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UNITED STATES COMPILED STATUTES ANNOTATED

1916

EMBRACING THE STATUTES OF THE UNITED STATES OF A GENERAL AND PERMANENT NATURE IN FORCE AT THE CLOSE OF THE FIRST SESSION OF THE 64TH CONGRESS

AND

DECISIONS CONSTRUING AND APPLYING SAME TO APRIL 1, 1916

INCORPORATING UNDER THE HEADINGS OF THE REVISED STATUTES THE SUBSEQUENT LAWS, TOGETHER WITH EXPLANATORY AND HISTORICAL NOTES

TEXT OF THE STATUTES COMPILED BY

JOHN A. MALLORY

ASSISTED BY EDITORIAL STAFF

ANNOTATIONS BY MEMBERS OF THE PUBLISHERS' EDITORIAL STAFF

IN 12 VOLUMES

VOLUME 10

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1917

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UNITED STATES COMPILED STATUTES ANNOTATED

1916

VOLUME 10

TITLE LXIII

RIVERS, HARBORS, AND CANALS

The designation of this Title in the Revised Statutes, "Rivers and Harbors," is extended in this compilation to "Rivers, Harbors, and Canals," to describe more completely the contents of the original title, as well as the additional provisions included here.

This Title, as enacted in the Revised Statutes, was not divided into chapters. For convenience, the sections of the Revised Statutes and the numerous additional provisions included with them under this Title are divided into nine chapters, designated as chapters A–I.

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CHAPTER A

Navigable Waters

This chapter includes the sections of the Revised Statutes and other provisions, prior as well as subsequent to said Revision, declaring certain rivers, etc., navigable waters, and regulating the operation and control of such rivers and of canals connected with them.

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§ 9836. (R. S. § 5244.) Certain rivers in Alabama to be free from tolls.

The Tennessee, Coosa, Cahawba, and Black Warrior Rivers, within the State of Alabama, shall be forever free from toll for all property belonging to the United States, and for all persons in their service, and for all citizens of the United States, except as to such tolls as may be allowed by act of Congress.

Act May 23, 1828, c. 75, § 7, 4 Stat. 290.

Navigable rivers within public lands were to be deemed and remain public highways, by R. S. § 2476, ante, § 4918.

Notes of Decisions

Navigable waters in Alabama.—Alabama when admitted into the Union became entitled to the soil below high-water mark, under the navigable waters within the limits of the state, where it had not been previously granted. Mobile Transp. Co. v. Mobile (1903) 23 Sup. Ct. 170, 172, 187 U. S. 479, 47 L. Ed. 266.

By the acts of congress regulating the survey and disposal of the public lands, the federal government has renounced its title to the navigable waters of Alabama. City of Mobile v. Eslava (1839) 9 Port. 577, 33 Am. Dec. 325.

The navigable waters embrace all the soil that is within the limits of high-water mark. Id.

In determining the navigability of a freshwater stream, navigable for only a part of the year, not less than all of the following considerations should be considered: Whether the stream is suitable for valuable floatage for a sufficient length of time for its beneficial use by the public; whether the public or only a few individuals are interested in transportation on it, or any great public interests are promoted in its use for transportation; whether it has been previously used generally, and how long it has been and will be used, by the public; and whether it was meandered by government surveys, or included therein. Blackman v. Mauldin (1909) 51 So. 23, 164 Ala. 337, 27 L. R. A. (N. S.) 670. See, also, Rhodes v. Otis (1859) 33 Ala. 578, 73 Am. Dec. 439.

—— **Waters held not navigable.**—A stream susceptible of floating logs only at high water or during a freshet cannot be considered a navigable stream. Lewis v. Coffee County (1884) 77 Ala. 190, 54 Am. Rep. 55.

Where a stream is suitable for purposes of navigation only at certain periods of varying duration, and it appears that it was included in the surveys of the country, and is not connected with tide water, evidence that "the river was sufficient for the floatage of logs and flatboats during the winter seasons" does not show the stream to be per se a public highway. Olive v. State (1888) 86 Ala. 88, 5 South. 653, 4 L. R. A. 33.

Stream held as a matter of law, not a public stream. Bayzer v. McMillan Mill Co. (1894) 105 Ala. 395, 16 South. 923. Murder creek. Ellis v. Carey (1857) 30 Ala. 725. Middle fork of Dog river. Peters v. New Orleans, M. & C. R. Co. (1876) 56 Ala. 528.

Presumptions and burden of proof.—A nontidal stream, which was not meandered in the survey by the United States is prima facie nonnavigable. Olive v. State (1888) 86 Ala. 88, 5 South. 653, 4 L. R. A. 33; Blackman v. Mauldin (Ala. 1909) 51 So. 23. The onus is on the party claiming it to be so to prove that a stream above tide water is navigable, and therefore open to the public. Rhodes v. Otis (1859) 33 Ala. 578, 73 Am. Dec. 439; Morrison v. Coleman (1888) 87 Ala. 655, 6 South. 374, 5 L. R. A. 384.

—— **Questions for court and jury.**—Whether a stream is navigable is a question of law, after the facts on which the question depends are ascertained. Rhodes v. Otis (1859) 33 Ala. 578, 73 Am. Dec. 439; Walker v. Allen (1882) 72 Ala. 456.

Whether use of a stream for floatage of logs and flatboats during the winter seasons makes it a public highway is for the jury. Olive v. State (1888) 86 Ala. 88, 5 South. 653, 4 L. R. A. 33.

§ 9837. (R. S. § 5245.) Toll on canals on the Tennessee.

The assent of the United States is hereby given to any act which the legislature of the State of Alabama may pass for imposing a toll on the use of such parts of the canal or canals which have been,

or may be, constructed at or around the Muscle and Colbert's Shoals of the river Tennessee. Such tolls shall be expended exclusively on the canals, and shall not exceed in amount the sum required to keep them in repair, and to defray the expenses of lock-tenders, collectors, superintendents, and managers. This section shall not affect the exemption of the property of the United States, and all persons in their service, from any toll whatever. An annual report shall be made to the Secretary of the Treasury of the United States, of the rate and amount of tolls charged or collected on said canals, and their application.

Act June 23, 1836, c. 119, § 2, 5 Stat. 57.

Provisions abolishing tolls on United States canals and providing for the payment of expenses of operation, maintenance, etc., were made by Act July 5, 1884, c. 229, § 4, amended by Act March 3, 1909, c. 264, § 6, post, § 9860.

See note to R. S. § 5244, ante, § 9836.

Notes of Decisions

Bids for building locks on canal.—A bidder under Act Aug. 14, 1876, c. 267, to build locks on the Muscle Shoals Canal may, until acceptance of his bid, withdraw it, but the other bidders are not released, and that the contract may be awarded to the one whose bid is lowest. (1877) 15 Op. Atty. Gen. 649.

§ 9838. (R. S. § 5246.) The Des Moines River.

The Des Moines River shall forever remain free from any toll, or other charge whatever, for any property of the United States, or persons in their service, passing along the same.

Act Aug. 8, 1846, c. 103, § 3, 9 Stat. 78. Act Jan. 20, 1870, c. 7, 16 Stat. 61.

See note to R. S. § 5244, ante, § 9836.

Notes of Decisions

Des Moines river as navigable stream.—The repeal of Act 1846 (incorporated in this section) did not affect riparian rights of the owners of land bounded on such stream nor such rights as the riparian owners had acquired by grants under which they claimed to high-water mark. Berry v. Hoogendoorn (1906) 108 N. W. 923, 133 Iowa, 437.

§ 9839. (R. S. § 5247.) Michigan City Harbor.

The passage of vessels to and from the harbor of Michigan City, in Indiana, shall be free and not subject to toll or charge.

Act June 23, 1866, c. 138, § 1, 14 Stat. 73. Act March 2, 1867, c. 144, § 2, 14 Stat. 421.

See note to R. S. § 5244, ante, § 9836.

§ 9839a. (Act July 27, 1916, c. 260, § 1.) Government iron pier, Delaware Bay; open to public use.

Government iron pier in Delaware Bay near Lewes, Delaware: * * Hereafter said pier shall be open to public use under regulations to be prescribed by the Secretary of War. (39 Stat. 394.)

This was a provision following an appropriation for maintenance of said pier in section 1 thereof of the rivers and harbors appropriation act of 1916, cited above.

A further provision repealed Act March 3, 1891, c. 542, 26 Stat. 969, authorizing a transfer of the pier to the Treasury Department.

§ 9840. (R. S. § 5248.) The Iowa River.

So much of the Iowa River within the State of Iowa as lies north of the town of Wapello shall not be deemed a navigable river or public highway, but dams and bridges may be constructed across it.

Res. July 13, 1868, No. 55, § 2, 15 Stat. 257. Act May 6, 1870, c. 92, 16 Stat. 121.

This section was in effect amended by a provision of Act Aug. 18, 1894, c. 299, § 1, post, § 9841.

Authority to construct dams across navigable waters was granted by the

Dam Act of June 21, 1906, c. 3508, amended by Act June 23, 1910, c. 360, post, §§ 9976–9983.

Authority to construct bridges was granted by the Bridge Act of March 23, 1906, c. 1130, post, §§ 9961–9968.

Notes of Decisions

Implied declaration of navigability or nonnavigability.—A statute declaring that a river is navigable up to a mill-dam, is an implied declaration that it is unnavigable beyond that point. American River Water Co. v. Amsden (1856) 6 Cal. 443.

A statute declaring a river nonnavigable impliedly recognizes that theretofore it had been a navigable river. Wood v. Fowler (1882) 26 Kan. 682, 40 Am. Rep. 300. See, also, Murray v. Preston (1899) 50 S. W. 1095, 106 Ky. 561, 90 Am. St. Rep. 232; Southern Ry. Co. v. Ferguson (1900) 59 S. W. 343, 105 Tenn. 552, 80 Am. St. Rep. 908.

§ 9841. (Act Aug. 18, 1894, c. 299, § 1.) Iowa River, Iowa.

So much of the Iowa River within the State of Iowa as lies between the town of Toolsboro and the town of Wapello, in the county of Louisa, shall not be deemed a navigable river or public highway, but dams and bridges may be constructed across it. (28 Stat. 356.)

This was a provision of section 1 of the rivers and harbors appropriation act of 1894, cited above.

See R. S. § 5248, ante, § 9840, and notes thereto.

Notes of Decisions

Effect of statutes.—The effect of a series of statutes declaring what streams or portions of streams shall be navigable, which, after declaring a stream navigable between certain points, and repeatedly changing one of those points, omits the stream from the list of navigable waters entirely, is to declare by implication that the stream is nonnavigable. Cardwell v. Sacramento County (1889) 79 Cal. 347, 21 Pac. 763.

§ 9842. (Act Feb. 23, 1901, c. 470.) Mississippi River, West Channel, opposite La Crosse, Wisconsin.

That the branch of the Mississippi River flowing between Grand Island and the mainland opposite the city of La Crosse, State of Wisconsin, and known as the West Channel, be, and the same is hereby, declared unnavigable, and the said city of La Crosse is, from and after the passage of this Act, relieved of the necessity of maintaining a draw or pontoon bridge over said West Channel. (31 Stat. 804.)

Notes of Decisions

Effect of statutory declaration.—See notes under §§ 9840, 9841, ante.

Navigability of Mississippi river.—Mississippi river is a navigable stream. U. S. v. Milwaukee & St. P. Ry. Co. (C. C. 1873) Fed. Cas. No. 15,778; Hagerla v. Mississippi River Power Co. (D. C. 1913) 202 Fed. 776; People v. City of St. Louis (1848) 10 Ill. (5 Gilman) 351, 48 Am. Dec. 339; McManus v. Carmichael (1856) 3 Iowa (3 Clarke) 1; Tomlin v. Dubuque, B. & M. R. Co. (1871) 32 Iowa, 106, 7 Am. Rep. 176; State v. Akers (1914) 140 Pac. 637, 92 Kan. 169, Ann. Cas. 1916B, 543; Castner v. The Dr. Franklin (1858) 1 Minn. 73 (Gil. 51). So is its eastern channel between Bloody Island and the main land. People v. City of St. Louis (1848) 10 Ill. (5 Gilman) 351, 48 Am. Dec. 339. And in the region of the falls of St. Anthony, Minn. St. Anthony Falls Water Power Co. v. Board of Water Com'rs of City of St. Paul, Minn. (1897) 18 Sup. Ct. 157, 168 U. S. 349, 42 L. Ed. 497. See City of Chicago v. McGinn (1869) 51 Ill. 266, 2 Am. Rep. 295; Houck v. Yates (1876) 82 Ill. 179; The Magnolia v. Marshall (1860) 39 Miss. 109; State v. Muncie Pulp Co. (1907) 104 S. W. 437, 119 Tenn. 47.

§ 9843. (Res. Feb. 7, 1907, No. 13.) Sturgeon Bay, Illinois.

So much of the west fork of Sturgeon Bay within the county of Mercer and State of Illinois as lies west of the line between the east half and the west half of the east half of section twenty-five, in township fourteen north, range six west of the fourth principal meridian, and so much of the east fork of said Sturgeon Bay as lies north of the north line of section thirty, in township fourteen

north, range five west of the fourth principal meridian, shall not be deemed navigable waters of the United States. (34 Stat. 1421.)

§ 9843a. (Act Feb. 27, 1915, c. 68.) Calumet River, Cook County, Illinois, outside of new channel lines.

The portion of the old channel of the Calumet River in the north quarter of fractional section seven, township thirty-seven north, range fifteen, east of the third principal meridian, south of the Indian boundary line, in Cook County, Illinois, which lies outside of the new channel lines as established by the United States and shown on "map of the Calumet River, Illinois, from Lake Michigan to Calumet Lake, to accompany report of W. G. Ewing, United States attorney, to the Attorney General, respecting cession of right of way for improvement of said river, under act of Congress approved July fifth, eighteen hundred and eighty-four," is hereby abandoned as navigable water. (38 Stat. 817.)

This was an act entitled "An act in relation to the location of a navigable channel of the Calumet River in Illinois," cited above. Said act was preceded by the following preamble:

"Whereas by deeds dated May fourth, eighteen hundred and eighty-seven, and recorded in the recorder's office of Cook County, Illinois, on April sixth, eighteen hundred and eighty-nine, in book two thousand four hundred and ninety-seven of records, at page two hundred and nineteen, and on April eighth, eighteen hundred and eighty-nine, in book two thousand four hundred and eighty-one of records, at page two hundred and seventy-one, respectively, the owners of the north quarter of fractional section seven, township thirty-seven north, range fifteen, east of the third principal meridian, south of the Indian boundary line in Cook County, Illinois, gave and granted unto the United States of America free and unobstructed right of way in and through the above-described ground two hundred feet in width for purposes of a channel for the Calumet River, in accordance with the provisions of the Act of Congress approved July fifth, eighteen hundred and eighty-four, and in order to enable the United States to straighten the channel of the said Calumet River and conform to a survey and realignment of the channel lines of said river as adopted, established, and shown by plat approved by the Chief of Engineers of the United States Army and filed for record in the office of the recorder of deeds of Cook County, Illinois, on the seventeenth day of May, eighteen hundred and eighty-nine, as document numbered one million one hundred and two thousand two hundred and eighty-four, entitled 'Map of the Calumet River, Illinois, from Lake Michigan to Calumet Lake, to accompany report of W. G. Ewing, United States attorney, to the Attorney General, respecting cession of right of way for improvement of said river, under Act of Congress approved July fifth, eighteen hundred and eighty-four' (Report dated January twenty-fourth, eighteen hundred and eighty-eight, and report dated February twelfth, eighteen hundred and eighty-nine. William G. Ewing, United States attorney, northern district of Illinois); and

"Whereas it is provided in the said deeds above referred to that 'the shore or dock lines of said river as so established and shown on said plat shall hereafter for all purposes be taken as the true meandered lines of said stream'; and

"Whereas a navigable channel has been cut through said north quarter of said fractional section seven within the new channel lines of the Calumet River as shown on said map: Therefore

"Be it enacted," etc.

The rivers and harbors appropriation Act of July 5, 1884, c. 229, 23 Stat. 143, mentioned in this section, made an appropriation for continuing improvement of Calumet River, Illinois, and provided that no part thereof should be expended until the right of way should have been conveyed to the United States, free from expense, and the United States released from liability to adjacent property owners, to the satisfaction of the Secretary of War.

§ 9844. (Act Oct. 23, 1913, c. 33.) Mill Slough, Oregon.

Mill Slough, a tidal tributary of Coos Bay, lying within the limits of the city of Marshfield, State of Oregon, is hereby declared to be not a navigable waterway of the United States, within the meaning of the laws enacted by Congress for the preservation and protection of such waterways, and the consent of Congress is hereby given to the filling in of said slough by the said city of Marshfield. (38 Stat. 233.)

§ 9845. (R. S. § 5249.) Wisconsin and Fox Rivers.

All tolls and revenues derived from the improvements made or acquired in the Wisconsin River and the line of water communication between the Wisconsin River and the Fox River, after providing for the current expenses of operating and keeping the same in repair, shall be paid into the Treasury; and whenever the United States shall be re-imbursed for all sums advanced for the same, with interest thereon, then the tolls shall be reduced to the least sum which, together with other revenues properly applicable thereto, if any, shall be sufficient to operate and keep the improvements in repair.

Act July 7, 1870, c. 210, § 4, 16 Stat. 190.
See note to R. S. § 5244, ante, § 9836.

Notes of Decisions

Abolition of tolls.—The effect of Act Aug. 2, 1882, c. 375, declaring that no tolls or operating charges shall be levied or collected on any vessels passing through any canal of the United States, was to abolish tolls levied on vessels passing through the works of the Fox and Wisconsin rivers improvement, and this provision is re-enacted in Act July 4, 1884, c. 229, § 4, incorporated into post, § 9860. (1885) 18 Op. Atty. Gen. 188.

Payment of operating expenses.—See § 9860, post, and notes thereunder.

Water power, right to.—The right to the water power created incidentally by the dams and canals owned and maintained by the United States in aid of navigation in the Fox river in Wisconsin, which was reserved by agreement by a canal company, which conveyed the improvements to the United States, is vested solely in such corporation, unaffected by rights of other riparian owners, and subject only to such control as may be exercised by the United States. Green Bay & M. Canal Co. v. Patten Paper Co. (1898) 19 Sup. Ct. 97, 101, 172 U. S. 58, 43 L. Ed. 364.

(R. S. § 5250. Transferred.)

This section authorized the construction of bridges across the Maquoketa River in Iowa. It is placed, with other provisions relating to bridges, post, under chapter E of this title, "Bridges over Navigable Waters," § 9960.

§ 9845a. (Act March 4, 1915, c. 142, § 13.) Swan Creek, Toledo, Ohio.

Swan Creek, a stream lying within the limits of the city of Toledo, State of Ohio, is hereby declared to be not a navigable waterway of the United States within the meaning of the laws enacted by Congress for the preservation and protection of such waterways, and the consent of Congress is hereby given for the filling in of said creek by the local authorities. (38 Stat. 1055.)

This was a section of the rivers and harbors appropriation act of 1915, cited above.

§ 9845b. (Act July 27, 1916, c. 260, § 1.) Crum River declared navigable.

Hereafter the said Crum River, as so straightened, shall be a public navigable stream, and the present course and channel of the said river from the right of way of the Philadelphia and Reading Railway Company to the low-water line in the Delaware River shall be abandoned and vacated when the above-mentioned new channel shall have been completed to a depth of four feet at mean low water, with a bottom width of sixty-two feet and width of one hundred feet at mean low-water level: Provided, That the Government shall have such right, title, and interest in and to the bed of said new channel as will assure the public the right to the perpetual use of said channel for all the purposes of navigation and commerce. (39 Stat. 393.)

This was a provision of section 1 of the rivers and harbors appropriation act of 1916, cited above.

The portion of said act immediately preceding this provision authorized certain persons named to change the course of Crum River under the supervision of the Secretary of War.

§ 9845c. (Act July 27, 1916, c. 260, § 1.) Kyle and Young Canal; acceptance by United States; free public water way.

There shall be conveyed to the United States, free of cost, title to the land occupied by what is known as the "Kyle and Young Canal" and the "Morrison Landing extension" of the same, on the Oklawaha River, in the State of Florida, together with title to a strip of land on the east side of said canal of such width as in the judgment of the Secretary of War may be required for the future widening of said canal and extension by the United States; and the Secretary of War is hereby authorized to accept said land and navigation improvements as the property of the United States upon the delivery to him by the owners of a clear and indefeasible title; and the said canal and extension shall thereupon become a free public waterway of the United States in place of the existing natural bed of the river. (39 Stat. 396.)

This was a provision of section 1 of the rivers and harbors appropriation act of 1916, cited above.

§ 9846. (R. S. § 5251.) Rivers in Louisiana.

All the navigable rivers and waters in the former Territories of Orleans and Louisiana shall be and forever remain public highways.

Act March 3, 1811, c. 46, § 12, 2 Stat. 666.

This section was modified by various provisions declaring parts of rivers nonnavigable, set forth post, §§ 9846a–9855.

Act March 3, 1905, c. 1482, § 5, 33 Stat. 1148, declaring Cane River, Louisiana, not a navigable river, was repealed by Act June 29, 1906, c. 3609, 34 Stat. 618.

Notes of Decisions

Application of statute in general.—See § 9842, ante, and notes thereunder.

This section does not affect the question of whether the patentee to land on a nonnavigable lake belonging to the United States takes title to the adjoining submerged land. Hardin v. Shedd (1903) 23 Sup. Ct. 685, 190 U. S. 508, 47 L. Ed. 1156. See Boykin v. Shaffer (1858) 13 La. Ann. 129, holding that the act of congress admitting Louisiana into the Union, which provides that it shall be a condition upon which said state is admitted into the Union that the Mississippi river, and the navigable rivers and waters leading into the same and into the Gulf of Mexico, shall be common highways, and open to the inhabitants of the states and territories of the Union, was not intended to apply to streams only capable of an imperfect navigation in time of floods and very high water. And see Hamilton v. Vicksburg, S. & P. R. Co. (1886) 7 S. Ct. 206, 119 U. S. 280, 30 L. Ed. 393, holding that Act Feb. 20, 1811, enabling the people of the territory of Orleans to form a state, and declaring that the Mississippi, and its navigable tributaries shall be common highways, forever free, did not prohibit a state from authorizing a railroad to construct a drawbridge over such a tributary, since the use of the stream was not thereby given to private parties to the exclusion of the public.

Validity of state statutes.—Act La. 1888, No. 147, providing that the governor shall appoint two coal gaugers to gauge any coal or coke boat or barge in the state, and ascertain the number of bushels in each load, and that no boat load of coal or coke shall be sold in the state until gauged, etc., does not violate Act Feb. 20, 1811, admitting the state of Louisiana into the Union on an equal footing with the original states, and providing that the river Mississippi and navigable waters leading into it or the Gulf of Mexico shall be free highways, without any tax, duty, impost, or toll imposed by such state. Pittsburgh & S. Coal Co. v. Louisiana (1895) 15 Sup. Ct. 459, 463, 156 U. S. 590, 39 L. Ed. 544.

Obstructions by dams.—A finding that a stream is navigable up to the junction with it of another stream, but that the portion above the junction, on which it was proposed to build a dam, is not navigable, has no channel, and is "nothing but a high-water outlet, going dry every summer at many places, choked with rafts and filled with sand, reefs, etc.," is, in effect, a finding that the navigability of the stream below the junction is not influenced by the flow of water from that portion above, and hence that such navigability would not be injured by the erection of a dam. Egan v. Hart (1897) 17 Sup. Ct. 300, 165 U. S. 188, 41 L. Ed. 680. And see post, chapter F of this title, and notes thereunder.

"Navigable" defined.—"Navigable" means capable of being navigated during a considerable portion of the year, and not simply on the happening of floods at uncertain intervals. Bissel v. Olson (1913) 143 N. W. 340, 26 N. D. 60. The word has been extended beyond its technical signification and

refers to all bodies of water adapted or used for public purposes. State v. Korrer (1914) 148 N. W. 617.

In determining the authority and duties of parish police juries as to bridges, etc., a water course will be held to be navigable when in its natural state it can afford a channel for useful commerce; and this, notwithstanding natural formation of sand bars and accumulation of timber. Goodwill v. Police Jury of Bossier Parish (1886) 38 La. Ann. 752.

Rivers and waters held navigable.—The ebb and flow of the tide is not the only test of navigability. McManus v. Carmichael (1856) 3 Iowa (3 Clarke) 1. The doctrine, distinguishing navigable and nonnavigable rivers by their position above or below tide water, is abolished. Benson v. Morrow (1875) 61 Mo. 345. Test of navigability stated. Hurst v. Dana (1912) 122 P. 1041, 86 Kan. 947. The navigability of a stream is determined by the use of which it is capable rather than by the use actually made of it, and hence evidence that a stream has never been used as a highway of commerce is not conclusive that it is nonnavigable. Bissel v. Olson (1913) 143 N. W. 340, 26 N. D. 60.

A river which is navigable in fact is navigable in law. Little Rock, M. R. & T. R. Co. v. Brooks (1882) 39 Ark. 403, 43 Am. Rep. 277; McManus v. Carmichael (1856) 3 Iowa (3 Clarke) 1; Castner v. The Dr. Franklin (1852) 1 Minn. 73 (Gil. 51). A stream not tidewater, to be navigable, must be navigable in its natural state, without reference to artificial means, and be adaptable for use as a highway in the transportation of products or passengers. And it must be capable of being used for a highway a considerable part of the year, and not merely during brief, infrequent, and uncertain periods of high water. Bissel v. Olson (1913) 143 N. W. 340, 26 N. D. 60. Where a creek in its natural state and for a large part of the year had sufficient water to float rafts of railroad ties without requiring the raftsmen to use the banks of the stream, it was navigable. McKinney v. Northcutt (1905) 89 S. W. 351, 114 Mo. App. 146.

The Arkansas river is navigable. U. S. v. Mackey (C. C. A. 1913) 214 Fed. 137, appeal of certain parties dismissed. Gladys Belle Oil Co. v. Same (C. C. A. 1914) 216 Fed. 129, and decree reversed U. S. v. Same (C. C. A. 1914) 216 Fed. 126. So are Bayou St. John and Canal Carondelet. State v. Carondelet Canal & Navigation Co. (La. 1911) 56 So. 137. So is Falia river. Ingram v. Police Jury of Parish of St. Tammany (1868) 20 La. Ann. 226. So are the Mississippi river and its navigable tributaries, which include the Kansas and Arkansas rivers in Kansas. State v. Akers (1914) 140 P. 637, 92 Kan. 169. And so is the Missouri river. Benson v. Morrow (1875) 61 Mo. 345; State v. White River Valley Ry. Co. (1911) 129 N. W. 1034, 27 S. D. 65.

Rivers and waters held not navigable.—Where ponds and bayous are grassed, choked bodies of water, they are not navigable, and that occasional piroques and skiffs have been pulled over them is insufficient to show that they are navigable waters. Burns v. Crescent Gun & Rod Club (1900) 41 So. 249, 116 La. 1038.

Bayou La Chute. Bendich v. Scobel (1901) 31 So. 703, 107 La. 242. Big Lake, in northeastern Arkansas. Harrison v. Fite (1906) 148 Fed. 781, 78 C. C. A. 447. Little river. Harrison v. Fite (1906) 148 Fed. 781, 78 C. C. A. 447. McDowell creek. Lebanon Lumber Co. v. Leonard (1913) 136 P. 891, 68 Or. 147. Mouse river, near Minot. Bissel v. Olson (1913) 143 N. W. 340, 26 N. D. 60. Republican river. Clark v. Cambridge & A. Irr. & Imp. Co. (1895) 45 Neb. 798, 64 N. W. 239. Smoky Hill river. Kregar v. Fogarty (Kan. 1908) 96 P. 845.

Bayous which contain fresh water and drain prairies are not navigable. Burns v. Crescent Gun & Rod Club (1906) 41 So. 249, 116 La. 1038.

Judicial notice, presumptions, and burden of proof.—The courts take judicial notice of the navigable character of important rivers and inland lakes, but as to those of insignificant capacity and doubtful utility the question is one of fact, to be determined on evidence, and the burden of proof rests upon the party who asserts the existence of the public servitude. Harrison v. Fite (1906) 148 Fed. 781, 78 C. C. A. 447. See, also, McKinney v. Northcutt (1905) 89 S. W. 351, 114 Mo. App. 146.

A stream is not navigable unless its navigability is shown by evidence. Burns v. Crescent Gun & Rod Club (1906) 41 So. 249, 116 La. 1038.

A party claiming that a stream which has not been meandered or declared navigable by the legislature, is navigable has the burden of proving such fact. Bissel v. Olson (N. D. 1913) 143 N. W. 340. And the action of the government surveyor in meandering a body of water or in surveying its bed is evidence on question of navigability or unnavigability, but is not conclusive. Harrison v. Fite (1906) 148 Fed. 781, 78 C. C. A. 447; Kregar v. Fogarty (Kan. 1908) 96 P. 845. And see McKinney v. Northcutt (1905) 89 S. W. 351, 114 Mo. App. 146.

Question for jury.—Whether a stream is navigable is for the jury. Weller v. Missouri Lumber & Mining Co. (1913) 161 S. W. 853, 176 Mo. App. 243.

Whether a stream is navigable for the

purpose of floating logs, railroad ties, etc., is ordinarily a question of fact, the burden of establishing which rests on the party affirming it. McKinney v. Northcutt (1905) 89 S. W. 351, 114 Mo. App. 146.

§ 9846a. (Act July 27, 1916, c. 260, § 1.) Cache River, Arkansas; nonnavigable.

That the Cache River in the State of Arkansas be, and the same is hereby, declared to be a nonnavigable stream within the meaning of the Constitution and laws of the United States. This provision shall become void after one year from the date of the approval of this Act unless within said period the Legislature of Arkansas shall pass an act expressly approving this declaration. The right of the Congress to alter, amend, or repeal this paragraph is hereby expressly reserved. (39 Stat. 399.)

This was a provision of section 1 of the rivers and harbors appropriation act of 1916, cited above.

§ 9847. (Act March 23, 1900, c. 88.) Cuivre River, Missouri.

Cuivre River, in the counties of Lincoln and Saint Charles, in the State of Missouri, being the dividing line, is hereby declared not to be a navigable stream, and shall be so treated by the Secretary of War and all other authorities. (31 Stat. 50.)

§ 9848. (Act March 4, 1904, c. 393.) Osage River, Missouri.

The Osage River in the State of Missouri above the point where the south line of sections fifteen and sixteen in township forty north, of range twenty-two west, of the fifth principal meridian, and in the County of Benton, State of Missouri, crosses said river, is hereby declared not to be a navigable stream, and shall be so treated by the Secretary of War and by all other authorities. (33 Stat. 58.)

This act superseded Act June 24, 1902, c. 1154, 32 Stat. 398, which declared that the Osage River above the point where the dividing line between the counties of Benton and Saint Clair crosses the river should not be a navigable stream.

§ 9849. (Act Feb. 15, 1905, c. 574.) Grand River, Missouri.

Grand River in the State of Missouri above the city of Brunswick, in the county of Chariton in said State, is hereby declared to be not a navigable stream and shall be so treated by the Secretary of War and by all other authorities. (33 Stat. 715.)

§ 9850. (Act Feb. 15, 1910, c. 31, § 1.) One Hundred and Two River, Missouri.

That One Hundred and Two River south of the north boundary line of Andrew County, Missouri, as now located, be, and the same is hereby, declared to be not a navigable water of the United States within the meaning of the laws enacted by Congress for the preservation and protection of such waters. (36 Stat. 194.)

§ 9851. (Act Feb. 15, 1910, c. 31, § 2.) Reservation of power to alter, amend, or repeal act.

The right to alter, amend, or repeal this Act is hereby expressly reserved. (36 Stat. 194.)

§ 9852. (Act Feb. 15, 1910, c. 32, § 1.) Nodaway River, Missouri.

That Nodaway River, in the counties of Andrew, Holt, and Nodaway, in the State of Missouri, be, and the same is hereby, declared to be not a navigable water of the United States within the meaning of the laws enacted by Congress for the preservation and protection of such waters. (36 Stat. 194.)

§ 9853. (Act Feb. 15, 1910, c. 32, § 2.) Reservation of power to alter, amend, or repeal act.

The right to alter, amend, or repeal this Act is hereby expressly reserved. (36 Stat. 194.)

§ 9854. (Act Feb. 15, 1910, c. 33, § 1.) Big Tarkio River, Missouri.

That Big Tarkio River, in the counties of Holt and Atchison, in the State of Missouri, be, and the same is hereby, declared to be not a navigable water of the United States within the meaning of the laws enacted by Congress for the preservation and protection of such waters. (36 Stat. 194.)

§ 9855. (Act Feb. 15, 1910, c. 33, § 2.) Reservation of power to alter, amend, or repeal act.

The right to alter, amend, or repeal this Act is hereby expressly reserved. (36 Stat. 194.)

§ 9856. (R. S. § 5252.) Water-gauges on the Mississippi River and tributaries.

The Secretary of War is hereby authorized and directed to have water-gauges established, and daily observations made of the rise and fall of the Lower Mississippi River and its chief tributaries, at or in the vicinity of Saint Louis, Cairo, Memphis, Helena, Napoleon, Providence, Vicksburgh, Red River Landing, Baton Rouge, and Carrollton, on the Mississippi, between the mouth of the Missouri and the Gulf of Mexico; and at or in the vicinity of Fort Leavenworth, on the Missouri; Rock Island, on the Upper Mississippi; Louisville, on the Ohio; Florence, on the Tennessee; Jacksonport, on the White River; Little Rock, on the Arkansas; and Alexandria, on the Red River; and at such other places as the Secretary of War may deem advisable. The expenditure for the same shall be made from the appropriation for the improvement of rivers and harbors; but the annual cost of the observations shall not exceed the sum of five thousand dollars.

Res. Feb. 21, 1871, No. 40, 16 Stat. 598.

This section was modified by Act Aug. 11, 1888, c. 860, § 6, amended by Act June 13, 1902, c. 1079, § 9, post, § 9857.

§ 9857. (Act Aug. 11, 1888, c. 860, § 6, as amended, Act June 13, 1902, c. 1079, § 9.) Gauging the waters of the Mississippi River and tributaries; limit of annual expenditures.

For the purpose of securing the uninterrupted gauging of the waters of the Mississippi River and its tributaries, as provided for in joint resolution of the twenty-first of February, eighteen hundred and seventy-one, upon the application of the Chief of Engineers, the Secretary of War is hereby authorized to draw his warrant or requisition, from time to time, upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the sum of nine thousand six hundred dollars: Provided, however, That an itemized statement of said expenses shall accompany the annual report of the Chief of Engineers. (25 Stat. 424. 32 Stat. 374.)

This section was part of the rivers and harbors appropriation act for 1888, cited above.

The section, as originally enacted, provided for the gauging of the waters of the Lower Mississippi and tributaries, and limited the cost for each year to the amount appropriated in the act for such purpose. It was amended by Act June 13, 1902, c. 1079, § 9, cited above, to read as set forth here.

Res. Feb. 21, 1871, No. 40, mentioned in this section, was incorporated into Rev. St. § 5252, ante, § 9856.

Provisions for gauging at or near Saint Paul during the annual operation of the reservoirs at the headwaters of the Mississippi River, were made by Act Aug. 11, 1888, c. 860, § 1, post, § 9892.

(R. S. § 5253. Transferred.)

This section authorized the employment of civil engineers on survey and improvements on western and northwestern waters. It is placed, with other provisions for such improvements, post, under chapter B of this Title, "Improvement of Rivers and Harbors," § 9864.

(R. S. § 5254. Transferred.)

This section authorized piers and cribs for protection of saw-mills and rafts on the Mississippi and St. Croix Rivers in Wisconsin and Minnesota. It is placed, with provisions relating to protection of rivers, etc., post, under chapter C, "Preservation and Protection of Rivers and Harbors and of Improvements," § 9911.

§ 9858. (R. S. § 5255.) Louisville and Portland Canal.

The Secretary of the Treasury is directed to assume, on behalf of the United States, the control and management of the Louisville and Portland Canal in conformity with the terms of the joint resolution of the legislature of the State of Kentucky, approved March twenty-eight, eighteen hundred and seventy-two, at such time and in such manner as in his judgment the interests of the United States, and the commerce thereof, may require: Provided, That after the United States shall assume control of said canal, the tolls thereon on vessels propelled by steam shall be reduced to twenty-five cents per ton, and on all other vessels in proportion.

Act March 3, 1873, c. 233, § 1, 17 Stat. 563.

Provisions for the payment of the bonds of the Canal Company, for a reduction of tolls, and for the management of the canal by the Secretary of War, were made by Act May 11, 1874, c. 165, 18 Stat. 43. But no tolls were to be charged, by Act May 18, 1880, c. 95, post, § 9859.

Notes of Decisions

Right of Louisville and Portland Canal to tolls.—See sections 9859, 9860, and notes thereunder.

Expenditure of appropriation made by Act June 10, 1872, c. 416, "for continuing the work on the canal at the falls of the Ohio river," whether made with or without the consent of the Louisville and Portland Canal Company, will not affect any rights which the latter may now have as to tolls. (1872) 14 Op. Atty. Gen. 90.

§ 9859. (Act May 18, 1880, c. 95.) Tolls at the Louisville and Portland Canal abolished; manner of paying expenses.

After the first day of July, eighteen hundred and eighty, no tolls shall be charged or collected at the Louisville and Portland Canal, but the Secretary of War shall be authorized to draw his warrant from time to time upon the Secretary of the Treasury to pay the actual expenses of operating and keeping said canal in repair. (21 Stat. 141.)

This was an act entitled "An act to abolish all tolls at the Louisville and Portland Canal."

The Secretary of War was authorized to make and enforce regulations for the use of this canal by Act July 5, 1884, c. 229, § 7, 23 Stat. 148, and by Act Sept. 26, 1888, c. 1041, 25 Stat. 497.

Tolls on United States canals were abolished, and the expenses of operating and keeping them in repair were to be paid out of the Treasury on warrants issued by the Secretary of War, by Act July 5, 1884, c. 229, § 4, post, § 9860, and the Secretary of War was authorized to make and enforce regulations of the use of United States canals by Act Aug. 18, 1894, c. 299, § 4, post, § 9861.

Notes of Decisions

Payment by secretary of the treasury of warrants.—The secretary of the treasury is authorized to pay the warrants drawn by the secretary of war. (1880) 16 Op. Atty. Gen. 557.

§ 9860. (Act July 5, 1884, c. 229, § 4, as amended, Act March 3, 1909, c. 264, § 6.) Tolls on United States canals, etc., abolished; payment of expenses of operation, maintenance, etc., thereof; reconstruction of works, with modifications; statement of expenses; provisions not to apply to Panama Canal.

No tolls or operating charges whatever shall be levied upon or collected from any vessel, dredge, or other water craft for passing through any lock, canal, canalized river, or other work for the use and benefit of navigation, now belonging to the United States or that may be hereafter acquired or constructed; and for the purpose of preserving and continuing the use and navigation of said canals and

other public works without interruption, the Secretary of War, upon the recommendation of the Chief of Engineers, United States Army, is hereby authorized to draw his warrant or requisition, from time to time, upon the Secretary of the Treasury to pay the actual expenses of operating, maintaining, and keeping said works in repair, which warrants or requisitions shall be paid by the Secretary of the Treasury out of any money in the Treasury not otherwise appropriated: Provided, That whenever, in the judgment of the Secretary of War, the condition of any of the aforesaid works is such that its entire reconstruction is absolutely essential to its efficient and economical maintenance and operation as herein provided for, the reconstruction thereof may include such modifications in plan and location as may be necessary to provide adequate facilities for existing navigation: Provided further, That the modifications are necessary to make the reconstructed work conform to similar works previously authorized by Congress and forming a part of the same improvement, and that such modifications shall be considered and approved by the Board of Engineers for Rivers and Harbors and be recommended by the Chief of Engineers before the work of reconstruction is commenced: Provided further, also, That an itemized statement of said expenses shall accompany the annual report of the Chief of Engineers: And provided further, That nothing herein contained shall be held to apply to the Panama Canal. (23 Stat. 147. 35 Stat. 818.)

This section was part of the rivers and harbors appropriation act of 1884, cited above.

The section, as originally enacted, was as follows:

"No tolls or operating charges whatsoever shall be levied or collected upon any vessel or vessels, dredges, or other passing water-craft through any canal or other work for the improvement of navigation belonging to the United States; and for the purpose of preserving and continuing the use and navigation of said canals, rivers, and other public works without interruption, the Secretary of War, upon the application of the chief engineer in charge of said works, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury to pay the actual expenses of operating and keeping said works in repair, which warrants or requisitions shall be paid by the Secretary of the Treasury, out of any money in the Treasury not otherwise appropriated: Provided, however, That an itemized statement of said expenses shall accompany the annual report of the chief of engineers."

It was amended by Act March 3, 1909, c. 264, § 6, cited above, to read as set forth here.

Provisions applicable to the Panama Canal were made by the Panama Canal Act of Aug. 24, 1912, c. 390, § 5, as amended by Act June 15, 1914, c. 106, post, § 10041.

Notes of Decisions

Application of appropriations.—The indefinite appropriation made by this section as originally enacted for the purpose of preserving and continuing the use and navigation of certain canals, rivers, and other public works, without interruption, is not applicable to river and harbor improvements generally, but only to a particular class of public works, such as canals, locks, etc., in the use of which both operating expenses and expenses for repairs are necessarily incurred. (1885) 18 Op. Atty. Gen. 188.

Right to tolls.—The improvement of a navigable stream by the construction of a canal or otherwise is a sufficient consideration to the public for the exaction of toll, and such exaction does not violate the statutory or constitutional promise that all navigable water shall be free. State v. Columbia Water Power Co. (1909) 63 S. E. 884, 82 S. C. 181.

Tolls for the use of improvement of a navigable stream may be charged, notwithstanding the stream was capable of such use in its natural condition, provided the improvement facilitated it. It is not, it seems, competent for the state to give the control of one of its navigable streams to private parties for improvement with power to charge toll at discretion. Nelson v. Cheboygan Nav. Co. (1880) 5 N. W. 998, 44 Mich. 7, 38 Am. Rep. 222.

Decisions and opinions under prior statutes.—A contract for the perpetual maintenance of the canals for which lands were granted by Act of May 24, 1828, to the state of Ohio, was not created by the acceptance of the grant, with the provision that the canals, "when completed or used, shall be and forever remain public highways"; but this imposes the obligation to maintain the canals as public highways only so long as they are "used" as such. Walsh

v. Columbus, H. V. & A. R. Co. (1900) 20 Sup. Ct. 393, 396, 176 U. S. 469, 44 L. Ed. 548, affirming decree (1898) 50 N. E. 442, 58 Ohio St. 123.

The effect of the river and harbor act of August 2, 1882 (22 Stat. 209), which declared "that no tolls or operating charges whatsoever shall be levied or collected upon any vessels, boats, dredges, craft, or other water craft passing through any canal or other work for the improvement of navigation belonging to the United States" was to abolish the tolls levied by the government on vessels passing through the works of the Fox and Wisconsin rivers. (1885) 18 Op. Atty. Gen. 188.

§ 9861. (Act Aug. 18, 1894, c. 299, § 4, as amended, Act June 13, 1902, c. 1079, § 11.) Regulations of use of canals authorized; violation of rules; penalty.

It shall be the duty of the Secretary of War to prescribe such rules and regulations for the use, administration, and navigation of any or all canals and similar works of navigation that now are, or that hereafter may be, owned, operated, or maintained by the United States as in his judgment the public necessity may require, and he is also authorized to prescribe regulations to govern the speed and movement of vessels and other water craft in any public navigable channel which has been improved under authority of Congress, whenever, in his judgment, such regulations are necessary to protect such improved channels from injury, or to prevent interference with the operations of the United States in improving navigable waters or injury to any plant that may be employed in such operations. Such rules and regulations shall be posted, in conspicuous and appropriate places, for the information of the public; and every person and every corporation which shall violate such rules and regulations shall be deemed guilty of a misdemeanor and, on conviction thereof in any district court of the United States within whose territorial jurisdiction such offense may have been committed, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court. (28 Stat. 362. 32 Stat. 374.)

This section was part of the rivers and harbors appropriation act of 1894, cited above.

The section, as originally enacted, was as follows:

"It shall be the duty of the Secretary of War to prescribe such rules and regulations for the use, administration, and navigation of any or all canals and similar works of navigation that now are, or that hereafter may be, owned, operated, or maintained by the United States as in his judgment the public necessity may require.

"Such rules and regulations shall be posted, in conspicuous and appropriate places, for the information of the public; and every person and every corporation which shall knowingly and willfully violate such rules and regulations shall be deemed guilty of a misdemeanor and, on conviction thereof in any district court in the United States within whose territorial jurisdiction such offense may have been committed, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court."

It was amended by Act June 13, 1902, c. 1079, § 3, cited above, to read as set forth here.

The consent of Congress was given to the construction of a ship canal along the Government right of way connecting the waters of Puget Sound with Lake Washington, said canal, when completed, to be turned over to the United States, by Act June 11, 1906, c. 3072, post, §§ 9904–9906.

Provisions for the acquisition of lands, etc., between the present Saint Marys Falls Ship Canal and the international boundary line at Sault Sainte Marie, Mich., for purposes of navigation, etc., of said waters, etc., were made by Act March 3, 1909, c. 264, § 11, post, § 9880.

Provisions for conservation of the right to the flow of water and riparian, water power, and other rights in the Saint Marys River, for purposes of navigation and incidentally for development of the water power, were added, by Act March 3, 1909, c. 264, § 12, to provisions of Act June 13, 1902, c. 1079, § 1, set forth, as so amended post, § 9989.

Notes of Decisions

Validity of statute.—This section is not invalid as a delegation of legislative power. U. S. v. Ormsbee (D. C. 1896) 74 Fed. 207; U. S. v. Moody (D. C. 1908) 164 Fed. 269.

Prohibited uses of canals of United

States.—Regulations made pursuant to this section have the force of law, so that persons violating the same by drawing off water from a canal are subject to criminal punishment under the act. U. S. v. Ormsbee (D. C. 1896) 74 Fed. 207.

This section impliedly forbids the use of canals owned by the United States, under penalty of criminal prosecution, except in compliance with rules and regulations made by the secretary of war. U. S. v. Moody (D. C. 1908) 164 Fed. 269.

It is unnecessary to set out regulations made by an executive department in pursuance of authority delegated by congress in an indictment for their violation or to specify the particular rule violated. Id.

Control and supervision by secretary of war.—The control and supervision of the navigable waters of the United States is placed in the secretary of war. (1897) 21 Op. Atty. Gen. 518.

Decisions as to navigability of waters in general.

§ 9862. (Act June 13, 1902, c. 1079, § 6.) Manner of enforcing regulations of use of navigable waters.

Any regulations heretofore or hereafter prescribed by the Secretary of War in pursuance of the fourth and fifth sections of the river and harbor Act of August eighteenth, eighteen hundred and ninety-four, and any regulations hereafter prescribed in pursuance of the aforesaid section four as amended by section eleven of this Act, may be enforced as provided in section seventeen of the river and harbor Act of March third, eighteen hundred and ninety-nine, the provisions whereof are hereby made applicable to the said regulations. (32 Stat. 374.)

This section was part of the rivers and harbors appropriation act of 1902, cited above.

Act Aug. 18, 1894, c. 299, § 4, mentioned in this section, authorizing the Secretary of War to make regulations for the use of canals, and prescribing a penalty for a violation thereof, is set forth, as amended by Act June 13, 1902, c. 1079, § 11, ante, § 9861.

Act Aug. 18, 1894, c. 299, § 5, also mentioned in this section, authorizing the Secretary of War to prescribe regulations for drawbridges over navigable waters, and prescribing a penalty for a violation thereof, is set forth post, § 9973.

Act March 3, 1899, c. 425, § 17, also mentioned in this section, prescribing the duties of the Department of Justice in enforcing regulations relating to navigable waters, authorized by several sections of said act, is set forth post, § 9922.

Decisions Relating to Subject in General

Navigability in general.—See post, chapters, C, E, and F of this title, and notes thereunder.

A stream running into the sea, and in which the tide ebbs and flows, is "navigable water." U. S. v. President, etc., of Jamaica & R. Turnpike Road (C. C. 1910) 183 Fed. 598 (decree reversed [C. C. A. 1913] 204 Fed. 759); Middleton v. Pritchard (1842) 4 Ill. (3 Scam.) 510, 38 Am. Dec. 112; Wilson v. Watson (1910) 132 S. W. 563, 141 Ky. 324; Charles C. Wilson & Son v. Harrisburg (Me. 1910) 77 A. 787; Commonwealth v. Chapin (1827) 22 Mass. (5 Pick.) 199, 16 Am. Dec. 386; Attorney General v. Woods (1871) 108 Mass. 436, 11 Am. Rep. 380; Ex parte Jennings (N. Y. 1826) 6 Cow. 518, 16 Am. Dec. 477; People v. Tibbetts (1859) 19 N. Y. 523; In re Delaware River at Stilesville (1909) 115 N. Y. S. 745, 131 App. Div. 403; Fulton Light, Heat & Power Co. v. State (1909) 116 N. Y. S. 1000, 62 Misc. Rep. 189; Fulton Light, Heat & Power Co. v. State (1911) 94 N. E. 199, 200 N. Y. 400 (affirming judgment [1910] 123 N. Y. S. 1117, 138 App. Div. 931); Lewis v. City of Utica (1913) 145 N. Y. S. 346, 159 App. Div. 160; Flanagan v. City of Philadelphia (1862) 42 Pa. (6 Wright) 219; Stuart v. Clark's Lessee (1852) 32 Tenn. (2 Swan) 9, 58 Am. Dec. 49; Dawson v. McMillan (1904) 75 P. 807, 34 Wash. 269; Judson v. Tide Water Lumber Co. (1908) 98 P. 377, 51 Wash. 164.

But tidal channels are navigable in law only when they are navigable in fact for trade and commerce by craft of some kind. State v. Pacific Guano Co. (1884) 22 S. C. 50, rehearing denied (1886) 24 S. C. 598. And the doctrine of the common law as to the navigability of waters has no application in this country. Here the ebb and flow of the tide do not constitute the usual test, as in England, or, indeed, any test at all, of the navigability of waters. The Daniel Ball (1870) 77 U. S. (10 Wall.) 557, 19 L. Ed. 999; Bowman v. Wathen (D. C. 1841) Fed. Cas. No. 1,740; Lowber v. Wells (N. Y. 1856) 13 How. Prac. 454; Wilson v. Forbes (1828) 13 N. C. 30; Ingram v. Threadgill (1831) 14 N. C. 59; Hodges v. Williams (1886) 95 N. C. 331, 59 Am. Rep. 242; State v. Eason (1894) 114 N. C. 787, 19 S. E. 88, 41 Am. St. Rep. 811, 23 L. R. A. 520; Weise v. Smith (1869) 3 Or. 445, 8 Am.

Rep. 621; Stover v. Jack (1869) 60 Pa. (10 P. F. Smith) 339, 100 Am. Dec. 566; Elder v. Burrus (1845) 25 Tenn. (6 Humph.) 358; Sigler v. State (1874) 66 Tenn. (7 Baxt.) 493. CONTRA, Cobb v. Davenport (1867) 32 N. J. Law (3 Vroom) 369. And see Commonwealth v. Inhabitants of Charlestown (1822) 18 Mass. (1 Pick.) 180, 11 Am. Dec. 161; Rowe v. Granite Bridge Corp. (1838) 38 Mass. (21 Pick.) 344; Morgan v. King (1858) 30 Barb. 9 (affirmed [1866] 35 N. Y. 454, 91 Am. Dec. 58); Carson v. Blazer (Pa. 1810) 2 Bin. 475, 4 Am. Dec. 463.

A river which is navigable in fact is navigable in law. Genessee Chief (1851) 12 How. 443, 13 L. Ed. 1058; The Daniel Ball (1870) 77 U. S. (10 Wall.) 557, 19 L. Ed. 999; The Montello (1870) 78 U. S. (11 Wall.) 411, 20 L. Ed. 191; Id. (1874) 87 U. S. (20 Wall.) 430, 22 L. Ed. 391; Toledo Liberal Shooting Co. v. Erie Shooting Club (1898) 90 Fed. 680, 33 C. C. A. 233; Harrison v. Fite (1906) 148 Fed. 781, 78 C. C. A. 447; Spooner v. McConnell (C. C. 1838) Fed. Cas. No. 13,245; McGilvra v. Ross (C. C. 1907) 161 Fed. 398 (decree affirmed [1908] 164 Fed. 604, 90 C. C. A. 398, which is reversed [1909] 30 Sup. Ct. 27, 215 U. S. 70, 54 L. Ed. 95); Hubbard v. Fort (C. C. 1911) 188 Fed. 987; State of Maryland v. Miller (D. C. 1910) 180 Fed. 796 (decree modified [1911] 194 Fed. 775, 114 C. C. A. 495); Walker v. Allen (1882) 72 Ala. 456; Sullivan v. Spotswood (1886) 82 Ala. 163, 2 South. 716; Miller & Lux v. Enterprise Canal & Land Co. (1904) 75 P. 770, 142 Cal. 208, 100 Am. St. Rep. 115; City and County of San Francisco v. Main (1913) 137 P. 281, 23 Cal. App. 86; Wethersfield v. Humphrey (1850) 20 Conn. 218; Broward v. Mabry (1909) 50 So. 826, 58 Fla. 398; Clement v. Watson (Fla. 1912) 58 So. 25; Healy v. Joliet & C. R. Co. (1878) 2 Ill. App. (2 Bradw.) 435; Schulte v. Warren (1905) 75 N. E. 783, 218 Ill. 108 (reversing 120 Ill. App. 10); People v. Board of Sup'rs of Whiteside County (1905) 122 Ill. App. 40; Martin v. Bliss (1838) 5 Blackf. 35, 32 Am. Dec. 52; Depew v. Board of Trustees of Wabash & Erie Canal (1854) 5 Ind. 8; Neaderhouser v. State (1867) 28 Ind. 257; McManus v. Carmichael (1856) 3 Iowa (3 Clarke) 1; Wadsworth v. Smith (1834) 11 Me. (2 Fairf.) 278, 26 Am. Dec. 525; Treat v. Lord (1856) 42 Me. 552, 66 Am. Dec. 298; Kean v. Stetson (1827) 22 Mass. (5 Pick.) 492; Moore v. Sanborne (1853) 2 Mich. 519, 59 Am. Dec. 209; Lorman v. Benson (1860) 8 Mich. 18, 77 Am. Dec. 435; Castner v. The Dr. Franklin (1852) 1 Minn. 73 (Gil. 51); Browne v. Scofield (N. Y. 1850) 8 Barb. 239; Morgan v. King (1858) 30 Barb. 9 (affirmed [1866] 35 N. Y. 454, 91 Am. Dec. 58); Wilson v. Forbes (1828) 13 N. C. 30; Collins v. Benbury (1842) 25 N. C. 277, 38 Am. Dec. 722; Hodges v. Williams (1886) 95 N. C. 331, 59 Am. Rep. 242; State v. Eason (1894) 114 N. C. 787, 19 S. E. 88, 23 L. R. A. 520, 41 Am. Rep. 811; State v. Baum (1901) 38 S. E. 900, 128 N. C. 600; State v. Twiford (1904) 48 S. E. 586, 136 N. C. 603; Hickok v. Hine (1872) 23 Ohio St. 523, 13 Am. Rep. 255; Flanagan v. City of Philadelphia (1862) 42 Pa. (6 Wright) 219; Hecksher v. Water & Gas Co. (Pa. 1874) 2 Leg. Chron. 273; Conneaut Lake Ice Co. v. Quigley (1909) 74 A. 648, 225 Pa. 605; State v. Columbia Water Power Co. (1909) 63 S. E. 884, 82 S. C. 181; Stuart v. Clark's Lessee (1852) 32 Tenn. (2 Swan) 9, 58 Am. Dec. 49; Southern Ry. Co. v. Ferguson (1900) 59 S. W. 343, 105 Tenn. 552, 80 Am. St. Rep. 908; Webster v. Harris (1902) 69 S. W. 782, 111 Tenn. 668, 59 L. R. A. 324; Miller v. State (1911) 137 S. W. 760, 124 Tenn. 293, 35 L. R. A. (N. S.) 407, Ann. Cas. 1912D, 1086; State v. West Tennessee Land Co. (1913) 158 S. W. 746, 127 Tenn. 575; Bigham Bros. v. Port Arthur Canal & Dock Co. (Tex. Civ. App. 1910) 126 S. W. 324; State v. Superior Court of Chehalis County (Wash. 1910) 109 P. 340; Sumner Lumber & Shingle Co. v. Pacific Coast Power Co. (1913) 131 P. 220, 72 Wash. 631; Diedrich v. Northwestern Union Ry. Co. (1877) 42 Wis. 248, 24 Am. Rep. 399; Diana Shooting Club v. Husting (1914) 145 N. W. 816, 156 Wis. 261.

In order to be a navigable stream it is not necessary that the waters shall be deep enough to admit the passage of boats at all portions of the stream. St. Anthony Falls Water-Power Co. v. Board of Water Com'rs of City of St. Paul, Minn. (1897) 18 Sup. Ct. 157, 168 U. S. 349, 42 L. Ed. 497.

As to navigability, see Charleston & S. Ry. Co. v. Johnson (1884) 73 Ga. 306; Thunder Bay River Booming Co. v. Speechly (1875) 31 Mich. 336, 18 Am. Rep. 184; Schurmeier v. St. Paul & P. R. Co. (1865) 10 Minn. 82 (Gil. 59), 83 Am. Dec. 59; Jeremy v. Elwell (1890) 5 Ohio Cir. Ct. R. 379; Southern Ry. Co. v. Ferguson (1900) 59 S. W. 343, 105 Tenn. 552, 80 Am. St. Rep. 908; State v. West Tennessee Land Co. (1913) 158 S. W. 746, 127 Tenn. 575, Ann. Cas. 1914B, 1043.

Streams capable of being used for the purpose of carrying boats, passengers, freight, floating logs, timber, wood, or any other product to market are navigable. The Daniel Ball (1870) 77 U. S. (10 Wall.) 557, 19 L. Ed. 999; The Montello (1870) 78 U. S. (11 Wall.) 411, 20 L. Ed. 191; Id. (1874) 87 U. S. (20 Wall.) 430, 22 L. Ed. 391; Spokane Mill Co. v. Post (C. C. 1892) 50 Fed. 429; Chisolm v. Caines (C. C. 1894) 67 Fed. 285; Bullock v. Wilson (Ala. 1835) 2 Port. 436; Walker v. Allen (1882) 72 Ala. 456; Sullivan v. Spotswood (1886) 82 Ala. 163, 2 South.

716; American River Water Co. v. Amsden (1856) 6 Cal. 443; Bailey v. Philadelphia, W. & B. R. Co. (Del. 1846) 4 Har. 389, 44 Am. Dec. 593; Bucki v. Cone (1889) 25 Fla. 1, 6 South. 160; Seaboard Air Line Ry. v. Sikes (1908) 60 S. E. 868, 4 Ga. App. 7; Johnson v. Johnson (1908) 95 P. 499, 14 Idaho, 561; Moss v. Ramey (1908) 95 P. 513, 14 Idaho, 598; La Veine v. Stack-Gibbs Lumber Co. (Idaho, 1909) 104 P. 666; Mashburn v. St. Joe Improvement Co. (Idaho, 1911) 113 P. 92; Idaho Northern R. Co. v. Post Falls Lumber & Mfg. Co. (1911) 119 P. 1098, 20 Idaho, 695; Healy v. Joliet & C. R. Co. (1878) 2 Ill. App. (2 Bradw.) 435; Schulte v. Warren (1905) 75 N. E. 783, 218 Ill. 108 (reversing [1905] 120 Ill. App. 10); People v. Economy Light & Power Co. (1909) 89 N. E. 760, 241 Ill. 290; Neaderhouser v. State (1867) 28 Ind. 257; Goodin's Ex'rs v. Kentucky Lumber Co. (1890) 90 Ky. 625, 14 S. W. 775; Ford Lumber Co. v. McQueen (1892) 14 Ky. Law Rep. 521; Banks v. Frazier (1901) 64 S. W. 983, 23 Ky. Law Rep. 1197, 111 Ky. 909; Asher v. McKnight (Ky. 1908) 112 S. W. 647; Ireland v. Bowman & Cockrell (Ky. 1908) 113 S. W. 56 (rehearing denied [1908] 114 S. W. 338); Berry v. Carle (1830) 3 Me. (3 Greenl.) 269; Spring v. Russell (1831) 7 Me. (7 Greenl.) 273; Brown v. Chadbourne (1849) 31 Me. 9, 1 Am. Rep. 641; Treat v. Lord (1856) 42 Me. 552, 66 Am. Dec. 298; Smart v. Aroostook Lumber Co. (1907) 68 A. 527, 103 Me. 37; Charles C. Wilson & Son v. Harrisburg (1910) 77 A. 787, 107 Me. 207; La Plaisance Bay Harbor Co. v. Common Council of City of Monroe (Mich. 1843) Walk. Ch. 155; Moore v. Sanborne (1853) 2 Mich. 519, 59 Am. Dec. 209; Thunder Bay River Booming Co. v. Speechly (1875) 31 Mich. 336, 18 Am. Rep. 184; Turner v. Holland (1887) 33 N. W. 283, 65 Mich. 453; Jones v. Lee (1889) 43 N. W. 855, 77 Mich. 35; Cole v. Dooley (1904) 100 N. W. 561, 137 Mich. 419, 11 Detroit Leg. N. 304; Carter v. Thurston (1877) 58 N. H. 104, 42 Am. Rep. 584; Munson v. Hungerford (N. Y. 1849) 6 Barb. 265; Curtis v. Keesler (1852) 14 Barb. 511; Morgan v. King (1858) 30 Barb. 9; Morgan v. King (1866) 35 N. Y. 454, 91 Am. Dec. 58; In re Delaware River at Stilesville (1909) 115 N. Y. S. 745, 131 App. Div. 403; Burke County Com'rs v. Catawba Lumber Co. (1895) 116 N. C. 731, 21 S. E. 941, 47 Am. St. Rep. 829 (reversing [1894] 115 N. C. 590, 20 S. E. 707, 847); State v. Twiford (1904) 48 S. E. 586, 136 N. C. 603; Hickok v. Hine (1872) 23 Ohio St. 523, 13 Am. Rep. 255; Weise v. Smith (1869) 3 Or. 445, 8 Am. Rep. 621; Felger v. Robinson (1869) 3 Or. 455; Shaw v. Oswego Iron Co. (1882) 10 Or. 371, 45 Am. Rep. 146; Haines v. Hall (1888) 17 Or. 165, 20 Pac. 831, 3 L. R. A. 609; Nutter v. Gallagher (1890) 19 Or. 375, 24 Pac. 250; Hallock v. Suitor (1900) 60 P. 384, 37 Or. 9; Trullinger v. Howe (Or. 1908) 97 P. 548 (decree modified on rehearing [1909] 99 P. 880); Lebanon Lumber Co. v. Leonard (Or. 1913) 136 P. 891; Stump v. McNairy (1844) 24 Tenn. (5 Humph.) 363, 42 Am. Dec. 437; Stuart v. Clark (1852) 32 Tenn. (2 Swan) 9, 58 Am. Dec. 49; Sigler v. State (1874) 66 Tenn. (7 Baxt.) 493; Allison v. Davidson (Tenn. Ch. App. 1896) 39 S. W. 905; Webster v. Harris (1902) 69 S. W. 782, 111 Tenn. 668, 59 L. R. A. 324; State v. West Tennessee Land Co. (1913) 158 S. W. 746, 127 Tenn. 575, Ann. Cas. 1914B, 1043; Orange Lumber Co. v. Thompson (Tex. Civ. App. 1910) 126 S. W. 604; Burr's Ferry, B. & C. Ry. Co. v. Allen (Tex. Civ. App. 1912) 149 S. W. 358; Burr's Ferry, B. & C. Ry. Co. v. Allen (Tex. Civ. App. 1914) 164 S. W. 878; Hot Springs Lumber & Mfg. Co. v. Revercomb (1906) 55 S. E. 580, 106 Va. 176; Hot Springs Lumber & Mfg. Co. v. Revercomb (Va. 1909) 65 S. E. 557; Monroe Mill Co. v. Menzel (1904) 77 P. 813, 35 Wash. 487, 70 L. R. A. 272, 102 Am. St. Rep. 905; Kalez v. Spokane Valley Land & Water Co. (1906) 84 P. 395, 42 Wash. 43; Brace & Hergert Mill Co. v. State (1908) 95 P. 278, 49 Wash. 326; Fortson Shingle Co. v. Skagland (1913) 137 P. 304, 77 Wash. 8; Gaston v. Mace (1889) 33 W. Va. 14, 10 S. E. 60, 25 Am. St. Rep. 848, 5 L. R. A. 392; Whisler v. Wilkinson (1868) 22 Wis. 572; Sellers v. Union Lumbering Co. (1876) 39 Wis. 525; Olson v. Merrill (1877) 42 Wis. 203; Falls Mfg. Co. v. Oconto River Imp. Co. (1894) 87 Wis. 134, 58 N. W. 257; Village of Bloomer v. Town of Bloomer (1906) 107 N. W. 974, 128 Wis. 297; In re Southern Wisconsin Power Co. (1909) 122 N. W. 801, 140 Wis. 245; Id. (1909) 122 N. W. 809, 140 Wis. 265.

Judicial notice of navigability.—The courts will take notice of the navigability of streams. King v. American Transp. Co. (C. C. 1859) Fed. Cas. No. 7,787; Neaderhouser v. State (1867) 28 Ind. 257; Wood v. Fowler (1882) 26 Kan. 682, 40 Am. Rep. 330. But federal courts cannot take judicial notice that a stream is navigable because of an apparently irregular traffic in times of high water, employing Indian canoes and small steamboats and gasoline launches, in face of a declaration by the legislature that such stream is not navigable. Donnelly v. U. S. (1913) 33 Sup. Ct. 1024, 228 U. S. 708, 57 L. Ed. 1035, denying rehearing (1913) 33 Sup. Ct. 449, 228 U. S. 243, 57 L. Ed. 820, Ann. Cas. 1913E, 710. Nor can a court take judicial notice of the character of rivers which are in fact navigable for portions of the year, but their capacity is not historical or traditional. As to geographical and similar facts, not historical and traditional—as here, the ca-

pacity of Five-Mile run, in Cattaraugus county, for navigation, etc.—the court will not take judicial notice. Buffalo Pipe Line Co. v. New York, L. E. & W. R. Co. (1880) 10 Abb. N. C. 107. See as to Straight creek, in Bell county, Hoskins v. Archer (1885) 6 Ky. Law Rep. 671.

Law determining navigability.—What shall be deemed a navigable stream within the local rules of property in the bed of a stream is for the determination of the several states. Donnelly v. U. S. (1913) 33 Sup. Ct. 449, 228 U. S. 243, 57 L. Ed. 820, Ann. Cas. 1913E, 710, rehearing denied (1913) 33 Sup. Ct. 1024, 228 U. S. 708, 57 L. Ed. 1035.

Presumptions as to navigability.—A stream will not be presumed to be navigable. Leihy v. Ashland Lumber Co. (1880) 49 Wis. 165, 5 N. W. 471.

That a stream was not meandered by the United States surveyors or their deputies raises the presumption that it is not navigable. Clute v. Briggs (1868) 22 Wis. 607.

A stream neither meandered nor declared navigable by the Legislature is prima facie nonnavigable. Allaby v. Mauston Electric Service Co. (Wis. 1908) 116 N. W. 4. CONTRA, Sumner Lumber & Shingle Co. v. Pacific Coast Power Co. (1913) 131 P. 220, 72 Wash. 631.

Evidence of navigability.—See Idaho Northern R. Co. v. Post Falls Lumber Co. (1911) 119 P. 1098, 20 Idaho, 695, 38 L. R. A. (N. S.) 114; People v. Economy Light & Power Co. (1909) 89 N. E. 760, 241 Ill. 290; Holden v. Robinson Mfg. Co. (1876) 65 Me. 215; Burroughs v. Whitwam (1886) 59 Mich. 279, 26 N. W. 491; State v. Twiford (1904) 48 S. E. 586, 136 N. C. 603.

Question for court or jury as to navigability.—Whether a body of water is navigable is a question of fact for the jury. Jeremy v. Elwell (1890) 5 Ohio Cir. Ct. R. 379; Jones v. Johnson (1894) 6 Tex. Civ. App. 262, 25 S. W. 650.

See Broward v. Mabry (1909) 50 So. 826, 58 Fla. 398; Idaho Northern R. Co. v. Post Falls Lumber Co. (1911) 119 P. 1098, 20 Idaho, 695, 38 L. R. A. (N. S.) 114; Treat v. Lord (1856) 42 Me. 552, 66 Am. Dec. 298; Smith v. Fonda (1886) 64 Miss. 551, 1 South. 757; Morgan v. King (N. Y. 1854) 18 Barb. 277; Micelli v. Andrus (Or. 1912) 120 P. 737; State v. Columbia Water Power Co. (1909) 63 S. E. 884, 82 S. C. 181, 22 L. R. A. (N. S.) 435, 129 Am. St. Rep. 876, 17 Ann. Cas. 343; Sumner Lumber & Shingle Co. v. Pacific Coast Power Co. (1913) 131 P. 220, 72 Wash. 631.

Navigable waters as common highways.—It is fundamental law throughout the United States that all navigable waters are common highways, forever free to the use of all citizens of the United States, without any tax, impost, or duty therefor. Leverich v. City of Mobile (C. C. 1867) 110 Fed. 170.

—— **Waters held navigable.**—Allegheny river. U. S. v. Union Bridge Co. (D. C. 1906) 143 Fed. 377 (judgment affirmed Union Bridge Co. v. U. S. [1907] 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523); Dalrymple v. Mead (Pa. 1855) 1 Grant, Cas. 197; Wainwright v. McCullough (1870) 63 Pa. (13 P. F. Smith) 66. Androscoggin river. Gerrish v. Brown (1863) 51 Me. 256, 81 Am. Dec. 569; Thompson v. Androscoggin River Imp. Co. (1874) 54 N. H. 545. Chippewa river in Wisconsin. Pound v. Turck (1877) 95 U. S. 459, 24 L. Ed. 525. Connecticut river. Chapman v. Kimball (1831) 9 Conn. 38, 21 Am. Dec. 707; Hollister v. Union Co. (1833) 9 Conn. 436, 25 Am. Dec. 36; Enfield Toll Bridge Co. v. Hartford & N. H. R. Co. (1845) 17 Conn. 40, 42 Am. Dec. 716. See Scott v. Willson (1825) 3 N. H. 321. Cumberland river. Goodin's Ex'rs v. Kentucky Lumber Co. (1890) 90 Ky. 625, 14 S. W. 775. Delaware river. Rundle v. Delaware & R. Canal Co. (1852) 14 How. 80, 14 L. Ed. 335. Duck creek. Cummins v. Spruance (Del. 1845) 4 Har. 315. Fox river, in Wisconsin. The Montello (1874) 87 U. S. (20 Wall.) 430, 22 L. Ed. 391. Hudson river. The Daniel Drew (C. C. 1876) Fed. Cas. No. 3,565; Palmer v. Mulligan (N. Y. 1805) 3 Caines, 307, 2 Am. Dec. 270; Hudson River Ice Co. v. Brady (1913) 142 N. Y. S. 819, 158 App. Div. 142; West Virginia Pulp & Paper Co. of Delaware v. Peck (1913) 143 N. Y. S. 720, 82 Misc. Rep. 72. James river above tidewater. Old Dominion Iron & Nail Works Co. v. Chesapeake & O. Ry. Co. (Va. 1914) 81 S. E. 108. Lake Cœur d'Alene. Shephard v. Cœur d'Alene Lumber Co. (Idaho, 1909) 101 P. 591. Maumee river. Spooner v. McConnell (C. C. 1838) Fed. Cas. No. 13,245. Miller's river in Charlestown. Commonwealth v. Inhabitants of Charlestown (1822) 18 Mass. (1 Pick.) 180, 11 Am. Dec. 161; Inhabitants of Charlestown v. Middlesex County Com'rs (1841) 44 Mass. (3 Metc.) 203. Mohawk river. People v. Canal Appraisers (1865) 33 N. Y. 461; Crill v. City of Rome (N. Y. 1873) 47 How. Prac. 398. Monongahela river. Monongahela Bridge Co. v. Kirk (1863) 46 Pa. (10 Wright) 112, 84 Am. Dec. 527; Wainwright v. McCullough (1869) 63 Pa. (13 P. F. Smith) 66. Muskingum river. Guthrie v. McConnel (1859) 2 Ohio Dec. 157; Same v. McConnelly (Ohio, 1859) 1 West. Law Month. 593. Niagara river. Hensler v. Hartman (N. Y. 1878) 16 Abb. N. C. 176, note; In re State Reservation at Niagara (N. Y. 1884) 16 Abb. N. C. 159; In re State Reservation Com'rs (1885) 37 Hun,

537 (affirmed [1886] 7 N. E. 916, 102 N. Y. 734). Oconto river. Leigh v. Holt (C. C. 1873) Fed. Cas. No. 8,220. Ohio river. Bennett v. Bryan (1880) 1 Ky. Law Rep. 274; Wainwright v. McCullough (1870) 63 Pa. (13 P. F. Smith) 66; Monongahela River Consol. Coal & Coke Co. v. Lancaster's Adm'r (Ky. 1916) 183 S. W. 258. See Baker v. Lewis (1858) 33 Pa. (9 Casey) 301, 75 Am. Dec. 598. And see Porter v. Allen (1856) 8 Ind. 1, 65 Am. Dec. 750. Pond branch. Witt v. Jefcoat (S. C. 1857) 10 Rich. Law, 389. Presque Isle stream. Smart v. Aroostook Lumber Co. (1907) 68 A. 527, 103 Me. 37. Rappahannock river. Horne v. Richards (Va. 1798) 4 Call, 441, 2 Am. Dec. 574. Rock river, in Wisconsin. Newell v. Smith (1862) 15 Wis. 101; Cobb v. Same (1863) 16 Wis. 661; State v. Carpenter (1887) 68 Wis. 165, 31 N. W. 730, 60 Am. Rep. 848; In re Horicon Drainage Dist. (Wis. 1908) 116 N. W. 12, 16; Appeal of Rottenberger, Id. 12; Appeal of Koch, Id. 16. Sacramento river. People v. Gold Run Ditch & Mining Co. (1884) 66 Cal. 138, 4 Pac. 1152, 56 Am. Rep. 80. Saginaw river. Tittabawassee Boom Co. v. Cunning (Mich. N. P. 1883) Howell, N. P. 82. Susquehanna river. Commonwealth v. Fisher (Pa. 1830) 1 Pen. & W. 462. Suwanee river. Bucki v. Cone (1889) 25 Fla. 1, 6 South. 160. Wabash river. Dawson v. James (1878) 64 Ind. 162; State v. Wabash Paper Co. (1898) 51 N. E. 949, 21 Ind. App. 167 (denying rehearing [1897] 48 N. E. 653, 21 Ind. App. 167). Willow river. Willow River Club v. Wade (1898) 76 N. W. 273, 100 Wis. 86, 42 L. R. A. 305.

An estuary which was not a natural harbor, but has been made a harbor by government works, is navigable. City of Oakland v. Oakland Water-Front Co. (1897) 50 P. 277, 118 Cal. 160.

Waters held not navigable.—Chicago river. City of Chicago v. McGinn (1869) 51 Ill. 266, 2 Am. Rep. 295. But see CONTRA (1891) 20 Op. Atty. Gen. 101. Connecticut river, in New Hampshire. Scott v. Willson (1825) 3 N. H. 321. Desplaines river, between Lockport and its mouth. People v. Economy Light & Power Co. (1909) 89 N. E. 760, 241 Ill. 290. Healy slough. Joliet & C. R. Co. v. Healy (1880) 94 Ill. 416. Illinois river. City of Chicago v. McGinn (1869) 51 Ill. 266, 2 Am. Rep. 295. Oswego river. Fulton Light, Heat & Power Co. v. State (1911) 94 N. E. 199, 200 N. Y. 400, 37 L. R. A. (N. S.) 307, affirming judgment (1910) 123 N. Y. S. 1117, 138 App. Div. 931. Potomac, above tide water, except so far as it is made so by statute. In re Binney (Ind. 1829) 2 Bland, 99. Rio Grande river, within New Mexico. U. S. v. Rio Grande Dam & Irrigation Co. (1899) 19 Sup. Ct. 770, 174 U. S. 690, 43 L. Ed. 1136, reversing decree (N. M. 1898) 51 P. 674. Thread river. Burroughs v. Whitwam (1886) 26 N. W. 491, 59 Mich. 279. Wabash river, in Adams county. Neaderhouser v. State (1867) 28 Ind. 257. White river in Marion county. Ross v. Faust (1876) 54 Ind. 471, 23 Am. Rep. 655.

For nonnavigable waters in general, see Niles v. Cedar Point Club (1898) 85 Fed. 45, 29 C. C. A. 5; Toledo Liberal Shooting Co. v. Erie Shooting Club (1898) 90 Fed. 680, 33 C. C. A. 233; Bolsa Land Co. v. Burdick (Cal. 1907) 90 P. 532; Ligare v. Chicago, M. & N. R. Co. (1897) 46 N. E. 803, 166 Ill. 249; Murray v. Preston (1899) 106 Ky. 561, 50 S. W. 1095, 21 Ky. Law Rep. 72, 90 Am. St. Rep. 232; Wadsworth v. Smith (1834) 11 Me. (2 Fairf.) 278, 26 Am. Dec. 525; Treat v. Lord (1856) 42 Me. 552, 66 Am. Dec. 298; Moore v. Sanborne (1853) 2 Mich. 520, 59 Am. Dec. 209; Thunder Bay River Booming Co. v. Speechly (1875) 31 Mich. 336, 18 Am. Rep. 184; Witheral v. Muskegon Booming Co. (1888) 35 N. W. 758, 68 Mich. 48, 13 Am. St. Rep. 325; Munson v. Hungerford (N. Y. 1849) 6 Barb. 265; Curtis v. Keesler (1852) 14 Barb. 511; Morgan v. King (1856) 35 N. Y. 454, 91 Am. Dec. 58 (reversing [1858] 30 Barb. 9); Ledyard v. Ten Eyck (1862) 36 Barb. 102; Kerr v. West Shore R. Co. (1891) 127 N. Y. 269, 27 N. E. 833 (affirming [1889] 53 Hun, 634, 6 N. Y. Supp. 958); Ten Eyck v. Town of Warwick (1894) 75 Hun, 562, 27 N. Y. Supp. 536; City of Geneva v. Henson (1910) 124 N. Y. S. 588, 140 App. Div. 49 (order affirmed [1911] 95 N. E. 1125); State v. Glen (1859) 52 N. C. 321; Cornelius v. Same (1860) 52 N. C. 512; Hodges v. Williams (1886) 95 N. C. 331, 59 Am. Rep. 242; Burke County Com'rs v. Catawba Lumber Co. (1894) 115 N. C. 590, 20 S. E. 707, 847; Haines v. Hall (1888) 17 Or. 165, 20 Pac. 831, 3 L. R. A. 609; Nutter v. Gallagher (1890) 19 Or. 375, 24 Pac. 250; Kamm v. Normand (Or. 1907) 91 P. 448, 11 L. R. A. (N. S.) 290; Webster v. Harris (1902) 69 S. W. 782, 59 L. R. A. 324, 111 Tenn. 668; Miller v. State (Tenn. 1911) 137 S. W. 760; East Hoquiam Boom & Logging Co. v. Neeson (1898) 54 P. 1001, 20 Wash. 142; Griffith v. Holman (1900) 63 P. 239, 23 Wash. 347, 54 L. R. A. 178, 83 Am. St. Rep. 821; Sumner Lumber & Shingle Co. v. Pacific Coast Power Co. (1913) 131 P. 220, 72 Wash. 631.

It does not follow that, because a stream or body of water was once navigable, it has continued and remains so; and whenever, from any natural or other cause its practical utility as a means of transportation has been permanently destroyed, it should cease to be classed among those waters that are charged with a public use. Harrison v. Fite (1906) 148 Fed. 781, 78 C. C. A. 447.

CHAPTER B

Improvement of Rivers and Harbors

This chapter includes provisions of a general and continuing character relating to the work of improving rivers, harbors, etc., for purposes of navigation.

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9908. Reservation of right to amend or repeal act.

§ 9863. (Act June 13, 1902, c. 1079, § 3.) Board of engineer officers; appointment; duties; reports; authority to rent quarters and employ civil employés.

There shall be organized in the Office of the Chief of Engineers, United States Army, by detail from time to time from the Corps of Engineers, a board of [five] engineer officers, whose duties shall be fixed by the Chief of Engineers, and to whom shall be referred for consideration and recommendation, in addition to any other duties assigned, [so far as in the opinion of the Chief of Engineers may be necessary,] all reports upon examinations and surveys provided for by Congress, and all projects or changes in projects for works of river and harbor improvement heretofore or hereafter provided for. And the board shall submit to the Chief of Engineers recommendations as to the desirability of commencing or continuing any and all improvements upon which reports are required. And in the consideration of such works and projects the board shall have in view the amount and character of commerce existing or reasonably prospective which will be benefited by the improvement, and the relation of the ultimate cost of such work, both as to cost of construction and maintenance, to the public commercial interests involved, and the public necessity for the work and propriety of its construction, continuance, or maintenance at the expense of the United States. And such consideration shall be given as time permits to such works as have heretofore been provided for by Congress, the same as in the case of new works proposed. The board shall, when it considers the same necessary, and with the sanction and under orders from the Chief of Engineers, make, as a board or through its members, personal examinations of localities. And all facts, information, and arguments which are presented to the board for its consideration in connection with any matter referred to it by the Chief of Engineers shall be reduced to and submitted in writing, and made a part of the records of the Office of the Chief of Engineers. It shall further be the duty of said board, upon a request transmitted to the Chief of Engineers by the Committee on Rivers and Harbors of the House of Representatives, or the Committee on Commerce of the Senate, in the same manner to examine and report through the Chief of Engineers upon any projects heretofore adopted by the Government or upon which appropriations have been made, and report upon the desirability of continuing the same or upon any modifications thereof which may be deemed desirable.

The board shall have authority, with the approval of the Chief of Engineers, to rent quarters, if necessary, for the proper transaction

of its business, and to employ such civil employees as may, in the opinion of the Chief of Engineers, be required for properly transacting the business assigned to it, and the necessary expenses of the board shall be paid from allotments made by the Chief of Engineers from any appropriations made by Congress for the work or works to which the duties of the board pertain. (32 Stat. 372.)

This section was part of the rivers and harbors appropriation act for 1902, cited above.

The word "five," inclosed in brackets in this section, was superseded by a provision that the board should consist of seven members, a majority of whom should be of rank not less than lieutenant colonel, by Act March 4, 1913, c. 144, § 4, post, § 9866.

The words "so far as in the opinion of the Chief of Engineers may be necessary," also inclosed in brackets in this section, were superseded by a provision that all reports on examinations and surveys authorized by law should be reviewed by said board, of said Act March 4, 1913, c. 144, § 4, post, § 9868.

This section was further modified by Act March 4, 1913, c. 144, §§ 3, 4, post, §§ 9866, 9868.

Subsequent provisions for preliminary examinations, etc., and supplemental reports were made by Act July 27, 1916, c. 260, § 2, post, §§ 9866a, 9866b.

Notes of Decisions

Power of congress.—Congress has supreme control of a navigable stream where the commerce thereon is interstate and foreign. U. S. v. Rio Grande (1899) 19 Sup. Ct. 770, 174 U. S. 690, 43 L. Ed. 1136; Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523; Philadelphia v. Stimson (1912) 32 Sup. Ct. 340, 223 U. S. 605, 56 L. Ed. 570; Hagerla v. Mississippi River Power Co. (D. C. 1913) 202 Fed. 776.

§ 9864. (R. S. § 5253.) Employment of civil engineers on western and northwestern rivers.

The Chief of Engineers may, with the approval of the Secretary of War, employ such civil engineers, not exceeding five in number, for the purpose of executing the surveys and improvements of western and northwestern rivers, ordered by Congress, as may be necessary to the proper and diligent prosecution of the same; and the persons so employed may be allowed a reasonable compensation for their services, not to exceed the sum of three thousand dollars a year.

Res. March 29, 1867, No. 27, 15 Stat. 28.

§ 9865. (Act June 3, 1896, c. 314, § 7.) Employment of retired officers of Army or Navy.

Section two of the Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes, approved July thirty-first, eighteen hundred and ninety-four, shall not be so construed as to prevent the employment of any retired officer of the Army or Navy to do work under the direction of the Chief of Engineers of the United States Army in connection with the improvement of rivers and harbors of the United States, or the payment by the proper officer of the Treasury of any amounts agreed upon as compensation for such employment. (29 Stat. 235.)

This was a provision of the rivers and harbors appropriation act of 1896, cited above.

Act July 31, 1894, c. 174, § 2, mentioned in this provision, is set forth ante, § 3231.

Cited without definite application, Carter v. McClaughry (1902) 22 Sup. Ct. 181, 195, 183 U. S. 365, 46 L. Ed. 236.

§ 9866. (Act March 4, 1913, c. 144, § 3.) Preliminary examinations, etc., and reports; data required in reports; terminal and transfer facilities; water power development; improvement of navigation; printing of reports during recess of Congress.

In all cases where preliminary examinations and surveys are authorized a preliminary examination of the river, harbor, or other proposed improvement mentioned shall first be made and a report

as to the advisability of its improvement shall be submitted unless a survey or estimate is expressly directed. If upon such preliminary examination the proposed improvement is not deemed advisable, no further action shall be taken thereon without the further direction of Congress; but in case the report shall be favorable to such proposed improvement, or that a survey and estimate should be made to determine the advisability of improvement, the Secretary of War is authorized, in his discretion, to cause surveys to be made, and the cost and advisability to be reported to Congress. And such reports containing plans and estimates shall also contain a statement as to the rate at which the work should be prosecuted: Provided, That every report submitted to Congress, in addition to full information regarding the present and prospective commercial importance of the project covered by the report and the benefit to commerce likely to result from any proposed plan of improvement, shall also contain such data as it may be practicable to secure in regard to the following subjects:

(a) The existence and establishment of both private and public terminal and transfer facilities contiguous to the navigable water proposed to be improved, and, if water terminals have been constructed, the general location, description, and use made of the same, with an opinion as to their adequacy and efficiency, whether private or public. If no public terminals have been constructed, or if they are inadequate in number, there shall be included in the report an opinion in general terms as to the necessity, number, and appropriate location of the same, and also the necessary relations of such proposed terminals to the development of commerce.

(b) The development and utilization of water power for industrial and commercial purposes.

(c) Such other subjects as may be properly connected with such project: Provided, That in the investigation and study of these questions consideration shall be given only to their bearing upon the improvement of navigation, to the possibility and desirability of their being coordinated in a logical and proper manner with improvements for navigation to lessen the cost of such improvements and to compensate the Government for expenditures made in the interest of navigation, and to their relation to the development and regulation of commerce: Provided further, That the investigation and study of these questions may, upon review by the Board of Engineers for Rivers and Harbors when called for as provided by law, be extended to any work of improvement under way and to any locality the examination and survey of which has heretofore been, or may hereafter be, authorized by Congress.

All reports on examinations and surveys which may be prepared during the recess of Congress shall, in the discretion of the Secretary of War, be printed by the Public Printer as documents of the following session of Congress. (37 Stat. 825.)

This section was part of the rivers and harbors appropriation act of 1913, cited above.

This section superseded similar provisions of Act June 25, 1910, c. 382, § 3, 36 Stat. 668, for reports, investigations on review by the board of engineers, and for the printing of reports.

Subsequent provisions for preliminary examinations, surveys, etc., were made by Act July 27, 1916, c. 260, § 2, post, §§ 9866a, 9866b.

The Secretary of War was directed to cause preliminary examinations and surveys to be made of the harbors and connecting waters of the Great Lakes with a view to determining what additional improvements would be necessary to permit those waterways to accommodate vessels to pass through the Welland Canal when enlarged by the Dominion of Canada, including report as to the character and draft of vessels which might be expected to use the canal when so enlarged by a provision of the rivers and harbors appropriation act of 1916, Act July 27, 1916, c. 260, § 2, 39 Stat. 411.

The Secretary of War and the Secretary of the Navy were authorized and directed to report to Congress at the earliest practicable date, such specific plans for improvement of harbors, canals and connecting channels as would best provide adequate facilities for operations of the fleet for defense of the harbors on the Atlantic, Gulf, and Pacific coasts; also the feasible extensions requisite to make existing approved projects for improvement of such harbors, canals, and channels available for such purposes, and the cost of each such several improvements, calculated upon the basis of completion under contract within five years, by Act Aug. 29, 1916, c. 417, ante, § 2813d.

§ 9866a. (Act July 27, 1916, c. 260, § 2.) Preliminary examinations, etc., not to be made except when designated.

No preliminary examination, survey, project or estimate for new works other than those designated in this or some prior Act or joint resolution shall be made. (39 Stat. 406.)

This was a provision of section 2 of the rivers and harbors appropriation act of 1916, cited above.

Previous provisions for preliminary examinations and reports thereof were made by Act March 4, 1913, c. 144, § 3, ante, § 9866.

Provisions for the organization of the board of engineers were made by Act June 13, 1902, c. 1079, § 3, ante, § 9863.

§ 9866b. (Act July 27, 1916, c. 260, § 2.) Supplemental reports without order by concurrent resolution prohibited.

After the regular or formal reports made as required by law on any examination, survey, project, or work under way or proposed are submitted no supplemental or additional report or estimate shall be made unless ordered by a concurrent resolution of Congress. (39 Stat. 406.)

This was a provision of section 2 of the rivers and harbors appropriation act of 1916, cited above.

This section contained a further provision that the government should not be deemed to have entered upon any project for the improvement of any waterway or harbor mentioned in the act until funds for the commencement of the proposed work should have been actually appropriated by law.

§ 9867. (Act June 25, 1910, c. 382, § 3.) Surveys of navigable streams to include investigations of watersheds; surveys for construction of dams, etc.

The surveys of navigable streams herein or hereafter authorized shall include such stream-flow measurements and other investigations of the watersheds as may be necessary for preparation of plans of improvement and a proper consideration of all uses of the stream affecting navigation; and whenever necessary similar investigations may be made in connection with all navigable streams under improvement. Whenever permission for the construction of dams in navigable streams is granted, or is under consideration by Congress, such surveys and investigations of the sections of the streams affected may be made as are necessary to secure conformity with rational plans for the improvement of the streams for navigation. (36 Stat. 669.)

These provisions were part of section 3 of the rivers and harbors appropriation act of 1910, cited above.

The other provisions of said section were superseded by provisions of Act March 4, 1913, c. 144, § 3, ante, § 9866.

General provisions regulating the construction of dams were made by the Dam Act of June 21, 1906, c. 3508, amended by Act June 23, 1910, c. 360, post, §§ 9976–9983.

§ 9868. (Act March 4, 1913, c. 144, § 4.) Review of reports by board of engineers; examinations on request of committees of Congress; membership of board.

All reports on examinations and surveys authorized by law shall be reviewed by the Board of Engineers for Rivers and Harbors as provided for in section three of the river and harbor Act approved June thirteenth, nineteen hundred and two, and all special reports ordered by Congress shall, in the discretion of the Chief of Engineers, be reviewed in like manner by said board; and the said

board shall also, on request by resolution of the Committee on Commerce of the Senate or the Committee on Rivers and Harbors of the House of Representatives, submitted to the Chief of Engineers, examine and review the report of any examination or survey made pursuant to any Act or resolution of Congress, and report thereon through the Chief of Engineers, United States Army, who shall submit his conclusions thereon as in other cases: Provided, That in no case shall the board, in its report thus called for by committee resolution, extend the scope of the project contemplated in the original report upon which its examination and review has been requested, or in the provision of law authorizing the original examination or survey: Provided further, That said board shall consist of seven members, a majority of whom shall be of rank not less than lieutenant colonel. (37 Stat. 826.)

This section was part of the rivers and harbors appropriation act of 1913, cited above.

Provisions for the organization of the board of engineers were made by Act June 13, 1902, c. 1079, § 3, mentioned in this section, set forth ante, § 9863.

§ 9869. (Act July 25, 1912, c. 253, § 1.) Preliminary examinations and minor surveys and removal of snags, etc., from tributaries of waterways.

The Chief of Engineers, in his discretion, and after approval by the Secretary of War, is hereby authorized to make preliminary examinations and minor surveys and to remove snags and other temporary or readily removable obstructions from tributaries of waterways already under Federal improvement or in general use by navigation, to be paid from the appropriations for the adjoining waterways: Provided, That the cost of such work in any single year shall not exceed five hundred dollars per tributary. (37 Stat. 222.)

These provisions were part of section 1 of the rivers and harbors appropriation act of 1912, cited above.

§ 9870. (Act March 4, 1915, c. 142, § 5.) Channel depths and dimensions defined.

In the preparation of projects under this and subsequent river and harbor Acts, unless otherwise expressed, the channel depths referred to shall be understood to signify the depth at mean low water in tidal waters tributary to the Atlantic and Gulf coasts and at mean lower low water in tidal waters tributary to the Pacific coast and the mean depth for a continuous period of fifteen days of the lowest water in the navigation season of any year in rivers and nontidal channels, and the channel dimensions specified shall be understood to admit of such increase at the entrances, bends, sidings, and turning places as may be necessary to allow of the free movement of boats. (38 Stat. 1053.)

This section was part of the rivers and harbors appropriation act of 1915, cited above.

This section superseded Act March 4, 1913, c. 144, § 9, 37 Stat. 827, which read as follows:

"In the preparation of projects under this and subsequent river and harbor acts, unless otherwise expressed, the channel depths referred to shall be understood to signify the depth at mean lower low water in tidal waters, and the mean depth during the month of lowest water in the navigation season in rivers and nontidal channels, and the channel dimensions specified shall be understood to admit of such increase at the entrances, bends, sidings, and turning places as may be necessary to allow of the free movement of boats."

§ 9871. (R. S. § 231.) Report of examinations of river and harbor improvements.

The Secretary of War shall cause to be prepared and submitted to Congress, in connection with the reports of examinations and surveys of rivers and harbors hereafter made by order of Congress,

full statements of all existing facts tending to show to what extent the general commerce of the country will be promoted by the several works of improvements contemplated by such examinations and surveys, to the end that public moneys shall not be applied excepting where such improvements shall tend to subserve the general commercial and navigation interests of the United States.

Res. July 27, 1868, No. 76, 15 Stat. 262.

Provisions applicable to all the Departments, as to time of making annual reports, and the time of furnishing copies thereof to the printer, were made by R. S. §§ 195, 196, ante, §§ 278, 279.

Provisions for the submitting to Congress of reports of preliminary examinations and surveys and plans and estimates were made by Act March 4, 1913, c. 144, § 3, ante, § 9866.

Provisions for preliminary examinations, etc., and for supplemental reports were made by Act July 27, 1916, c. 260, § 2, ante, §§ 9866a, 9866b.

§ 9872. (Act Aug. 5, 1886, c. 929, § 8.) Annual report of names, etc., of civilian engineers.

The Secretary of War shall report to Congress, at its next and each succeeding session thereof, the name and place of residence of each civilian engineer employed in the work of improving rivers and harbors by means and as the result of appropriations made in this and succeeding river and harbor appropriation bills, the time so employed, the compensation paid, and the place at and work on which employed. (24 Stat. 335.)

§ 9873. (Act Aug. 11, 1888, c. 860, § 8.) Annual report of engineers.

The Secretary of War shall cause the manuscript of the annual report of the Chief of Engineers and subordinate engineers, relating to the improvement of rivers and harbors, and the report of the Mississippi [and Missouri] River Commissions to be placed in the hands of the Public Printer on or before the fifteenth day of October in each year, and the Public Printer shall cause said reports to be printed with an accurate and comprehensive index thereof, on or before the first Monday in December in each year, for the use of Congress. (25 Stat. 424.)

This section was part of the rivers and harbors appropriation act of 1886, cited above.

Provisions for the employment of civil engineers on surveys and improvements on western and northwestern rivers were made by R. S. § 5253, ante, § 9864.

The Mississippi River Commission was created by Act June 28, 1879, c. 43, post, §§ 9993, 9994, 9997–10001.

The words "and Missouri," inclosed in brackets in this section, were superseded by the abolition of the Missouri River Commission by Act June 13, 1902, c. 1079, § 1, 32 Stat. 367.

§ 9874. (Act March 3, 1899, c. 425, § 7.) Report of deterioration in river and harbor improvements; cost of repairs, etc.; recommendation of discontinuance of appropriations.

The Secretary of War shall cause the Chief of Engineers of the United States Army, in submitting his annual reports to Congress with regard to works of river and harbor improvement under his charge, to state what deterioration, if any, has taken place by destruction, decay, obstructions, or otherwise, in connection with any of such works, together with an estimate of the cost of rebuilding, or repairing such works, or removing such obstructions; and he shall also cause the said Chief of Engineers to recommend, with his reasons therefor, the discontinuance of appropriations for any river and harbor work which he may deem unworthy of further improvement. (30 Stat. 1150.)

This section was part of the rivers and harbors appropriation act of 1899, cited above.

Section 8 of this act required the Secretary of War to report to Congress a

list of all piers, wharves, and other structures or property pertaining to river and harbor works of the Government then occupied by private persons or corporations, together with the terms of such occupancy.

§ 9875. (Repealed.)

This section, which was a provision of Act July 25, 1912, c. 253, § 13, 37 Stat. 234, read as follows:

"The printing of matter relating to river and harbor works, including all reports, compilations, regulations, and so forth, whose preparation is allowable under War Department regulations, may, upon recommendation of the Chief of Engineers and approval by the Secretary of War, be paid for from river and harbor appropriations."

It was repealed by Act July 1, 1916, c. 209, § 1, post, § 9875a.

§ 9875a. (Act July 1, 1916, c. 209, § 1.) Printing of reports, etc.; payment from appropriation for printing and binding for War Department.

Section thirteen of the river and harbor appropriation Act approved July twenty-fifth, nineteen hundred and twelve, which authorizes the payment for printing of matter relating to river and harbor works from river and harbor appropriations, is repealed, and hereafter such printing shall be done and paid for out of regular annual appropriations for printing and binding for the War Department. (39 Stat. 330.)

This was a provision following an appropriation for printing for the War Department of the sundry civil appropriation act for the fiscal year 1917, cited above.

See note to § 9875, ante.

§ 9876. (Act Sept. 19, 1890, c. 907, § 15.) Mileage of officers of Engineer Corps.

In determining the mileage of officers of the corps of engineers traveling without troops on duty connected with works under their charge, no deduction shall be made for such travel as may be necessary on free or bond-aided or land-grant railways. (26 Stat. 456.)

Provisions for hire and use of transportation by engineer officers were made by Act July 25, 1912, c. 253, § 9, post, § 9877.

§ 9877. (Act July 25, 1912, c. 253, § 9.) Transportation of engineer officers.

In their execution and inspection of river and harbor improvement work, at points beyond easy reach of ordinary regular transportation lines, Engineer officers are authorized to hire and use such transportation as they may consider desirable and advantageous to the progress of work. (37 Stat. 233.)

This section was part of the rivers and harbors appropriation act of 1912, cited above.

§ 9878. (Act April 24, 1888, c. 194.) Condemnation of land for river and harbor improvements; purchase; donations.

The Secretary of War may cause proceedings to be instituted, in the name of the United States, in any court having jurisdiction of such proceedings, for the acquirement by condemnation of any land, right of way, or material needed to enable him to maintain, operate or prosecute works for the improvement of rivers and harbors for which provision has been made by law; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: Provided, however, That when the owner of such land, right of way, or material shall fix a price for the same, which in the opinion of the Secretary of War, shall be reasonable, he may purchase the same at such price without further delay: And provided further, That the Secretary of War is hereby au-

thorized to accept donations of lands or materials required for the maintenance or prosecution of such works. (25 Stat. 94.)

This was an act entitled "An act to facilitate the prosecution of works projected for the improvement of rivers and harbors."

Provisions authorizing the condemnation of land for sites for public buildings were made by Act Aug. 1, 1888, c. 728, ante, §§ 6909, 6910.

Authority to receive from private parties funds contributed to be expended with government funds for any authorized work of public improvement of rivers and harbors, was granted by Act March 4, 1915, c. 142, § 4, post, § 9879.

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5. Compensation, jurisdiction of courts.
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7. —— Assessment of compensation.
8. —— Instructions.
9. —— Questions for jury.
10. —— Right to decline to complete purchase.
11. Title of United States.

1. Authority to condemn property.—See §§ 6909-6911, ante, and notes thereunder.

The general policy of river and harbor improvement is not an exercise of the right of eminent domain. Friend v. U. S. (1895) 30 Ct. Cl. 94.

As to power of congress to provide for the taking of private property, see U. S. v. Certain Lands in Narragansett, R. I. (C. C. 1906) 145 Fed. 654; Chappell v. U. S. (1896) 16 Sup. Ct. 397, 160 U. S. 499, 40 L. Ed. 510; Shoemaker v. U. S. (1893) 13 Sup. Ct. 361, 147 U. S. 282, 37 L. Ed. 170; Kohl v. U. S. (1875) 91 U. S. 367, 23 L. Ed. 499.

2. Construction of statutes.—There is nothing in this section which qualifies or removes this condition of compensation. In re Manderson (1892) 51 Fed. 501, 2 C. C. A. 490, affirming In re Montgomery (D. C. 1892) 48 Fed. 896.

Under this section, the secretary of war is intrusted with the power and duty of determining specifically what land, right of way, or material is needed for such works as are authorized by law. U. S. v. Certain Lands in Narragansett, R. I. (C. C. 1906) 145 Fed. 654.

The secretary of war may, under this section and the river and harbor act of Aug. 18, 1894 (28 Stat. 359), condemn land necessary for construction of a boat railway provided for. If a change in the location of an existing railway is a necessity in the building of the boat railway, the acquisition by the secretary of war of the necessary land to make the change is merely an incident to the enterprise intrusted to him. (1895) 21 Op. Atty. Gen. 221.

See (1853) 6 Op. Atty. Gen. 172.

3. —— Of local statutes.—The appropriation by eminent domain of land for the approaches and terminal facilities necessary to the use of a bridge erected, under Act Jan. 26, 1901, c. 181, 31 Stat. 741, over a navigable stream, is not forbidden by that act because the plans submitted to the secretary of war, and specifically approved by him, although fully subserving the purpose of showing the extent to which navigation would be affected, do not include such terminal and connecting facilities, and cannot, under the act, be altered without his consent. Stone v. Southern Illinois & M. Bridge Co. (1907) 27 Sup. Ct. 615, 616, 206 U. S. 267, 51 L. Ed. 1057, affirming judgment Southern Illinois & M. Bridge Co. v. Stone (1906) 92 S. W. 475, 194 Mo. 175.

An act making an appropriation for improving the Point Judith harbor of refuge, Rhode Island, under direction of the secretary of war, and providing that the amount should be applied "in extending the easterly or shore arm of the breakwater and continuing it to the shore, with a view of providing a shelter for a landing place for the passengers, crews, and cargoes of vessels in distress and other vessels, and for the life boats of the Point Judith life-saving service," authorized the taking not only of such part of the shore as the end of the breakwater should actually rest upon, but of such additional land as would give the government control of the shore terminus, and of a landing place for passengers, cargoes and life boats, with access to a highway over its own land, and that the determination of the amount required for such purposes was committed to the discretion of the secretary of war, whose judgment could not be controlled or reviewed by the courts unless his authority was clearly exceeded. U. S. v. Certain Lands in the Town of Narragansett, R. I. (C. C. 1906) 145 Fed. 654.

4. Taking of property for which compensation must be made.—The flooding of a plantation by a government dam, so as to render it unfit for cultivation, is a taking for public use, requiring compensation, although the government actually occupies no part thereof. King v. U. S. (C. C. 1893) 59 Fed. 9, appeal dismissed U. S. v. King (1896) 17 Sup. Ct. 1001, 164 U. S. 703, 41 L. Ed. 1182.

The action of government officers in improving navigation, pursuant to

authority from the government, which resulted in overflowing private property is the act of the government in taking property for which compensation must be made and not the personal act of the officers. U. S. v. Lynah (1903) 23 Sup. Ct. 349, 355, 188 U. S. 445, 47 L. Ed. 539.

Owners of land lying on a stream, who, with their ancestors, have used the waters of such stream for nearly 100 years for flowing the land in the growing of rice, have acquired an easement therein which constitutes property, within the fifth amendment, and they are entitled to maintain an action against the United States to recover just compensation for the taking of property for public use upon an allegation that the federal authorities, in the exercise of their lawful power to improve navigation, have diverted the waters of the stream, and thereby destroyed such easement, and the value of the land to which it was appurtenant. Lowndes v. U. S. (C. C. 1901) 105 Fed. 838.

In order that the flooding of lands resulting from the construction of a dam on a stream by the United States for the improvement of navigation shall constitute a "taking" of the land, it must amount to a permanent flooding and an actual ouster of the owner, the effect of which is the practical destruction of the value of the land. There is not such taking where the land was previously subject to overflow each year in time of freshets, to such extent that it had not been cultivated for many years, and the only effect of the dam was to increase such overflows in extent and frequency, the land for the most part being free from water practically all the time; and in such case there can be a recovery only with respect to such portion as is permanently covered. Coleman v. U. S. (C. C. 1910) 181 Fed. 599.

The widening of the navigable channel of a river by the United States as an aid to navigation resulting in the destruction of piers built by a riparian owner under lawful authority held a taking of the property and to entitle the owner to compensation. Greenleaf Johnson Lumber Co. v. U. S. (D. C. 1913) 204 Fed. 489.

The partial destruction of a pier built, under lawful state authority, by the United States in widening the channel of the stream, held a taking of the property within the fifth amendment. Greenleaf-Johnson Lumber Co. v. Garrison (D. C. 1913) 208 Fed. 1022. But the owner of property taken by eminent domain for the approaches and terminal facilities necessary to the use of a bridge erected, under Act Jan. 26, 1901, c. 181, 31 Stat. 741, over a navigable stream is denied no federal right because the erection of the bridge was not begun within the time limit set by Congress, where the bridge has been constructed without complaint by the federal authorities, Congress having, by Act Jan. 18, 1904, c. 5, 33 Stat. 6, extended the time for its completion. Stone v. Southern Illinois & M. Bridge Co. (1907) 27 Sup. Ct. 615, 616, 206 U. S. 267, 51 L. Ed. 1057, affirming judgment Southern Illinois & M. Bridge Co. v. Stone (1906) 92 S. W. 475, 194 Mo. 175.

The construction of a log pond in a navigable river below low-water mark held not to give a riparian owner any property right in the water or land beneath for which the United States was required to pay when the inclosure was destroyed in improving the navigation of the river. Greenleaf-Johnson Lumber Co. v. Garrison (D. C. 1913) 208 Fed. 1022.

The United States may improve or protect the navigation of navigable streams by deepening the channels or by erecting lighthouses, and if, in so doing, incidental injury is done to property below or above the works, this injury gives no claim for compensation against the United States; but where private property is taken by a change in the natural channel of the stream, the owner is entitled to compensation. Brown v. U. S. (C. C. 1897) 81 Fed. 55, 57.

The fact that the volume and force of the current of a navigable stream flowing against the bank on the land of a riparian owner have been increased by the construction of a bridge and the deepening of the channel on the side next his land, rendered necessary because of the construction of a pier in the middle of the stream, resulting in the washing of the bank, does not amount to a taking of his land. Salliotte v. King Bridge Co. (1903) 122 Fed. 378, 58 C. C. A. 466, 65 L. R. A. 620, writ of certiorari denied (1903) 24 Sup. Ct. 841, 191 U. S. 569, 48 L. Ed. 306.

The United States may occupy and use soil within the bed of a river for the improvement of its navigation. (1884) 18 Op. Atty. Gen. 64, citing Transportation Co. v. Chicago (1878) 99 U. S. 635, 25 L. Ed. 336.

Proprietors of land adjacent to Lake Huron, Michigan, have no legal right to stone taken from the bed of that lake, in front of their property, by other persons, and delivered by them on the government works. (1881) 17 Op. Atty. Gen. 59.

The government has the right to dredge a channel in navigable waters of the United States for the purpose of carrying out improvements authorized and directed by congress, without making compensation to the owners of oyster beds placed upon the soil under the water originally owned and occupied by them, for the injury to or destruction of their property, rea-

sonable opportunity being given such owners to remove the same. (1909) 27 Op. Atty. Gen. 311.

The opinion of Attorney General Bonaparte in 26 Op. Atty. Gen. 441, must be limited in its application to operations in nonnavigable waters or the willful and unnecessary taking, injury to, or appropriation of property without reasonable opportunity being given to the owner to remove the same. Id.

The rights of owners of land bordering on a navigable river must yield to the powers of the government on improvements of the same for purposes of navigation, whether by the federal or the state government. Johnson v. State (1909) 116 N. Y. S. 253, 62 Misc. Rep. 15.

The owner of lands may recover from the United States damages and compensation for their flowage, caused by the erection of a dam by the Wisconsin Improvement Company across the Fox river at Governor's Bend, for the use of the Fox and Wisconsin rivers in 1865, although he became the owner of said lands after the erection of the dam, since the United States became the owner of the improvement in 1872, and authorized such recovery by Acts 1875, c. 166. Sweaney v. U. S. (1885) 62 Wis. 396, 22 N. W. 609.

5. **Compensation, jurisdiction of courts.**—Act Aug. 14, 1876, authorizes the secretary of war to acquire land on behalf of the government for the purpose of constructing a canal around the cascades of the Columbia river, and provides that, if the land cannot be purchased for a reasonable price, condemnation proceedings shall be resorted to. Held, in an action by the secretary of war to procure condemnation under said act, that the circuit court had jurisdiction, under R. S. § 629, ante, § 991 (1) conferring jurisdiction on such courts of suits "where the United States, or any officer thereof suing under the authority of any act of congress, are plaintiffs." U. S. v. Oregon Ry. & Nav. Co. (1883) 16 Fed. 524.

Under Act March 3, 1875, which relates to certain river improvements in Wisconsin, provides that the United States may take possession of and use any lands necessary in making such improvements, "after first having paid, or secured to be paid, the value thereof, which may have been ascertained in the mode provided by the laws of the state wherein such property lies," a person whose land is so taken may sue the United States for compensation in the state court, as provided by the laws of the state in respect to lands taken by right of eminent domain. Jones v. U. S. (1879) 48 Wis. 385, 4 N. W. 519.

6. —— **Petition for condemnation.**—Under an act providing for condemnation of land, where the owner refuses a reasonable price offered by the secretary of war, a petition in condemnation proceedings which alleges that defendant refuses to sell at a reasonable price is good on general demurrer. It is unnecessary to allege or prove that the United States was unable to agree with the owner as to the value of the premises. It is not necessary to allege any fact to show the necessity of appropriating the land involved, except that in the judgment of the secretary of war the land is necessary, and has been selected by him for that purpose. An allegation as to the value of the premises is not necessary. U. S. v. Oregon Ry. & Nav. Co. (C. C. 1883) 16 Fed. 524.

7. —— **Assessment of compensation.**—The owner of a farm, a part of which is permanently flooded by a government dam, must be compensated, in addition to the value of the land taken, for the lessened value of the farm, caused by the consequent cutting off of a private way across the lands of others, which is the only practicable outlet from the farm to the county road. U. S. v. Welch (1909) 30 Sup. Ct. 527, 217 U. S. 333, 54 L. Ed. 787, 28 L. R. A. (N. S.) 385, 19 Ann. Cas. 680.

The damage to lands and crops of riparian owners along the Mississippi river from the increase of water from the prevention of outflow by work of the federal government in its tributaries to deepen the channels is too remote to require compensation. Jackson v. U. S. (1913) 33 Sup. Ct. 1011, 230 U. S. 1, 57 L. Ed. 1363, affirming judgment (1912) 47 Ct. Cl. 579.

Where the government, before instituting condemnation proceedings by the filing of a petition, had practically completed the end of a breakwater adjoining claimant's property, thus creating, under the shelter of the breakwater, a wharf site, which was taken away by the subsequent condemning of part of the upland adjacent to the alleged wharf site, the rule that damages are to be assessed as of the date of condemnation did not apply, so as to entitle the owner of the upland to damages as of the date of condemnation, and as enhanced by the wharf site created by the work; it being certain from the beginning of the work that the upland would be condemned, and the alleged wharf site not being available as such without the approval of the Secretary of War, which could not reasonably be expected in view of the location of the government improvements. U. S. v. Certain Lands in Town of Narragansett (C. C. 1910) 180 Fed. 260.

8. —— **Instructions.**—It is not proper to submit to the jury instructions to determine whether the government can comply with a condition on which its proposed condemnation of land is sought, and authorize them to award damages in advance as for a failure.

Where the estimates of witnesses as to the value of property taken differ very widely, and the jury themselves view the premises, it is proper to refuse an instruction that they cannot disregard the testimony of the witnesses, and base their verdict on mere conjectures of their own, unsupported by the evidence, as such instructions are liable to mislead the jury into supposing that they must not rely on their own opinions. An instruction that when the government takes land it takes the fee simple, and the premises would never revert to defendant even if the work should be abandoned, held irrelevant. U. S. v. Seufert Bros. Co. (C. C. 1898) 87 Fed. 35.

9. —— **Questions for jury.**—In a proceeding by a lumber company against the United States to recover damages caused by flooding lands forming part of its lumber yard, the company made a claim for filling, rendered necessary by the raising of a dam. The land was originally low, and subject to overflow, and to render it fit for use it was necessary that it should be filled. The filling used was sawdust, slab, and other material, and it was claimed that the water set back thereon rotted it, and that thereby the filling was constantly settling, necessitating refilling. Held, that in determining the amount of damage the jury must consider the original character of the land, and the consequent rotting of the filling, and that the recovery must be limited to such filling as was rendered necessary by the raising of the dam, and the rotting resulting therefrom, and not from natural causes. The question whether the property affected by a rise of water lies within the banks of a river is a question of fact to be determined by the jury. Paine Lumber Co. v. U. S. (C. C. 1893) 55 Fed. 854.

10. —— **Right to decline to complete purchase.**—Under a statute providing for condemnation of land by the United States for the purpose of internal improvements, after the value has been ascertained, the United States has the power to decline to complete the purchase. United States v. Oregon Ry. & Nav. Co. (C. C. 1883) 16 Fed. 524.

11. **Title of United States.**—When by act of congress a pier or breakwater is constructed for the improvement of a harbor, no right to the land on which it is constructed accrues to the United States by that fact alone, and without purchase and cession from the states. If, in consequence of any such construction, land is made by accretion, such accretion belongs to the owner of the land to which it attaches, and not to the United States. (1855) 7 Op. Atty. Gen. 314.

See, also (1882) 17 Op. Atty. Gen. 453; (1886) 18 Op. Atty. Gen. 88, 437.

§ 9879. (Act March 4, 1915, c. 142, § 4.) Contributions from private parties; return of excess to contributing interests.

The Secretary of War is hereby authorized to receive from private parties such funds as may be contributed by them to be expended in connection with funds appropriated by the United States for any authorized work of public improvement of rivers and harbors whenever such work and expenditure may be considered by the Chief of Engineers as advantageous to the interests of navigation: Provided, That when contributions heretofore or hereafter made by local interests for river and harbor improvements, in accordance with specific requirements or under general authority of Congress, are in excess of the actual cost of the work contemplated and properly chargeable to such contributions, such excess contributions may, with the approval of the Secretary of War, be returned to the proper representatives of the contributing interests, unless the provision of law under which the contribution is made requires that the entire contribution be retained by the United States. (38 Stat. 1053.)

This section was a part of the rivers and harbors appropriation act of 1915, cited above.

This section superseded Act March 4, 1913, c. 144, § 8, 37 Stat. 827, which read as follows:

"The Secretary of War is hereby authorized to receive from private parties such funds as may be contributed by them to be expended in connection with funds appropriated by the United States for any authorized work of public improvement of rivers and harbors, whenever such work and expenditure may be considered by the Chief of Engineers as advantageous to the interests of navigation."

§ 9880. (Act March 3, 1909, c. 264, § 11.) Saint Marys Falls Ship Canal; acquisition of additional lands; proceedings for condemnation.

The ownership in fee simple absolute by the United States of all lands and property of every kind and description north of the present Saint Marys Falls Ship Canal throughout its entire length and lying between said ship canal and the international boundary line at Sault Sainte Marie, in the State of Michigan, is necessary for the purposes of navigation of said waters and the waters connected therewith.

The Secretary of War is hereby directed to take proceedings immediately for the acquisition by condemnation or otherwise of all of said lands and property of every kind and description, in fee simple absolute. He shall proceed in such taking by filing in the office of the register of deeds of Chippewa County, in the State of Michigan, a writing, stating the purpose for which the same is taken under the provisions of this section, and giving a full description of all the lands and property of every kind and description thus to be taken. After the filing of said writing, and ten days after publication thereof in one or more newspapers in the city of Sault Sainte Marie, in the State of Michigan, the United States shall be entitled to, and shall take, immediate possession of the property described, and may at once proceed with such public works thereon as have been authorized by Congress for the uses of navigation.

The [circuit] court of the United States for the western district of Michigan is hereby given exclusive jurisdiction to hear condemnation proceedings and to determine what compensation shall be awarded for property taken under authority of this section. After the taking of any property by the Government of the United States, as herein provided for, the United States, by its proper officials, shall begin condemnation proceedings in the aforesaid court, and the practice shall be in accordance with the practice in the courts of the State of Michigan for the condemnation of lands by the State for public buildings of such State so far as the same may be followed without conflicting with the provisions hereof. Possession may be taken by the United States prior to a determination by a court of any necessity of taking, and prior to any determination of the amount of compensation. Any money payable by the Government under the provisions of this section shall be payable out of any money heretofore authorized or appropriated for the purpose of improving Saint Marys River at the falls, Michigan. (35 Stat. 820.)

These provisions were part of section 11 of the rivers and harbors appropriation act of 1909, cited above.

The word "circuit," inclosed in brackets in this section, was superseded by the abolition of the circuit courts and the transfer of their powers and duties to the district courts, by Jud. Code, §§ 289–291, ante, §§ 1266–1268.

The further provisions of this section were temporary and have been executed, or were special only, and are omitted.

Notes of Decisions

Validity of statute.—The questions of whether the proper regulation of this river required that no construction of any kind should be placed or continued in the river and whether the whole flow of the stream should be conserved for the use and safety of navigation are for congress. Congress did not act arbitrarily in determining that, for the purposes of navigation of the waters, and the waters connected therewith, the entire flow of the rapids and falls of the St. Marys river should be devoted exclusively to navigation. An owner of the bed and shore of the St. Marys river, having no property right in the flow of the river which has been taken by the United States cannot complain because under post, § 9989, the Secretary of War may lease any water power resulting from the conservation of the flow of the river and the works the government may construct. U. S. v. Chandler-Dunbar Water Power Co.

(1913) 33 Sup. Ct. 667, 229 U. S. 53, 57 L. Ed. 1063.

Conclusiveness of determination by Congress.—The determination by congress that the entire St. Marys river between the American bank and the international line and all of the upland north of the present ship canal were necessary for purposes of navigation, is conclusive in condemnation proceedings by the United States. U. S. v. Chandler-Dunbar Water Power Co. (1913) 33 Sup. Ct. 667, 229 U. S. 53, 57 L. Ed. 1063.

"Lands and property" within statute.—Riparian owners of the shore and appurtenant bed of St. Marys river have no right of private property in the water power of the stream. Any right which a riparian owner on the St. Marys river, having title to the middle thread of the stream, may have to maintain structures for water power purposes, is not a right of private property for which compensation must be made by the United States. Compensation for loss and damage to a riparian owner because of revocation of permits issued by the Secretary of War to place in the rapids of St. Marys river the dams, dykes, and forebays necessary to control the current, and to use its power for commercial purposes, was not contemplated. U. S. v. Chandler-Dunbar Water Power Co. (1913) 33 Sup. Ct. 667, 229 U. S. 53, 57 L. Ed. 1063.

Taking for public use.—The taking by the United States, in the avowed interests of navigation, of all lands and property of every kind and description north of the St. Marys Falls ship canal, throughout its entire length, and lying between such canal and the international boundary line, is none the less for a public use because post, § 9989, permits the lease by the Secretary of War of any excess of water power which may result from such conservation and the works which the government may construct. And an owner of the bed and shore of the St. Marys river, who has no property right in the flow of the river which has been taken conformably to this section, cannot complain on that ground. U. S. v. Chandler-Dunbar Water Power Co. (1913) 33 Sup. Ct. 667, 229 U. S. 53, 57 L. Ed. 1063.

Compensation, elements of.—The availability for lock and canal purposes of the land between the canals in use and the bank of St. Marys river, taken by the United States, is a proper element of value in fixing compensation. But award to riparian owners of the bed and shore of the St. Marys river for the upland taken by the United States should not include additional value of the land for use as factory sites in connection with the development of water power by the owners, where they had no vested property rights in the water power. And the so-called strategic value of an island lying in the St. Marys river, growing out of the necessity of including it as a tail-race site, in any efficient plan of water development by any owner, is not an element of value. U. S. v. Chandler-Dunbar Water Power Co. (1913) 33 Sup. Ct. 667, 229 U. S. 53, 57 L. Ed. 1063.

Effect of ownership by United States.—When the United States shall have acquired the ownership in fee simple absolute of all lands and property of every kind and description north of the present St. Marys Fall Ship Canal, throughout its entire length, and lying between said canal and the international boundary line at Sault Ste. Marie, in the state of Michigan, there will be no riparian rights in the water and no rights of owners of lands under water which will fall, within the protection of Senate resolution of March 3, 1909, authorizing ratification of the treaty between the United States and Great Britian, signed January 11, 1909, and the treaty, when ratified, will become operative over the waters at the rapids. The resolution does not assume to affect the water in any other waterway within its provisions. (1909) 27 Op. Atty. Gen. 296.

Recovery of surplus tolls and moneys and machinery.—Surplus moneys over and above the cost of the ship canal at St. Mary's Falls, arising from sales of the public lands granted by Act Aug. 26, 1852, c. 92, 10 Stat. 35, to Michigan in aid of its construction on a right of way therein granted to the state for that purpose, and any surplus tolls remaining after the formal transfer of canal to the United States, and all the tools and machinery on hand at the time of such transfer, must be deemed to be held in trust by the state for the United States. Laches is no defense to a suit by the United States to compel Michigan to account for surplus moneys and right of way therein granted to the state for that tolls remaining after the formal transfer to the United States, and for all tools and machinery on hand at the time of such transfer. U. S. v. Michigan (1903) 23 Sup. Ct. 742, 751, 190 U. S. 379, 47 L. Ed. 1103.

§ 9881. (Act May 16, 1906, c. 2465, as amended, Act June 29, 1906, c. 3628.) Condemnation of land for river and harbor improvements authorized by Congress, or for locks, dry docks, etc., and dams in connection therewith, to be conveyed to United States free of cost, at expense of person, company, or corporation.

Whenever any person, company, or corporation, municipal or private, shall undertake to secure any land or easement therein, needed in connection with a work of river and harbor improvement duly authorized by Congress, for the purpose of conveying the same to the United States free of cost, or for the purpose of constructing, maintaining, and operating locks, dry docks, or other works to be conveyed to the United States free of cost, and of constructing, maintaining and operating dams for use in connection therewith, and shall be unable for any reason to obtain the same by purchase and acquire a valid title thereto, the Secretary of War may, in his discretion, cause proceedings to be instituted in the name of the United States for the acquirement by condemnation of said land or easement, and it shall be the duty of the Attorney-General of the United States to institute and conduct such proceedings upon the request of the Secretary of War: Provided, That all expenses of said proceedings and any award that may be made thereunder shall be paid by the said person, company, or corporation, to secure which payment the Secretary of War may require the said person, company, or corporation to execute a proper bond in such amount as he may deem necessary before said proceedings are commenced. (34 Stat. 196. 34 Stat. 632.)

This was an act entitled "An act authorizing the condemnation of lands or easements needed in connection with works of river and harbor improvement at the expense of persons, companies, or corporations."

This act, as originally enacted, was as follows:

"Whenever any person, company, or corporation, municipal or private, shall undertake to secure, for the purpose of conveying the same to the United States free of cost, any land or easement therein, needed in connection with a work of river and harbor improvement duly authorized by Congress, and shall be unable for any reason to obtain a valid title thereto, the Secretary of War, may, in his discretion, cause proceedings to be instituted in the name of the United States for the acquirement by condemnation of said land or easement, and it shall be the duty of the Attorney-General of the United States to institute and conduct such proceedings upon the request of the Secretary of War: Provided, That all the expenses of said proceedings and any award that may be made thereunder shall be paid by the said person, company, or corporation, to secure which payment the Secretary of War may require the said person, company, or corporation to execute a proper bond in such amount as he may deem necessary before said proceedings are commenced."

It was amended by Act June 29, 1906, c. 3628, cited above, to read as set forth here.

Provisions regulating improvements of navigable waters by persons or corporations were contained in Act June 13, 1902, c. 1079, § 1, post, § 9903.

Cited without definite application,
Hagerla v. Mississippi River Power Co.
(D. C. 1913) 202 Fed. 776.

§ 9882. (Act June 13, 1902, c. 1079, § 5.) Sale of property acquired for river and harbor improvements authorized.

When any land or other property which has been heretofore or may be hereafter purchased or acquired for the improvement of rivers and harbors is no longer needed, or is no longer serviceable, it may be sold in such manner as the Secretary of War may direct, and the proceeds credited to the appropriation for the work for which it was purchased or acquired; and the Secretary of War may direct the transfer of any property employed in river and harbor works, and in such event the property so transferred shall be valued and credited to the project upon which it was theretofore used and charged to the project to which it shall be transferred.

The Secretary may also direct a temporary transfer of any property employed in the improvement of rivers and harbors whenever, in his judgment, such transfer would secure efficient or economical results, and such adjustment in the way of charges and credits shall be made between the projects affected as may be equitable. (32 Stat. 373.)

This section was part of the rivers and harbors appropriation act of 1902, cited above.

§ 9883. (Act Aug. 11, 1888, c. 860, § 3.) Application of appropriations; contracts.

It shall be the duty of the Secretary of War to apply the money herein and hereafter appropriated for improvements of rivers and harbors, other than surveys, estimates and gaugings, in carrying on the various works, by contract or otherwise, as may be most economical and advantageous to the Government. Where said works are done by contract, such contract shall be made after sufficient public advertisement for proposals, in such manner and form as the Secretary of War shall prescribe; and such contracts shall be made with the lowest responsible bidders, accompanied by such securities as the Secretary of War shall require, conditioned for the faithful prosecution and completion of the work according to such contract. (25 Stat. 423.)

This section was part of the rivers and harbors appropriation act of 1888, cited above, section 1 of which made appropriations for the purposes described in this section.

This section was not to be construed so as to prohibit the cumulation of two or more works of river and harbor improvement in the same proposal and contract, when the works are situated in the same region, and are of the same character, by Act Sept. 19, 1890, c. 907, § 2, post, § 9884.

Provisions for carrying on works of improvement by contract or otherwise were made by Act March 2, 1907, c. 2509, § 1, and Act July 25, 1912, c. 253, § 1, post, §§ 9885, 9886.

Notes of Decisions

1. Statutory authority to making improvements.
2. Expenditure of appropriations.
3. Bids, withdrawal before acceptance and effect thereof.
4. Contracts, construction of in general.
5. —— "Legal representatives," meaning of.
6. —— Right of contractors to compensation.
7. —— Liabilities of defaulting contractors.
8. —— Liabilities for torts.
9. —— Assignments of contracts.
10. Hours of labor on river and harbor improvements.

1. Statutory authority to make improvements.—An act of congress making an appropriation for a specific improvement of a navigable stream is sufficient authority to the secretary of war to make the improvement. Greenleaf Johnson Lumber Co. v. U. S. (D. C. 1913) 204 Fed. 489.

This section does not modify R. S. § 3744, post, § 6983, to the extent of dispensing with the formal execution of such contracts as a prerequisite to their legality and binding effect after the acceptance of proposals. U. S. v. Lamont (1894) 2 App. D. C. 532.

2. Expenditure of appropriations.—See §§ 9887, 9888, post, and notes thereunder.

In expending the appropriation in the act of March 2, 1889 (25 Stat. 963), "for repairs to draw pier of the Rock Island Bridge," the Secretary of War is not required to use all of the money appropriated or more than is necessary to do the work properly, bearing in mind that temporary repairs are not always most economical or expedient. In case of doubt as to the necessity of any expenditure, due weight should be given to the judgment of the lawmaking power as expressed in the appropriation. Refusal of the Chicago, Rock Island & Pacific Railroad Company to contribute to the expense incurred any sum in excess of one-half of what would be necessary to place the existing pier in as nearly as practicable the condition it was in when the bridge was completed, does not relieve the Secretary of War of his duty to make the repairs directed. (1889) 19 Op. Atty. Gen. 375.

The Secretary of War is authorized under the river and harbor act of September 19, 1890 (26 Stat. 426, 448), to draw his warrant in favor of the city of Galena, Ill., in payment for the improvement of the Galena river contemplated by that act, notwithstanding the fact that the certificate of such work is signed by the surveyor of customs for that port, instead of the collector of the port, as directed by that act, it ap-

pearing that there is no collector of the port at Galena, and that all the duties of that office are imposed upon the surveyor of customs. (1894) 20 Op. Atty. Gen. 700.

Under section 5 of the river and harbor act of June 3, 1896 (29 Stat. 235), which limits the amount that the Secretary of War can obligate the government for in any fiscal year to $400,000, the contractor may perform in one year the work which the contract allows him three years to perform and, though he may thus earn a larger sum than the amount stated, he may not receive full payment therefor under three years. The section is not limited in its application to cases in which the total amount authorized to be expended is more than $400,000. (1896) 21 Op. Atty. Gen. 379.

The provisions in the river and harbor act of June 3, 1896, that contracts "may be" entered into by the Secretary of War for the completion of certain improvements, to be paid for out of future appropriations, are not mandatory but discretionary. (1896) 21 Op. Atty. Gen. 420.

The Secretary of War is authorized to award a contract for the construction of a breakwater at San Pedro, Cal., in accordance with the recommendation and the plans and specifications adopted by the board of engineers appointed under the provisions of that portion of the river and harbor act of June 3, 1896 (29 Stat. 213), which provides for a deep-water harbor for commerce and refuge at Port Los Angeles or San Pedro, Cal., the location of the harbor to be determined by the board. The project reported by the board is a breakwater which fulfills the provisions of the law and will make a harbor for commerce and of refuge within the meaning of the statute. It was not the intention of congress that out of the appropriation made the harbor should be equipped with piers, jetties, and channels necessary for the highest condition of usefulness and efficiency. It was the purpose of congress to construct a deep-water harbor in the sense of having a sufficient depth of water to accommodate vessels of large draft, but not necessarily vessels of the greatest draft now constructed. The Secretary of War is not called upon to make further plans, specifications, or estimates for other work not included within the plans and specifications adopted by the court board. (1898) 22 Op. Atty. Gen. 138.

The requirements as to time, with reference to the improvement of the outer bar of the harbor at Brunswick, Ga., under the river and harbor acts of 1894 (28 Stat. 342) and 1896 (29 Stat. 208), have been sufficiently complied with in respect to certificate and payment of $100,000, and the certificate may now be authorized. (1898) 22 Op. Atty. Gen. 156.

There is no authority for paying out of the appropriation made by Act March 3, 1899, 30 Stat. 1128, for widening a channel any expenses for making the contract, inspecting or superintending the work, unless it be indirectly through a provision in the contract that these expenses shall be paid by the contractors and charged against their compensation. (1899) 22 Op. Atty. Gen. 489.

The Secretary of War has no authority to use any portion of the amount appropriated by the river and harbor act of March 3, 1899 (30 Stat. 1147), for improvement of the Missouri river above Sioux City, for improvements at or in front of that city. (1899) 22 Op. Atty. Gen. 519.

The Secretary of War has discretionary authority, under the act of June 3, 1896 (29 Stat. 213), and subsequent acts, making appropriations for the construction of a tidal canal in Oakland Harbor, California, to suspend the work on such improvement when the suspension will best inure to its ultimate completion, but he would not be justified in suspending the work if the only purpose was to delay its completion with the intention of abandoning it. A mere doubt as to the wisdom of carrying out a public work authorized by congress does not justify its suspension and a refusal to complete it. Until such act is repealed it must be assumed to be the deliberate and continuing expression of the will of congress, and respected as such. (1901) 23 Op. Atty. Gen. 504.

See, also, (1886) 18 Op. Atty. Gen. 481.

3. Bids, withdrawal before acceptance, and effect thereof.—A bidder may, before acceptance of his bid, withdraw it, and when he does so neither he nor the sureties on the guaranty accompanying it are liable; but the other bidders are not released, and the contract may be let to the lowest bidder. (1877) 15 Op. Atty. Gen. 649.

4. Contracts, construction of in general.—Contractors required to erect and maintain at their own expense a stake light at the end of the new structure while the work was in progress, in accordance with the instructions of the engineer officer in charge, or his agent, and also such other lights as the engineer might direct, must not only maintain lanterns in the required positions, but also see that they were kept trimmed and brightly burning during the hours of darkness, and they are liable for injury to a vessel stranded on the new construction by reason of the extinguishment by the wind of the stake light, where they had knowledge that it was liable to be so extinguished, and had been a number of times previously. Reasonable care and vigilance required the contractors to guard against the probable consequences of the extinguishment of the light or its failure to burn at night,

and, if it was impracticable to properly relight the lantern whenever the light was blown out in a storm or high wind, they should, in view of the great danger to navigation resulting from darkness at that point, either have erected an electric light which could have been operated from the shore, or made such disposition of their floating plant as to warn vessels away from the new breakwater. The extinguishment of the stake light by the wind due to its improper adjustment cannot be attributed to the act of God or vis major, so as to relieve the contractors from liability, being something which might reasonably have been anticipated, and could have been guarded against in the exercise of reasonable care and vigilance. The provision requiring the contractors to maintain such other lights as the engineer should direct did not necessarily measure their obligations to third persons to whom they owed the duty of maintaining such lights as were necessary or proper in view of the dangerous character of the structure, whether directed by the engineer or not. Harrison v. Hughes (1903) 125 Fed. 860, 60 C. C. A. 442, affirming decree (D. C. 1901) 110 Fed. 545, and writ of certiorari denied Hughes v. Harrison (1903) 24 Sup. Ct. 846, 191 U. S. 575, 48 L. Ed. 308.

5. —— **"Legal representatives," meaning of.**—"Legal representatives," in the act of 1896 (27 Stat. 208), refers to those who may be charged with the administration of the contractor's estate, or as equivalent to the "assigns" of the contract as an integral thing. (1898) 22 Op. Atty. Gen. 156.

6. —— **Right of contractors to compensation.**—Where plaintiff contracted to do harbor excavation at a specified price per cubic yard, and was directed to make excavations at a certain place by a government inspector, it was no defense to its right to recover therefor under the contract that the fill making the excavation necessary was not a natural one, but was occasioned by the negligence of the city. San Francisco Bridge Co. v. U. S. (D. C. 1913) 209 Fed. 135.

7. —— **Liabilities of defaulting contractors.**—The obligations of a contract for a public work, so far as applicable to a case of the contractor's default, including the right reserved to the government to secure some one else to complete the work, and charge the original contractor with the reasonable difference in cost, remained in force after the government, exercising its option, declared the contract null and void for the contractor's failure to perform, without prejudice to its right to recover for defaults therein or violations thereof. The right of the government under a contract for a public work to charge the contractor with the reasonable difference in cost in case of a reletting after his default is not defeated because this second contract does not appear to have completed the work intended to be accomplished by the first, where the work done under the new contract was work which the first contractor had agreed to perform. U. S. v. McMullen (1912) 32 Sup. Ct. 128, 131, 222 U. S. 460, 56 L. Ed. 269, reversing judgment McMullen v. U. S. (1909) 167 Fed. 460, 93 C. C. A. 96.

8. —— **Liabilities for torts.**—One blasting in a harbor, in performance of a contract with the United States, is not liable for injuries to a house by the vibration of the earth and pulsation of the air, unless he is negligent. Benner v. Atlantic Dredging Co. (1892) 134 N. Y. 156, 31 N. E. 328, 30 Am. St. Rep. 649, 17 L. R. A. 220.

9. —— **Assignments of contracts.**—Where there is a question as to the assignment of a contract, all parties may execute an agreement in the nature of a trust to embody a release to the United States as to a present payment and an agreement to release as to future payments, and providing for payment to a trustee for disbursement. As regards the government and the payment referred to, there is but one valid claim—that of the contractor. (1898) 22 Op. Atty. Gen. 156.

10. **Hours of labor on river and harbor improvements.**—Eight-Hour Law (sections 8918–8922, ante), as originally enacted, applies to the jetty work at the mouth of the Columbia river, which is being conducted directly by the government, and those employed upon that work, who come fairly within the meaning of the words "laborers and mechanics," should be restricted to eight hours of effective labor in any one calendar day, irrespective of enforced idleness on other days, except in case of a sudden emergency requiring prompt action. (1907) 26 Op. Atty. Gen. 278.

§ 9884. (Act Sept. 19, 1890, c. 907, § 2.) Contracts for river and harbor improvements.

Nothing contained in section thirty-seven hundred and seventeen of the Revised Statutes of the United States, nor in section three of the river and harbor act of August eleventh, eighteen hundred and eighty-eight, shall be so construed as to prohibit or prevent the cumulation of two or more works of river and harbor improvement in the same proposal and contract, where such works are sit-

uated in the same region and of the same kind or character. (26 Stat. 452.)

This section was part of the rivers and harbors appropriation act of 1890, cited above.

R. S. § 3717, mentioned in this section, providing that when the Secretary of War invited proposals for any works, or labor or material for any works, there should be separate proposals and separate contracts for each work and for each class of material or labor for each work, is set forth ante, § 6858.

Act Aug. 11, 1888, c. 860, § 3, also mentioned in this section, providing that, when works were to be done by contract, the contract should be made after advertisement for proposals to the lowest bidder, is set forth ante, § 9883.

In all contracts for material for any public improvement the Secretary of War was required to give preference to American materials, by Act March 3, 1875, c. 133, § 2, ante, § 6859.

Recent rivers and harbors appropriation acts, under paragraphs making appropriations for certain specified improvements, contained provisions authorizing the Secretary of War to enter into contracts for such materials and work as might be necessary to prosecute the projects, to be paid for as appropriations might from time to time be made by law, not to exceed in the aggregate a certain specified sum, exclusive of the amounts already appropriated for such projects, with a further proviso that such authorizations should not be construed as adopting such projects beyond the work to the extent and in the manner specified. These provisions were repeated by the rivers and harbors appropriation act of July 27, 1916, c. 260, 39 Stat. 392.

Cited without definite application, Ellis v. U. S. (1907) 27 Sup. Ct. 600, 604, 206 U. S. 246, 51 L. Ed. 1047, 11 Ann. Cas. 589 (dissenting opinion).

§ 9885. (Act March 2, 1907, c. 2509, § 1.) Works of improvement of rivers and harbors to be carried on by contract or otherwise.

All works of improvement heretofore or herein authorized to be prosecuted or completed under contracts may, in the discretion of the Secretary of War, be carried on by contract or otherwise, as may be most economical or advantageous to the United States. (34 Stat. 1110.)

This was a provision of the rivers and harbors appropriation act of 1907, cited above.

Notes of Decisions

Discretion of secretary of war.—The secretary of war is not required by the act of March 3, 1896, providing that contracts may be entered into by him for the completion of improvements named, to make such contracts, but he may decline to do so in all cases where he is convinced the public interest would not be subserved by making them. (1896) 21 Op. Atty. Gen. 420.

While "may" in any statute is ordinarily to be construed as "shall" or "must" when public rights or interests are concerned, yet the construction depends upon the context of the statute, the test being the intent of the legislature. (1902) 24 Op. Atty. Gen. 594.

The authority conferred on him by the river and harbor act of June 13, 1902 (32 Stat. 371), to prosecute or complete, "by contract or otherwise," all river and harbor improvements which theretofore or therein were authorized to be constructed or completed under contract, vested in him the power to construct the dredge now nearing completion, for use on Lake Michigan, and to pay the cost of the same by allotment from the sums appropriated for the improvement of the various harbors of that lake. (1904) 25 Op. Atty. Gen. 145.

§ 9886. (Act July 25, 1912, c. 253, § 1.) Works of improvements of rivers and harbors to be carried on by contract or otherwise.

All works of improvement herein or hereafter authorized to be prosecuted or completed under contracts may, in the discretion of the Secretary of War, be carried on by contract or otherwise, as may be most economical or advantageous to the United States. (37 Stat. 222.)

This was a provision of the rivers and harbors appropriation act of 1912, cited above.

A previous provision in the same language was made by Act Feb. 27, 1911, c. 166, § 1, 36 Stat. 952.

§ 9887. (Act March 2, 1907, c. 2509, § 1.) Appropriations for completion of works, if insufficient therefor, applicable to prosecution of work.

In all cases in which appropriations or authorizations have hereto-

fore been made, or are herein made, for the completion of river and harbor works, and the amounts appropriated or authorized shall prove insufficient for completion, the Secretary of War may, in his discretion, on the recommendation of the Chief of Engineers, apply such amounts appropriated or authorized for the prosecution of such work. (34 Stat. 1111.)

This was a provision of section 1 of the rivers and harbors appropriation act of 1907, cited above.

Notes of Decisions

Expenditure of appropriation.—See § 883, ante, and § 9888, post, and notes thereunder.

Under section 5 of the river and harbor act of June 3, 1896 (29 Stat. 235), which limits the amount that the Secretary of War can obligate the government for in any fiscal year to $400,000, the contractor may perform in one year the work for which the contract allows him three years to perform, and although he may thus earn a larger sum than the amount stated he may not receive full payment therefor under three years. Where the total amount authorized to be expended is less than $400,000, contractors may be allowed to earn the amounts authorized to be expended in advance of the appropriation by congress for such work. Appropriation may be expended in the prosecution of work, notwithstanding the total cost may exceed the appropriation. (1911) 29 Op. Atty. Gen. 236.

§ 9888. (Act July 25, 1912, c. 253, § 8.) Combination of two or more works in one contract; application of appropriations, insufficient for completion, to prosecution of work.

Whenever the appropriations made by Congress for river and harbor works can be more advantageously expended by combining in one contract two or more works, such combinations shall be made. And whenever the appropriations made, or authorized to be made, for the completion of any river and harbor work shall prove insufficient therefor, the Secretary of War may, in his discretion, on the recommendation of the Chief of Engineers, apply the funds so appropriated or authorized to the prosecution of such work. (37 Stat. 233.)

This section was part of the rivers and harbors appropriation act of 1912, cited above.

This section superseded Act June 25, 1910, c. 382, § 2, 36 Stat. 668, which authorized combinations in one contract of two or more works and the application of insufficient appropriations to the prosecution of such works.

Previous provisions relating to the cumulation of two or more works of river and harbor improvement in the same contract were made by Act Sept. 19, 1890, c. 907, § 2, ante, § 9884.

Notes of Decisions

Expenditure of appropriation.—See §§ 9883, 9887, ante, and notes thereunder.

Appropriation authorized may be expended in the prosecution of the work, notwithstanding the total cost may exceed the amount of the appropriation. (1911) 29 Op. Atty. Gen. 236.

§ 9889. (Act March 4, 1915, c. 142, § 3.) Application of appropriations where separate works or items consolidated.

Where separate works or items are consolidated in this or subsequent river and harbor Acts and an aggregate amount is appropriated therefor, any balances remaining to the credit of the separate works or items may be transferred to the credit of the corresponding aggregate amounts appropriated for the consolidated items, and the amounts appropriated or transferred shall, unless otherwise expressed, be expended in securing maintenance and improvement according to the respective projects adopted by Congress, after giving due regard to the respective needs of traffic. The allotments to the respective works consolidated shall be made by the Secretary of War upon recommendations by the Chief of Engineers. In case such works or items are consolidated and separate amounts are given with each project, the amounts so named shall be expended upon such separate projects unless, in the discretion of the

Secretary of War, another allotment or division should be made of the same. Any balances remaining to the credit of the consolidated items shall be carried to the credit of the respective aggregate amounts appropriated for the consolidated items. (38 Stat. 1052.)

This section was a part of the rivers and harbors appropriation act of 1915, cited above.

This section superseded Act March 4, 1913, c. 144, § 7, 37 Stat. 827, which read as follows:

"Where separate works or items are consolidated in this or subsequent river and harbor Acts and an aggregate amount is appropriated therefor the amounts appropriated shall, unless otherwise expressed, be expended in securing maintenance and improvement according to the respective projects adopted by Congress, after giving due regard to the respective needs of traffic. The allotments to the respective works consolidated shall be made by the Secretary of War upon recommendations by the Chief of Engineers. In case such works or items are consolidated and separate amounts are given with each project, the amounts so named shall be expended upon such separate projects unless, in the discretion of the Secretary of War, another allotment or division should be made of the same. Any balances remaining to the credit of the consolidated items shall be carried to the credit of the respective aggregate amounts appropriated for the consolidated items."

§ 9890. (Act July 13, 1892, c. 158, § 5.) Expenditure of appropriations for river and harbor improvements for dredging within harbor lines prohibited.

No money appropriated for the improvement of rivers and harbors in this act or hereafter, shall be expended for dredging inside of harbor lines duly established. (27 Stat. 111.)

This was a section of the rivers and harbors appropriation act of 1892, cited above.

The establishing of harbor lines was authorized by Act March 3, 1899, c. 425, § 11, post, § 9912.

Notes of Decisions

Expenditure of appropriations under local acts.—The act of June 3, 1896 (29 Stat. 202, 228), authorizing the Secretary of War to contract for the improvement of the Chicago river, "as far as may be permitted by existing docks and wharves," confines the improvements within existing docks and wharves. (1897) 21 Op. Atty. Gen. 471.

§ 9891. (Act March 2, 1907, c. 2509, § 5.) Hiring of dredging plants.

Whenever it shall become, in the opinion of the Secretary of War, necessary or desirable to hire a dredging plant or plants for the performance of any of the public work carried on under his direction the said Secretary may, in his discretion, agree for the same, either in the manner now customary or on the basis of an equitable reimbursement for deterioration of plant when in use by the Government, and a reasonable percentage of the total cost of the work. (34 Stat. 1119.)

This was a provision of section 5 of the rivers and harbors appropriation act of 1888, cited above.

Notes of Decisions

Building or hiring dredges.—The words "is authorized" in the river and harbor act of June 13, 1902 (32 Stat. 342), which confers on the Secretary of War the power to purchase or build a dredge for use in harbor improvement and maintenance in Lake Erie, while equivalent to the word "may," are used in a mandatory sense and are binding upon the executive whose duty it is to carry them into effect. (1902) 24 Op. Atty. Gen. 594.

That congress has in other instances made specific appropriations for dredging plants, cannot be held to limit the meaning of the words "by contract or otherwise," in Act June 13, 1902, by restricting the secretary to the hiring of a dredge as the only alternative of a contract, nor to forbid that officer from using such dredge on improvements other than those authorized by appropriations from which the moneys for its construction have been taken. (1904) 25 Op. Atty. Gen. 145.

§ 9892. (Act Aug. 11, 1888, c. 860, § 11.) Construction of fish-ways.

Whenever the improvements provided for by this act, or those which have heretofore been prosecuted by the United States, or may hereafter be undertaken, shall be found to operate (whether by lock and dam or otherwise), as obstructions to the passage of fish, the Secretary of War may, in his discretion, direct and cause to be constructed practical and sufficient fish-ways, to be paid for out of the general appropriations for the streams on which such fish-ways may be constructed. (25 Stat. 425.)

This section was part of the rivers and harbors appropriation act of 1888, cited above, which, in section 1 thereof, made appropriations for purposes described therein.

General provisions regulating the construction of dams over navigable waters were made by the Dam Act of June 21, 1906, c. 3508, amended by Act June 23, 1910, c. 360, post, §§ 9976–9983, chapter F.

§ 9893. (Act Aug. 11, 1888, c. 860, § 1.) Mississippi River; regulations of use, etc., of reservoirs at headwaters; punishment for violation; gaugings during operation of reservoirs.

For continuing operations upon the reservoirs at the headwaters of the Mississippi River, * * And it shall be the duty of the Secretary of War to prescribe such rules and regulations in respect to the use and administration of said reservoirs as in his judgment the public interest and necessity may require; which rules and regulations shall be posted in some conspicuous place or places for the information of the public. And any person knowingly and willfully violating such rules and regulations shall be liable to a fine not exceeding five hundred dollars, or imprisonment, not exceeding six months, the same to be enforced by prosecution in any district court of the United States within whose territorial jurisdiction such offense may have been committed. And the Secretary of War shall cause such gaugings to be made at or near Saint Paul during the annual operation of said reservoirs as shall determine accurately the discharge at that point, the cost of same to be paid out of the annual appropriation for gauging the waters of the Mississippi River and its tributaries. (25 Stat. 419.)

These were provisions of section 1 of the river and harbor appropriation act of 1888, cited above.

Provisions for water gauges on the Mississippi River and tributaries were made by R. S. § 5252, ante, § 9856, and by section 6 of this act, as amended by Act June 13, 1902, c. 1079, § 9, ante, § 9857.

§ 9894. (Act Aug. 11, 1888, c. 860, § 4.) South Pass of Mississippi River; examinations and surveys; expenditures.

For the purpose of securing the uninterrupted examinations and surveys at the South Pass of the Mississippi River, as provided for in the Act of March third, eighteen hundred and seventy-five, the Secretary of War, upon the application of the Chief of Engineers, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the amount appropriated in this act for such purpose: Provided, however, That an itemized statement of said expenditures shall accompany the Annual Report of the Chief of Engineers. (25 Stat. 424.)

This section was part of the rivers and harbors appropriation act of 1888, cited above.

§ 9895. (Act Aug. 11, 1888, c. 860, § 7.) Mississippi River; operation of snag-boats, etc.; expenditures.

For the purpose of securing the uninterrupted work of operating snag-boats on the Upper Mississippi River, and of removing snags, wrecks, and other obstructions in the Mississippi River, the Secretary of War, upon the application of the Chief of Engineers, is

hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the amounts appropriated in this act for such purposes: Provided, however, That an itemized statement of said expenses shall accompany the annual report of the Chief of Engineers. (25 Stat. 424.)

This section was part of the rivers and harbors appropriation act of 1888, cited above.

Act March 3, 1875, c. 134, mentioned in this section, provided in sections 4, etc., 18 Stat. 463–466, for a contract with James B. Eads and others to construct jetties, etc., to maintain the channel at the South Pass.

The provisions of said act and of this act with regard to examinations and surveys at the South Pass remained in force notwithstanding the termination of said contract, by a provision of Act June 13, 1902, c. 1079, § 1, 32 Stat. 340.

§ 9896. (Act June 6, 1900, c. 790, § 3.) South Pass of Mississippi River; maintenance of channel; expenditures.

The Secretary of War is hereby authorized, in his discretion, to terminate the contract heretofore entered into with the late James B. Eads for the maintenance of the channel through the South Pass of the Mississippi River, * * In case of the termination of said contract, by virtue of the provisions hereof or by expiration of said contract the Secretary of War is hereby directed to take charge of said channel, including the jetties, and all auxiliary works connected therewith, and thereafter to maintain with the utmost efficiency said South Pass Channel; and for that purpose he is authorized to draw his warrants from time to time on the Treasurer of the United States, until otherwise provided for by law, for such sums of money as may be necessary, not to exceed in the aggregate for any one year one hundred thousand dollars. (31 Stat. 584.)

These provisions were part of section 3 of an act making provision for emergencies in river and harbor work, etc., cited above.

A subsequent provision for the same purpose, authorizing the use therefor of Government dredges, made by Act June 13, 1902, c. 1079, § 1, is set forth post, § 9897.

Notes of Decisions

Mississippi river improvements.—See §§ 9893–9895, ante, and § 9897, post.

Under Act 1875, c. 134, Act 1878, c. 313, and Act 1879, c. 181, relating to the improvement of South Pass of the Mississippi, a navigable depth of 26 feet must be maintained through the shoal at the head of the Pass, and through the Pass itself. (1881) 17 Op. Atty. Gen. 137.

"Navigable depth" is a depth sufficiently wide to be navigated by vessels either moved by sails or steam and to permit them to pass each other. (1894) 21 Op. Atty. Gen. 29.

If in the judgment of the Secretary of War justice either to the government or to the contractors on the works at the South Pass channel of the Mississippi river requires him to determine the actual height of average flood tide as a datum of measurement, he has the right to determine such height, and to require the expenses incurred to be provided for by the representatives of James B. Eads, the contractor. (1896) 21 Op. Atty. Gen. 308.

The remote possibility that in some way and at some time the crevasse in Pass a Loutre may injuriously affect the channel in South Pass, cannot justify the United States in withholding final payment on the contract for opening and maintaining said channel after it has been opened according to contract and shall have been maintained for a period of 20 years. The contractor was under no obligation to close the crevasse, unless it was necessary to maintain the channel and protect the works, and the question whether such necessity exists is one of fact. (1900) 23 Op. Atty. Gen. 143. See, also, (1896) 21 Op. Atty. Gen. 391; (1896) 21 Op. Atty. Gen. 414.

§ 9897. (Act June 13, 1902, c. 1079, § 1.) South Pass of Mississippi River; maintenance of channel; use of government dredges.

The Secretary of War is hereby directed to maintain the channel in the South Pass of the Mississippi River with the utmost efficiency, and

for that purpose the dredge boat Beta, or any other available government dredge, may be used. (32 Stat. 340.)

This was a provision of section 1 of the rivers and harbors appropriation act of 1902, cited above.

Further provisions of the section, for the purchase of lands and buildings on either side of the South Pass, were temporary merely, and are omitted.

§ 9898. (Act Sept. 19, 1890, c. 907, § 13, as amended, Act June 3, 1896, c. 314, § 3.) Ohio River; operation of snag-boats, etc.; expenditures.

For the purpose of securing the uninterrupted work of operating snag-boats on the Ohio River and removing snags, wrecks, and other obstructions in said river, the Secretary of War, upon the application of the Chief of Engineers, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the sum of fifty thousand dollars: Provided, however, That an itemized statement of said expenses shall accompany the annual report of the Chief of Engineers. (26 Stat. 455. 29 Stat. 234.)

This section was part of the rivers and harbors appropriation act of 1890, cited above.

The section, as originally enacted, limited the amount to be drawn for the work, by the words "not to exceed in the aggregate for each year the sum of twenty-five thousand dollars." It was amended by Act June 3, 1896, c. 314, § 3, last cited above, by inserting the words "fifty thousand dollars" in lieu of the words "twenty-five thousand dollars" therein.

Cited without definite application, Carter v. McClaughry (1902) 22 Sup. Ct. 181, 195, 183 U. S. 365, 46 L. Ed. 236.

§ 9899. (Act June 25, 1910, c. 382, § 4.) Injuries by vessels engaged upon river and harbor work, by collision with other vessel, pier, etc.; examination by Chief of Engineers, and adjustment of claims.

Whenever any vessel belonging to or employed by the United States engaged upon river and harbor work collides with and damages another vessel, pier, or other legal structure belonging to any person or corporation, the Chief of Engineers shall cause an immediate and thorough examination to be made, and, if in his judgment, the facts and circumstances of the collision are such as to make the whole or any part of the damage inflicted a proper charge against the United States, the Chief of Engineers, subject to the approval of the Secretary of War, shall have authority to adjust and settle all claims for damages caused by such collision in cases where the claim for damage does not exceed five hundred dollars, and report the same to Congress for consideration. (36 Stat. 676.)

This section was part of the rivers and harbors appropriation act of 1910, cited above.

Notes of Decisions

Liability for injury caused by dredge.—A dredge, while working at a place 140 feet out from Long Island City pier, was moored to the pier by two wire cables stretched above the water, with nothing to give notice of their presence, except the cables themselves and a sign on the dredge to "look out for anchor cables." A New York City fireboat, attempting to pass between the dredge and pier in answering a call to a fire, did not see the cables until too late to stop or avoid them, and was injured by running into them. Held, that the dredge was in fault for not giving a better warning of such an unusual obstruction, and the fireboat was not chargeable with contributory fault because she was not in the center of the river, as required of all vessels by a state statute. The No. 1 (1910) 180 Fed. 969, 104 C. C. A. 125.

§ 9900. (Act Feb. 21, 1891, c. 252, § 1.) Shipping statistics to be furnished where river and harbor improvements are carried on.

Owners, agents, masters, and clerks of vessels arriving at or departing from localities where works of river and harbor improve-

ment are carried on shall furnish, on application of the persons in local charge of the works, a comprehensive statement of vessels, passengers, freight, and tonnage. (26 Stat. 766.)

This section and the section next following were an act entitled "An act to facilitate the collection of commercial statistics required by section two of the river and harbor appropriation acts of eighteen hundred and sixty-six and eighteen hundred and sixty-seven."

The appropriation acts of June 23, 1866, c. 138, § 2, 14 Stat. 73, and March 2, 1867, c. 144, § 2, 14 Stat. 421, referred to in said title of this act, required the Secretary of War, in his annual reports on the river and harbor improvements appropriated for in those acts, to "state in what collection district each work is located, and at or near what port of entry, light-house, or fort ['port' in the act of 1867]; what amount of revenue was collected at the nearest port of entry for the last fiscal year, and, as far as practicable, what amount of commerce and navigation would be benefited by the completion of each particular work." These provisions were not included in the Revised Statutes, probably because they were regarded as temporary, and limited to the improvements appropriated for therein.

§ 9901. (Act Feb. 21, 1891, c. 252, § 2.) Failure to furnish statistics.

Every person or persons offending against the provisions of this act shall, for each and every offense, be liable to a fine of one hundred dollars, or imprisonment not exceeding two months, to be enforced in any district court in the United States within whose territorial jurisdiction such offense may have been committed. (26 Stat. 766.)

§ 9902. (Act July 25, 1912, c. 253, § 1.) Classification of freight statistics; collation of ton-mileage.

In the collection of statistics relating to traffic, the Corps of Engineers is directed to adopt a uniform system of classification for freight, and upon rivers or inland waterways to collate ton-mileage statistics as far as practicable. (37 Stat. 201.)

This provision was part of section 1 of the rivers and harbors appropriation act of 1912, cited above.

§ 9902a. (Act July 27, 1916, c. 260, § 1.) Experiments in transportation of heavy freights on Mississippi River.

The Chief of Engineers, or such board as the Secretary of War may appoint, shall, within two years after the passage of this Act, make such experiments in the transportation of heavy freights on said Mississippi River between the mouth of the Ohio River and Saint Louis and between Dubuque, Iowa, and Minneapolis, Minnesota, at all stages of water in said river, with the experimental tows and barges described in House Document Numbered Eight hundred and fifty-seven, Sixty-third Congress, second session, as will fully demonstrate the economy or lack of economy in the transportation of such heavy freights, and particularly upstream in parts of said river in which said improvement has been completed or practically completed, and for the making of such experiments said Chief of Engineers or board is hereby authorized to use not to exceed $50,000 of the unexpended balance of the $500,000 appropriated by the Act of June twenty-fifth, nineteen hundred and ten, for designing and constructing experimental towboats and barges and loading and unloading facilities for towing and delivering supplies along the Mississippi River and its tributaries. (39 Stat. 403.)

This was a provision of section 1 of the rivers and harbors appropriation act of 1916, cited above.

Act June 25, 1910, c. 382, 36 Stat. 659, mentioned in this section authorized the Chief of Engineers, under the direction of the Secretary of War to design and construct experimental towage boats and barges and loading and unloading facilities for towing and delivering supplies along the Mississippi River and tributaries, and made an appropriation therefor.

§ 9903. (Act June 13, 1902, c. 1079, § 1.) Navigable river improvements by private parties; approval of plans.

Any person or persons, corporations, municipal or private, who desire to improve any navigable river, or any part thereof, at their or its own expense and risk may do so upon the approval of the plans and specifications of said proposed improvement by the Secretary of War and Chief of Engineers of the Army. The plan of said improvement must conform with the general plan of the Government improvements, must not impede navigation, and no toll shall be imposed on account thereof, and said improvement shall at all times be under the control and supervision of the Secretary of War and Chief of Engineers. (32 Stat. 371.)

These were provisions following an appropriation for emergencies in the rivers and harbors appropriation act for 1902, cited above.

Authority was given to the State of New Jersey, or, through it, to any commission, individual, corporation, or municipality, designated by the legislature of the State or by a commission appointed or authorized by the legislature, to improve the channels on the New Jersey seacoast, etc., by Act June 30, 1906, c. 3923, post, §§ 9907, 9908.

The consent of Congress was given to the construction of a ship canal along the Government right of way connecting the waters of Puget Sound with Lake Washington, said canal, when completed, to be turned over to the United States, by Act June 11, 1906, c. 3072, post, §§ 9904–9906.

Notes of Decisions

Extent of private improvements prior to statute.—In the case of natural water courses, the extent to which private improvements are compatible with the public use of navigation must depend upon circumstances and must always be a question of fact. The owner's use is prima facie lawful. Ryan v. Brown (1869) 18 Mich. 196, 100 Am. Dec. 154.

Right to question form and manner of approval of plans.—A property owner contesting the condemnation of land for the improvement of a harbor made under St. Wis. 1913, §§ 926—108 to 926—113, which was aided by the federal government, cannot question the form and manner of the government's approval of the plan for improvement prepared by the municipality. State v. City of Milwaukee (1914) 146 N. W. 775, 156 Wis. 549.

§ 9904. (Act June 11, 1906, c. 3072, § 1.) Consent to construction of canal connecting waters of Puget Sound with Lake Washington; approval of plans, etc., and inspection of work; damages from construction; bond; canal to be property of United States, and to be maintained and operated for three years free of cost, charges and tolls.

The consent of Congress is hereby granted to, and it shall be lawful for James A. Moore or his assigns to construct a ship canal not less than twenty-five feet in depth and with a bottom width of not less than sixty feet, with a suitable timber lock of not less than six hundred feet in length and seventy-two feet in width, along the Government right of way connecting the waters of Puget Sound, in the State of Washington, with Lake Washington, subject always to the provisions and requirements of this Act and to such conditions and stipulations as may be imposed by the Chief of Engineers and the Secretary of War for the protection of navigation and the property and other interests of the United States, which shall include provision for the discharge of waters from Lakes Union and Washington and afford adequate protection against claims for damages for changing the level of Lake Washington, subject to every right and power of the United States: Provided, That such canal and lock shall not be built or commenced until after the plans and specifications for their construction, together with such drawings of the proposed construction and such maps of the proposed locations as may be required for a full understanding of the subject, have been submitted to the Secretary of War for his approval and until after he shall have approved such plans and specifications and the location of such lock and any

accessory works, and such works shall at all times be subject to the inspection and supervision of the Secretary of War; and when the plans for any lock and canal for construction under the provisions of this Act have been approved by the Secretary of War it shall not be lawful to deviate from such plans, either before or after the completion of the structure, unless the modification of such plans has previously been submitted to and received the approval of the Secretary of War: And provided, That the said James A. Moore or his assigns shall be liable for any damage that may be inflicted by the construction of said lock and canal by overflow, by a lowering of the waters affected, or otherwise, in a court of competent jurisdiction, and the said Secretary of War may compel the execution of a sufficient bond by the said James A. Moore, or his assigns, insuring compliance with the provisions and conditions imposed: And provided further, That said canal and lock, when completed, shall be turned over to the United States ready for use and free of all expense to the United States, and thenceforth shall be and remain the sole and exclusive property of the United States, but the said James A. Moore, or his assigns, shall operate and maintain in suitable condition the said canal and lock after completion for a period of three years to the satisfaction of said Secretary of War and Chief of Engineers of the United States, free of cost to the United States, and from charges of any kind whatever, and free from the payment of all tolls. (34 Stat. 232.)

This section and the two sections next following were an act entitled "An act authorizing James A. Moore or his assigns to construct a canal along the Government right of way connecting the waters of Puget Sound with Lake Washington."

Notes of Decisions

Assessments for construction of canal.—This section and Act Sept. 19, 1890, c. 907, 26 Stat. 452, Act Aug. 17, 1894, c. 299, § 1, 28 Stat. 360, River and Harbor Act June 3, 1896, c. 314, § 1, 29 Stat. 234, joint resolution of April, 1896 (29 Stat. 471), Act June 13, 1902, c. 1079, § 1, 32 Stat. 347, Act March 3, 1905, c. 1482, § 1, 33 Stat. 1144, and Act March 2, 1907, c. 2509, § 1, 34 Stat. 1108, appropriating money for the expense of preliminary surveys and investigations for the construction of a canal commonly known as the "Lake Washington Canal," connecting Puget Sound through Lake Union with Lake Washington, and providing that the state of Washington shall secure deeds or releases of a right of way for the benefit of the United States, but that nothing therein shall be construed as the adoption of any project for the construction of a waterway connecting Puget Sound with Lakes Union and Washington, did not manifest an intention on the part of the United States to construct or operate the canal within a reasonable time so as to authorize the county commissioners of King county to levy an assessment under Laws Wash. 1907, c. 236. State v. Board of Com'rs of King County (Wash. 1910) 109 P. 350.

Cited without definite application, Louisville & N. R. Co. v. Hughes (D. C. 1912) 201 Fed. 727.

§ 9905. (Act June 11, 1906, c. 3072, § 2.) Limit of time for commencement and completion of canal.

This Act shall be null and void unless the canal and lock herein authorized shall be commenced within one year and completed within three years from the date of the approval hereof. (34 Stat. 232.)

§ 9906. (Act June 11, 1906, c. 3072, § 3.) Reservation of right to amend or repeal act.

The right to alter, amend, or repeal this Act is hereby expressly reserved. (34 Stat. 231.)

§ 9907. (Act June 30, 1906, c. 3923, § 1.) Authority given to State of New Jersey or to commission, individual, corporation, etc., designated by legislature of State, to improve channels on New Jersey seacoast.

That authority be given to the State of New Jersey, or, through it, to any commission, individual, corporation, or municipality,

singly or collectively, designated by the legislature of said State, or by a commission appointed or authorized by said legislature, to improve the channels on the New Jersey seacoast, or any portion of said coast, or the waters adjacent thereto, lying between thirty-eight degrees fifty-six minutes and forty degrees twenty minutes north latitude, by dredging, or by the construction of piers, jetties, or breakwaters, or other river and harbor work of any description or nature adapted to attain the ends now pursued by the United States Government for the advantage of said coast or the relief of commerce: Provided, That such operations shall not encroach upon those portions of said coast, or the channels adjacent thereto, for which the United States Government may undertake similar work according to its own plans: And provided, That the plans for said work shall be placed on file with the Chief of Engineers of the War Department for thirty days, during which time he is authorized to disapprove said plans and forbid such work if, in his judgment, the improvements when completed will interfere with navigation or with any works of the United States Government commenced or proposed to be made: Provided further, That no tolls or other charges upon commerce shall be imposed by those making such improvements: And provided further, That this Act shall not be construed as affecting in any way the jurisdiction and control of the Federal Government over any waters that may be improved in pursuance of the provisions thereof, nor as exempting such waters from the operation of the laws heretofore or hereafter enacted by Congress for the preservation and protection of navigable waters. (34 Stat. 800.)

This section and the section next following were an act entitled "An act to improve the channels along the New Jersey seacoast."

Notes of Decisions

Title to soil under navigable waters.—The soil under the navigable waters of east New Jersey belongs to the state, and the principle governs a case where land has been reclaimed from the water under an act of the legislature. Den ex dem. Russell v. Jersey Co. (1853) 15 How. 426, 432, 14 L. Ed. 757.

§ 9908. (Act June 30, 1906, c. 3923, § 2.) Reservation of right to amend or repeal act.

The right to alter, amend, or repeal this Act is hereby expressly reserved. (34 Stat. 800.)

CHAPTER C

Preservation and Protection of Rivers and Harbors and of Improvements

This chapter includes provisions for preserving and protecting navigable channels in rivers and harbors and works constructed for improvement, extension, etc., thereof.

Sec.
9909. Injury to river and harbor improvements; penalty.
9910. Obstruction of navigable waters prohibited; approval of plans for wharves, etc.; excavations in channels.
9910a. Continuance of obstructions of navigable waters; punishment.
9911. Piers and cribs on the Mississippi and St. Croix.
9912. Establishment of harbor lines.
9913. Establishment and modification of harbor lines on the Potomac and Anacostia Rivers.
9914. Establishment of harbor lines; deposit of débris.
9915. Modification and extension of harbor lines in front of the city of Chicago.
9916. Establishment of pierhead and bulkhead lines in Wilmington Harbor, Cal.
9916a. Establishment of pierhead and bulkhead lines at Newport Harbor, Cal.
9917. Penalty for violation of provisions of act; removal of structures, etc.

Sec.
9918. Depositing refuse in navigable waters prohibited.
9919. Taking possession or use, etc., of works, etc., prohibited; permits for temporary use.
9920. Obstructions by vessels, anchored or sunk, and floating timber; marking and removal of sunken vessels.
9921. Penalty for violation of provisions of act.
9922. Duty of district attorneys; officers empowered to arrest offenders.
9923. Duty of officers and agents.
9924. Removal of obstructions to navigation; notice; proposals to remove; bond of bidder; disposition of proceeds.
9925. Destruction of vessels grounding, etc., specially endangering navigation; notice; expense of removal; reimbursement; appropriation; repeal.
9926. Regulations governing transportation and dumping into navigable waters, of dredgings, etc., and other refuse, authorized; violations of regulations made punishable; enforcement of regulations; exception of waters within any State used for cultivation of oysters.
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9928. Regulations authorized; publication; violation; penalty.
9929. Reservation of power to alter, amend, or repeal act.
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9931. South and Southwest passes of Mississippi River; regulations of navigation; violation of regulation a misdemeanor; punishment.
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9933. Depositing refuse in New York Harbor prohibited; penalty.
9934. Liability of master, etc., of vessel towing scow, boat, etc., loaded with prohibited matter.
9935. Designation of dumping grounds; permits; making deposits at other places; penalty; scows or boats to have names, etc., painted thereon; to be equipped with life lines, etc.; lists of names of men employed; penalty for failure to comply with provisions; appointment of inspectors, etc., and powers and duties of supervisor of harbor, inspectors, etc., for enforcement of act; bribery; penalty; return of permits; penalty for violation of provisions.
9936. Requirements as to life lines, etc., not to apply to certain scows or boats; place where names, etc., to be painted on such scows or boats.
9937. Disposition of dredged matter; penalty.
9938. Supervisor of harbor.
9939. Consent to obstruction by city of New York of navigation of river, etc., within limits of city; location and plans for proposed works to be approved; liability of city for damages.
9940. Reservation of right to amend or repeal act, without liability incurred by United States therefor.
9941. Fishing, etc., for shell fish in New York Harbor channels prohibited; penalty; arrests; process; proceedings.
9942. Deposit of refuse, etc., in Potomac River prohibited.
9943. Deposit of offal prohibited.
9944. Violation of act; penalty.
9945. Improvements by Government unaffected.
9946. Throwing, discharging, etc., refuse matter into Lake Michigan, at certain places, unlawful; exceptions; violation of provisions, a misdemeanor; punishment.

§ 9909. (Act Aug. 14, 1876, c. 267, § 3.) Injury to river and harbor improvements; penalty.

Any person who shall willfully and unlawfully injure any pier, breakwater, or other work of the United States for the improvement of rivers or harbors, or navigation in the United States, shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars. (19 Stat. 139.)

This provision was part of section 3 of the rivers and harbors appropriation act of 1876, cited above.

Malicious injury to harbor defenses and fortifications was made punishable by Act July 7, 1898, c. 576, § 1, 30 Stat. 717, which was incorporated into the Criminal Code in section 44 thereof, post, § 10208, and was repealed by section 341 thereof, post, § 10515.

Injury to sea walls, dikes, or other works built by the United States was punishable by Act March 3, 1899, c. 425, §§ 14, 16, post, §§ 9919, 9921.

Notes of Decisions

Protection of harbor improvement works.—Lawful authority exists for the protection of harbor improvement works from pillage or appropriation by individuals or corporations. (1853) 6 Op. Atty. Gen. 172.

§ 9910. (Act March 3, 1899, c. 425, § 10.) Obstruction of navigable waters prohibited; approval of plans for wharves, etc.; excavations in channels.

The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is hereby prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same. (30 Stat. 1151.)

This section was part of the rivers and harbors appropriation act of 1899, cited above.

This section and section 9 of this act, post, § 9971, superseded provisions of Act Sept. 19, 1890, c. 907, § 7, 26 Stat. 454, as amended by Act July 13, 1892, c. 158, § 3, 27 Stat. 88, which prohibited the erection of obstructions to navigation, and prohibited the erection of bridges over navigable waters under State legislation before the approval of the plans by the Secretary of War, and prohibited the alteration of channels unless authorized by said Secretary. They also superseded provisions of Act Sept. 19, 1890, c. 907, § 10, post, § 9910a, which prohibited the creation of any obstruction, not affirmatively authorized by law to the navigable capacity of any waters under the jurisdiction of the United States; but they did not supersede the provisions of said Act Sept. 19, 1890, c. 907, § 10, making the continuance of any such obstruction, except bridges, piers, docks, and wharves, and similar structures, an offense, and prescribed a penalty for violations thereof. See post, § 9910a, and notes thereunder.

Provisions prescribing what officers should aid in the enforcement of Act Sept. 19, 1890, c. 907, §§ 4–10, were contained in section 11 thereof, post, § 9923. Said sections 4–9 were superseded by this act, sections 9, 10, 12–16, 18–20, of which contained provisions more or less similar to those contained in said superseded sections, and therefore said section 11 of that act may be regarded as applicable to this act, so far as it contained substituted provisions.

General provisions regulating the construction of bridges over navigable waters were made by the Bridge Act of March 23, 1906, c. 1130, post, §§ 9961–9968.

General provisions regulating the construction of dams over navigable waters were made by the Dam Act of June 21, 1906, c. 3508, amended by Act June 23, 1910, c. 360, post, §§ 9976–9983.

Provisions for payment of expenses of investigations, inspections, etc., by the Engineer Department, incidental to examinations for various purposes of protection of navigable waters, etc., were made by Act March 3, 1895, c. 1482, § 6, post, § 9974.

Provisions authorizing the Secretary of War to make rules for the navigation of the South and Southwest passes of the Mississippi River were made by Act March 3, 1909, c. 264, § 5, post, § 9931.

Provisions authorizing the Secretary of War to make rules for the navigation of Ambrose Channel were made by Act March 4, 1913, c. 144, § 1, post, § 9932.

Violations of this section were made misdemeanors by Act March 3, 1899, c. 425, § 12, as amended by Act Feb. 20, 1900, c. 23, § 2, set forth as amended, post, § 9917.

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1. Power of states in absence of federal statute.—See post, chapters E and F of this title, and notes thereunder.

In the absence of the exercise by congress of authority to the contrary, the states may authorize the erection of works in navigable streams wholly within their jurisdiction. Willson v. Black Bird Creek March (1829) 2 Pet. 245, 7 L. Ed. 412; Withers v. Buckley (1857) 20 How. 84, 15 L. Ed. 816; Gilman v. City of Philadelphia (1865) 70 U. S. (3 Wall.) 713, 18 L. Ed. 96; The Passaic Bridges (1865) 70 U. S. (3 Wall.) 721, 16 L. Ed. Append. 1; County of Mobile v. Kimbal (1880) 102 U. S. 691, 26 L. Ed. 238; Escanaba & L. M. Transp. Co. v. Chicago (1882) 2 Sup. Ct. 185, 107 U. S. 678, 27 L. Ed. 442; Cardwell v. American Bridge Co. (1885) 5 Sup. Ct. 423, 113 U. S. 205, 28 L. Ed. 959; Bridge Co. v. Hatch (1888) 8 Sup. Ct. 811, 125 U. S. 1, 31 L. Ed. 629; Shively v. Bowlby (1894) 14 Sup. Ct. 548, 152 U. S. 1, 38 L. Ed. 331; Lake Shore & M. S. Ry. Co. v. Ohio (1897) 17 Sup. Ct. 357, 165 U. S. 365, 41 L. Ed. 747; U. S. v. Rio Grande Dam & Irrigation Co. (1899) 19 Sup. Ct. 770, 174 U. S. 690, 43 L. Ed. 1136; Manigault v. Springs (1905) 26 Sup. Ct. 127, 199 U. S. 473, 50 L. Ed. 274; U. S. v. Union Bridge Co. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523; Milnor v. New Jersey R. Co. (C. C. 1857) Fed. Cas. No. 9,620; Oregon City Transp. Co. v. Columbia St. Bridge Co. (D. C. 1892) 53 Fed. 549.

In the absence of legislation by congress, a state statute authorizing the erection of a dam across a navigable river which is wholly within her limits is not unconstitutional. Pound v. Turck (1877) 95 U. S. 459, 24 L. Ed. 525.

The common-law doctrine as to the dominion, sovereignty, and ownership of lands under tide waters on the borders of the sea applies equally to the lands beneath the navigable waters of the Great Lakes; and in this country such dominion, sovereignty, and ownership belongs to the states, respectively, within whose borders such lands are situated, subject always to the right of congress to control the navigation so far as may be necessary for the regulation of foreign and interstate commerce. Illinois Cent. R. Co. v. State of Illinois (1892) 13 Sup. Ct. 110, 146 U. S. 387, 36 L. Ed. 1018, affirming decree State of Illinois v. Illinois Cent. R. Co. (C. C. 1888) 33 Fed. 730.

The power of a state, if it existed at all, to obstruct or close entirely a navigable stream wholly within a state, depended solely on the absence of congressional legislation asserting the reserved authority of the general government over all navigable streams, including even those wholly within a state, and therefore ceased to exist from the enactment by congress of Act Sept. 19, 1890, c. 907, 26 Stat. 454. Egan v. Hart (1897) 17 Sup. Ct. 300, 301, 165 U. S. 188, 41 L. Ed. 680.

In the absence of any statute by congress, a state has plenary power over a navigable stream entirely within its limits, and obstructions in the stream may be offenses against the laws of the state, but not an offense against the United States. North Shore Boom & Driving Co. v. Nicomen Boom Co. (1909) 29 Sup. Ct. 355, 357, 212 U. S. 406, 53 L. Ed. 574.

State legislation to aid commerce by improving a navigable river, by deepening its channel or removing obstructions, does not encroach on power of congress, if not in conflict with any system for improvement of navigable waters provided by congress. Faust v. City of Cleveland (1903) 121 Fed. 810, 58 C. C. A. 194, citing Mobile County v. Kimball (1880) 102 U. S. 691, 26 L. Ed. 238.

A bridge across a navigable stream built under authority given by the state prior to the enactment of any federal legislation on the subject is a lawful structure. Rogers Sand Co. v. Pittsburgh, Ft. W. & C. Ry. Co. (1905) 139 Fed. 7, 71 C. C. A. 419.

All state laws and regulations with respect to navigable waters, and all rights acquired under them, are subject to the paramount right of the United States to appropriate any portion of the submerged soil for the purposes of navigation. Garrison v. Greenleaf Johnson Lumber Co. (1914) 215 Fed. 576, 131 C. C. A. 644, reversing decree Greenleaf Johnson Lumber Co. v. Garrison (D. C. 1913) 208 Fed. 1022, appeal to Supreme Court granted (1914) 221 Fed. 1021, 136 C. C. A. 663, and decree affirmed (1915) 35 Sup. Ct. 551, 237 U. S. 251, 59 L. Ed. 939.

Until congress assumes control of a navigable river wholly within the limits of the state, a state may legislate in reference to its commercial use as a public highway, and authorize the obstruc-

tion of a navigable river by a private corporation. Heerman v. Beef Slough Manufacturing, Booming, Log-Driving & Transp. Co. (C. C. 1878) Fed. Cas. No. 6,320; Id. (C. C. 1880) 1 Fed. 145, 154.

In absence of federal statute, states bordering on the Mississippi river could authorize improvements on their side of the river, but could not justify the destruction or substantial impairment of navigation of the river. Rutz v. St. Louis (C. C. 1882) 10 Fed. 338, 339.

States may assert the same ownership to the beds and shores of navigable fresh water lakes and streams as they may properly assert to the beds and shores of tidal waters. McGilvra v. Ross (C. C. 1907) 161 Fed. 398, decree affirmed (1908) 164 Fed. 604, 90 C. C. A. 398, which is reversed (1909) 30 Sup. Ct. 27, 215 U. S. 70, 54 L. Ed. 95. But the right so granted is held subject to the right of congress at any time to require the removal or alteration of such structure as an obstruction to navigation, where such waterway is used as a means for carrying on interstate or foreign commerce. U. S. v. Union Bridge Co. (D. C. 1906) 143 Fed. 377, judgment affirmed Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523.

Where a dike was being constructed in the Ohio river, leading from the shore to deep water, which it was apprehended by persons engaged in navigating the river would obstruct its navigation, and application was made by the latter to the engineer officers of the United States to interfere, the authorities of the United States had no power, in the absence of congressional legislation. (1880) 15 Op. Atty. Gen. 526.

In the absence of legislation by congress on the subject of the improvement of the harbor of St. Louis, or of the navigation of the Mississippi river at that point, no one is authorized to institute judicial proceedings in behalf of the United States against the city of St. Louis for the abatement as a nuisance of the Bryan street dike, constructed by that city in said river. The anticipation that, should such legislation hereafter be adopted, the dike will be an obstacle, is no ground for interference. (1875) 15 Op. Atty. Gen. 515.

The filling of a navigable waterway for the purpose simply of enabling riparian owners to reach the point of navigability by means of docks, piers, etc., when not forbidden by any statute of the United States or of a state, is neither unauthorized nor unlawful. But the filled-in land is subject to the servitude of navigation, and any obstruction to navigation arising therefrom could be abated by congress, even if made under the authority of the state. (1911) 29 Op. Atty. Gen. 139. The right of the state to regulate and control the beds of navigable streams does not imply a right to relinquish its control over a river bed or permit its use so as to interfere with navigation. State v. Southern Sand & Material Co. (Ark. 1914) 167 S. W. 854.

2. Constitutionality of federal statute.—Congress has power to close one of several channels in a navigable stream, if in its judgment the navigation of the river will be thereby improved. South Carolina v. Georgia (1876) 93 U. S. 4, 23 L. Ed. 782.

No act of or grant by an executive department of the United States can affect the right of the public to use the waters of a navigable stream for purposes of navigation, nor the power of congress to control the same. Carver v. San Pedro, L. A. & S. L. R. Co. (C. C. 1906) 151 Fed. 334.

The statute is within the power of congress so far as navigation comes within the provisions of interstate commerce or within the admiralty and maritime jurisdiction. U. S. v. Banister Realty Co. (C. C. 1907) 155 Fed. 583, and cases cited.

The constitutional jurisdiction of the United States to legislate over navigable waters applies to the entire body of water where the tide ebbs and flows, over which water, or through the channels of which, interstate or foreign commerce might ordinarily or reasonably be transacted, or which is subject to the admiralty jurisdiction; and the power of the war department over obstructions to such waters is coextensive with such general jurisdiction. U. S. v. President, etc., of Jamaica & R. Turnpike Road (C. C. 1910) 183 Fed. 598, decree reversed (1913) 204 Fed. 759, 123 C. C. A. 128.

Congress has supreme control of a navigable stream where the commerce thereon is interstate and foreign. Hagerta v. Mississippi River Power Co. (D. C. 1913) 202 Fed. 776 and cases cited as follows: U. S. v. Rio Grande (1899) 19 Sup. Ct. 770, 174 U. S. 690, 43 L. Ed. 1136; Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523; Philadelphia v. Stimson (1912) 32 Sup. Ct. 340, 223 U. S. 605, 56 L. Ed. 570.

It is not an unconstitutional delegation of the legislative function for congress to intrust to the secretary of war the power to declare what is an unreasonable obstruction to navigation. (1899) 21 Op. Atty. Gen. 431.

See Frost v. Washington County R. Co. (1901) 51 A. 806, 96 Me. 76, 59 L. R. A. 68.

3. Construction and operation of statute in general.—Where there is a federal law which applies to the subject of obstruction of a navigable stream entirely within a state, there is a concurrent or joint jurisdiction of the state and national governments over the erection of a structure obstructing

navigation. North Shore Boom & Driving Co. v. Nicomen Boom Co. (1909) 29 Sup. Ct. 355, 357, 212 U. S. 406, 53 L. Ed. 574.

The authority of a state to prohibit the erection, without its permission, of a structure in a navigable river wholly within its limits, was not superseded by this section, and both the state and federal governments must act conjointly. Cummings v. Chicago (1903) 23 Sup. Ct. 472, 477, 188 U. S. 410, 47 L. Ed. 525; Calumet Grain & Elevator Co. v. Same (1903) 23 Sup. Ct. 477, 188 U. S. 431, 47 L. Ed. 532; Montgomery v. Portland (1903) 23 Sup. Ct. 735, 190 U. S. 89, 47 L. Ed. 965; The Margaret J. Sanford (D. C. 1913) 203 Fed. 331.

The delegation to the secretary of war by Act Sept. 12, 1890 (26 Stat. 453, §§ 4, 5, 7), of authority to direct changes in existing bridges over any navigable waters of the United States, or of bridges to be erected under legislative authority of any state, for the purpose of preventing obstructions to navigation, showed no intention by congress to exercise exclusive control over navigable waters entirely within the jurisdiction of a state; and consequently this act did not deprive the states of power to compel the removal or alteration of bridges erected over such waters without authority. Lake Shore & M. S. Ry. Co. v. Ohio (1897) 17 Sup. Ct. 357, 358, 165 U. S. 365, 41 L. Ed. 747.

This section and section 9971, post, merely provide that, under circumstances described, the secretary of war may withdraw all objections on the part of the United States to the erection of structures mentioned therein over navigable streams, but congress did not assume to deprive a state in which such stream may be situated of all jurisdiction thereover. (1909) 27 Op. Atty. Gen. 327. And does not transfer exclusive control over navigable waters within the limits of a state to the federal government, but the right to erect structures in such waters is dependent upon the concurrent consent of both the state and federal governments. Minnesota Canal & Power Co. v. Pratt (1907) 112 N. W. 395, 101 Minn. 197, 11 L. R. A. (N. S.) 105.

By expending money in improving the Willamette river in Oregon, and making Portland a port of entry, congress did not assume police power over that stream so as to deprive the state of the power to authorize the erection of a bridge over that river without the consent of congress. Willamette Iron Bridge Co. v. Hatch (1888) 8 Sup. Ct. 811, 125 U. S. 1, 31 L. Ed. 629, reversing decree Wallamet Iron Bridge Co. v. Same (C. C. 1884) 19 Fed. 347.

The establishment of harbor lines did not operate to destroy all state power concerning structures in navigable waters within its border, or to automatically destroy all vested property rights, though acquired under state authority prior to this section. Gring v. Ives (1912) 32 Sup. Ct. 167, 222 U. S. 365, 56 L. Ed. 235.

Acts of congress making appropriations for the improvement of a river do not prevent the construction under state authority of booms, dams, piers, or bridges on the river. U. S. v. Bellingham Bay Boom Co. (1897) 81 Fed. 658, 661, 26 C. C. A. 547.

The provision in the act of admission of California into the Union, that all the navigable waters in the state should be common highways, and forever free, without tax therefor, does not refer to physical obstructions, but to political regulations. Pacific Gas Imp. Co. v. Ellert (C. C. 1894) 64 Fed. 421.

Filled-in land is subject to the servitude of navigation, and any obstruction to navigation arising therefrom could be abated by congress, even if made under authority of a state. The filling of a navigable waterway for the purpose simply of enabling riparian owners to reach the point of navigability by means of docks, piers, etc., when not forbidden by any statute of the United States or of a state, is neither unauthorized nor unlawful. (1911) 29 Op. Atty. Gen. 139. And see post, chapter E of this title, and notes thereunder, and post, chapter F of this title, and notes thereunder.

This section is designed to protect the navigable waters of the United States from encroachment and from obstructions to navigation, and commits the duty of their protection to an officer of the government. Cobb v. Lincoln Park (1903) 202 Ill. 427, 67 N. E. 5, 63 L. R. A. 264, 95 Am. St. Rep. 258. It is prospective purely, and not intended to take away from a railroad company, which, under a duly authorized grant from a state, has constructed a bridge over a navigable interstate river, the implied power to make all necessary repairs. Kansas City, M. & B. R. Co. v. J. T. Wiygul & Son (1903) 33 So. 965, 82 Miss. 223, 61 L. R. A. 578. And it is a mere regulation for the benefit of commerce and navigation, and a permission of the secretary of war to obstruct the same is only a finding or declaration that the proposed structure will not interfere with or be detrimental to navigation, and is not a positive declaration by congress that the licensee may make such obstruction without obtaining the consent of the owner of the submerged land, and the license given to the Hudson County Water Company by the secretary of war to lay pipes across the Kill von Kull from Bayonne in New Jersey to Staten Island in New York, is a mere declaration that the proposed work will not interfere with navigation, and is not authority to do the work in the absence of consent

thereto by the state of New Jersey, the owner of the land. Wilson v. Hudson County Water Co. (N. J. 1910) 76 A. 560.

A license by the Secretary of War authorizing a corporation to carry water pipe lines under a navigable stream separating two states was a mere finding and declaration that the pipes, structure, or excavation would not interfere with or be detrimental to navigation, and was not equivalent to a positive declaration by authority of congress that the licensee might make such obstruction or excavation without first obtaining authority from the state. Hubbard v. Fort (C. C. 1911) 188 Fed. 987.

The control and supervision of the navigable waters of the United States is vested in the secretary of war. (1897) 21 Op. Atty. Gen. 518.

Prior to the Porto Rican act (§ 3762, ante), the secretary of war had authority, under this section, to issue a license for the building and maintenance of a wharf in the harbor of San Juan, Porto Rico, and the rules imposed by § 3783, ante, on the grant of franchises by the executive council of that island do not extend to an antecedent license granted by him. The power to revoke the license so granted is vested in the Secretary of War, and so long as it is unrevoked the rebuilding of the wharf under such license is subject to his control and supervision, and not to that of the executive council. (1901) 23 Op. Atty. Gen. 551.

Congress did not by this section undertake to assume control over navigable streams to such an extent as to deprive a state in which such stream may be situated of all jurisdiction thereover. The statute only in effect provides that under the circumstances described the secretary of war may withdraw all objections on the part of the United States to the creation of structures mentioned. (1909) 27 Op. Atty. Gen. 327.

See Cobb v. Lincoln Park (1903) 202 Ill. 427, 67 N. E. 5, 63 L. R. A. 267, 95 Am. St. Rep. 258, holding that an authorization of work by the secretary of war is a mere license and not a grant of power. And see Wallace v. Aiken (1911) 72 S. E. 157, 136 Ga. 845, holding that a license to build a wharf, issued by the secretary of war to one of the rival claimants, was not admissible in evidence as tending to show title in such claimant. Wallace v. Aiken (1911) 72 S. E. 157, 136 Ga. 845.

And see, also, West Chicago St. R. Co. v. People of State of Illinois ex rel. City of Chicago (1906) 26 Sup. Ct. 518, 201 U. S. 506, 50 L. Ed. 845.

4. —— **Of prior statutes.**—Act Sept. 19, 1890, c. 907 (set forth post, § 9910a), prohibiting the maintenance of obstructions to navigation in navigable streams, is not inconsistent with this section. U. S. v. Wishkah Boom Co. (1905) 136 Fed. 42, 68 C. C. A. 592, appeal dismissed Wishkah Boom Co. v. U. S. (1906) 26 Sup. Ct. 765, 202 U. S. 613, 50 L. Ed. 1171.

The act of 1890 prohibits the construction of a dam in a river, at a point where it is not navigable, which so retards the flow of water as to affect the navigability of the river at a point where the river was navigable before. U. S. v. Rio Grande Dam & Irrigation Co. (1899) 19 Sup. Ct. 770, 776, 174 U. S. 690, 43 L. Ed. 1136, reversing decree (N. M. 1898) 51 Pac. 674.

The riparian owner on the Mississippi river above tidewater, whose title under the local law extends to the middle of the stream, is not powerless to prevent a trespasser from dredging the sand in the bed of the river in front of her land, even if she, under the River and Harbor Act Sept. 19, 1890, § 7, could not take out such sand without permission of the Secretary of War. Archer v. Greenville Sand & Gravel Co. (1914) 34 Sup. Ct. 567, 233 U. S. 60, 58 L. Ed. 850, reversing judgment (1912) 194 Fed. 1020, 114 C. C. A. 664.

Under Act Sept. 19, 1890, c. 907, § 7, which prohibits the erection of obstructions in navigable waters of the United States, and section 10 which provides that every person guilty of a violation of the provisions of section 7 shall be punished, and Act 1892, c. 158, which amends and re-enacts section 7, section 10 applies to section 7 as amended and re-enacted, and imposes a penalty for its violation. Leovy v. U. S. (1899) 92 Fed. 344, 34 C. C. A. 392.

The additional embankment which caused the obstruction in the river having been built after Act Sept. 19, 1890, which in express terms prohibited "the creation of any obstruction, not affirmatively authorized by law, to the navigable capacity of any waters in respect of which the United States has jurisdiction," and provided that the creation or continuance of any such unlawful obstruction might be prevented by injunction at suit of the United States, the provisions of such act are applicable, and the further construction of the embankment will be enjoined, except on condition that the company takes measures to prevent any further obstruction of the river thereby. Northern Pac. Ry. Co. v. U. S. (1900) 104 Fed. 691, 44 C. C. A. 135, 59 L. R. A. 80.

Act 1890, c. 907, § 7, is prospective in operation. U. S. v. Bellingham Bay Boom Co. (C. C. 1896) 72 Fed. 585, 590, affirmed (1897) 81 Fed. 658, 26 C. C. A. 547. And refers to such permanent construction as tends to obstruct navigation, the building of which must, by the provisions of such sec-

tion, have the approval and authorization of the secretary of war, and not to such alteration of the channel as would result from a violation of section 6, prohibiting the casting into any navigable waters of the United States from any ship any substance tending to obstruct navigation. U. S. v. David Burns and Gideon Burns (C. C. 1893) 54 Fed. 351. The city of Chicago has no power to widen the Chicago river without approval of the secretary of war. City of Chicago v. Law (1893) 144 Ill. 569, 33 N. E. 855.

The intent of congress in the first clause of section 7 of Act Sept. 19, 1890 (chapter 907), as amended by section 3 of Act July 13, 1892, was that the navigable waters of the United States should thereafter be under the exclusive control of the United States, and that for the future their navigability should be interfered with by bridges, dams, or other obstructions only by express permission of the United States, granted through its agent, the secretary of war. (1894) 21 Op. Atty. Gen. 42; (1896) 21 Op. Atty. Gen. 293; (1898) 22 Op. Atty. Gen. 52.

If the proposed canal between Port Arthur, Tex., and the Sabine Pass is one of the works provided for in section 3 of the act of July 13, 1892 (27 Stat. 110), making it unlawful, without the authority and permission of the secretary of war, for any one to build or construct any of the works therein mentioned in or over any of the navigable waters of the United States that would obstruct or impair the navigation of said waters, the secretary of war has authority to authorize and permit its construction. (1897) 21 Op. Atty. Gen. 531.

The act admitting Oregon into the Union, and providing "that all the navigable waters of said state shall be common highways and forever free, as well to the inhabitants of said state as to all other citizens of the United States, without tax, duty, impost, or toll therefor," did not prohibit obstructions by bridges or otherwise to the navigation of such waters. Willamette Iron-Bridge Co. v. Hatch (1888) 8 Sup. Ct. 811, 125 U. S. 1, 31 L. Ed. 629, reversing decree Wallamet Iron Bridge Co. v. Same (C. C. 1884) 19 Fed. 347.

5. —— **Conflict with treaties.**—This section and section 9971, post, are not in conflict with Webster-Ashburton Treaty 1842, art. 2. Minnesota Canal & Power Co. v. Pratt (1907) 112 N. W. 395, 101 Minn. 197, 11 L. R. A. (N. S.) 105.

6. **Boom defined.**—See Rollins v. Clay (1851) 33 Me. 132; John Spry Lumber Co. v. C. H. Green (1889) 43 N. W. 576, 76 Mich. 320; Gasper v. Heimbach (1893) 55 N. W. 559, 53 Minn. 414; Id. (1894) 60 N. W. 1080, 59 Minn. 102; Appeal of Powers (1889) 17 Atl. 254, 125 Pa. 175, 11 Am. St. Rep. 882.

7. **Harbor defined.**—A harbor is a recess in the coast line of a body of water in which ships can be sheltered, and it may extend to a line inside of which vessels may find protection, and the word has a more extended meaning than "shore," which when applied to a tide water bay usually means the part between ordinary high and low water marks. Leary v. Jersey City (C. C. 1911) 189 Fed. 419. See, also, The Aurania (D. C. 1886) 29 Fed. 98; Rowe v. Smith (1883) 51 Conn. 266, 50 Am. Rep. 16; Martin v. Hilton (1845) 9 Metc. (50 Mass.) 371; People v. Kirsch (1887) 35 N. W. 157, 67 Mich. 539, and cases cited.

8. **Haven defined.**—See Ex parte O'Hare (1910) 179 Fed. 662, 103 C. C. A. 220; De Lovio v. Boit (C. C. 1815) Fed. Cas. No. 3,776; U. S. v. Morel (C. C. 1834) Fed. Cas. No. 15,807.

9. **Pier defined.**—See The Haxby (D. C. 1899) 94 Fed. 1016; Western Maryland Tidewater R. Co. v. Baltimore (1907) 68 Atl. 6, 106 Md. 561; Seabright v. Allgor (1903) 56 Atl. 287, 69 N. J. Law, 641; People v. New York Ferry Co. (N. Y. 1876) 7 Hun, 105; Thompson v. New York (1854) 11 N. Y. 115, and cases cited.

10. **Weir defined.**—See Stannard v. Hubbard (1867) 34 Conn. 370; Treat v. Chipman (1852) 35 Me. 34; Arnold v. Mundy (1821) 6 N. J. Law 1, 10 Am. Dec. 356.

11. **Wharf defined.**—See John J. Sesnon Co. v. U. S. (1910) 182 Fed. 573, 105 C. C. A. 545; Illinois & St. Louis R. & Canal Co. v. St. Louis (C. C. 1872) Fed Cas. No. 7,007; Smith v. Britain S. S. Co. (D. C. 1903) 123 Fed. 176; Geiger v. Filor (1859) 8 Fla. 325; City of Dubuque v. Stout (1871) 32 Iowa, 49; City of Keokuk v. Keokuk Northern Line Packet Co. (1876) 45 Iowa, 196; Doane v. Broad St. Ass'n (1810) 6 Mass. 332; Palen v. City of Ocean City (1900) 46 Atl. 774, 64 N. J. Law, 669; Langdon v. City of New York (1883) 93 N. Y. 129; State v. Cowan (1847) 29 N. C. 239; Reighard v. Flinn (1900) 44 Atl. 1080, 194 Pa. 352; Lessesne v. Young (1890) 12 S. E. 414, 33 S. C. 543. See, also, Prior v. Swartz (1892) 62 Conn. 132, 25 Atl. 398, 18 L. R. A. 668, 36 Am. St. Rep. 333.

12. **Navigable waters of the United States in general.**—See Const. art. 3, § 2, and notes thereunder; and see, also, ante, chapter A of this title, and notes thereunder; and see post, chapter E of this title, and notes thereunder, and chapter F of this title, and notes thereunder.

All waters are navigable waters of the United States where they form in their ordinary condition, by themselves

or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water. The Daniel Ball (1870) 10 Wall. 557, 563, 19 L. Ed. 999; The Montello (1874) 20 Wall. 430, 22 L. Ed. 391; South Carolina v. Georgia (1876) 93 U. S. 4, 23 L. Ed. 782; Cardwell v. American Bridge Co. (1885) 113 U. S. 205, 5 Sup. Ct. 423, 28 L. Ed. 959; U. S. v. Rio Grande Dam & Irrig. Co. (1899) 19 Sup. Ct. 770, 174 U. S. 690, 43 L. Ed. 1136; Leovy v. U. S. (1900) 20 Sup. Ct. 797, 801, 177 U. S. 621, 44 L. Ed. 914, and cases cited; The Robert W. Parsons (1903) 24 Sup. Ct. 8, 191 U. S. 17, 48 L. Ed. 73; Donnelly v. U. S. (1913) 33 Sup. Ct. 449, 228 U. S. 243, 57 L. Ed. 820, Ann. Cas. 1913E, 710 (rehearing denied [1913] 33 Sup. Ct. 1024, 228 U. S. 708, 57 L. Ed. 1035); U. S. v. Wishkah Boom Co. (1905) 136 Fed. 42, 68 C. C. A. 592 (appeal dismissed Wishka Boom Co. v. U. S. [1906] 26 Sup. Ct. 765, 202 U. S. 613, 50 L. Ed. 1171); Manigault v. S. M. Ward & Co. (C. C. 1903) 123 Fed. 707 (judgment affirmed Same v. Springs [1905] 26 Sup. Ct. 127, 199 U. S. 473, 50 L. Ed. 274); U. S. v. Burlington & Henderson Co. Ferry Co. (D. C. 1884) 21 Fed. 331; (1891) 20 Op. Atty. Gen. 101.

The mere capacity to pass in a boat of any size, however small, from one stream or rivulet to another, is not sufficient to constitute a navigable water of the United States, which Act Sept. 19, 1890, makes it a misdemeanor to obstruct unless the channel is substantially useful to some purpose of interstate commerce. Leovy v. U. S. (1900) 20 Sup. Ct. 797, 177 U. S. 621, 44 L. Ed. 914, reversing judgment (1899) 92 Fed. 344, 34 C. C. A. 392.

"Navigable waters of the United States" applies, first, to all waters capable of sustaining or being used for interstate or foreign commerce, covering every part of any body of water, tidal or otherwise, any portion of which is capable of such use; and, second, to all waters under the admiralty and maritime jurisdiction of the United States and over which the district court of the United States can exercise its peculiar admiralty jurisdiction. U. S. v. Banister Realty Co. (C. C. 1907) 155 Fed. 583.

13. —— **Waters held navigable waters of the United States.**—Buffalo river. City of Buffalo v. Delaware, L. & W. R. Co. (1910) 120 N. Y. S. 1081, 136 App. Div. 274. The Chicago river and its branches. Escanaba & L. M. Transp. Co. v. Chicago (1882) 2 Sup. Ct. 185, 107 U. S. 678, 27 L. Ed. 442; (1891) 20 Op. Atty. Gen. 101; Cuyohoga river. Faust v. City of Cleveland (1903) 121 Fed. 810, 58 C. C. A. 194. East river at New York. Miller v. New York (1883) 3 Sup. Ct. 228, 109 U. S. 385, 27 L. Ed. 971. Erie Canal. Perry v. Haines (1903) 24 Sup. Ct. 8, 191 U. S. 17, 48 L. Ed. 73; Maloney v. Milwaukee (D. C. 1880) 1 Fed. 611. Fox river in Wisconsin. The Montello (1874) 20 Wall. 430, 22 L. Ed. 391; Green Bay & M. Canal Co. v. Patten Paper Co. (1898) 19 Sup. Ct. 97, 101, 172 U. S. 58, 43 L. Ed. 364. Hook creek in the county of Queens, New York. U. S. v. President, etc., Jamaica & R. Turnpike Road (C. C. 1910) 183 Fed. 598. The channel between Quantuc bay and East bay, portions of the Great South Bay, in Long Island. Whitehead v. Jessup (C. C. 1893) 53 Fed. 707. Coastal waters, harbors, and other navigable waters of the island of Porto Rico. (1901) 23 Op. Atty. Gen. 551.

See ante, chapter A of this title, and notes thereunder, and, post, chapters E and F of this title, and notes thereunder.

14. —— **Waters held not navigable waters of the United States.**—A pass or crevasse caused by the overflow of the Mississippi river making a channel to the Gulf through which a few fishermen had occasionally gone with small vessels carrying oysters for planting, and through which one or two cargoes of timber may have passed, but which had not been used for any purpose of interstate commerce, and the Gulf end of which became closed. Leovy v. U. S. (1900) 20 Sup. Ct. 797, 798, 177 U. S. 621, 44 L. Ed. 914. Coastal waters of Cuba. (1900) 23 Op. Atty. Gen. 76. A stream in a swamp. Jeremy v. Elwell (1890) 5 Ohio Cir. Ct. R. 379. A stream which is only navigable for three or four miles from its mouth at high tide by small boats drawing from three to four feet of water, and floatable for its entire length. State v. Superior Court of Chehalis County (Wash. 1910) 109 P. 340.

See ante, chapter A of this title, and notes thereunder.

15. **Bank and bed of river defined.**—The bank of a river is that elevation of land which confines the waters of the river in their natural channel when they rise to their highest, but do not overflow the banks. A river does not include lands beyond the banks, which are covered in times of freshet or extreme floods, or swamps or low grounds which are liable to overflow, but are reclaimable for meadows or agriculture, or which, being too low for reclamation, though not always covered with water, may be used for cattle to range upon, as natural or uninclosed pasture. The bed of a river is a definite, and commonly a permanent, channel, and is the characteristic which distinguishes the water of the river from mere surface drainage, and from water percolating through the strata of the earth. Paine Lumber Co. v. U. S. (C. C. 1893) 55 Fed. 854.

16. Eminent domain, approval of federal government as condition precedent to exercise of.—A public service corporation will not be permitted to exercise the power of eminent domain in furtherance of an enterprise involving interference with navigable waters within the state without having first procured the approval of the federal government. Minnesota Canal & Power Co. v. Pratt (1907) 112 N. W. 395, 101 Minn. 197.

17. Affirmatively authorized obstructions or improvements.—Obstructions not affirmatively authorized by Congress are prohibited, but the case of the state assent remains with the state for its sole adjudication. North Shore Boom & Driving Co. v. Nicomen Boom Co. (1909) 29 Sup. Ct. 355, 357, 212 U. S. 406, 53 L. Ed. 574. The word "affirmatively" in this section is used to distingush the two kinds of authority referred to, and the section should be construed to require that the initial authorization to create an obstruction must rest on affirmative congressional authority, and not on a mere permit of the secretary of war. The word "authorize" is used in the sense of to approve of and formally sanction, and the section does not confer on the secretary of war authority to grant original authorization for the construction of any work constituting an obstruction of the navigable waters of the United States. Hubbard v. Fort (C. C. 1911) 188 Fed. 987. And a log boom constructed in the manner conformable to a state statute at the time congress had not assumed jurisdiction over the waters in question is "affirmatively authorized by law" within Act 1890, c. 907, § 10. U. S. v. Bellingham Bay Boom Co. (1900) 20 Sup. Ct. 343, 344, 176 U. S. 211, 44 L. Ed. 437.

At common law no right to wharf out to navigable waters attached to the ownership of shore lands, and such right, if it exists, must be based on some legislation of the state. Western Pac. Ry. Co. v. Southern Pac. Co. (1907) 151 Fed. 376, 80 C. C. A. 606.

That a log boom constructed under authority of a state statute on a river lying wholly within the state may not conform to the regulations prescribed by the state statute does not make it an unlawful structure, under Act Sept. 19, 1890 (26 Stat. 426). U. S. v. Bellingham Bay Boom Co. (1897) 81 Fed. 658, 26 C. C. A. 547, affirming judgment (C. C. 1896) 72 Fed. 585, judgment reversed (1900) 20 Sup. Ct. 343, 176 U. S. 211, 44 L. Ed. 437.

This section does not apply to the rebuilding of a bridge which was lawfully in existence when passed. The right to maintain a railroad bridge lawfully built across a navigable stream carries the right to rebuild the same in whole or in part when required for the safety of travel and transportation, and also the right to build such temporary structures in the stream as may be necessary to prevent the interruption of the operation of the railroad, and to maintain the same for a reasonable length of time. Rogers Sand Co. v. Pittsburgh, Ft. W. & C. Ry. Co. (1905) 139 Fed. 7, 71 C. C. A. 419.

In passing on whether permission shall be given for the erection of a dolphin off the coast of Santa Barbara, Cal., the Chief of Engineers and the Secretary of the Treasury should not consider the incidental injury to the bathing beach or the impairment of bathing facilities in that vicinity, or any other similar reason not having direct relation to the navigable capacity of the waters and their use for interstate and foreign commerce. Such considerations should not prevent the approval of the plan, provided it would otherwise have their approval. (1909) 27 Op. Atty. Gen. 285.

Complaint held not to show that a bridge across a navigable stream was a public nuisance where it did not show whether it was built since the passage of this section or section 9971, post, or whether it was built without the approval of the War Department as required by that act. Mauldin v. Central of Georgia Ry. Co. (Ala. 1913) 61 So. 947.

No right to obstruct navigation passes to the purchasers under the laws for the sale of swamp and overflowed lands. Taylor v. Underhill (1871) 40 Cal. 471.

The owner of a lot abutting on the waters of Lake Michigan does not acquire the right to construct a wharf over submerged lands, not owned by him, immediately in front of his property, by obtaining a license to build such wharf from the Secretary of War under this section. Cobb v. Lincoln Park Com'rs (1903) 67 N. E. 5, 202 Ill. 427, 63 L. R. A. 264, 95 Am. St. Rep. 258.

A water pipe across the Kennebec river, if built according to plans recommended by the chief of engineers and authorized by the Secretary of War, is deemed authorized by Congress, and is a lawful structure without any further action by the courts. Maine Water Co. v. Knickerbocker Steam Towage Co. (1905) 59 A. 953, 99 Me. 473.

That title of the bed of a navigable slough has been vested in a person by purchase from the state as tide lands gives him no right to obstruct navigation. Dawson v. McMillan (1904) 75 P. 807, 34 Wash. 269.

A sale by the state of tide lands is subject to the paramount right of the public in the navigable waters thereof, and confers no right to obstruct navigation. Judson v. Tide Water Lumber Co. (1908) 98 P. 377, 51 Wash. 164.

The city of Chicago was empowered, without the approval of the Secretary of War, to require the lowering of a street railway tunnel under the Chicago river to give a clear depth of 21 feet of water above it, or, in the al-

ternative, to compel its removal, by the declaration in River and Harbor Act March 3, 1899, c. 425, 30 Stat. 1156, that all the work of removing and reconstructing bridges and piers and lowering tunnels, necessary to permit a navigable channel with the prescribed "project" depth of 21 feet in the Chicago river, should be done by the city without expense to the United States. West Chicago St. R. Co. v. Illinois ex rel. Chicago (1906) 26 Sup. Ct. 518, 524, 201 U. S. 506, 50 L. Ed. 845, affirming judgment (1905) 73 N. E. 393, 214 Ill. 9.

Where the Secretary of War authorized the construction of improvements in the Chicago river so as to secure a flowage capacity of 300,000 cubic feet per minute with a velocity of 1¼ miles an hour, but reserving the right at any time, when it became apparent that the current created in the river was an unreasonable obstruction to navigation, to close the connection between the river and the canal of the sanitary district, the grant was not conditioned on the district's keeping the current within the stated velocity. Corrigan Transit Co. v. Sanitary Dist. of Chicago (1905) 137 Fed. 851, 70 C. C. A. 381.

18. —— Surrender of authority to prevent obstructions of navigable waters.—That the government permits a structure in some degree interfering with navigation of an inland harbor does not work a surrender of the government's authority to prevent other obstructions on the same spot. City of Milwaukee v. Gimbel Bros. (1906) 110 N. W. 7, 130 Wis. 31.

19. Authorization of excavations.—Inasmuch as plans for a proposed excavation in a river have not been submitted to the Secretary of War for his approval and authorization, he is not required by law to give the proceedings consideration. (1891) 20 Op. Atty. Gen. 101.

20. Rights of riparian owners to erect structures on navigable water.—Riparian owners, in order to secure access to navigable water, may lawfully erect wharves or other structures. Weems Steamboat Co. of Baltimore City v. People's Steamboat Co. (1909) 29 Sup. Ct. 661, 214 U. S. 345, 53 L. Ed. 1024, 16 Ann. Cas. 1222 (reversing decree [1907] 152 Fed. 1022, 82 C. C. A. 276); Dalton v. Hazelet (1910) 182 Fed. 561, 105 C. C. A. 99; Case v. Toftus (C. C. 1889) 39 Fed. 730, 5 L. R. A. 684; Dana v. Jackson St. Wharf Co. (1866) 31 Cal. 118, 89 Am. Dec. 164; Inhabitants of Town of East Haven v. Henningway (1828) 7 Conn. 186; Burrows v. Gallup (1865) 32 Conn. 493, 87 Am. Dec. 186; Ockerhausen v. Tyson (1898) 40 A. 1041, 71 Conn. 31; Ensminger v. People (1868) 47 Ill. 384, 95 Am. Dec. 495; City of Chicago v. Laflin (1868) 49 Ill. 172; Deering v. Proprietors of Long Wharf (1845) 25 Me. (12 Shep.) 51; People v. Woodruff (1899) 53 N. E. 1129, 159 N. Y. 536 (affirming judgment and order [1898] 51 N. Y. S. 515, 30 App. Div. 43); Bond v. Wool (1890) 107 N. C. 139, 12 S. E. 281.

And provided that such structures are so adapted as not to obstruct navigation. Dutton v. Strong (1861) 66 U. S. (1 Black) 23, 17 L. Ed. 29; Leverich v. City of Mobile (C. C. 1867) 110 Fed. 170; Paine Lumber Co. v. U. S. (C. C. 1893) 55 Fed. 854; Greenleaf Johnson Lumber Co. v. U. S. (D. C. 1913) 204 Fed. 489; Mobile Transp. Co. v. City of Mobile (Ala. 1907) 44 So. 976, 13 L. R. A. (N. S.) 352; Frink v. Lawrence (1849) 20 Conn. 117, 50 Am. Dec. 274; Simons v. French (1856) 25 Conn. 346; Prior v. Swartz (1892) 62 Conn. 132, 25 Atl. 398, 36 Am. St. Rep. 323, 18 L. R. A. 668; Bainbridge v. Sherlock (1868) 29 Ind. 364, 95 Am. Dec. 644; Mills & Allen v. Evans (1897) 69 N. W. 1043, 100 Iowa, 712; Cincinnati Cooperage Co. v. Commonwealth (1890) 11 Ky. Law Rep. 629; Goodsell v. Lawson (1875) 42 Md. 348; Rice v. Ruddiman (1862) 10 Mich. 125; Rippe v. Chicago, D. & M. R. Co. (1876) 23 Minn. 18; Carli v. Stillwater St. Ry. & Transfer Co. (1881) 28 Minn. 373, 10 N. W. 205, 41 Am. Rep. 290; Union Depot St. Ry. & Transfer Co. v. Brunswick (1883) 31 Minn. 297, 17 N. W. 626; In re Union Depot Ry. & Transfer Co. (Minn. 1883) 17 N. W. 626; St. Louis, K. & N. W. R. Co. v. St. Louis Union Stock Yards Co. (1894) 120 Mo. 541, 25 S. W. 399; Barnes v. Midland R. Terminal Co. (N. Y. 1908) 85 N. E. 1093 (reversing judgment [1908] 110 N. Y. S. 545, 126 App. Div. 435); Bond v. Wool (1890) 107 N. C. 139, 12 S. E. 281; Pollock v. Cleveland Shipbuilding Co. (1897) 47 N. E. 582, 56 Ohio St. 655; Parker v. Taylor (1879) 7 Or. 435; Coquille Mill & Mercantile Co. v. Johnson (Or. 1908) 98 P. 132; Thornton v. Grant (1873) 10 R. I. 477, 14 Am. Rep. 701; Delaplaine v. Chicago & N. W. Ry. Co. (1877) 42 Wis. 214, 24 Am. Rep. 386; Diedrich v. Northwestern Union Ry. Co. (1877) 42 Wis. 248, 24 Am. Rep. 399; Stevens Point Boom Co. v. Reilly (1878) 44 Wis. 295. But no person may impair the paramount right of unobstructed navigation. Lallande v. The C. D. Jr. (D. C. 1855) Fed. Cas. No. 8,000; Sherlock v. Bainbridge (1872) 41 Ind. 35, 13 Am. Rep. 302; Warner v. Ford Lumber & Mfg. Co. (1906) 93 S. W. 650, 29 Ky. Law Rep. 527, 123 Ky. 103; Cumberland Pipe Line Co. v. Stambaugh (1910) 126 S. W. 106, 137 Ky. 528; Kean v. Stetson (1827) 22 Mass. (5 Pick.) 492; McGunnegle v. Pittsburg & L. E. R. Co. (Pa. 1906) 62 A. 988, 213 Pa. 383. While in other jurisdictions he can extend his wharf to, but not beyond, low-water mark. Prior v. Swartz (1892) 62 Conn. 132, 25 A.

398, 18 L. R. A. 668, 36 Am. St. Rep. 333; Naglee v. Ingersoll (1847) 7 Pa. (7 Barr) 185; Frankford v. Lennig (Pa. 1853) 1 Am. Law Reg. 357; Borough of Frankford v. Lennig (Pa. 1853) 2 Phila. 403; Borough of Elizabeth v. The Geneva (Pa. 1883) 3 Lanc. Law Rev. 134.

A right to obstruct navigation cannot be obtained by user or prescription. Olive v. State (1888) 86 Ala. 88, 5 South. 653, 4 L. R. A. 33; Blackman v. Mauldin (Ala. 1909) 51 So. 23; Ingram v. Police Jury of Parish of St. Tammany (1868) 20 La. Ann. 226; Knox v. Chaloner (1856) 42 Me. 150; Gifford v. McArthur (1885) 55 Mich. 535, 22 N. W. 28. Subject to such rules and regulations as may be prescribed by statute. Sullivan Timber Co. v. City of Mobile (C. C. 1901) 110 Fed. 186; Groner v. Foster (1897) 94 Va. 650, 27 S. E. 493.

Under the common law as it obtains in some jurisdictions, the riparian owner cannot erect a wharf or other structure below high-water mark. Revell v. People (1898) 52 N. E. 1052, 177 Ill. 468, 43 L. R. A. 790, 69 Am. St. Rep. 257; Trustees, etc., of Town of Brookhaven v. Smith (1904) 90 N. Y. S. 646, 98 App. Div. 212, reversed (1907) 80 N. E. 665, 188 N. Y. 74, 9 L. R. A. (N. S.) 326.

When a riparian owner on one side of a river seeks, by dikes or otherwise, to secure an improvement of his property, he must do so without obstructing the navigability of the river, or destroying the property of the riparian owner on the opposite shore. Rutz v. St. Louis (C. C. 1882) 10 Fed. 338, 341.

The owners of lots fronting on a street, the fee of which is in another, and separated from it by navigable waters, are not entitled by virtue of such ownership to construct wharves along the shore parallel with the street opposite their property. Potomac Steamboat Co. v. Upper Steamboat Co. (D. C. 1880) 4 MacArthur & M. 285.

The upland owner has a right to build a wharf on tide lands in front of his property, notwithstanding a trespasser's presence on the tide lands. Lewis v. Johnson (1902) 1 Alaska, 529.

The owner of a lot on the water front of San Francisco has no right, without a license, to wharf out from his own land into the bay. Dana v. Jackson St. Wharf Co. (1866) 31 Cal. 118, 89 Am. Dec. 164.

The public has an easement in and the right to use navigable streams, but in so doing must have due consideration and reasonable care for the rights of the riparian owner, whose right to use a stream implies the necessity as well as the right to pass to and from such stream. Johnson v. Johnson (1908) 95 P. 499, 14 Idaho, 561; Moss v. Ramey (1908) 95 P. 513, 14 Idaho, 598.

A street cannot, by condemnation proceedings, be so laid out across a navigable water way as to destroy the water way. Ligare v. City of Chicago (1891) 139 Ill. 46, 28 N. E. 934.

Riparian rights in the Great Lakes do not extend beyond access to navigable water. Stuart v. Greanyea (1908) 117 N. W. 655, 15 Detroit Leg. N. 689, 154 Mich. 132.

The owner of land bounded by a navigable river has the right of access to the navigable part of the river in front of his premises, and the right to use of the waters for all purposes not inconsistent with the public right of navigation therein. Hobart-Lee Tie Co. v. Stone (1909) 117 S. W. 604, 135 Mo. App. 438.

The right to build docks being a right dependent on the shore ownership, a corporation to whom land bounding on water is conveyed to be used for a specific purpose has the right to prevent third persons building docks in front of their land though it may not have the right to build such docks. Morris Canal & Banking Co. v. Brown (1858) 27 N. J. Law (3 Dutch.) 13.

The right of a riparian owner to construct booms, etc., adjacent to his land is a mere franchise, distinguishable from the appropriation and occupation of the bed itself, but is not personal to the owner, and is the subject of grant. Coquille Mill & Mercantile Co. v. Johnson (Or. 1908) 98 P. 132.

An obstruction is such an impediment to the navigation that boats in passing along the stream cannot by the use of ordinary care avoid being injured. Terre-Haute Drawbridge Co. v. Halliday (1852) 4 Ind. 36.

This section not only includes the kind of structures specifically referred to in section 9971, post, but all others that may be an obstruction to the navigable capacity of the waters of the United States, without reference to whether the obstruction is but slight, and only temporary. Hubbard v. Fort (C. C. 1911) 188 Fed. 987.

Particular structures held unlawful obstructions of navigation:

A pier erected in the navigable water of the Mississippi river for the sole use of the riparian owner, without license or authority of any kind, except such as may arise from ownership of the adjacent shore. Atlee v. Northwestern Union Packet Co. (1874) 88 U. S. (21 Wall.) 389, 22 L. Ed. 619.

A log boom which completely blocks up the channel of a navigable river, leaving no space for the free passage of boats and vessels, although it has what is termed a "trip," which may be opened for the passage of vessels. U. S. v. Bellingham Bay Boom Co. (1900) 20 Sup. Ct. 343, 176 U. S. 211, 44 L. Ed. 437, reversing decree (1897) 81 Fed. 658, 26 C. C. A. 547.

A rope stretched across the archway of a bridge, and over the principal channel of a navigable river, and re-

maining 24 hours. The Swan (D. C. 1884) 19 Fed. 455.

A gas main across the Allegheny river, held, a wrongful obstruction to navigation. Omslaer v. Philadelphia Co. (D. C. 1887) 31 Fed. 354.

Particular structures held not unlawful obstructions of navigation:

Temporary obstructions. State v. Charleston Light & Water Co. (1904) 47 S. E. 979, 68 S. C. 540.

Obstructions in aid of navigation. Delaware & H. Canal Co. v. Lawrence (N. Y. 1873) 2 Hun, 163.

Building between high and low water marks. State ex rel. Citizens' Electric Lighting & Power Co. v. Longfellow (1902) 69 S. W. 374, 169 Mo. 109.

Log booms. The City of Erie v. Canfield (1873) 27 Mich. 479; Canfield v. The City of Erie (1889) 1 Mich. N. P. 105; Pickens v. Coal River Boom & Timber Co. (1902) 41 S. E. 400, 51 W. Va. 445, 90 Am. St. Rep. 819.

Piers, docks, and wharves. Barnes v. Midland R. Terminal Co. (1908) 110 N. Y. S. 545, 126 App. Div. 435 (judgment reversed [N. Y. 1908] 85 N. E. 1093); Ryan v. Brown (1869) 18 Mich. 196, 100 Am. Dec. 154.

Piers, docks, and wharves erected in Lake Michigan by a railroad company by virtue of its riparian proprietorship cannot be said to extend into the lake beyond the point of practical navigability, having reference to the manner in which commerce in vessels is conducted on that lake, where such structures extend no further into the lake than is necessary to accommodate a great number of vessels of moderate capacity, and the average depth of water at the outer line of the structures is insufficient for the accommodation of a vast amount of commerce carried on in vessels on the lake. People of State of Illinois v. Illinois Cent. R. Co. (1902) 22 Sup. Ct. 300, 184 U. S. 77, 46 L. Ed. 440, affirming decree (1899) 91 Fed. 955, 34 C. C. A. 138.

Wire cable. The Vancouver (D. C. 1873) Fed. Cas. No. 16,838.

Bridge. Miller v. City of New York (1883) 3 Sup. Ct. 228, 109 U. S. 385, 27 L. Ed. 971, affirming decree (C. C. 1880) 10 Fed. 513.

See, also, Barrett's Syndic v. City of New Orleans (1858) 13 La. Ann. 105; State v. Wilson (1856) 42 Me. 9; Attorney General v. Evart Booming Co. (1876) 34 Mich. 462; Scott v. Layng (1886) 26 N. W. 220, 791, 59 Mich. 43; Walsh v. Hopkins (1901) 48 A. 390, 22 R. I. 418.

As to the lines and boundaries within which a riparian owner may erect structures, see Oregon Coal & Navigation Co. v. Anderson (1913) 206 Fed. 404, 124 C. C. A. 286; Martin v. Heckman (1901) 1 Alaska, 165; Ladies' Seamen's Friend Soc. v. Halstead (1889) 58 Conn. 144, 19 Atl. 658; Chicago Yacht Club v. Marks (1901) 97 Ill. App. 406 (affirmed Marks v. Columbia Yacht Club [1905] 76 N. E. 582, 219 Ill. 417); City of Baltimore v. Baltimore & Philadelphia Steamboat Co. (1906) 65 A. 353, 104 Md. 485; Bradley v. McPherson (N. J. 1904) 58 A. 105.

21. —— **Burden of proof.**—Any obstruction of a navigable stream erected without constitutional legislative authority is a nuisance. Woodman v. Kilbourn Mfg. Co. (C. C. 1867) Fed. Cas. No. 17,978; Northwestern Union Packet Co. v. Atlee (C. C. 1873) Fed. Cas. No. 10,341; Wethersfield v. Humphrey (1850) 20 Conn. 218; People v. City of St. Louis (1848) 10 Ill. (5 Gilman) 351, 48 Am. Dec. 339; Swain v. Chicago, B. & Q. R. Co. (1911) 160 Ill. App. 533 (judgment affirmed David M. Swain & Son v. Same [Ill. 1912] 97 N. E. 247); Cincinnati Cooperage Co. v. Commonwealth (1890) 11 Ky. Law Rep. 629; Veazie v. Dwinel (1862) 50 Me. 479; Gerrish v. Brown (1863) 51 Me. 256, 81 Am. Dec. 569; Smart v. Aroostook Lumber Co. (1907) 68 A. 527, 103 Me. 37; Commonwealth v. Wright, Thacher (Mass. 1829) Cr. Cas. 211; Weller v. Missouri Lumber & Mining Co. (1913) 161 S. W. 853, 176 Mo. App. 243; Newark Plank Road & Ferry Co. v. Elmer (1855) 9 N. J. Eq. (1 Stockt.) 754; Hart v. City of Albany (N. Y. 1832) 9 Wend. 571, 24 Am. Dec. 165; Hecker v. New York Balance Dock Co. (N. Y. 1857) 13 How. Prac. 549; People v. Horton (N. Y. 1875) 5 Hun, 516 (affirmed [1876] 64 N. Y. 610); People v. Steeplechase Park Co. (1913) 143 N. Y. S. 503, 82 Misc. Rep. 247; Reyburn v. Sawyer (1904) 47 S. E. 761, 135 N. C. 328, 65 L. R. A. 930, 102 Am. St. Rep. 555; McMeekin v. Central Carolina Power Co. (1908) 61 S. E. 1020, 80 S. C. 512; Gold v. Carter (1848) 28 Tenn. (9 Humph.) 369, 49 Am. Dec. 712; Barnes v. City of Racine (1854) 4 Wis. 454; Stevens Point Boom Co. v. Reilly (1879) 46 Wis. 237, 49 N. W. 978; Union Mill Co. v. Shores (1886) 66 Wis. 476, 29 N. W. 243; McCarthy v. Murphy (1903) 96 N. W. 531, 119 Wis. 159, 100 Am. St. Rep. 876.

Where bridge piers and landing places on the shores of navigable waters do not violate positive law, the one who alleges that they are a nuisance or an obstruction to the navigation must prove it. Dutton v. Strong (1861) 1 Black, 23, 32, 17 L. Ed. 29.

22. —— **Question for jury.**—See Blanc v. Klumpke (1865) 29 Cal. 156; Wetmore v. Atlantic White Lead Co. (N. Y. 1862) 37 Barb. 70; Pilcher v. Hart (1840) 20 Tenn. (1 Humph.) 524.

23. **Bridges as obstructions.**—See post, chapter E of this title, and notes thereunder.

24. **Dams as obstructions.**—See post, chapter F of this title, and notes thereunder.

25. Criminal prosecution.—The obstruction of navigable rivers under the laws of the original states is not punishable as a crime, unless contrary to some clause in the federal constitution, or a treaty or an act of congress. U. S. v. New Bedford Bridge (C. C. 1847) Fed. Cas. No. 15,867.

See, also, notes under § 9917, post.

26. Information in name of attorney general of United States.—Obstructions to navigation in the navigable waters of the United States, whether by states or by individuals, constitute acts of purpresture. There is remedy in such case by ex officio information in the name of the Attorney General of the United States. (1853) 6 Op. Atty. Gen. 172.

27. Proceedings by war department.—It is the duty of the war department to direct proceedings to be taken to enjoin the construction of a "dock line" which will obstruct, encroach upon, or interfere with harbor improvement. (1882) 17 Op. Atty. Gen. 279, citing U. S. v. Duluth (C. C. 1871) Fed. Cas. No. 15,-001.

28. Damages, recovery of.—Where a riparian owner erects a pier in the navigable water of the Mississippi river without license or authority of any kind, except such as may arise from his ownership of the adjacent shore, he is liable for the sinking of a barge by colliding with it in the night. Where plaintiff, whose vessel was injured in a collision with a pier erected by a riparian owner, was in fault because the pilot was ignorant or negligent concerning the obstruction, and the landowner was in fault because his pier was an unlawful obstruction to navigation, the damages were divided. Atlee v. Northwestern Union Packet Co. (1874) 88 U. S. (21 Wall.) 389, 22 L. Ed. 619.

The city of Chicago in erecting a waterworks crib in the navigable waters of Lake Michigan within the roadstead to and from the port of Chicago under a permit from the War Department, assumed the obligation to provide thereon suitable fog signals for the protection of navigation whether specifically prescribed by the permit or the lighthouse board or not; that the nonperformance of such duty by the failure to provide a bell which, as shown by the evidence, could have been heard for a mile or more, rendered the party responsible therefor liable for the resulting damages. The crib having been previously turned over by the contractor who built it to the city, which had exclusive possession and maintained the light by its employés, without proof of any reservation in the contract the contractor could not be held responsible for the failure to maintain proper signals. A steamer approaching the port of Chicago at night in a fog at half speed, which was at the rate of about 4½ miles an hour, and on the undisputed testimony enabled her to clear another vessel or an obstruction on a warning received at a distance of twice her length, held not in fault because of excessive speed for a collision with a waterworks crib from which no bell was sounded, as she had a right to expect, and which was insufficiently lighted. Erie & Western Transp. Co. v. City of Chicago (1910) 178 Fed. 42, 101 C. C. A. 170, writ of certiorari denied City of Chicago v. Erie & Western Transp. Co. (1910) 30 Sup. Ct. 574, 216 U. S. 620, 54 L. Ed. 641.

The city of Chicago, as owner of a waterworks crib, and a steamer, which came into collision therewith in a fog, both held in fault for negligence. City of Chicago v. Goodrich Transit Co. (1912) 199 Fed. 112, 117 C. C. A. 362.

Injury to a steamer from collision in the night with a crib under construction as an extension of a breakwater held, due to inefficient lookout or obstruction of the light by fog and smoke for which, in either case, the contractors building the crib were not liable. Rutland Transit Co. v. L. P. & J. A. Smith Co. (1913) 209 Fed. 47, 126 C. C. A. 189.

Where a bridge constructed over a navigable stream under the authority of a state statute is a material obstruction, the statute is no defense to a suit for an injury caused thereby. Jolly v. Terre Haute Drawbridge Co. (C. C. 1853) Fed. Cas. No. 7,441.

A steamboat, the pilot of which knew of the presence of submerged piles in the river, is chargeable with negligence in backing towards the place of danger in daylight, without having a lookout at the stern of the boat to give warning to the pilot. The Modoc (D. C. 1886) 26 Fed. 718.

The libelants, whose steam towboat was injured by coming in contact with a gas main laid on the bed of the river, are to be judged by the standard of common prudence and experience; and, acting in an emergency, they are not to be held responsible for a mere mistake of judgment. Defendant, having wrongfully placed in a river a natural gas main, which was exposed to rupture by steamboats running foul of it, cannot be heard to say that the injuries resulting to libelants, by escaping and ignited gas, were such as could not have been foreseen. Omslaer v. Philadelphia Co. (D. C. 1887) 31 Fed. 354.

The owner of a pier, though it is an obstruction to navigation, is not liable to a vessel striking it, where the accident was caused by careless navigation. The Henry Clark v. O'Brien (D. C. 1895) 65 Fed. 815.

The sanitary district of Chicago, having been authorized by the state, and by the United States government through the Secretary of War, to construct the drainage canal and connect the same with the Chicago river, its use of the river for that purpose is lawful, and it cannot be held liable for damages resulting therefrom so long as

such use is reasonable and within the authority conferred. The provision in the permit granted by the Secretary of War that the district must assume all responsibility for damages to property and navigation interests by reason of the introduction of a current in the river does not create a liability, but merely undertakes to impose on the district such liability as may legally arise; and the creation of a mean current throughout the length of the river of 1¼ miles an hour, which at congested points, such as bridge draws, is augumented, and operates to obstruct or retard the passage of vessels, especially those of large displacement, is not an unreasonable or unauthorized use of the river, which renders the district liable to a vessel for the additional expense and delay resulting in the absence of any exercise by the secretary of the power reserved by him to regulate the current should it prove unreasonably obstructive. Corrigan Transp. Co. v. Sanitary District (D. C. 1903) 125 Fed. 611, decree affirmed Corrigan Transit Co. v. Sanitary Dist. of Chicago (1905) 137 Fed. 851, 70 C. C. A. 381.

Evidence held insufficient to sustain an allegation that injury to a vessel entering Cleveland harbor at night was caused by her coming into collision with a government crib in process of construction. Rutland Transit Co. v. L. P. & J. A. Smith Co. (D. C. 1912) 199 Fed. 640.

And see, also, Silver v. Missouri Pac. Ry. Co. (1890) 101 Mo. 79, 13 S. W. 410; James River & Kanawha Co. v. Early (Va. 1856) 13 Grat. 541.

29. —— **Waiver of right to damages.**—Plaintiffs, by voluntarily making use of the booms of defendant, waived any right to recover damages upon the ground that such booms constituted an unlawful obstruction of the stream; nor could such an action be maintained because plaintiff's logs suffered injury by reason of the unreasonable delay of defendant in passing them through its gates, the action being in tort, and not upon contract, implied or express. Nester v. Diamond Match Co. (1900) 105 Fed. 567, 44 C. C. A. 606, 52 L. R. A. 950.

30. **Injunctive relief.**—A riparian owner on the Mississippi river above tide water, whose title under the local law extends to the middle of the stream, is not powerless to prevent a trespasser from dredging sand and gravel in the bed of the river in front of her land, even if she herself, under River and Harbor Act Sept. 19, 1890, c. 907, § 7, could not take out such sand and gravel without the permission of the Secretary of War. Authority from the Secretary of War to dredge out sand and gravel in the bed of the Mississippi river in front of the land of a riparian owner whose title under the local law extends to the middle of the stream is a matter of defense, to be pleaded to a bill by a riparian owner to restrain such dredging as a continuing trespass. Archer v. Greenville Sand & Gravel Co. (1914) 34 Sup. Ct. 567, 233 U. S. 60, 58 L. Ed. 850.

Whether the appropriation of the upper waters of a navigable stream should be enjoined on application of the attorney general, as authorized by Act 1890, § 10 (set forth in historical notes herein), is a question of fact, dependent on whether such appropriation interferes with the navigability of the stream. Since the duty of the United States to its own citizens, to preserve the navigability of the Rio Grande river, is as great as any arising out of a treaty with Mexico, the court, on a bill by the United States to enjoin the erection of a dam in such river, will not consider the question whether the erection of such dam would be a violation of the treaty. U. S. v. Rio Grande Dam & Irrigation Co. (1899) 19 Sup. Ct. 770, 774, 174 U. S. 690, 43 L. Ed. 1136, reversing decree (1898) 51 P. 674, 9 N. M. 292.

Where proofs were admitted without objection that a bill failed to specify the date at which an obstruction in a river was constructed, or during what period it was maintained, under a bill alleging that defendant maintained and continues to maintain an obstruction to navigation in the navigable waters of the river, the bill was maintainable under Act Sept. 19, 1890, c. 907, 26 Stat. 454, prohibiting the maintenance of obstructions to navigation in navigable streams, notwithstanding Act March 3, 1899 (incorporated in part into this section). Where a bill to restrain defendant from obstructing a navigable stream alleged that the river was a navigable stream—navigable for small steamboats—and was the only practicable highway for the residents along its upper border to A. and other markets on a certain harbor, and that it was used largely for floating logs and foreign products to market, it was not demurrable for want of equity, in that it failed to allege facts showing an actual use of the river in navigation. U. S. v. Wishkah Boom Co. (1905) 136 Fed. 42, 68 C. C. A. 592, appeal dismissed Wishkah Boom Co. v. U. S. (1906) 26 Sup. Ct. 765, 202 U. S. 1613, 50 L. Ed. 1171.

Embankment causing an obstruction in river having been built after Act 1890, c. 907, which prohibited "the creation of any obstruction, not affirmatively authorized by law, to the navigable capacity of any waters in respect of which the United States has jurisdiction," and provided that the creation or continuance of any such unlawful obstruction might be prevented by injunction at suit of the United States, the provisions of such act are applicable, and the further construction of the embankment will be en-

joined, except on condition that the company takes measures to prevent any further obstruction of the river thereby. Northern Pac. Ry. Co. v. U. S. (1900) 104 Fed. 691, 44 C. C. A. 135, 59 L. R. A. 80.

A littoral owner, while not entitled to wharf out on the tide lands in front of his property, is entitled to an injunction against the erection of any structure on such lands or in the water in front thereof which would interfere with his right of access. McCloskey v. Pacific Coast Co. (1908) 160 Fed. 794, 87 C. C. A. 568, 22 L. R. A. (N. S.) 673.

Where a private canal constructed and used as a cut-off to take the place commercially of the tortuous channel of a navigable stream has been abandoned, and its uses for such purpose entirely destroyed by the owner of the rights therein, the rights of the public revert to the original channel of the stream, and the United States may maintain a suit to enjoin the obstruction of such channel by a bridge. U. S. v. President, etc., of Jamaica & R. Turnpike Road (C. C. 1910) 183 Fed. 598, decree reversed (1913) 204 Fed. 759, 123 C. C. A. 128.

A court of equity will not enjoin the maintenance of piers, booms, and dams in a navigable river at the suit of an individual, on the ground that the defendant has exceeded its corporate powers, that being a ground for interference only by the state creating it; or that the same is a nuisance, because obstructing the steamboat navigation of the river. In such a case, where the interests involved are very large, and the improvements complained of have been erected under color of legislative authority, and have been used in facilitating an important branch of commerce, and have been acquiesced in for a long time, a court of equity will not interfere by perpetual injunction until the right of the party complaining has been established at law, and it appears that no adequate compensation can be afforded in damages. Heerman v. Beef Slough Manufacturing, Booming, Log-Driving & Transportation Co. (C. C. 1880) 1 Fed. 145, 157; Id. (C. C. 1878) Fed. Cas. No. 6,320.

A person who places an obstruction in the navigable channel of a river is not entitled to notice to remove the same, or to abate the nuisance caused thereby. Missouri River P. Co. v. Hannibal & St. J. R. Co. (C. C. 1880) 2 Fed. 285.

Under Act Sept. 19, 1890, § 7, providing that it shall be unlawful to build a wharf outside established harbor lines, or in any navigable waters of the United States where no harbor lines are or may be established, in such manner as to impair navigation, without the permission of the secretary of war, a preliminary injunction will be granted against the extension, without the consent of the secretary of war, of a dock 25 feet into a navigable river, to a point where the depth is from 26 to 28 feet, when such extension will seriously injure the commerce of an adjoining ferry company. The fact that a dock extends to a certain point in a river is no ground for not enjoining the extension of an adjacent dock to that point, when such extension is unlawful. Grand Trunk Ry. Co. v. A. Backus, Jr., & Sons (C. C. 1891) 46 Fed. 211.

One who seeks to abate an obstruction in a navigable stream and for an injunction must allege and show that the commerce for which he would utilize the stream is lawful. Spokane Mill Co. v. Post (C. C. 1892) 50 Fed. 429.

See Martin v. Heckman (1901) 1 Alaska, 165; Shephard v. Cœur d'Alene Lumber Co. (Idaho, 1909) 101 P. 591; Barnes v. Midland R. Terminal Co. (1908) 110 N. Y. S. 545, 126 App. Div. 435 (judgment reversed [N. Y. 1908] 85 N. E. 1093); Hulet v. Wishkah Boom Co. (1909) 103 P. 814, 54 Wash. 510.

31. —— **Acquittal of offense not barring suit in equity.**—The acquittal of a defendant indicted under, post, § 9917 (as originally enacted), for creating an obstruction in a navigable stream, in violation of this section, is not a bar to a subsequent suit in equity brought by the United States under the same section against the same defendant to compel the removal of such obstruction; the issues and measure of proof required in the two proceedings not being the same. U. S. v. Donaldson-Shultz Co. (1906) 148 Fed. 581, 79 C. C. A. 403, reversing judgment U. S. v. Donaldson-Shulz Co. (C. C. 1905) 142 Fed. 300.

32. **Persons entitled to sue.**—An individual suffering special damages by an obstruction of a navigable river may have a civil redress by a suit, though the obstruction be authorized by a state, if it be contrary to, or conflict with, an act of congress. U. S. v. New Bedford Bridge (C. C. 1847) Fed. Cas. No. 15,867.

An obstruction to navigable waters may be enjoined at suit of a private person who suffers a special injury therefrom, whether such injury be different in kind from that of the public at large or only greater in degree. Carver v. San Pedro, L. A. & S. L. R. Co. (C. C. 1906) 151 Fed. 334.

And see, also, City of Chicago v. Law (1893) 33 N. E. 855, 144 Ill. 569; Page v. Mille Lacs Lumber Co. (1893) 53 Minn. 492, 55 N. W. 608; Penniman v. New York Balance Co. (N. Y. 1856) 13 How. Prac. 40; Pedrick v. Raleigh & P. S. R. Co. (N. C. 1906) 55 S. E. 877; Oliver v. Klamath Lake Nav. Co. (Or. 1909) 102 P. 786; Drews v. E. P. Burton & Co. (1907) 57 S. E. 176, 76 S. C. 362; Barksdale v. Charleston & W. C. Ry. Co. (1909) 64 S. E.

1013, 83 S. C. 287; Dawson v. McMillan (1904) 75 P. 807, 34 Wash. 269; Hulet v. Wishkah Boom Co. (1909) 103 P. 814, 54 Wash. 510.

And see, also, chapter E of this title, and notes thereunder.

33. **Persons not entitled to sue.**—A private action cannot be maintained to recover damages for the unlawful obstruction of a river by log booms constructed near its mouth by defendant for its own use in connection with its mills, and which stopped the passage of all logs floated down the river, where plaintiffs never made or attempted to make any use of the stream with which such obstructions interfered. Nester v. Diamond Match Co. (1900) 105 Fed. 567, 44 C. C. A. 606, 52 L. R. A. 950.

A court of equity will not entertain a suit by a private individual to abate a public nuisance consisting of an alleged unlawful obstruction of a navigable stream, where the only special injury claimed by plaintiff is incidental to his ownership of land on the stream, which he does not occupy, and his title to which is disputed. Lownsdale v. Gray's Harbor Boom Co. (C. C. 1902) 117 Fed. 983.

An owner of lands in Alaska which border on tidal waters has no title to the soil below high-water mark, and cannot enjoin the maintenance of a wharf or other structure in aid of navigation thereon, unless it prevents his own free access to the navigable waters. Decker v. Pacific Coast S. S. Co. (1908) 164 Fed. 974, 91 C. C. A. 102.

See, also, Gerrish v. Proprietors of Union Wharf (1846) 26 Me. (13 Shep.) 384, 46 Am. Dec. 568; Butchers' Slaughtering & Melting Ass'n v. City of Boston (1913) 101 N. E. 426, 214 Mass. 254; Lepire v. Klenk (Mich. 1912) 134 N. W. 1119; Jenks v. Miller (1897) 43 N. Y. S. 927, 14 App. Div. 474; South Carolina Steamboat Co. v. Wilmington, C. & A. R. Co. (1896) 24 S. E. 337, 46 S. C. 327, 33 L. R. A. 541, 57 Am. St. Rep. 688; Orange Lumber Co. v. Thompson (Tex. Civ. App. 1908) 113 S. W. 563; Jones v. St. Paul, M. & M. Ry. Co. (1896) 47 P. 226, 16 Wash. 25; Miller v. Hare (1897) 28 S. E. 722, 43 W. Va. 647, 39 L. R. A. 491; Yates v. Judd (1864) 18 Wis. 118.

And see, also, chapter E of this title, and notes thereunder.

34. —— **Review on appeal.**—A decree dismissing a suit by the United States, under Act Sept. 19, 1890, c. 907 (26 Stat. 426, 454) § 10, to enjoin the creation of an obstruction of a navigable stream, will be reversed in the exercise of the power, on an appeal in equity, to render such a decree as under all the circumstances may seem proper, and the cause will be remanded for further hearing, where material evidence is absent from the record because of the action of the trial court in not giving sufficient time to the government to prepare its case for the inquiry directed on a prior appeal to be made on the question whether the navigability of the stream would be substantially diminished by the creation of such obstruction. U. S. v. Rio Grande Dam & Irrigation Co. (1902) 22 Sup. Ct. 428, 184 U. S. 416, 46 L. Ed. 619, reversing decree (1900) 65 P. 276, 10 N. M. 617.

Cited without definite application, Montgomery v. Portland (1903) 23 Sup. Ct. 735, 737, 190 U. S. 89, 47 L. Ed. 965; Ellis v. U. S. (1907) 27 Sup. Ct. 600, 604, 206 U. S. 246, 51 L. Ed. 1047, 11 Ann. Cas. 589 (dissenting opinion); Gromer v. Standard Dredging Co. (1912) 32 Sup. Ct. 499, 501, 224 U. S. 362, 56 L. Ed. 801; U. S. v. Certain Lands in Town of Narragansett (C. C. 1910) 180 Fed. 260; U. S. v. Ormsbee (D. C. 1896) 74 Fed. 207, 210.

§ 9910a. (Act Sept. 19, 1890, c. 907, § 10.) Continuance of obstruction of navigable waters; punishment.

The creation of any obstruction, not affirmatively authorized by law, to the navigable capacity of any waters, in respect of which the United States has jurisdiction, is hereby prohibited. The continuance of any such obstruction, except bridges, piers, docks and wharves, and similar structures erected for business purposes, whether heretofore or hereafter created, shall constitute an offense and each week's continuance of any such obstruction shall be deemed a separate offense. Every person and every corporation which shall be guilty of creating or continuing any such unlawful obstruction in this act mentioned, or who shall violate the provisions of the last four preceding sections of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court, the creating or continuing of any unlawful obstruction in this act mentioned may be prevented and such obstruction may be caused to be removed by the injunction of

any circuit court exercising jurisdiction in any district in which such obstruction may be threatened or may exist; and proper proceedings in equity to this end may be instituted under the direction of the Attorney-General of the United States. (26 Stat. 454.)

This was section 10 of the rivers and harbors appropriation act of 1890, cited above.

So much of this section as relates to the creation of obstructions of navigable waters may be regarded as superseded by Act March 3, 1899, c. 425, § 10, ante, § 9910; but the provisions of this section relating to the continuance of such obstructions have been held not to be superseded by said Act March 3, 1899, c. 425, § 10. See United States v. Wishkah Boom Co., 136 Fed. 42, 68 C. C. A. 592. Accordingly this section is inserted here in full.

Notes of Decisions

See notes under § 9910, ante, and § 9917, post.

§ 9911. (R. S. § 5254, as amended, Act May 1, 1882, c. 112.) Piers and cribs on the Mississippi and St. Croix.

The owners of saw-mills on the Mississippi River and the Saint Croix River in the States of Wisconsin and Minnesota are authorized and empowered, under the direction of the Secretary of War, to construct piers or cribs in front of their mill property on the banks of the river, for the protection of their mills and rafts against damage by floods and ice: Provided, however, That the piers or cribs so constructed shall not interfere with or obstruct the navigation of the river. And in case any pier or crib constructed under authority of this section shall at any time, and for any cause, be found to obstruct the navigation of the river, the Government expressly reserves the right to remove or direct the removal of it, at the cost and expense of the owners thereof.

Act March 3, 1873, c. 278, 17 Stat. 606. Act May 1, 1882, c. 112, 22 Stat. 52.

This section, as enacted in the Revised Statutes, did not contain, in the first sentence thereof, after the words "Mississippi River," the further words "and the Saint Croix River in the States of Wisconsin and Minnesota," as set forth here. Said words were inserted by amendment by Act May 1, 1882, c. 112, last cited above.

Notes of Decisions

Compensation to shore owners.— Where the owner of a lot fronting on the Mississippi river has constructed under authority of a state statute a pier and boom in front of his lot, without the consent of the Secretary of War, and the public does not complain, a railroad company that places its road between high and low water mark in front of the lot must compensate the lot owner in accordance with a provision of the state statute which is not in conflict with this section prior to its amendment. Davenport & N. W. Ry. Co. v. Renwick (1880) 102 U. S. 180, 181, 26 L. Ed. 51.

§ 9912. (Act March 3, 1899, c. 425, § 11.) Establishment of harbor lines.

Where it is made manifest to the Secretary of War that the establishment of harbor lines is essential to the preservation and protection of harbors he may, and is hereby, authorized to cause such lines to be established, beyond which no piers, wharves, bulkheads, or other works shall be extended or deposits made, except under such regulations as may be prescribed from time to time by him: Provided, That whenever the Secretary of War grants to any person or persons permission to extend piers, wharves, bulkheads, or other works, or to make deposits in any tidal harbor or river of the United States beyond any harbor lines established under authority of the United States, he shall cause to be ascertained the amount of tide water displaced by any such structure or by any such deposits, and he shall, if he deem it necessary, require the parties to whom the permission is given to make compensation for such displacement either by excavating in some part of the harbor, including tide-water channels between high and low water mark, to such an extent as to

create a basin for as much tide water as may be displaced by such structure or by such deposits, or in any other mode that may be satisfactory to him. (30 Stat. 1151.)

This section was part of the rivers and harbors appropriation act of 1899, cited above.

This section and section 12 of this act, post, § 9917, superseded Act Aug. 11, 1888, c. 860, § 12, 25 Stat. 425, as amended by Act Sept. 19, 1890, c. 907, § 12, 26 Stat. 455, which authorized the establishment of harbor lines, and prescribed a penalty for a violation of the section, or any rule made in pursuance of it.

This section also superseded Act Aug. 18, 1894, c. 299, § 9, 28 Stat. 364, which contained provisions for compensation for tide water displaced similar to the proviso in this section.

Provisions making this section applicable to the Potomac and Anacostia Rivers were made by Act July 25, 1912, c. 253, § 1, post, § 9913.

Provisions for the establishment of harbor lines for the deposit of débris were made by Act Aug. 5, 1886, c. 929, § 2, post, § 9914.

Provisions for the modification and extension of harbor lines in front of the city of Chicago were made by Act Aug. 26, 1912, c. 408, § 5, post, § 9915.

Provisions for the establishment of pierhead and bulkhead lines in Wilmington Harbor were made by Res. March 26, 1908, No. 14, post, § 9916.

Provisions for the establishment of pierhead and bulkhead lines in Newport Harbor, California, were made by Act July 27, 1916, c. 260, § 3, post, § 9916a.

Violations of this section were made misdemeanors by Act March 3, 1899, c. 425, § 12, as amended by Act Feb. 20, 1900, c. 23, § 2, set forth as amended, post, § 9917.

Notes of Decisions

1. Constitutionality.
2. Power to establish or modify harbor lines.
3. Location of harbor lines.
4. Harbor lines defined.
5. Conclusiveness of action of secretary of war.
6. —— Protection of property rights.
7. —— Jurisdiction of courts.
8. Establishment of harbor lines as affecting right of government to deposit materials.
9. —— As affecting power of states.
10. —— As affecting right to extend land and wharves.
11. Remedy for establishment of harbor lines in violation of law.

1. Constitutionality.—In regulating commerce, congress may establish harbor lines or limits beyond which deposits shall not be made or structures built in navigable waters, and it has acted within its constitutional power in authorizing the secretary of war to fix the lines. Philadelphia Co. v. Stimson (1912) 32 Sup. Ct. 340, 223 U. S. 605, 56 L. Ed. 570.

The power of congress over navigable waters has been exercised by the enactment of this section. Greenleaf-Johnson Lumber Co. v. Garrison (1915) 35 Sup. Ct. 551, 237 U. S. 251, 59 L. Ed. 939.

Congress has the power to establish harbor lines or modify existing ones in navigable waters within the limits of a state, although such state has already established such harbor lines. The power to establish harbor lines in a given harbor is a continuing power, and may be exercised as often as the needs of commerce require it. (1897) 22 Op. Atty. Gen. 501.

2. Power to establish or modify harbor lines.—Authority of Secretary of War to establish harbor lines may be exercised to widen the Elizabeth river to permit mooring of war vessels in front of Norfolk Navy Yard. Greenleaf-Johnson Lumber Co. v. Garrison (1915) 35 Sup. Ct. 551, 237 U. S. 251, 59 L. Ed. 939, affirming decree (1914) 215 Fed. 576, 131 C. C. A. 644.

The Secretary of War is authorized to establish harbor lines when the interests of commerce require them. And he has power to establish a harbor line for the Tacoma harbor. (1899) 22 Op. Atty. Gen. 501.

Act of Secretary of War in fixing a harbor line in an island in a navigable river outside the high-water mark does not prevent him from subsequently changing the lines to coincide with the actual high-water line. Philadelphia Co. v. Stimson (1912) 32 Sup. Ct. 340, 223 U. S. 605, 56 L. Ed. 570, affirming decree Same v. Dickinson (1909) 33 App. D. C. 338.

That harbor lines have once been established is no bar to the exercise of the same power as often as the needs of commerce require. And the Secretary of War has power to modify the existing one in the harbor of Seattle. (1899) 22 Op. Atty. Gen. 501.

3. Location of harbor lines.—Harbor lines do not necessarily have to be laid in deep water. State v. Sturtevant (1914) 138 P. 650, 76 Wash. 158, denying rehearing (1913) 135 P. 1035, 76 Wash. 158.

4. Harbor lines defined.—See Engs v. Peckham (1875) 11 R. I. 210.

5. Conclusiveness of action of secretary of war.—The determination of whether establishment of a harbor line is essential to preservation and protection of a harbor rests, under section 12 of the act of Sept. 19, 1890 (26 Stat. 453), in the discretion of the secretary

of war, and his judgment in the matter is final and conclusive until subsequently modified by himself. (1894) 20 Op. Atty. Gen. 740.

6. —— **Protection of property rights.**—Action of state in fixing lines of ordinary high and low water in certain rivers held to give riparian owners no rights which will prevent Congress from fixing harbor lines in accordance with the high-water mark as changed by the wearing away of banks in the course of years. One whose property rights have been invaded in fixing harbor lines may sue to enjoin the Secretary of War from causing criminal proceedings to be brought against him, under this section and post, § 9917, as originally enacted, and section 9922. But lawful building of a dam by the United States to increase depth of water in a harbor in a navigable river, and thereby submerging an island to a greater extent than before, gives subsequent purchaser no right to relief in an action against the Secretary of War. Philadelphia Co. v. Stimson (1912) 32 Sup. Ct. 340, 223 U. S. 605, 56 L. Ed. 570, affirming decree Same v. Dickinson (1909) 33 App. D. C. 338.

7. —— **Jurisdiction of courts.**—The courts of District of Columbia because they have jurisdiction over the person of the Secretary of War, have not, by reason of that fact, the right to control his action by injunction, in a case where the effect of his action is to deny the title of the complainant to submerged land in a navigable river in Pennsylvania, outside of harbor lines designated by him under supposed authority of an act of Congress; and, where the question of title to the land is necessarily the fundamental question involved, such question should be tried in the courts of that state. Philadelphia Co. v. Dickinson (1909) 33 App. D. C. 338.

8. **Establishment of harbor lines as affecting right of government to deposit materials.**—The establishment of harbor lines on the Hudson river from Troy to below New Baltimore does not preclude the government, in the prosecution of improvements in said river in the interest of commerce and navigation, from depositing the excavated material in the areas of shoal water behind and shoreward of the said lines without the consent of the owners and without making compensation. (1910) 28 Op. Atty. Gen. 433.

9. —— **As affecting power of states.**—The establishment of harbor lines did not operate to destroy all state power concerning structures in navigable waters within its border, or to automatically destroy all vested property rights, though acquired under state authority prior to this section. Gring v. Ives (1912) 32 Sup. Ct. 167, 222 U. S. 365, 56 L. Ed. 235.

The federal statutes regulating harbors used in interstate commerce are merely restrictive of certain acts, and on their face do not prevent the states from exercising ordinary police control over the conduct of their citizens, or the erection of structures within their limits which would obstruct an inland navigable harbor. City of Milwaukee v. Gimbel Bros. (1906) 110 N. W. 7, 130 Wis. 31.

10. —— **As affecting right to extend land and wharves.**—The extension of wharves beyond harbor lines established by local law, in navigable waters of the United States wholly within the limits of a state, cannot be justified by relocation of harbor lines by the Secretary of War acting under the authority of River and Harbor Act Sept. 19, 1890, c. 860, § 12 (25 Stat. 400, 425). Montgomery v. Portland (1903) 23 Sup. Ct. 735, 737, 190 U. S. 89, 47 L. Ed. 965, affirming judgment City of Portland v. Montgomery (1900) 62 P. 755, 38 Or. 215.

See, also, Commonwealth v. Alger (1851) 61 Mass. (7 Cush.) 53; Engs v. Peckham (1875) 11 R. I. 210; Aborn v. Smith (1879) 12 R. I. 370; Dawson v. Broome (1902) 53 Atl. 151, 24 R. I. 359; J. W. Bishop Co. v. Curran & Burton (R. I. 1910) 76 A. 275.

11. **Remedy for establishment of harbor lines in violation of law.**—If the laying of harbor lines in navigable waters by a commission under Const. Wash. art. 15, is in violation of the acts of congress concerning navigation and harbor lines the United States, by its proper officers, alone can interfere. Harbor Line Com'rs v. State (1891) 2 Wash. St. 530, 27 Pac. 550; State v. Harbor Line Com'rs (1892) 4 Wash. St. 816, 30 Pac. 734.

Cited without definite application. Montgomery v. Portland (1903) 23 Sup. Ct. 735, 736, 190 U. S. 89, 47 L. Ed. 965; Southern Pac. Co. v. Western Pac. R. Co. (C. C. 1906) 144 Fed. 160, reversed (1907) 151 Fed. 376, 80 C. C. A. 606.

§ 9913. (Act July 25, 1912, c. 253, § 1.) Establishment and modification of harbor lines on the Potomac and Anacostia Rivers.

The provisions of section eleven of the river and harbor act of March third, eighteen hundred and ninety-nine, are hereby made applicable to the Potomac and Anacostia Rivers, and hereafter harbor lines in the District of Columbia, or elsewhere on said rivers, shall be established or modified as therein provided; and all

laws or parts of laws inconsistent with this proviso are hereby repealed. (37 Stat. 206.)

These provisions were part of section 1 of the rivers and harbors appropriation act of 1912, cited above.

Act March 3, 1899, c. 425, § 11, mentioned in this section, is set forth ante, § 9912.

§ 9914. (Act Aug. 5, 1886, c. 929, § 2.) Establishment of harbor lines; deposit of débris.

In places where harbor-lines have not been established, and where deposits of débris of mines or stamp works can be made without injury to navigation, within lines to be established by the Secretary of War, said officer may, and is hereby authorized to, cause such lines to be established; and within such lines such deposits may be made, under regulations to be from time to time prescribed by him. (24 Stat. 329.)

This section was part of the rivers and harbors appropriation act of 1886, cited above.

General provisions for the establishment of harbor lines were made by Act March 3, 1899, c. 425, § 11, ante, § 9912.

§ 9915. (Act Aug. 26, 1912, c. 408, § 5.) Modification and extension of harbor lines in front of the city of Chicago.

The Secretary of War is hereby authorized, in his discretion, to modify and extend harbor lines in front of the City of Chicago in such manner as to permit park extension work which may be desired by the municipal authorities, including the changing and widening of the southern entrance to the Chicago Harbor. (37 Stat. 626.)

This section was part of the deficiency appropriation act for the fiscal year 1912, cited above.

General provisions for the establishment of harbor lines were made by Act March 3, 1899, c. 425, § 11, ante, § 9912.

§ 9916. (Res. March 26, 1908, No. 14.) Establishment of pierhead and bulkhead lines in Wilmington Harbor, Cal.

The Secretary of War is hereby authorized to fix and establish pierhead and bulkhead lines, either or both, in the inner harbor of San Pedro, otherwise known as Wilmington Harbor, California, beyond which no piers, wharves, bulkheads, or other works shall be extended or deposits made except under such regulations as shall be prescribed from time to time by the Secretary of War. (35 Stat. 569.)

This was a resolution entitled "Joint resolution authorizing the Secretary of War to establish harbor lines in Wilmington Harbor, California."

General provisions for the establishment of harbor lines were made by Act March 3, 1899, c. 425, § 11, ante, § 9912.

§ 9916a. (Act July 27, 1916, c. 260, § 3.) Establishment of pierhead and bulkhead lines at Newport Harbor, Cal.

The Secretary of War is hereby authorized and directed to fix and establish pierhead and bulkhead lines, either or both, at Newport Harbor, California, in accordance with plan dated United States Engineer Office, Los Angeles, California, March twenty-fifth, nineteen hundred and thirteen, and entitled Newport Bay, California, showing harbor lines, beyond which no piers, wharfs, bulkheads, or other works shall be extended or deposit made, except under such regulations as shall be prescribed from time to time by the Secretary of War. (39 Stat. 411.)

This section was part of the rivers and harbors appropriation act of 1916, cited above.

General provisions for the establishment of harbor lines were made by Act March 3, 1899, c. 425, § 11, ante, § 9912.

§ 9917. (Act March 3, 1899, c. 425, § 12, as amended, Act Feb. 20, 1900, c. 23, § 2.) Penalty for violation of provisions of act; removal of structures, etc.

Every person and every corporation that shall violate any of the provisions of sections nine, ten, and eleven of this Act, or any rule or regulation made by the Secretary of War in pursuance of the provisions of the said section eleven, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding twenty-five hundred dollars nor less than five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court. And further, the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any [circuit] court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney-General of the United States. (30 Stat. 1151. 31 Stat. 32.)

This section and the five sections next following were part of the rivers and harbors appropriation act of 1899 cited above, the immediately preceding sections 9, 10, and 11 of which are referred to in this section.

Section 9 of this act, mentioned in this section, is set forth post, § 9971.

Section 10 of this act, also mentioned in this section, is set forth ante, § 9910.

Section 11 of this act, also mentioned in this section, is set forth ante, § 9912.

The provisions of said section 11 were made applicable to the Potomac and Anacostia Rivers by Act July 25, 1912, c. 253, § 1, ante, § 9913.

This section was amended by Act Feb. 20, 1900, c. 23, § 2, cited above, by striking out, after the words "of the said section," where they first occur, the word "fourteen," and inserting in lieu thereof the word "eleven," as set forth here.

The word "circuit," inclosed in brackets in this section, was superseded by the abolition of the circuit courts and the transfer of their powers and duties to the district courts, by Jud. Code, §§ 289–291, ante, §§ 1266–1268.

Notes of Decisions

See §§ 9910, 9910a, and notes thereunder.

Validity of statute.—The statute is within the power of congress so far as navigation comes within the provisions of interstate commerce or within the admiralty and maritime jurisdiction. U. S. v. Banister Realty Co. (C. C. 1907) 155 Fed. 583.

Congress has power to declare obstructions of navigable waters an offense against the United States. (1853) 6 Op. Atty. Gen. 172 and cases cited.

Criminal responsibility.—The failure of an order by a police jury for the construction of a dam, to say anything about the subject of health, does not preclude the defense against an indictment for obstructing a navigable stream, that it was done in order to promote the health of the community. Leovy v. U. S. (1900) 20 Sup. Ct. 797, 177 U. S. 621, 44 L. Ed. 914, reversing judgment (1899) 82 Fed. 344, 34 C. C. A. 392.

It is not a crime, under Act Sept. 19, 1890, § 10, to float rafts, logs, timber, boats, and vessels, loose and adrift, in and upon the navigable waters of the United States, especially when the offense is alleged to have been committed upon the Little Kanawha river, the navigation of which has been improved for that very purpose, and when the alleged offender pays toll, under lawful regulations, to the Little Kanawha Navigation Company, for the privilege of floating such articles upon the river and through the locks of the company. The obstructions to navigation prohibited by section 10 are only those which are permanent in their nature. U. S. v. David Burns and Gideon Burns (C. C. 1893) 54 Fed. 351.

A criminal prosecution for obstruction of navigable waters under Act Sept. 19, 1890, §§ 6, 7, 10 (26 Stat. 426), may be maintained, though neither the officers and agents of the United States in charge of works for the improvement of said waters, nor the collectors of customs or other revenue officers, have given information to the district attorney as provided in section 9923, post. Id.

See (1870) 13 Op. Atty. Gen. 342.

See post, chapter E of this title, and notes thereunder.

—— **Indictment.**—An indictment under Act Sept. 19, 1890, § 6, for casting certain rubbish, tending to obstruct navigation, into the Little Kanawha river from a certain ship and from the shore and from a certain pier upon the bank, is bad for duplicity. An indict-

ment charging the placing of such articles on the banks of the Little Kanawha river "at the district of West Virginia," in a place where the same were liable to be washed into the river, and thereby impede navigation, is bad for want of particularity of place. An indictment charging the building of a certain wharf, pier, or other structure "in, along, upon, and across" the Little Kanawha river "at the district of West Virginia," so as to obstruct navigation, in violation of Act Sept. 19, 1890, § 7, is bad for want of particularity of place. An indictment charging the excavation of the bottom, shore, side, bed, and channel of the Little Kanawha river "at the district of West Virginia," and with filling the same, thereby unlawfully altering the course and capacity of the channel of the said river, is bad for want of particularity of place. An indictment charging that defendant, in conducting the logging business, unlawfully created an obstruction, not affirmatively authorized by law, to the navigable capacity of the Little Kanawha river, is bad for want of particularity of description of the offense. An indictment, which charges the building of "a certain wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, and certain other structures," is bad for duplicity. An indictment describing the rubbish as "ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, slag, cinders, ashes, refuse, and other waste of divers kinds," and alleging that it was cast into the Little Kanawha river "at the district of West Virginia," is bad, although it quotes the words of the statute, since it does not give the defendant sufficiently clear notice of the character of the article or of the place where the alleged offense was committed. U. S. v. David Burns and Gideon Burns (C. C. 1893) 54 Fed. 351.

—— **Defenses.**—The failure of an order by a police jury for the construction of a dam, to say anything about the subject of health, does not preclude the defense against an indictment for obstructing a navigable stream, that it was done in order to promote the health of the community. Leovy v. U. S. (1900) 20 Sup. Ct. 797, 177 U. S. 621, 44 L. Ed. 914, reversing judgment (1899) 92 Fed. 344, 34 C. C. A. 392.

In a prosecution for the erection of a dam in a navigable stream without consent of the secretary of war, prohibited by 27 Stat. 110, c. 158, § 3, a resolution of state levee commissioners within the district in which the dam was built, approving defendant's action, passed after indictment found, was irrelevant. Leovy v. U. S. (1899) 92 Fed. 344, 34 C. C. A. 392.

—— **Instructions.**—Where defendant was charged with obstructing a navigable stream, prohibited by 27 Stat. 110, c. 158, § 3, an instruction that unless such stream, when closed, was substantially useful for interstate commerce, the federal legislation prohibiting its closing was unconstitutional, was properly refused, as inapplicable to the issues. Leovy v. U. S. (1899) 92 Fed. 344, 34 C. C. A. 392, judgment reversed (1900) 20 Sup. Ct. 797, 177 U. S. 621, 44 L. Ed. 914.

—— **Questions for jury.**—Where evidence of the character of a stream is conflicting, whether it is a navigable stream, within 27 Stat. 110, c. 158, § 3, prohibiting the erection of any dam, etc., in navigable streams of the United States, is a question of law and fact, for the jury. Leovy v. U. S. (1899) 92 Fed. 344, 34 C. C. A. 392.

Injunction relief against obstructions.—Embankment causing an obstruction in a river having been built after passage of Act Sept. 19, 1890, c. 907, 26 Stat. 454, which prohibited "the creation of any obstruction, not affirmatively authorized by law, to the navigable capacity of any waters in respect of which the United States has jurisdiction," and provided that the creation or continuance of any such unlawful obstruction might be prevented by injunction at suit of the United States, the provisions of such act are applicable, and the further construction of the embankment will be enjoined, except on condition that the company takes measures to prevent any further obstruction of the river thereby. Northern Pac. Ry. Co. v. U. S. (1900) 104 Fed. 691, 44 C. C. A. 135, 59 L. R. A. 80.

The acquittal of a defendant indicted under this section (as originally enacted) for creating an obstruction in a navigable stream, in violation of section 9910, ante, is not a bar to a subsequent suit in equity brought by the United States under the same section against the same defendant to compel the removal of such obstruction; the issues and measure of proof required in the two proceedings not being the same. U. S. v. Donaldson-Schultz Co. (1906) 148 Fed. 581, 79 C. C. A. 403, reversing judgment U. S. v. Donaldson-Shulz Co. (C. C. 1905) 142 Fed. 300.

Where a canal constructed over private ground to shorten a navigable river route had never been dedicated to the public, the owner was entitled to close it at his election; and the government could not compel the removal of a bridge as an obstruction to navigation, under Act Sept. 19, 1890, as amended by Act July 13, 1892 (post, § 9971), and Act Feb. 20, 1900. U. S. v. Jamaica & R. Turnpike Co. (1913) 204 Fed. 759, 123 C. C. A. 128, reversing decree (C. C. 1910) 183 Fed. 598.

Enjoining criminal prosecutions.—One whose property rights have been invaded in fixing harbor lines may sue to enjoin the Secretary of War from

causing criminal proceedings to be brought against him, under this section (as originally enacted) and section 9912, ante, and section 9922, post. Philadelphia Co. v. Stimson (1912) 32 Sup. Ct. 340, 344, 223 U. S. 605, 56 L. Ed. 570, affirming decree Same v. Dickinson (1909) 33 App. D. C. 338.

Cited without definite application, Carver v. San Pedro, L. A. & S. L. R. Co. (C. C. 1906) 151 Fed. 334; Greenleaf Johnson Lumber Co. v. U. S. (D. C. 1913) 204 Fed. 489, 490, 491.

§ 9918. (Act March 3, 1899, c. 425, § 13.) Depositing refuse in navigable waters prohibited.

It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed: Provided, That nothing herein contained shall extend to, apply to, or prohibit the operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the United States officers supervising such improvement or public work: And provided further, That the Secretary of War; whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful. (30 Stat. 1152.)

See notes to section 12 of this act, ante, § 9917.

This section and sections 14 and 16 of this act, post, §§ 9919, 9921, superseded Act Aug. 18, 1894, c. 299, §§ 6, 7, 8, 28 Stat. 363, which prohibited the depositing of refuse in navigable waters for the improvement of which money had been appropriated, and the injury to sea walls and other works built by the Government, and prescribed penalties for violations, including penalties against masters, etc., and vessels.

This section also superseded Act Sept. 19, 1890, c. 907, § 6, 26 Stat. 453, which prohibited obstructing navigation by deposits of refuse, etc., in navigable waters.

Provisions regulating the transportation and dumping into navigable waters of dredgings, etc., were made by Act March 3, 1905, c. 1482, § 4, post, § 9926.

Provisions regulating the dumping of refuse, etc., in New York harbor were made by Act June 29, 1888, c. 496, post, §§ 9933–9935, 9937, 9938.

Provisions regulating the depositing of refuse, etc., in the Potomac River, were made by Act May 19, 1896, c. 208, post, §§ 9942–9945.

Provisions regulating the discharge, etc., of refuse matter into Lake Michigan, were made by Act June 23, 1910, c. 359, post, § 9946.

Notes of Decisions

1. Constitutionality of statute.
2. Obstructions to navigation.
3. Designation of grounds for depositing refuse.
4. Discharge of contractor.
5. Compensation for consequential damages to riparian owner.
6. Damages caused by obstructions.
7. Injunctive relief.
8. Liability to penalties.
9. Criminal prosecution.
10. —— Indictment.

1. Constitutionality of statute.—This section was enacted in the exercise of the police power of the government. Scow No. 36 (1906) 144 Fed. 932, 75 C. C. A. 572. And is within the con-

stitutional power of congress. The Scow No. 9 (D. C. 1907) 152 Fed. 548.

Congress has power to regulate and improve harbors of the navigable waters of the United States, and this carries with it the right to deposit the material removed in making improvements in any other part of the harbors or navigable waters or other place within its control. (1899) 22 Op. Atty. Gen. 646.

2. Obstructions to navigation.—Where, by reason of the plastic nature of the substratum of clay under the right of way of a railroad located some distance from a navigable river, the track of the road settled, and the additional weight of an embankment built by the company forced the clay into the bed of the river, causing a bar, which obstructed navigation, such bar is the direct result of the building of the embankment, and constitutes a public nuisance, for the creation and maintenance of which the company is liable, unless the obstruction was authorized by Congress, and such authority cannot be implied from an act authorizing the building of the road where it was located. Northern Pac. Ry. Co. v. U. S. (1900) 104 Fed. 691, 44 C. C. A. 135, 59 L. R. A. 80.

Act Sept. 19, 1890, § 7, forbidding the excavation and filling, the altering and modifying of the course, location, and capacity of the channel of navigable waters, refers to such permanent construction as tends to obstruct navigation, the building of which must, by the provisions of such section, have the approval and authorization of the secretary of war, and not to such alteration of the channel as would result from a violation of section 6, prohibiting the casting into any navigable waters of the United States from any ship any substance tending to obstruct navigation. U. S. v. David Burns and Gideon Burns (C. C. 1893) 54 Fed. 351.

Act 1890, c. 907, making it an offense to obstruct a navigable stream, is directed against casting into or constructing upon the beds thereof anything creating obstructions more or less permanent in character, and does not apply to the floating of logs or rafts which may temporarily obstruct the surface of the stream. U. S. v. Marthinson (D. C. 1893) 58 Fed. 765.

Though the Attorney General cannot determine without considering questions of fact whether or not a bar in Flushing creek formed opposite the mouth of a sewer and offering an obstruction to navigation is such a case as comes within the exception in Act Aug. 18, 1894, c. 299, § 6, the Secretary of War is not precluded from taking such action inviting the attention of the town authorities of Flushing to the matter as may be advisable. (1897) 21 Op. Atty. Gen. 594.

A municipal corporation, given the right to discharge its refuse matter into an adjacent navigable body of water, must exercise it so as not to create a nuisance interfering with navigation or the enjoyment of private docks used for loading and unloading merchandise. Peck v. Michigan City (1898) 49 N. E. 800, 149 Ind. 670.

It is not prima facie a nuisance to cast garbage in one of the Great Lakes 15 miles from shore. Kuehn v. City of Milwaukee (1896) 92 Wis. 263, 65 N. W. 1030.

3. Designation of grounds for depositing refuse.—It is the duty of the Secretary of War to act on a petition to have designated the portion of a river within which refuse matter may be discharged, in accordance with Act Aug. 18, 1894, c. 299, § 6, superseded by this section, though the navigability of the river will not be affected. He should be governed only by considerations affecting the navigation of the river, or which may affect future navigation. The discretion given him is very broad, and no principles governing it are declared. There is no appeal from his action. These facts impose the obligation of a careful scrutiny of the considerations which should control his judgment. (1896) 21 Op. Atty. Gen. 305.

The authorities of the city of Chicago have no legal power to prohibit the government contractors from dumping material dredged from the harbor at Chicago within the limits selected and designated by the Secretary of War, in accordance with the authority conferred upon him by law. (1899) 22 Op. Atty. Gen. 646.

4. Discharge of contractor.—The Secretary of War has no authority to discharge a dredging company from the performance of its contract with the United States to remove and deposit dredged matter in such places as the United States engineer officer shall direct, because of unforeseen difficulties in selling or even in disposing of the material excavated, which the officers of the engineer corps had represented could be disposed of at a stated price per cubic yard. (1882) 17 Op. Atty. Gen. 368.

5. Compensation for consequential damages to riparian owner.—Where dredged material in the making of an improvement in the Hudson river under contract with the United States government is deposited along the shore on lands under water and adjacent to uplands, the owner of such lands is not entitled to compensation for consequential damages to riparian and water rights resulting therefrom. Slingerland v. International Contracting Co. (1899) 60 N. Y. S. 12, 43 App. Div. 215, judgment affirmed (1901) 61

N. E. 995, 169 N. Y. 60, 56 L. R. A. 494.

6. **Damages caused by obstructions.**—Evidence considered, and held insufficient to sustain the claim of a libelant that the grounding of a coal barge while being towed in a canal was caused by an obstruction by material deposited and left in the bottom by a dredging company. Susquehanna Coal Co. v. Eastern Dredging Co. (D. C. 1908) 200 Fed. 817.

A dredging company, which left the channel of a river temporarily obstructed by loose rock, without marking the place or giving notice of the obstruction, held liable for the grounding of a barge thereon. Consolidated Coal Co. v. Knickerbocker Steam Towage Co. (D. C. 1912) 200 Fed. 840.

7. **Injunctive relief.**—The threatened daily transportation by the sanitary district of Chicago, by artificial means and through an unnatural channel, of large quantities of sewage and of accumulated deposits which will poison the water supply of inhabitants of the state of Missouri, and injuriously affect that portion of the bed or soil of the Mississippi river which lies within its territory, entitles that state to maintain a suit for equitable relief, in advance of any actual injury sustained thereby. State of Missouri v. State of Illinois (1901) 21 Sup. Ct. 331, 180 U. S. 208, 45 L. Ed. 497.

The discharge into the Mississippi river, through an artificial drainage canal, of the sewage of Chicago, mixed with a large volume of pure water from Lake Michigan, will not be enjoined by the federal Supreme Court on complaint by the state of Missouri that the result of such action is to poison the water supply of its inhabitants, where the evidence, though disclosing an increase in the deaths from typhoid fever in St. Louis, leaves it doubtful whether the typhoid bacillus can and does survive the journey and reach the intake of St. Louis in the Mississippi, and shows other possible sources of infection in the discharge of sewage above the St. Louis intake from other towns and cities, some of which are situated in Missouri. State of Missouri v. State of Illinois (1906) 26 Sup. Ct. 268, 200 U. S. 496, 50 L. Ed. 572.

Complainant established a pulp mill on the Potomac river a few miles below an ore bank which had been worked for many years, and for the last few with washers to free the ore from the clay; the waste water being run into settling pools and allowed to clear before being returned to the river. Subsequently defendant acquired the ore bank, greatly enlarged the works, and ran the waste water from the washers directly into the river, so discoloring the water with clay and ochre that complainant was obliged to stop its mill for about one-half the time. Held that, in the absence of proof by defendant that complainant could avoid the injury at a reasonable expense, the latter was entitled to an injunction restraining defendant from polluting the stream; it further appearing that he could provide settling pools, as formerly done, for a moderate outlay. Thropp v. Harpers Ferry Paper Co. (1902) 142 Fed. 690, 74 C. C. A. 22.

8. **Liability to penalties.**—To render a vessel subject to penalties it is not essential that some person or corporation should have previously been convicted thereunder. The Scow No. 9 (D. C. 1907) 152 Fed. 548. A vessel used in violation of this section is subject to penalties imposed by § 9921, post, though the act was without the knowledge or intent of her owner and contrary to his general instructions. Where the person placed in charge of a scow by the owner, for the purpose of dumping her load, in the business in which she was used, and in which the owner was engaged, discharged such load into the waters of a harbor, in violation of this section, such act was in a sense within the scope of his employment, though contrary to the owner's general instructions, and the scow was "used" for the unlawful purpose, within § 9921, post, and subject to the penalty thereby imposed. Scow No. 36 (1906) 144 Fed. 932, 75 C. C. A. 572. Where the owners of a dumping scow placed a man in sole charge with power to dump her load, and he becoming unnecessarily alarmed at the roughness of the sea while being towed to the dumping grounds dumped a part of her load into the waters of a harbor in violation of this section, the scow is subject to the penalty imposed by § 9921, post, though the action of the scowman was contrary to the orders of the owner; but the towing tug, although the property of the same owner, where the master had no reason to anticipate the violation of the statute, cannot be said to have been "used or employed" in such violation, and is not subject to the penalty therefor. The Scow No. 9 (D. C. 1907) 152 Fed. 548.

9. **Criminal prosecution.**—A criminal prosecution for the obstruction of navigable waters of the United States under Act Sept. 19, 1890, §§ 6, 7, 10 (26 Stat. 426), may be maintained, though neither the officers and agents of the United States in charge of works for the improvement of said waters, nor the collectors of customs or other revenue officers, have given information to the district attorney as provided in section 9923, post. U. S. v. David Burns and Gideon Burns (C. C. 1893) 54 Fed. 351.

10. —— **Indictment.**—An indictment which charged that M., being the own-

er, and R., being the master, of a steamer, "did unlawfully dump," and "aid and abet in the dumping" of, refuse matter "into the tidal waters of the harbor of New York, and the waters adjacent thereto," the place being "at the Southern district of New York, within the admiralty and maritime jurisdiction of the United States, and within the jurisdiction of this court," charged an offense within this section and §§ 9921, 9935, post. U. S. v. Moran (C. C. 1901) 113 Fed. 172. See §§ 9921, 9935, post, and notes thereunder.

§ 9919. (Act March 3, 1899, c. 425, § 14.) Taking possession or use, etc., of works, etc., prohibited; permits for temporary use.

It shall not be lawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, or any piece of plant, floating or otherwise, used in the construction of such work under the control of the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works: Provided, That the Secretary of War may, on the recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest. (30 Stat. 1152.)

See notes to sections 12 and 13 of this act, ante, §§ 9917, 9918.

This section superseded Act Sept. 19, 1890, c. 907, § 9, 26 Stat. 426, which prohibited persons taking possession of or using or injuring government works in navigable waters.

Provisions punishing injury to river and harbor improvements were made by Act Aug. 14, 1876, c. 267, § 3, ante, § 9909.

Notes of Decisions

Applicability of statute.—This section applies to a levee built to prevent overflow of the Mississippi, although several miles from the bank of the river, and whether completed or not. Houck v. U. S. (1912) 201 Fed. 862, 120 C. C. A. 200; Cape Girardeau & T. B. T. R. Co. v. Jordan (1912) 201 Fed. 868, 120 C. C. A. 206.

§ 9920. (Act March 3, 1899, c. 425, § 15.) Obstructions by vessels, anchored or sunk, and floating timber; marking and removal of sunken vessels.

It shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft; or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels; or to float loose timber and logs, or to float what is known as sack rafts of timber and logs in streams or channels actually navigated by steamboats in such manner as to obstruct, impede, or endanger navigation. And whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, accidently or otherwise, it shall be the duty of the owner of such sunken craft to immediately mark it with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned, and the neglect or failure of the said owner so to do shall be unlawful; and it shall be the duty of the owner of such sunken craft to commence the immediate removal of the same, and prosecute such removal diligently, and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States as hereinafter provided for. (30 Stat. 1152.)

See notes to section 12 of this act, ante, § 9917.

The Secretary of War was authorized to make regulations for floating logs

and rafts in streams when the floating of logs and rafts was the principal method of navigation, by Act May 9, 1900, c. 387, post, §§ 9927–9930.

Provisions for warning signals on vessels working on wrecks, or engaged in dredging or other submarine work, were made by Act June 7, 1897, c. 4, § 2, as amended by Act May 25, 1914, c. 98, ante, § 7906.

Notes of Decisions

1. Construction in general.
2. —— Meaning of words or clauses.
3. —— Superseding state legislation.
4. Care required in the anchorage of vessels.
5. —— Vessels lawfully anchored.
6. —— Vessels unlawfully anchored
7. Wrecks, duty to mark.
8. —— Duty to remove.
9. —— Abandonment.
10. —— Damages, liability for.
11. Rafts obstructing navigation.

1. Construction in general.—This act, being in aid of commerce and navigation, should receive a sensible construction to further that end; so far as concerns any liability in case of collision, it probably only emphasizes the previously existing maritime law. The Caldy (D. C. 1903) 123 Fed. 802, 804, affirmed (1907) 153 Fed. 837, 83 C. C. A. 19.

The tendency of the courts is to hold owners strictly to the requirement of the statute. Lehigh & W. Coal Co. v. Hartford & N. Y. Transp. Co. (D. C. 1914) 220 Fed. 348, and cases cited.

While this section was not intended to absolutely prohibit the anchoring in navigable channels, it makes it unlawful whenever the result is to obstruct other vessels in passing to such extent as to make such passing a dangerous maneuver; and the fact that other vessels have succeeded in passing one so anchored in safety is not proof that her anchorage was not in violation of the statute, or that she was not in fault for a collision with another vessel which was attempting to pass. The Caldy (1907) 153 Fed. 837, 83 C. C. A. 19, affirming decree (D. C. 1903) 123 Fed. 802. It places duty on the owner, and no one else, and he cannot shift the responsibility for an injury to another vessel resulting from his failure to perform it upon tugs which caused the wreck by their fault, when he had notice of the situation in ample time to have performed the duty before damage resulted. The Anna M. Fahy (1907) 153 Fed. 866, 83 C. C. A. 48. It does not apply to vessels anchored in a bay where there is navigable water four miles in width, though they are in the usual course of passing vessels. The Northern Queen (D. C. 1902) 117 Fed. 906. It was not intended to prevent the aiding of a vessel grounded or in difficulty, even if it involves the temporary obstruction of a channel. The Waverley (D. C. 1907) 155 Fed. 436.

An ocean-going vessel may lawfully lie at anchor in the nighttime in the deep channel of a navigable river if not so placed as to prevent or obstruct the passage of other vessels, in violation of this section. The Europe (1911) 190 Fed. 475, 111 C. C. A. 307.

This section should be construed and enforced strictly in the interest of safe navigation, the duty being not negatively, but affirmatively and positively, imposed on vessels coming to anchor in navigable channels to see that they do not under any circumstances, accidents excepted, prevent or obstruct the passage of other vessels. The Margaret J. Sanford (D. C. 1913) 203 Fed. 331; The Pocohuntas (D. C. 1914) 217 Fed. 135.

This section is not an absolute prohibition of the anchorage of vessels in navigable channels, but is intended to prevent their anchorage in such a way as to monopolize such channel, and is not violated where sufficient passageway is left for other vessels. The Grand Manan (D. C. 1913) 208 Fed. 583.

Whether a vessel is so anchored as to prevent or obstruct the passage of other vessels, in violation of this section must be determined by looking not alone to the chart and the geography of the situation, but also to the weather conditions and to the usual course of vessels using the thoroughfare. A vessel so anchored as to leave room for the passage of vessels on either side may not be an obstruction in clear weather, when an approaching vessel would have abundant time to avoid her by a change of course, but may be an obstruction when there is a thick fog and she lies in the compass course of passing vessels. The Georgia (D. C. 1913) 208 Fed. 635.

This section is not violated by a vessel which anchors in a channel if other vessels can pass in safety when navigated with proper care. The Strathleven (1914) 213 Fed. 975, 130 C. C. A. 381, modifying decree The Margaret J. Sanford (D. C. 1913) 203 Fed. 331, and resettlement of costs denied The Strathleven (1914) 213 Fed. 979, 130 C. C. A. 385.

Ocean-going vessels may lie at anchor in the nighttime, in the deep channel of a navigable river; but they must be so placed as not to prevent or obstruct the passage of other vessels in violation of this section. The Hilton (D. C. 1914) 213 Fed. 997. See The Oregon (1895) 15 Sup. Ct. 804, 158 U. S. 186, 39 L. Ed. 943, as to place of proper anchorage.

See, also, The S. Shaw (D. C. 1881) 6 Fed. 93; The Margaret J. Sanford (D. C. 1913) 203 Fed. 331; Cummins v. Spruance (Del. 1845) 4 Har. 315; Adams v. Wiggins (1858) 27 Mo. 95, 72 Am. Dec. 247; Brown v. Stone (Pa.

1860) 1 Phila. 241, 8 Leg. Int. 147, 5 Clark, 75, 4 Am. Law J. (N. S.) 135.

2. —— Meaning of words or clauses.—Respondent, a coal company, having in its possession a loaded coal flat moored to its float in the Allegheny river in Pittsburgh, with the right to retain it until it was unloaded, cast it loose during a flood to avoid injury to its float and other vessels, and it sank some distance below. The place was not marked, and some three weeks later libelant's vessel ran into it and was injured. Held, that respondent stood in the place of the owner within this section. Second Pool Coal Co. v. People's Coal Co. (1911) 188 Fed. 892, 110 C. C. A. 526, affirming judgment People's Coal Co. v. Second Pool Coal Co. (D. C. 1910) 181 Fed. 609, writ of certiorari denied (1911) 32 Sup. Ct. 526, 223 U. S. 727, 56 L. Ed. 632.

The words "prevent or obstruct" are positive words, indicative of limited restraint and of legislative intent not to interfere with the right use of waterways by imposing an absolute or unreasonable prohibition. The Europe (1911) 190 Fed. 475, 111 C. C. A. 307.

A log raft is a "vessel." A raft of logs held not a "sack raft." The Mary (D. C. 1903) 123 Fed. 609, 613. See The City of Birmingham (1905) 138 Fed. 555, 71 C. C. A. 115, and The Belfast (D. C. 1914) 226 Fed. 362 defining an obstruction.

3. —— Superseding state legislation. This section does not supersede state legislation establishing regulations for rivers and harbors which does not conflict therewith. The Margaret J. Sanford (D. C. 1913) 203 Fed. 331, and cases cited.

See, as to effect of state legislation, The Dean Richmond (1901) 107 Fed. 1001, 47 C. C. A. 138; The City of Dundee (1901) 108 Fed. 679, 47 C. C. A. 581; The Bedford (C. C. 1863) Fed. Cas. No. 1,216; Culbertson v. The Southern Belle (D. C. 1854) Fed. Cas. No. 3,462; Green v. The Helen (D. C. 1880) 1 Fed. 916, 922; The Nicholson (D. C. 1886) 28 Fed. 889; The Nettie Sundberg (D. C. 1900) 100 Fed. 886; The Dean Richmond (D. C. 1900) 103 Fed. 701; The Buenos Aires (D. C. 1902) 119 Fed. 493; The Chauncey M. Depew (D. C. 1904) 130 Fed. 59 (decree reversed [1905] 139 Fed. 236, 71 C. C. A. 362); The Admiral Cecille (D. C. 1905) 134 Fed. 673; In re Eastern Dredging Co. (D. C. 1906) 159 Fed. 541.

4. Care required in the anchorage of vessels.—The precautions taken by a vessel anchoring in a dangerous position should be commensurate with the perils assumed. The John H. Starin (1903) 122 Fed. 236, 58 C. C. A. 600 (writ of certiorari denied [1903] 23 Sup. Ct. 854, 190 U. S. 559, 47 L. Ed. 1184); The City of Birmingham (1905) 138 Fed. 555, 71 C. C. A. 115; The Europe (D. C. 1909) 175 Fed. 596; The Director (D. C. 1910) 180 Fed. 606.

Vessels mooring, or anchoring, especially in a busy harbor, should do so having regard to the fact that others have the right to navigate the waters; and this obligation should be measured by the increased risk arising from the circumstances of the particular case. The Washington (D. C. 1910) 182 Fed. 885.

The duty is imposed on vessels coming to anchor in navigable channels to see that they do not under any circumstances, accidents excepted, prevent or obstruct the passage of other vessels. The Pocohuntas (D. C. 1914) 217 Fed. 135.

A tug and an anchored steamship both held in fault for collision in North River at night between a barge in the tow of the tug and the steamship; the tug for careless navigation, and the steamship for anchoring so that she swung into the fairway. Id.

See, on same point, U. S. v. St. Louis & M. V. Transp. Co. (1902) 22 Sup. Ct. 350, 351, 184 U. S. 247, 46 L. Ed. 520; Campbell v. Pennsylvania R. Co. (1898) 85 Fed. 462, 29 C. C. A. 268; The Waterloo and The Glenalvon (1900) 100 Fed. 332, 40 C. C. A. 386 (affirming decree The Francisco R. v. The Waterloo and The Glenalvon [D. C. 1897] 79 Fed. 113); The Atlas (1905) 135 Fed. 1020, 68 C. C. A. 666 (affirming decree [D. C. 1902] 115 Fed. 856); The Rickmers (1905) 142 Fed. 305, 73 C. C. A. 415; The Overbrook (1905) 142 Fed. 950, 74 C. C. A. 120; The William E. Reis (1907) 152 Fed. 673, 82 C. C. A. 21 (affirming judgment [D. C. 1906] 143 Fed. 1013); The Pacific (1907) 154 Fed. 943, 83 C. C. A. 515; The Ciudad de Reus (1911) 185 Fed. 391, 107 C. C. A. 447 (reversing decree [D. C. 1909] 171 Fed. 470); Bradley v. Sullivan (1913) 209 Fed. 833, 126 C. C. A. 557; Vantine v. The Lake (C. C. 1850) Fed. Cas. No. 16,878; The Bedford (C. C. 1863) Fed. Cas. No. 1,216; The Exchange (C. C. 1872) Fed. Cas. No. 4,593; Pringle v. The Michigan (C. C. 1891) 52 Fed. 501; The Lotty (D. C. 1846) Fed. Cas. No. 8,524; The Scioto (D. C. 1847) Fed. Cas. No. 12,508; The Julia M. Hallock (D. C. 1852) Fed. Cas. No. 7,579; The Echo (D. C. 1861) Fed. Cas. No. 4,264; The Beaver (D. C. 1868) Fed. Cas. No. 1,199; The John Sanderson (D. C. 1870) Fed. Cas. No. 7,364; The E. A. Packer and The John Neilson (D. C. 1879) Fed. Cas. No. 4,241; The Milligan (D. C. 1882) 12 Fed. 338; The Oscar Townsend (D. C. 1883) 17 Fed. 93; The Worthington and Davis (D. C. 1883) 19 Fed. 836; The St. Lawrence (D. C. 1884) 19 Fed. 328; The Mary Fraser (D. C. 1886) 26 Fed. 872; The Wier v. The Padre (D. C. 1886) 29 Fed. 335; The Wallace (D. C. 1890) 41 Fed. 894;

Neel v. Blythe (D. C. 1890) 42 Fed. 457; Morrissey v. The Nora Costello (D. C. 1891) 46 Fed. 869; Wishing v. The Transfer No. 2 and Car Float No. 12 (D. C. 1893) 56 Fed. 313; The Anerly (D. C. 1893) 58 Fed. 794; The Sharpee She (D. C. 1894) 60 Fed. 928; Wilhelmsen v. Ludlow (D. C. 1897) 79 Fed. 979; Fenno v. The Mary E. Cuff (D. C. 1897) 84 Fed. 719; The Syracuse (D. C. 1898) 84 Fed. 1005; The Mary J. Robbins (D. C. 1900) 100 Fed. 141; The Comet (D. C. 1900) 102 Fed. 702; The Severn (D. C. 1902) 113 Fed. 578; The Juniata (D. C. 1903) 124 Fed. 861; The Drumcraig (D. C. 1904) 133 Fed. 804; The Mallay (D. C. 1905) 136 Fed. 992; Muller v. New York, N. H. & H. R. Co. (D. C. 1906) 144 Fed. 241; Sharpsburg Sand Co. v. Monongahela River Consol. Coal & Coke Co. (D. C. 1906) 145 Fed. 424; The Lucille (D. C. 1909) 169 Fed. 719; Wright & Cobb Lighterage Co. v. New England Nav. Co. (D. C. 1911) 189 Fed. 809 (decree affirmed [1913] 204 Fed. 762, 125 C. C. A. 129); The Evolution (D. C. 1912) 199 Fed. 514; The E. M. Peck (D. C. 1913) 201 Fed. 599; Foster v. Holly (1861) 38 Ala. 76; Dunn v. McComb (1856) 11 La. Ann. 325; Knowlton v. Sanford (1850) 32 Me. 148, 52 Am. Dec. 649; Lambert v. Staten Island R. Co. (1877) 70 N. Y. 104; Baker v. The Hibernia (Pa. 1850) 1 Phila. 228.

5. —— **Vessels lawfully anchored.**— This section does not condemn a lighter which, compelled to anchor in the Hudson river because of a dense fog, made her way to the side on which were the anchorage grounds, as far as was considered safe, and anchored after taking soundings which indicated that she was within the grounds; the exercise of precautions commensurate with the danger being all that is required. The Newburgh (1904) 130 Fed. 321, 64 C. C. A. 567, reversing decree (D. C. 1903) 124 Fed. 954.

An ocean-going vessel may lawfully lie at anchor in the nighttime in the deep channel of a navigable river if not so placed as to prevent or obstruct the passage of other vessels, in violation of this section. The Europe (1911) 190 Fed. 475, 111 C. C. A. 307.

An anchoring place designated by the harbor master of Boston is a proper anchorage, though in the channel. The Lady Franklin (D. C. 1873) Fed. Cas. No. 7,984.

The place of anchorage of vessel anchored in the middle of a river about 1,900 feet wide, where vessels were frequently passing, leaving room on either side for them to pass, was not improper. The Ogemaw (D. C. 1887) 32 Fed. 919.

A barge may properly anchor for the night near the middle of the channel of Delaware Bay, inside the capes, where it is four or five miles wide. Phinney v. The Le Lion (D. C. 1898) 84 Fed. 1011.

Where the bulkhead line of a dock is where it has been maintained for years, and since a time before there was any statute on the subject, persons using the bulkhead for mooring vessels in the customary manner, with the consent of the city, cannot be deemed in fault therefor, although it extends farther into the river than the line as established by law. The Harry B. Hollins (D. C. 1903) 125 Fed. 430.

A steamer which had been disabled, and which was moored on the inside of the Erie Basin Breakwater at the port of Buffalo, some 25 to 30 feet from the channel used by vessels passing from a dock to the open lake, and opposite a bend in such channel, was in a proper place. Rebstock v. Gilchrist Transp. Co. (D. C. 1904) 132 Fed. 174.

A vessel anchored at night in calm weather as the result of a previous collision in Hampton Roads in the middle of the channel, which was there a mile or more wide for seagoing vessels, was not chargeable with violation of this section. The Job H. Jackson (D. C. 1906) 144 Fed. 896, decree affirmed The Ann J. Trainer (1907) 152 Fed. 1021, 82 C. C. A. 332.

As to vessels lawfully anchored, see The City of Dundee (1901) 108 Fed. 679, 47 C. C. A. 581 (affirming judgment [D. C. 1900] 103 Fed. 696); The Col. John F. Gaynor (1904) 130 Fed. 856, 65 C. C. A. 340 (affirming decree The John F. Gaynor [D. C. 1902] 115 Fed. 382); Hamburg-American Packet Co. v. Rich (1908) 159 Fed. 667, 86 C. C. A. 535 (affirming decree The Iron State [D. C. 1907] 154 Fed. 1006); The Wyomissing (1909) 170 Fed. 1021, 95 C. C. A. 672 (affirming decree [D. C. 1906] 149 Fed. 241); North American Dredging Co. v. Pacific Mail S. S. Co. (1911) 185 Fed. 698, 107 C. C. A. 620; Wright & Cobb Lighterage Co. v. New England Navigation Co. (1913) 204 Fed. 762, 125 C. C. A. 129 (affirming decree [D. C. 1911] 189 Fed. 809); The Monitor (D. C. 1868) Fed. Cas. No. 9,710; The Masters (D. C. 1871) Fed. Cas. No. 9,267; The J. W. Everman (D. C. 1874) Fed. Cas. No. 7,591; The Mary Fraser (D. C. 1886) 26 Fed. 872; The Idlewild (D. C. 1894) 63 Fed. 1014; Hastorf v. City of New York (D. C. 1894) 64 Fed. 869; Baxter v. International Contracting Co. (D. C. 1894) 65 Fed. 250; The Francisco R. v. The Waterloo and The Glenalvon (D. C. 1897) 79 Fed. 113; The Nettie Sundberg (D. C. 1900) 100 Fed. 886; The Municipal (D. C. 1900) 108 Fed. 895; Rich v. Hamburg-American Packet Co. (D. C. 1902) 117 Fed. 751; The Northern Queen (D. C. 1902) 117 Fed. 906; The Grand Manan (D. C. 1913) 208 Fed. 583; The Wm. H. Gilbert (D. C. 1914) 211 Fed. 754; Foster v. Holly (1861) 38 Ala. 76.

6. —— **Vessels unlawfully anchored.**— Anchoring vessels of the United States

in an unusual and improper position in a harbor, in total disregard of the usages and regulations of the port requiring notice to the harbor master of the intention to anchor, constitutes negligence on the part of the officers of the vessel, which will render the United States liable in the court of claims for damages thereby caused to other vessels navigating the harbor. U. S. v. St. Louis & M. V. Transp. Co. (1902) 22 Sup. Ct. 350, 184 U. S. 247, 46 L. Ed. 520.

A dredge, anchored at night within 200 feet of the center of the narrow channel of the Savannah river, held to obstruct the passage of other vessels, in violation of this section. The City of Birmingham (1905) 138 Fed. 555, 71 C. C. A. 115, writ of certiorari denied P. Sanford Ross v. The City of Birmingham (1905) 26 Sup. Ct. 747, 199 U. S. 607, 50 L. Ed. 331, reversing decree (D. C. 1903) 125 Fed. 506.

A lighter held in fault for deliberately anchoring in a channel during a fog when in the vicinity of the anchorage grounds, which could easily have been reached. The Newburgh (D. C. 1903) 124 Fed. 954, decree reversed (1904) 130 Fed. 321, 64 C. C. A. 567.

A schooner anchored outside the legal limits and too near the channel courses held in fault. The Vera (D. C. 1912, 1914) 224 Fed. 998, judgment affirmed (1915) 226 Fed. 369, 141 C. C. A. 199.

As to vessels unlawfully anchored, see Ross v. Cornell Steamboat Co. (1906) 149 Fed. 196, 79 C. C. A. 514 (affirming decree [D. C. 1906] 143 Fed. 166); The Caldy (1907) 153 Fed. 837, 83 C. C. A. 19 (affirming decree [D. C. 1903] 123 Fed. 802); The Persian (1910) 181 Fed. 439, 104 C. C. A. 187 (reversing decree [D. C. 1908] 159 Fed. 788); Graves v. Lake Michigan Car Ferry Transp. Co. (1910) 183 Fed. 378, 105 C. C. A. 598; North American Dredging Co. v. Pacific Mail S. S. Co. (1911) 185 Fed. 698, 107 C. C. A. 620; The Kronprinz Wilhelm (1911) 186 Fed. 324, 108 C. C. A. 402; The Express (1914) 212 Fed. 672, 129 C. C. A. 208; The Louisville v. Strout (C. C. 1839) Fed. Cas. No. 8,542; Olmstead v. The Sandusky (D. C. 1846) Fed. Cas. No. 10,504; The Indiana (D. C. 1848) Fed. Cas. No. 7,020; The Marcia Tribou (D. C. 1858) Fed. Cas. No. 9,062; In re Cornwall (D. C. 1875) Fed. Cas. No. 3,248; The Milligan (D. C. 1882) 12 Fed. 338; The Lucy D. (D. C. 1884) 21 Fed. 142; Gorley v. The Carl Konow (D. C. 1894) 64 Fed. 815; The Passaic (D. C. 1896) 76 Fed. 460; The Itasca (D. C. 1901) 117 Fed. 885; The Charles E. Matthews (D. C. 1904) 132 Fed. 143; The Amiral Cecille (D. C. 1905) 134 Fed. 673; The J. G. Lindauer (D. C. 1907) 158 Fed. 449; The Annasona (D. C. 1909) 166 Fed. 801; The Ciudad de Reus (D. C. 1909) 171 Fed. 470 (decree reversed [1911] 185 Fed. 391, 107 C. C. A. 447); The Margaret J. Sanford (D. C. 1913) 203 Fed. 331; The Prudence (D. C. 1914) 212 Fed. 537; The Terje Viken (D. C. 1914) 212 Fed. 1020; The Adventuress (D. C. 1914) 214 Fed. 834; The Belfast (D. C. 1914) 226 Fed. 362; Chesley v. Nantasket Beach Steamboat Co. (1901) 61 N. E. 50, 179 Mass. 469.

7. **Wrecks, duty to mark.**—The owner of a canal boat which sank in New York Bay, who received notice of the sinking at once, and could have had it marked within an hour, is liable for damages caused by a collision 6 hours later, when it remained unmarked. The Anna M. Fahy (1907) 153 Fed. 866, 83 C. C. A. 48.

The word "immediately" in this section, means within a reasonable time and the word should be construed in view of the circumstances of the particular situation, and what might be justifiable delay in one case would be culpable delay in another. Id.

This section places on the owner the duty of marking a sunken craft, and he cannot shift responsibility for an injury to another vessel resulting from his failure to perform it on tugs which caused the wreck by their fault, when he had notice of the situation in ample time to have performed the duty before the damage resulted. Id.

The owner of a canal boat which was sunk in the channel of the Hudson river, who failed for two days without good excuse to mark the place, as required by this section, did not act within a reasonable time, and was liable for damage done to another vessel by collision with the wreck. The Macy (1909) 170 Fed. 930, 96 C. C. A. 146.

Owner of a vessel sunk in Hudson river held to have complied with this section, requiring it to mark the wreck by obtaining the services of the Lighthouse Department, which had official authority (Res. March 2, 1868, § 1, ante, § 8452), to do the same. The Plymouth (1915) 225 Fed. 483, 140 C. C. A. 1, reversing decree Lehigh & Wilkesbarre Coal Co. v. Hartford & New York Transp. Co. (D. C. 1914) 220 Fed. 348.

In a dangerous place, some notice of the presence of a wreck is a reasonable obligation on the part of the owner of such wreck; but, no special signals being prescribed, any plain signals that naturally serve as a warning to keep off are sufficient. Du Bois v. The H. S. Nichols and The Ceres (D. C. 1893) 53 Fed. 665.

The use of pieces of wood and two partly submerged buckets, together with a white pocket handkerchief attached to the end of a bamboo pole, held insufficient as danger signals to indicate the presence of a yacht sunk under 18 feet of water in a frequented channel. The Fred. Schlesinger (D. C. 1896) 71 Fed. 747.

A loaded scow owned by libelants sank in the night, lying across the edge

of the harbor channel as dredged, which was 20 feet deep, while the anchorage basin adjacent, 300 feet wide, was 16 feet deep. Libelants did not mark the position of the sunken vessel, except by an ordinary spar buoy, placed near its center, which was insufficient to give warning of the wreck. On the second morning thereafter the oyster steamer Lewis, coming in, ran into the sunken scow, both vessels being injured. Held, that libelants were in fault for failing to properly mark the place of the wreck. The Mary S. Lewis (D. C. 1903) 126 Fed. 848.

Under this section the neglect to mark a sunken craft as required is not a prima facie abandonment, nor is the failure to remove it an abandonment until the expiration of 30 days, and during all of such time it is the duty of the owner to keep the place marked, and if he does not he is liable for injuries caused to others thereby, unless there has been an actual abandonment. People's Coal Co. v. Second Pool Coal Co. (D. C. 1911) 181 Fed. 609, judgment affirmed Second Pool Coal Co. v. People's Coal Co. (1911) 188 Fed. 892, 110 C. C. A. 526, writ of certiorari denied (1911) 32 Sup. Ct. 526, 223 U. S. 727, 56 L. Ed. 632.

Owner of a sunken vessel, not abandoned, but not properly marked, is liable for an injury to another vessel, under this section. Lehigh & Wilkesbarre Coal Co. v. Hartford & New York Transp. Co. (D. C. 1914) 220 Fed. 348.

See The Swan (C. C. 1855) Fed. Cas. No. 13,667; Boston & H. Steamboat Co. v. Munson (1875) 117 Mass. 34.

8. —— **Duty to remove.**—In Missouri River P. Co. v. Hannibal & St. J. R. Co. (C. C. 1880) 2 Fed. 285, it is held that those navigating a river are under no obligation to remove wrecks which may be made in the proper and ordinary course of navigation, but he who, for his own benefit, uses any part of a navigable river, is liable in damages to any party injured, if such use causes a change in the ordinary course of the channel.

If defendant had a right to keep the pontoon in the river in connection with the bridge, and it was sunk by unavoidable accident, defendant was entitled to a reasonable time in which to raise and remove it, but was not at liberty to leave it in the channel for an indefinite period. Missouri River P. Co. v. Hannibal & St. J. R. Co. (C. C. 1880) 2 Fed. 285.

A loaded lighter was sunk in a dock. Although 48 hours would have sufficed to remove her, she was allowed to remain for six days, during which two vessels successively entered and used the dock. Upon the lighter being raised it was found that she had been injured by one of the vessels, and a libel was thereupon filed against the second vessel. Held, that the libelant's delay, coupled with the fact that another vessel had previously occupied the dock, rendered ascertainment of the injury inflicted by the second vessel impracticable, and the libel should therefore be dismissed. Semble, that, after a reasonable time for the removal of the lighter had elapsed, she might have been treated as a nuisance. The Atlee (D. C. 1882) 12 Fed. 734.

And see (1876) 15 Op. Atty. Gen. 71, holding that where a vessel put into harbor in a furious storm, and, leaking badly, was run ashore, thereupon becoming a wreck, which formed an obstruction to navigation, and it appeared that the wreck was caused by stress of weather, and not through any fault or misconduct of the master and crew, the owners of the vessel were under no legal obligation to remove it.

9. —— **Abandonment.**—A scow in tow of a steamer on a voyage from Charleston to Nicaragua having broken adrift off Fortune island in July, 1890, was drifting in the track of steamers going up and down the coast for over three weeks, when she was taken in tow by the defendant steamer, and on the following day set fire to for the purpose of destruction. The libelants, according to the libel, had notice from time to time during this interval of the whereabouts of the scow, but gave no evidence that they made any efforts to rescue her, or that they intended to do so. Held, that the inference from these facts was that the scow was abandoned by the owners, to be dealt with by other vessels that might meet her as prudence should dictate; that by the nature of the vessel she was an obstruction dangerous to navigation; and there being no evidence of her value, or that she was worth salvage, there was no presumption that the act of the master of the River Mersey in destroying this obstruction was either tortious or negligent; but that it was presumptively a beneficial service in the public interest, for the safety of life and property at sea. North American Dredging & Improvement Co. v. The River Mersey (D. C. 1892) 48 Fed. 686.

An abandoned vessel, which was sunk through the fault of the person in possession, is a nuisance, which he may be compelled to abate. Board of Water Com'rs of Detroit v. City of Detroit (1898) 76 N. W. 70, 117 Mich. 458, 5 Detroit Leg. N. 305.

10. —— **Damages, liability for.**—After the sinking of a sloop by collision with a tug in a narrow channel, the tug made fast to the broken mast, boom, and sails of the sloop, and towed them several hundred feet, and also dragged the hull along the bottom by the wire shrouds. Held, that the tug was liable for the damage thus done, her removal of the sloop not being jus-

tifiable as the abatement of a public nuisance, or for the protection of the sloop herself, or for the safety of navigation generally. The Brinton (1895) 66 Fed. 71, 13 C. C. A. 331, reversing decree (D. C. 1893) 59 Fed. 714.

A city, although charged by statute with the duty of keeping the channels of navigable streams within its limits free from obstructions, cannot be held liable for an injury caused by a sunken wreck, where the owner had in due time undertaken its removal through the agency of a reputable and experienced wrecking company, which was proceeding with apparent diligence and good faith and by customary methods. McCaulley v. City of Philadelphia (1903) 119 Fed. 580, 56 C. C. A. 100.

The owner of a canal boat which was sunk in New York Bay, who received notice of the sinking at once, and could have had it marked as required by statute within an hour, is liable for the damages caused by a passing vessel coming into collision with the wreck six hours later, when it was still unmarked. The Anna M. Fahy (1907) 153 Fed. 866, 83 C. C. A. 48.

Where it was alleged that a sunken pontoon, placed and kept in the channel by the defendant, had caused a change in the current of the river which had thrown plaintiff's vessel over against a pier of defendant's bridge, and that the accident was the result of two causes combined, to-wit, the presence in the channel of the pontoon, and of the bridge pier, both unlawful structures, held, that these facts being established, plaintiff could recover. Missouri River P. Co. v. Hannibal & St. J. R. Co. (C. C. 1880) 2 Fed. 285.

The fact that portions of a yacht sunk in a channel came to the surface shortly after a certain steamer passed, does not raise so strong a presumption that she ran upon the wreck as to overcome the testimony of those upon the steamer, and a tug towing her, that they passed from 70 to 100 feet to one side of the flag marking the wreck. The Fred. Schlesinger (D. C. 1896) 71 Fed. 747.

Libelant's tug was injured in the East river, in the night, by reason of a line becoming entangled in its screw. On the same night a line used by respondent in raising a sunken vessel, which had been securely made fast to a pier and weighted to the bottom, in some unknown manner became loosened from the pier. Held that, assuming that such line was the one which caused the injury, of which there was no direct proof, it did not appear that there was any negligence on the part of respondent, which alone could render it liable for the injury. Moran v. Merritt & Chapman Derrick & Wrecking Co. (D. C. 1905) 135 Fed. 863, decree affirmed (1906) 142 Fed. 1038, 71 C. C. A. 685.

A dredging company held not liable for injury to a grounded coal barge by settling partly in an excavation temporarily left in the bottom of the canal in which the stranding occurred. Susquehanna Coal Co. v. Eastern Dredging Co. (D. C. 1908) 200 Fed. 817.

Owner of sunken vessel, not abandoned nor properly marked, held liable for an injury to another vessel. Lehigh & Wilkesbarre Coal Co. v. Hartford & New York Transp. Co. (D. C. 1914) 220 Fed. 348.

A master, seeing no danger signal displayed, held entitled to suppose that danger from a sunken scow had been removed, and not negligent in assuming that there was no danger where there was no danger signal. But if, at the time of the accident, the master knew of the danger, or if, under all the circumstances, he ought to have known of it, and he failed to take reasonable and proper care to avoid it, and thus met with the accident, no recovery can be had against the owners of the scow. (1900) 23 Op. Atty. Gen. 43.

See, also, Taylor v. Atlantic Mut. Ins. Co. (1862) 22 N. Y. Super. Ct. (9 Bosw.) 369.

II. Rafts obstructing navigation.—If a log raft accidentally becomes grounded, or otherwise obstructs navigation, other vessels are required to submit to a reasonable delay until the owner has had time to remove it, in the exercise of proper skill and reasonable diligence and dispatch, before they are entitled to destroy it as a nuisance. The Mary (C. C. 1903) 123 Fed. 609. See, also, Doniphan Lumber Co. v. Henderson (Ark. 1911) 139 S. W. 649; Louisville & N. R. Co. v. Yarbrough (1909) 48 So. 634, 57 Fla. 101; Elkins v. Winlack (1899) 10 Pa. Super. Ct. 612.

Cited without definite application, Merritt & Chapman D. & W. Co. v. Cornell Steamboat Co. (D. C. 1909) 174 Fed. 716 (affirmed [1911] 185 Fed. 261, 107 C. C. A. 367, certiorari denied [1911] 31 Sup. Ct. 720, 220 U. S. 617, 55 L. Ed. 611); The Protector (D. C. 1910) 176 Fed. 171.

§ 9921. (Act March 3, 1899, c. 425, § 16.) Penalty for violation of provisions of act.

Every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize, or instigate a violation of the provisions of sections thirteen, fourteen, and fifteen of this Act shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding twenty-five hundred dollars nor less

than five hundred dollars, or by imprisonment (in the case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction. And any and every master, pilot, and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel who shall knowingly engage in towing any scow, boat, or vessel loaded with any material specified in section thirteen of this Act to any point or place of deposit or discharge in any harbor or navigable water, elsewhere than within the limits defined and permitted by the Secretary of War, or who shall willfully injure or destroy any work of the United States contemplated in section fourteen of this Act, or who shall willfully obstruct the channel of any waterway in the manner contemplated in section fifteen of this Act, shall be deemed guilty of a violation of this Act, and shall upon conviction be punished as hereinbefore provided in this section, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. And any boat, vessel, scow, raft, or other craft used or employed in violating any of the provisions of sections thirteen, fourteen, and fifteen of this Act shall be liable for the pecuniary penalties specified in this section, and in addition thereto for the amount of the damages done by said boat, vessel, scow, raft, or other craft, which latter sum shall be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damage occurred, and said boat, vessel, scow, raft, or other craft may be proceeded against summarily by way of libel in any district court of the United States having jurisdiction thereof. (30 Stat. 1153.)

See notes to section 12 of this act, ante, § 9917.

Sections 13–15 of this act, mentioned in this section, are set forth ante, §§ 9918–9920.

Notes of Decisions

Validity of statute.—This section was enacted in the exercise of the police power of the government. Scow No. 36 (1906) 144 Fed. 932, 75 C. C. A. 572. And is within the constitutional power of congress. The Scow No. 9 (D. C. 1907) 152 Fed. 548.

Penalties.—To render a vessel subject to penalties it is not essential that some person or corporation should have previously been convicted thereunder. The Scow No. 9 (D. C. 1907) 152 Fed. 548.

Where the person placed in charge of a scow by the owner, for the purpose of dumping her load, in the business in which she was used, and in which the owner was engaged, discharged such load into the waters of a harbor, in violation of § 9918, ante, such act was in a sense within the scope of his employment, though contrary to the owner's general instructions, and the scow was "used" for the unlawful purpose, within this section, and subject to penalty. Scow No. 36 (1906) 144 Fed. 932, 75 C. C. A. 572.

Where the owners of a dumping scow placed a man in sole charge, with power to dump her load, and he becoming unnecessarily alarmed at the roughness of the sea while being towed to the dumping grounds, dumped a part of the load in violation of § 9918, ante, the scow is subject to the penalty imposed by this section. The Scow No. 9 (D. C. 1907) 152 Fed. 548.

Criminal prosecution.—See § 9922, post, and notes thereunder.

—— **Jurisdiction of courts.**—Under 14 Stat. 244, providing that, "in case of any litigation arising from any obstruction * * * to * * * navigation of said river, the cause may be tried before the district court of the United States of any state in which any portion of said obstruction or bridge touches," held, that the United States courts had only concurrent jurisdiction with the state courts. Missouri River Packet Co. v. Hannibal & St. J. R. Co. (1883) 79 Mo. 478.

—— **Indictment.**—An indictment which charged that M., being the owner, and R., being the master, of a steamer, "did unlawfully dump," and "aid and abet in the dumping" of, refuse matter "into the tidal waters of the harbor of New York, and the waters adjacent thereto," the place being "at the Southern district of New York, within the admiralty and maritime jurisdiction of the United States, and within the jurisdiction of this court," charged an offense within this section, § 9918, ante, and § 9935, post. U. S. v. Moran (C. C. 1901) 113 Fed. 172. And

see, also, § 9922, post, and notes thereunder.

Cited without definite application, People's Coal Co. v. Second Pool Coal Co. (D. C. 1910) 181 Fed. 609, affirmed (1911) 188 Fed. 892, 110 C. C. A. 526, certiorari denied (1911) 32 Sup. Ct. 526, 223 U. S. 727, 56 L. Ed. 632.

§ 9922. (Act March 3, 1899, c. 425, § 17.) Duty of district attorneys; officers empowered to arrest offenders.

The Department of Justice shall conduct the legal proceedings necessary to enforce the foregoing provisions of sections nine to sixteen, inclusive, of this Act; and it shall be the duty of district attorneys of the United States to vigorously prosecute all offenders against the same whenever requested to do so by the Secretary of War or by any of the officials hereinafter designated, and it shall furthermore be the duty of said district attorneys to report to the Attorney-General of the United States the action taken by him against offenders so reported, and a transcript of such reports shall be transmitted to the Secretary of War by the Attorney-General; and for the better enforcement of the said provisions and to facilitate the detection and bringing to punishment of such offenders, the officers and agents of the United States in charge of river and harbor improvements, and the assistant engineers and inspectors employed under them by authority of the Secretary of War, and the United States collectors of customs and other revenue officers, shall have power and authority to swear out process and to arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by the aforesaid sections of this Act, or who may violate any of the provisions of the same: Provided, That no person shall be arrested without process for any offense not committed in the presence of some one of the aforesaid officials: And provided further, That whenever any arrest is made under the provisions of this Act, the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States. (30 Stat. 1153.)

See notes to section 12 of this act, ante, § 9917.

Provisions for the enforcement of regulations prescribed by the Secretary of War for the use of canals, authorized by Act Aug. 18, 1894, c. 299, § 4, amended by Act June 13, 1902, c. 1079, § 11, ante, § 9861, and the regulations for drawbridges authorized by Act Aug. 18, 1894, c. 299, § 5, post, § 9973, in the manner prescribed by this section, were made by Act June 13, 1902, c. 1079, § 6, ante, § 9862.

Regulations to govern the transportation and dumping in navigable waters of dredgings, etc., and other refuse materials, authorized by Act March 3, 1905, c. 1482, § 4, post, § 9926, may be enforced as provided in this section, the provisions whereof were made applicable to said regulations, by a proviso contained in said section 4, post, § 9926.

The duties of agents and officers in the enforcement of Act Sept. 19, 1890, c. 907, §§ 4–10, were prescribed by section 11 thereof, post, § 9923.

Notes of Decisions

Enjoining criminal prosecutions.— One whose property rights have been invaded in fixing harbor lines may sue to enjoin the Secretary of War from causing criminal proceedings to be brought against him, under § 9912, ante, and § 9917 (as originally enacted), and this section. Philadelphia Co. v. Stimson (1912) 32 Sup. Ct. 340, 344, 223 U. S. 605, 56 L. Ed. 570, affirming decree Same v. Dickinson (1909) 33 App. D. C. 338.

Cited without definite application, Naumburg v. Milwaukee (1906) 146 Fed. 641, 77 C. C. A. 67 (dissenting opinion).

§ 9923. (Act Sept. 19, 1890, c. 907, § 11.) Duty of officers and agents.

It shall be the duty of officers and agents having the supervision, on the part of the United States, of the works in progress for

the preservation and improvement of said navigable waters, and, in their absence, of the United States collectors of customs and other revenue officers to enforce the provisions of this act by giving information to the district attorney of the United States for the district in which any violation of any provision of this act shall have been committed: Provided, That the provisions of this act shall not apply to Torch Lake, Houghton County, Michigan. (26 Stat. 455.)

This was a section of the rivers and harbors appropriation act of 1890, cited above.

Sections 4–9 of this act relating to obstructions to navigation by bridges, deposits of refuse, construction of wharves, wrecks, and injuries to government works, were superseded by Act March 3, 1899, c. 425, §§ 9, 10, 12–16, 18–20, which contained provisions more or less similar to those contained in these superseded sections. Said sections 9 and 18 are set forth post, §§ 9970, 9971. Said sections 10, 12–16, 19, and 20 are set forth ante, §§ 9910, 9912–9921, post, §§ 9924, 9925. This section may be regarded as applicable to the provisions of the later act so far as it contained substitutes for the previous sections of this act.

As to operation of section 10 of this act, see notes to Act Sept. 19, 1890, c. 907, § 10, ante, § 9910a.

Notes of Decisions

Failure of officers to perform duty not preventing criminal prosecution.—A criminal prosecution for the obstruction of navigable waters of the United States under Act Sept. 19, 1890, §§ 6, 7, 10 (26 Stat. 426), may be maintained though neither the officers and agents of the United States in charge of works for the improvement of said waters, nor the collectors of customs or other revenue officers, have given information to the district attorney as provided in this section. U. S. v. David Burns and Gideon Burns (C. C. 1893) 54 Fed. 351.

§ 9924. (Act March 3, 1899, c. 425, § 19.) Removal of obstructions to navigation; notice; proposals to remove; bond of bidder; disposition of proceeds.

Whenever the navigation of any river, lake, harbor, sound, bay, canal, or other navigable waters of the United States shall be obstructed or endangered by any sunken vessel, boat, water craft, raft, or other similar obstruction, and such obstruction has existed for a longer period than thirty days, or whenever the abandonment of such obstruction can be legally established in a less space of time, the sunken vessel, boat, water craft, raft, or other obstruction shall be subject to be broken up, removed, sold, or otherwise disposed of by the Secretary of War at his discretion, without liability for any damage to the owners of the same: Provided, That in his discretion, the Secretary of War may cause reasonable notice of such obstruction of not less than thirty days, unless the legal abandonment of the obstruction can be established in a less time, to be given by publication, addressed "To whom it may concern," in a newspaper published nearest to the locality of the obstruction, requiring the removal thereof: And provided also, That the Secretary of War may, in his discretion, at or after the time of giving such notice, cause sealed proposals to be solicited by public advertisement, giving reasonable notice of not less than ten days, for the removal of such obstruction as soon as possible after the expiration of the above specified thirty days' notice, in case it has not in the meantime been so removed, these proposals and contracts, at his discretion, to be conditioned that such vessel, boat, water craft, raft, or other obstruction, and all cargo and property contained therein, shall become the property of the contractor, and the contract shall be awarded to the bidder making the proposition most advantageous to the United States: Provided, That such bidder shall give satisfactory security to execute the work: Provided further, That any money received from the sale of any such wreck, or from any contractor for

the removal of wrecks, under this paragraph shall be covered into the Treasury of the United States. (30 Stat. 1154.)

This section and the section next following were part of the rivers and harbors appropriation act of 1899, cited above.

See notes to section 12 of the act, ante, § 9917.

This section superseded Act June 14, 1880, c. 211, § 4, 21 Stat. 197, and Act Aug. 2, 1882, c. 375, 22 Stat. 208, which required the Secretary of War to give notice to the persons interested in wrecks obstructing navigation of the purpose of the Secretary to remove the same unless such parties should do so, and authorized the Secretary to remove the same on the failure of the parties interested to do so, and to sell the same to the highest bidder, and also authorized the Secretary to dispose of any sunken vessel or cargo before removal.

This section also superseded Act Sept. 19, 1890, c. 907, § 8, 26 Stat. 454, which authorized the Secretary of War to remove wrecks remaining for more than two months.

Notes of Decisions

Statute paramount over state legislation.—This section is paramount; and Code Va. § 2011, as amended by Acts Va. 1889-90, c. 371 (Code Va. 1904, p. 1022), and Richmond City Ordinances, c. 77, § 8, declaring that the board of harbor commissioners and the committee on improvements of James river shall remove any wreck injurious to the harbor at the owner's expense, are invalid, unless the obstruction occurs with the privity or knowledge of the owner. Hagan v. City of Richmond (1905) 52 S. E. 385, 104 Va. 723, 3 L. R. A. (N. S.) 1120.

Authority of secretary of war.—This section did not invest the secretary of war with exclusive jurisdiction of the removal of obstructions, but was intended to clothe him with discretionary power, which he might exert or leave to the enforcement of the local authorities; and, if he fails or declines to act, the local authorities may protect their domestic commerce by keeping navigable waters in their jurisdiction unobstructed. Hagan v. City of Richmond (1905) 52 S. E. 385, 104 Va. 723, 3 L. R. A. (N. S.) 1120. See (1877) 15 Op. Atty. Gen. 284, holding that congress having made an appropriation for the improvement of the Connecticut river, to be expended under the direction of the secretary of war, the latter has power, under this legislation, to remove a wrecked vessel lying in that river, without waiting until it is abandoned, if in his judgment it constitutes an obstruction to navigation.

Navigable waters of United States.—See chapter A of this title, and notes thereunder, and § 9910, ante, and notes thereunder.

Act June 14, 1880 (21 Stat. 197), and Act Aug. 2, 1882 (22 Stat. 208), which authorize the Secretary of War to remove sunken vessels or craft which obstruct the navigation of a "navigable" water of the United States, do not apply to the coastal waters of Cuba, as such waters do not become waters of the United States by reason of the temporary jurisdiction of the United States over that island. (1900) 23 Op. Atty. Gen. 76.

Removal of sunken vessels as obstructions to navigation.—See § 9920, ante, and notes thereunder.

Owners of a vessel, who scuttle and sink her in a harbor while on fire, for the purpose of saving her rigging and spars and abandoning her to the underwriters, may be compelled to remove the hull, as an obstruction to navigation, under Act Sept. 19, 1890, § 10. U. S. v. Hall (1894) 63 Fed. 472, 11 C. C. A. 294.

Where the war department has taken charge of the removal of a sunken wreck its jurisdiction is exclusive, and a city cannot be held negligent in failing to take action for its removal. McCaulley v. City of Philadelphia (1903) 119 Fed. 580, 56 C. C. A. 100, affirming decrees (D. C. 1900) 103 Fed. 661, and McCauley v. City of Philadelphia (D. C. 1902) 116 Fed. 438.

This section and the following set forth the procedure in cases where there has been an abandonment of a sunken craft, or where the government takes over the control of the sunken craft because of obstruction or danger to navigation. Lehigh & W. Coal Co. v. Hartford & N. Y. Transp. Co. (D. C. 1914) 220 Fed. 348.

Where congress appropriated money, to be expended under the secretary of war, for removal of a wreck, and the secretary of war contracted with a company to remove the wreck, the contractors could proceed with the work as against any persons employed by the owners, and the secretary of war could aid it with necessary force for removal of the obstruction. (1868) 12 Op. Atty. Gen. 494.

§ 9925. (Act March 3, 1899, c. 425, § 20, as amended, Act Feb. 20, 1900, c. 23, § 3, and Act June 13, 1902, c. 1079, § 12.) Destruction of vessels grounding, etc., specially endangering navigation; notice; expense of removal; reimbursement; appropriation; repeal.

Under emergency, in the case of any vessel, boat, water craft, or

raft, or other similar obstruction, sinking or grounding, or being unnecessarily delayed in any Government canal or lock, or in any navigable waters mentioned in section nineteen, in such manner as to stop, seriously interfere with, or specially endanger navigation, in the opinion of the Secretary of War, or any agent of the United States to whom the Secretary may delegate proper authority, the Secretary of War or any such agent shall have the right to take immediate possession of such boat, vessel, or other water craft, or raft, so far as to remove or to destroy it and to clear immediately the canal, lock, or navigable waters aforesaid of the obstruction thereby caused, using his best judgment to prevent any unnecessary injury; and no one shall interfere with or prevent such removal or destruction: Provided, That the officer or agent charged with the removal or destruction of an obstruction under this section may in his discretion give notice in writing to the owners of any such obstruction requiring them to remove it: And provided further, That the expense of removing any such obstruction as aforesaid shall be a charge against such craft and cargo; and if the owners thereof fail or refuse to reimburse the United States for such expense within thirty days after notification, then the officer or agent aforesaid may sell the craft or cargo, or any part thereof that may not have been destroyed in removal, and the proceeds of such sale shall be covered into the Treasury of the United States.

Such sum of money as may be necessary to execute this section and the preceding section of this Act is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be paid out on the requisition of the Secretary of War.

That all laws or parts of laws inconsistent with the foregoing sections nine to twenty, inclusive, of this Act are hereby repealed: Provided, That no action begun or right of action accrued prior to the passage of this Act shall be affected by this repeal: Provided further, That nothing contained in the said foregoing sections shall be construed as repealing, modifying, or in any manner affecting the provisions of an Act of Congress approved June twenty-ninth, eighteen hundred and eighty-eight, entitled "An Act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York City, by dumping or otherwise, and to punish and prevent such offenses," as amended by section three of the river and harbor Act of August eighteenth, eighteen hundred and ninety-four. (30 Stat. 1154. 31 Stat. 32. 32 Stat. 375.)

This section was part of the rivers and harbors appropriation act of 1899, cited above.

See notes to section 12 of this act, ante, § 9917.

The last paragraph of this section, as originally enacted, was as follows:

"That all laws or parts of laws inconsistent with the foregoing sections ten to twenty, inclusive, of this Act, are hereby repealed: Provided, That no action begun, or right of action accrued, prior to the passage of this act shall be affected by this repeal."

It was amended by Act Feb. 20, 1900, c. 23, § 3, cited above, by striking out, after the word "sections," the word "ten," and inserting in place thereof the word "nine."

It was further amended, by adding, at the end of the paragraph, the last proviso, to read as set forth here.

Act June 29, 1888, mentioned in the last proviso of this section, is set forth post, §§ 9933–9935, 9937, 9938.

See notes to Act Sept. 19, 1890, c. 907, § 11, ante, § 9922.

Notes of Decisions

Removal of vessels.—See § 9924, ante, and notes thereunder.

Where a vessel ran into a bank at the entrance to the West Neebish Channel, so as to completely obstruct navigation between the Lakes Superior and Huron, and the engineer officer of the government thereupon took immediate possession of the vessel under this section as orginally enacted, and employed a wrecking company to swing it from the channel, the vessel, on the

failure of the owners thereof to pay for this service, may be regarded as having been abandoned and forfeited to the United States. The subsequent action of the wrecking company in raising the vessel and removing it from the jurisdiction of the United States, and in refusing to turn it over to the war department, thus placing it beyond the power of the United States to enforce its lien, may not relieve the government of its responsibility to that company for the expense incurred by it in removing the vessel from the channel, but it would seem to justify the government in refusing to pay such claim unless the vessel is brought within the jurisdiction of the United States, so that it may be attached and sold for the benefit of all claimants, including the United States, according to their respective rights and priorities. The liens acquired by the wrecking company on the vessel are superior to that which the United States would have if it paid the company for removing the vessel. The authority of the secretary of war to pay the claims of the wrecking company, other than for the expenses incurred in removing the vessel from the channel. doubted. (1911) 28 Op. Atty. Gen. 626.

§ 9926. (Act March 3, 1905, c. 1482, § 4.) Regulations governing transportation and dumping into navigable waters, of dredgings, etc., and other refuse, authorized; violations of regulations made punishable; enforcement of regulations; exception of waters within any State used for cultivation of oysters.

The Secretary of War is hereby authorized and empowered to prescribe regulations to govern the transportation and dumping into any navigable water, or waters adjacent thereto, of dredgings, earth, garbage, and other refuse materials of every kind or description, whenever in his judgment such regulations are required in the interest of navigation. Such regulations shall be posted in conspicuous and appropriate places for the information of the public; and every person or corporation which shall violate the said regulations, or any of them, shall be deemed guilty of a misdemeanor and shall be subject to the penalties prescribed in section sixteen of the river and harbor Act of March third, eighteen hundred and ninety-nine, for violation of the provisions of section thirteen of the said Act: Provided, That any regulations made in pursuance hereof may be enforced as provided in section seventeen of the aforesaid Act of March third, eighteen hundred and ninety-nine, the provisions whereof are hereby made applicable to the said regulations: Provided further, That this section shall not apply to any waters within the jurisdictional boundaries of any State which are now or may hereafter be used for the cultivation of oysters under the laws of such State, except navigable channels which have been or may hereafter be improved by the United States, or to be designated as navigable channels by competent authority, and in making such improvements of channels, the material dredged shall not be deposited upon any ground in use in accordance with the laws of such State for the cultivation of oysters, except in compliance with said laws: And provided further, That any expense necessary in executing this section may be paid from funds available for the improvement of the harbor or waterway, for which regulations may be prescribed, and in case no such funds are available the said expense may be paid from appropriations made by Congress for examinations, surveys, and contingencies of rivers and harbors. (33 Stat. 1147.)

This section was part of the rivers and harbors appropriation act of 1905, cited above.

Act March 3, 1899, c. 425, §§ 13, 16, 17, mentioned in this section, are set forth ante, §§ 9918, 9921, 9922.

Notes of Decisions

Permit by secretary of war.—A letter from the secretary of war, informing persons that there is no objection on the part of that department to their dredging and boring wells for the purpose of developing petroleum in the Pacific Ocean, below low-water mark, provided the operations are conducted in such manner as not to produce shoals on the water front or otherwise interfere with navigation, and that, if formal permits to erect wharves and

trestles are desired, it will be necessary to furnish drawings showing plan and location of structures, constitutes no authority to the recipients to erect such obstructions in front of the land of a littoral proprietor, below ordinary high water, thereby interfering with his access to and use of the ocean highway. San Francisco Sav. Union v. R. G. R. Petroleum & Mining Co. (1904) 77 P. 828, 144 Cal. 134, 66 L. R. A. 242, 103 Am. St. Rep. 72.

Public nuisance.—Filling up the channels and harbors of a navigable river by the deposit of refuse therein is a public nuisance, which no length of time can legalize. City of Ogdensburg v. Lovejoy (N. Y. 1873) 2 Thomp. & C. 83; Id. (1874) 58 N. Y. 662.

§ 9927. (Act May 9, 1900, c. 387, § 1.) Floating timber in certain navigable waters authorized.

The prohibition contained in section fifteen of the river and harbor Act, approved March third, eighteen hundred and ninety-nine, against floating loose timber and logs, or sack rafts, so called, of timber and logs in streams or channels actually navigated by steamboats, shall not apply to any navigable river or waterway of the United States or any part thereof whereon the floating of loose timber and logs and sack rafts of timber and logs is the principal method of navigation. But such method of navigation on such river or waterway or part thereof shall be subject to the rules and regulations prescribed by the Secretary of War as hereinafter provided. (31 Stat. 172.)

This section and the three sections next following were an act entitled "An act authorizing the Secretary of War to make regulations governing the running of loose logs, steamboats, and rafts on certain rivers and streams."

Act March 3, 1899, c. 425, § 15, mentioned in this section, is set forth ante, § 9920.

Notes of Decisions

Construction in general.—See § 9920, ante, and notes thereunder. See, also, The Mary (D. C. 1903) 123 Fed. 609, 613.

Floating timber in absence of statute.—The public has a right to float logs on streams which in their natural state are capable of being so used. Heerman v. Beef Slough Mfg., Booming, Log-Driving & Transportation Co. (C. C. 1880) 1 Fed. 145; Bucki v. Cone (1889) 25 Fla. 1, 6 South. 160; Goodin's Ex'rs v. Kentucky Lumber Co. (1890) 90 Ky. 625, 14 S. W. 775; Wadsworth v. Smith (1834) 11 Me. (2 Fairf.) 278, 26 Am. Dec. 525; Brown v. Chadbourne (1849) 31 Me. 9, 1 Am. Rep. 641; Brown v. Black (1857) 43 Me. 443; Gerrish v. Brown (1863) 51 Me. 256, 81 Am. Dec. 569; Moore v. Sanborne (1853) 2 Mich. 519, 59 Am. Dec. 209; Thompson v. Androscoggin River Imp. Co. (1874) 54 N. H. 545; Carter v. Thurston (1877) 58 N. H. 104, 42 Am. Rep. 584; Collins v. Howard (1889) 65 N. H. 190, 18 Atl. 794; Connecticut River Lumber Co. v. Olcott Falls Co. (1889) 65 N. H. 290, 21 Atl. 1090, 13 L. R. A. 826; Morgan v. King (1866) 35 N. Y. 454, 91 Am. Dec. 58; Weise v. Smith (1869) 3 Or. 445, 8 Am. Rep. 621; Felger v. Robinson (1869) 3 Or. 455; Shaw v. Oswego Iron Co. (1882) 10 Or. 371, 45 Am. Rep. 146; Haines v. Hall (1888) 17 Or. 165, 20 Pac. 831; Stuart v. Clark's Lessee (1852) 32 Tenn. (2 Swan) 9, 58 Am. Dec. 49; Gaston v. Mace (1889) 33 W. Va. 14, 10 S. E. 60, 25 Am. St. Rep. 848, 5 L. R. A. 392; Whisler v. Wilkinson (1868) 22 Wis. 572; Sellers v. Union Lumbering Co. (1876) 39 Wis. 525; Olson v. Merrill (1877) 42 Wis. 203; Stevens Point Boom Co. v. Reilly (1878) 44 Wis. 295; Falls Mfg. Co. v. Oconto River Imp. Co. (1894) 87 Wis. 134, 58 N. W. 257. CONTRA, Munson v. Hungerford (N. Y. 1849) 6 Barb. 265; Curtis v. Keesler (N. Y. 1852) 14 Barb. 511.

Navigable streams are as much dedicated to the use of rafts as to the use of other vessels. Rafts are included in the general term "vessels." If the privilege of use be abused, the persons so abusing the use are liable for any damages they may occasion. The Marthinson (D. C. 1893) 58 Fed. 765; The Mary (D. C. 1903) 123 Fed. 609.

The use of the Chippewa river by the public as a highway for the transportation of logs and lumber is a right common to all, recognized and protected by the municipal law; and such right must continue so long as the public have any need of its exercise, unless changed or abrogated by the legislature of the state or by congress. Heerman v. Beef Slough Manufacturing, Booming, Log-Driving & Transportation Co. (C. C. 1880) 1 Fed. 145, 163; Id. (C. C. 1878) Fed. Cas. No. 6,320.

See, also, Butterfield v. Gilchrist (1884) 18 N. W. 542, 53 Mich. 22; Shaw v. Crawford (N. Y. 1813) 10 Johns. 236.

—— Manner of exercising right and liabilities and remedies.—See The Mary (C. C. 1903) 123 Fed. 609; Blackman v. Mauldin (Ala. 1909) 51 So. 23; Hen-

derson v. Doniphan Lumber Co. (Ark. 1910) 127 S. W. 459; Louisville & N. R. Co. v. Yarbrough (1909) 48 So. 634, 57 Fla. 101; Powell v. Springston Lumber Co. (Idaho, 1906) 88 P. 97; La Veine v. Stack-Gibbs Lumber Co. (Idaho, 1909) 104 P. 666; McGuire v. Post Falls Lumber & Mfg. Co. (1913) 131 P. 654, 23 Idaho, 608; Ireland v. Bowman & Cockrell (Ky. 1908) 113 S. W. 56 (rehearing denied [Ky. 1908] 114 S. W. 338); Pearson v. Rolfe (1884) 76 Me. 380; McPheters v. Moose River Log-Driving Co. (1886) 78 Me. 329, 5 A. 270; Foster v. Searsport Spool & Block Co. (1887) 79 Me. 508, 11 Atl. 273; Lorman v. Benson (1860) 8 Mich. 18, 77 Am. Dec. 435; Middleton v. Flat River Booming Co. (1873) 27 Mich. 533; Grand Rapids Booming Co. v. Jarvis (1874) 30 Mich. 308; Buchanan v. Grand River Log Co. (1882) 48 Mich. 364, 12 N. W. 490; Gifford v. McArthur (1885) 22 N. W. 28, 55 Mich. 535; Koopman v. Blodgett (1888) 38 N. W. 649, 70 Mich. 610, 14 Am. St. Rep. 527; Castner v. The Dr. Franklin (1858) 1 Minn. 73 (Gil. 51); Hayward v. Knapp (1877) 23 Minn. 430; Page v. Mille Lacs Lumber Co. (1893) 53 Minn. 492, 55 N. W. 608; Doucette v. Little Falls Imp. & Nav. Co. (1898) 73 N. W. 847, 71 Minn. 206; Kretzschmar v. Meehan (1898) 77 N. W. 41, 74 Minn. 211; Mandery v. Mississippi & Rum River Boom Co. (Minn. 1908) 116 N. W. 1027; Connecticut River Lumber Co. v. Olcott Falls Co. (1889) 65 N. H. 290, 21 Atl. 1090, 13 L. R. A. 826; Brewster v. J. & J. Rogers Co. (1901) 62 N. E. 164, 169 N. Y. 73, 58 L. R. A. 495 (affirming judgment [1899] 59 N. Y. S. 32, 42 App. Div. 343); Taylor v. Norfolk & C. R. Co. (1902) 42 S. E. 464, 131 N. C. 50; Hallock v. Suitor (1900) 60 P. 384, 37 Or. 9; Trullinger v. Howe (Or. 1909) 99 P. 880 (modifying decree on rehearing [Or. 1908] 97 P. 548); Pursell v. Stover (1885) 110 Pa. 43, 20 Atl. 403; Miller v. State (Tenn. 1911) 137 S. W. 760; Orange Lumber Co. v. Thompson (Tex. Civ. App. 1908) 113 S. W. 563; Watkinson v. McCoy (1900) 63 P. 245, 23 Wash. 372; Matthews v. Belfast Mfg. Co. (1904) 77 P. 1046, 35 Wash. 662; Mitchell v. Lea Lumber Co. (1906) 86 P. 405, 43 Wash. 195, 9 L. R. A. (N. S.) 900; State v. Superior Court of Lewis County (Wash. 1910) 110 P. 1017; Pickens v. Coal River Boom & Timber Co. (1902) 41 S. E. 400, 51 W. Va. 445, 90 Am. St. Rep. 819; Harrington v. Edwards (1863) 17 Wis. 586, 86 Am. Dec. 768.

§ 9928. (Act May 9, 1900, c. 387, § 2.) Regulations authorized; publication; violation; penalty.

The Secretary of War shall have power, and he is hereby authorized and directed, within the shortest practicable time after the passage hereof, to prescribe rules and regulations, which he may at any time modify, to govern and regulate the floating of loose timber and logs, and sack rafts, (so called) of timber and logs and other methods of navigation on the streams and waterways, or any thereof, of the character, as to navigation, in section one hereof described. The said rules and regulations shall be so framed as to equitably adjust conflicting interests between the different methods or forms of navigation; and the said rules and regulations shall be published at least once in such newspaper or newspapers of general circulation as in the opinion of the Secretary of War shall be best adapted to give notice of said rules and regulations to persons affected thereby and locally interested therein. And all modifications of said rules and regulations shall be similarly published. And such rules and regulations when so prescribed and published as to any such stream or waterway shall have the force of law, and any violation thereof shall be a misdemeanor, and every person convicted of such violation shall be punished by a fine of not exceeding two thousand five hundred dollars nor less than five hundred dollars, or by imprisonment (in case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court: Provided, That the proper action to enforce the provisions of this section may be commenced before any commissioner, judge, or court of the United States, and such commissioner, judge or court shall proceed in respect thereto as authorized by law in the case of crimes or misdemeanors committed against the United States. (31 Stat. 172.)

Notes of Decisions

Construction in general.—Rules promulgated under this section are in aid of navigation and not for the protection of the owners of the banks of the rivers. Johnson v. Irvine Lumber Co. (Wash. 1914) 140 Pac. 577.

See The Mary (D. C. 1903) 123 Fed. 609, defining sack rafts.

§ 9929. (Act May 9, 1900, c. 387, § 3.) Reservation of power to alter, amend, or repeal act.

The right to alter, amend, or repeal this Act at any time is hereby reserved. (31 Stat. 172.)

§ 9930. (Act May 9, 1900, c. 387, § 4.) Pending actions not affected by act.

This Act shall not, nor shall any rules or regulations prescribed thereunder, in any manner affect any civil action or actions heretofore commenced and now pending to recover damages claimed to have been sustained by reason of the violation of any of the terms of said section fifteen, as originally enacted, or in violation of any other law. (31 Stat. 172.)

See notes to section 1 of this act, ante, § 9927.

§ 9931. (Act March 3, 1909, c. 264, § 5.) South and Southwest Passes of Mississippi River; regulations of navigation; violation of regulation a misdemeanor; punishment.

That the Secretary of War be, and is hereby, authorized to make such rules and regulations for the navigation of the South and Southwest passes of the Mississippi River as to him shall seem necessary or expedient for the purpose of preventing any obstruction to the channels through said South and Southwest passes and any injury to the works therein constructed. The term "South and Southwest passes," as herein employed, shall be construed as embracing the entire extent of channel, in each case, between the upper ends of the works at the head of the pass and the outer or sea ends of the jetties at the entrance from the Gulf of Mexico; and any willful violation of any rule or regulation made by the Secretary of War in pursuance of this Act shall be deemed a misdemeanor, for which the owner or owners, agent or agents, master or pilot of the vessel so offending shall be separately or collectively responsible, and on conviction thereof shall be punished by a fine of not less than one hundred dollars, nor exceeding five hundred dollars, or by imprisonment for not exceeding three months, or by both fine and imprisonment, at the discretion of the court. (35 Stat. 818.)

These provisions were part of section 5 of the river and harbor appropriation act of 1909, cited above.

These provisions superseded previous similar provisions relating to the navigation of the South Pass only, contained in Act Aug. 11, 1888, c. 860, § 5, 25 Stat. 424, amended by Act Sept. 19, 1890, c. 907, § 3, 26 Stat. 452.

Notes of Decisions

Constitutionality of statute.—Act Aug. 11, 1888, c. 860, § 5 (superseded by this section), is not invalid as conferring legislative authority on the secretary of war, as he is only authorized to make the rules, and it is the act of congress which declares the violation to be a misdemeanor. U. S. v. Breen (C. C. 1889) 40 Fed. 402.

§ 9932. (Act March 4, 1913, c. 144, § 1.) Rules for navigation of Ambrose Channel.

Improving New York Harbor, New York: * * and the Secretary of War is hereby authorized to make such rules and regulations for the navigation of Ambrose Channel after the completion of its improvement as he may deem necessary or expedient to insure its safe use in all kinds of weather, night and day, for all vessels under control and running under their own power, and to this end he may, in his discretion, forbid its use to tows of every description and to sailing vessels. (37 Stat. 803.)

These provisions were part of section 1 of the river and harbor appropriation act of 1913, cited above.

§ 9933. (Act June 29, 1888, c. 496, § 1.) Depositing refuse in New York Harbor prohibited; penalty.

The placing, discharging, or depositing, by any process or in any

manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden, and every such act is made a misdemeanor, and every person engaged in or who shall aid, abet, authorize, or instigate a violation of this section, shall, upon conviction, be punishable by fine or imprisonment, or both, such fine to be not less than two hundred and fifty dollars nor more than two thousand five hundred dollars, and the imprisonment to be not less than thirty days nor more than one year, either or both united, as the judge before whom conviction is obtained shall decide, one half of said fine to be paid to the person or persons giving information which shall lead to conviction of this misdemeanor. (25 Stat. 209.)

This was the first section of an act entitled "An act to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York City, by dumping or otherwise, and to punish and prevent such offenses."

Sections 2–5 of the act are set forth post, §§ 9934, 9935, 9937, 9938.

Section 6 of the act made an appropriation to carry out the provisions thereof. It is omitted, as temporary merely.

Provisions permitting and regulating obstruction to navigation by the city of New York were made by Act June 25, 1910, c. 436, post, §§ 9939, 9940.

The anchorage of vessels in the port of New York was regulated by Act May 16, 1888, c. 257, post, §§ 9947, 9948.

Fishing or dredging for shell fish in the New York Harbor channels, or interfering with the safe navigation of the same, was punishable by Act Aug. 18, 1894, c. 299, § 2, post, § 9941.

Appropriations for prevention of obstructive and injurious deposits within New York harbor and adjacent waters were made by recent sundry civil appropriation acts. The appropriations for the fiscal year 1917 were by Act July 1, 1916, c. 209, 39 Stat. 292.

Notes of Decisions

Validity of act.—See § 9935, post, and notes thereunder.

New York Harbor Act, incorporated into this section and §§ 9934, 9935, 9937, 9938, post, does not unlawfully delegate any portion of the power of congress over navigation and commerce. The act, in effect, provides that scows shall be dumped only at the place or places indicated by the supervisor, and makes disobedience of his orders an offense, and is a valid exercise of police power to protect waterways from obstructive and injurious deposits. U. S. v. Romard (C. C. 1898) 89 Fed. 156.

Act June 29, 1888, as amended by Act Aug. 18, 1894 (embodied in this section and sections 9934, 9935, 9937, 9938, post), is valid, both under the police power and under the admiralty jurisdiction. U. S. v. Various Tugs and Scows (D. C. 1915) 225 Fed. 505.

See Randall v. U. S. (1901) 107 Fed. 935, 47 C. C. A. 80, where the court affirmed a conviction under instructions, among others, that the necessities of commerce required the protection and preservation of the harbor, and that the act was constitutional.

Harbor or adjacent or tributary waters within statute.—The purpose of the act is to prevent dumping, where it will injure the harbor. Deposits not injuriously affecting the harbor are not prohibited. The G. L. Garlic (D. C. 1891) 45 Fed. 380.

The bodies of water referred to are the harbor of New York, waters adjacent and waters tributary to the harbor, and Long Island Sound, and the statute covers, not only the harbor proper, but also waterways by which commerce reaches that harbor, and it covers all such waterways as are tidal. U. S. v. The Sadie (C. C. 1890) 41 Fed. 396. See U. S. v. The Sadie (D. C. 1890) 41 Fed. 823, discussing the scope of the statute.

The harbor and adjacent waters of New York City do not extend to the waters of the Hudson river as far distant from New York Harbor as Troy, Albany, and New Baltimore. "Tributary waters" covers only such parts of the Hudson as can be regarded as connected with the harbor. (1889) 19 Op. Atty. Gen. 317.

Power of officers to prevent deposit of ballast.—Neither the Secretary of War nor supervisor of the harbor of New York has power to prevent the deposit of ballast in New York Harbor at a distance of more than three miles from the shore at low-water mark. (1892) 20 Op. Atty. Gen. 293.

Order prescribing limits for deposit of refuse.—See § 9935, post, and notes thereunder.

The statutory power to fix the limits of a prohibited area should be executed with reasonable definiteness, and according to the statutory intention. U. S. v. The Sadie (D. C. 1890) 41 Fed. 823.

An order issued by an officer designated to act as supervisor, providing that the deposits of refuse mud, sand, and dredging must take place east of a certain meridian of longitude, and south of a certain parallel of latitude, prescribed the limits within which such matter might be deposited. U. S. v. The Sadie (C. C. 1890) 41 Fed. 396.

An order that deposits must be made east of meridian 73° 55′ 56″ W., and south of parallel 40° 31′ N., is void for indefiniteness, and, further, because the supervisor exceeded his powers, in that his prohibition extends by implication to all tributary waters, and waters of Lond Island Sound, which are north of the designated parallel, and yet are not waters of the harbor of New York. U. S. v. The Sadie (D. C. 1890) 41 Fed. 823.

An order that the depositing of such refuse, etc., "must take place east of meridian 73° 55′ 56″ W. (which passes through the Scotland lightship) and south of parallel 40° 31′ N.," must be so construed as to allow dumping at all points east of the named meridian, or south of the named parallel, and not to confine it to points that are both east of the meridian and south of the parallel. The G. L. Garlic (D. C. 1891) 45 Fed. 380.

A permit, prescribing that the deposit be made in not less than 15 fathoms of water, to the southward and eastward of Sandy Hook lightship, or at the "Mud Buoy" at any time during ebb tide, except the last hour, is sufficiently definite. U. S. v. Romard (C. C. 1898) 89 Fed. 156.

A permit to dump not less than four miles east southeast of Scotland light ship excludes by implication dumping within New York harbor and its adjacent or tributary waters, and thus defines the precise limits. U. S. v. Various Tugs and Scows (D. C. 1915) 225 Fed. 505.

Offenses.—See § 9935, post, and notes thereunder.

A violation of this section is not an infamous crime. Ansbro v. U. S. (1895) 16 Sup. Ct. 187, 159 U. S. 695, 40 L. Ed. 310.

An offense is not committed until refuse is dumped in some prohibited place, and such place fixes the locus of the crime and the venue for its prosecution. U. S. v. Newark Meadows Imp. Co. (C. C. 1909) 173 Fed. 426.

The depositing of refuse mud or sand in the channel of the Hudson river at a point 60 miles from the harbor of New York is a violation. U. S. v. The Sadie (C. C. 1890) 41 Fed. 396.

Where one of the boats used in dumping refuse in New York harbor is innocent, the other may be held primarily liable, and a vessel whose owner and master are neither at fault may be subject to the penalty. U. S. v. Various Tugs and Scows (D. C. 1915) 225 Fed. 505.

All parties are liable, but there is but one wrongful act and but one penalty in amount to be imposed. Id.

Punishment.—A person convicted cannot be sentenced to imprisonment in a penitentiary. Ansbro v. U. S. (1895) 16 Sup. Ct. 187, 188, 159 U. S. 695, 40 L. Ed. 310.

Discontinuance of suit for fine or penalty.—The Secretary of Commerce and Labor has no authority to direct the discontinuance of a suit for the recovery of a fine or penalty imposed for a violation of the New York Harbor act (incorporated in this section and §§ 9934, 9935, 9937, 9938, post), nor did the Secretary of the Treasury have such power prior to the taking effect of Act Feb. 14, 1903 (incorporated in § 859, ante), creating the Department of Commerce and Labor. (1904) 25 Op. Atty. Gen. 220.

§ 9934. (Act June 29, 1888, c. 496, § 2.) Liability of master, etc., of vessel towing scow, boat, etc., loaded with prohibited matter.

Any and every master and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel, who shall knowingly engage in towing any scow, boat, or vessel loaded with any such prohibited matter to any point or place of deposit, or discharge in the waters of the harbor of New York, or in its adjacent, or tributary waters, or in those of Long Island Sound, or to any point or place elsewhere than within the limits defined and permitted by the supervisor of the harbor hereinafter mentioned, shall be deemed guilty of a violation of this act, and shall, upon conviction, be punishable as hereinbefore provided for offenses in violation of section

one of this act, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. (25 Stat. 209.)

Notes of Decisions

Offenses and liability therefor.—See notes under § 9933, ante, and §§ 9935, 9937, post.

§ 9935. (Act June 29, 1888, c. 496, § 3, as amended, Act Aug. 18, 1894, c. 299, § 3, and Act May 28, 1908, c. 212, § 8.) Designation of dumping grounds; permits; making deposits at other places; penalty; scows or boats to have names, etc., painted thereon; to be equipped with life lines, etc.; lists of names of men employed; penalty for failure to comply with provisions; appointment of inspectors, etc., and powers and duties of supervisor of harbor, inspectors, etc., for enforcement of act; bribery; penalty; return of permits; penalty for violation of provisions.

In all cases of receiving on board of any scows or boats such forbidden matter or substance as herein described, the owner or master, or person acting in such capacity on board of such scows or boats, before proceeding to take or tow the same to the place of deposit, shall apply for and obtain from the supervisor of the harbor appointed hereunder a permit defining the precise limits within which the discharge of such scows or boats may be made; and it shall not be lawful for the owner or master, or person acting in such capacity, of any tug or towboat to tow or move any scow or boat so loaded with such forbidden matter until such permit shall have been obtained; and every person violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than one thousand nor less than five hundred dollars, and in addition thereto the master of any tug or towboat so offending shall have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted.

And any deviation from such dumping or discharging place specified in such permit shall be a misdemeanor, and the owner and master, or person acting in the capacity of master, of any scows or boats dumping or discharging such forbidden matter in any place other than that specified in such permit shall be liable to punishment therefor as provided in section one of the said Act of June twenty-ninth, eighteen hundred and eighty-eight; and the owner and master, or person acting in the capacity of master, of any tug or towboat towing such scows or boats shall be liable to equal punishment with the owner and master, or person acting in the capacity of master, of the scows or boats; and, further, every scowman or other employee on board of both scows and towboats shall be deemed to have knowledge of the place of dumping specified in such permit, and the owners and masters, or persons acting in the capacity of masters, shall be liable to punishment, as aforesaid, for any unlawful dumping, within the meaning of this Act or of the said Act of June twenty-ninth, eighteen hundred and eighty-eight, which may be caused by the negligence or ignorance of such scowman or other employee; and, further, neither defect in machinery nor avoidable accidents to scows or towboats, nor unfavorable weather, nor improper handling or moving of scows or boats of any kind whatsoever shall operate to release the owners and master and employees of scows and towboats from the penalties hereinbefore mentioned.

Every scow or boat engaged in the transportation of dredgings, earth, sand, mud, cellar dirt, garbage, or other offensive material of any description shall have its name or number and owner's name paint-

ed in letters and numbers at least fourteen inches long on both sides of the scow or boat; these names and numbers shall be kept distinctly legible at all times, and no scow or boat not so marked shall be used to transport or dump any such material. Each such scow or boat shall be equipped at all times with a life line or rope extending at least the length of and three feet above the deck thereof, such rope to be attached to the coaming thereof, also with a life-preserver and a life buoy for each person on board thereof, also with anchor to weigh not less than two hundred and seventy-five pounds, and at least one hundred feet of cable attached thereto; a list of the names of all men employed on any such scow or boat shall be kept by the owner or master thereof and the said list shall be open to the inspection of all parties. Failure to comply with any of the foregoing provisions shall render the owner of such scow or boat liable upon conviction thereof to a penalty of not more than five hundred dollars.

The supervisor of the harbor of New York, designated as provided in section five of the said Act of June twenty-ninth, eighteen hundred and eighty-eight, is authorized and directed to appoint inspectors and deputy inspectors, and, for the purpose of enforcing the provisions of this Act and of the Act aforesaid, and of detecting and bringing to punishment offenders against the same, the said supervisor of the harbor, and the inspectors and deputy inspectors so appointed by him, shall have power and authority:

First. To arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by this section and by the Act of June twenty-ninth, eighteen hundred and eighty-eight, aforesaid, or who may violate any of the provisions of the same: Provided, That no person shall be arrested without process for any offense not committed in the presence of the supervisor or his inspectors or deputy inspectors, or either of them: And provided further, That whenever any such arrest is made the person or persons so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States.

Second. To go on board of any scow or towboat engaged in unlawful dumping of prohibited material, or in moving the same without a permit, as required in this section of this Act, or otherwise violating any of the provisions of this section of this Act, and to seize and hold said boats until they are discharged by action of the commissioner, judge, or court of the United States before whom the offending persons are brought.

Third. To arrest and take into custody any witness or witnesses to such unlawful dumping of prohibited material, the said witnesses to be released under proper bonds.

Fourth. To go on board of any towboat having in tow scows or boats loaded with such prohibited material, and accompany the same to the place of dumping, whenever such action appears to be necessary to secure compliance with the requirements of this Act and of the Act aforesaid.

Fifth. To enter gas and oil works and all other manufacturing works for the purpose of discovering the disposition made of sludge, acid, or other injurious material, whenever there is good reason to believe that such sludge, acid, or other injurious material is allowed to run into the tidal waters of the harbor in violation of section one of the aforesaid Act of June twenty-ninth, eighteen hundred and eighty-eight.

Every person who, directly or indirectly, gives any sum of money or other bribe, present, or reward, or makes any offer of the same to

any inspector, deputy inspector, or other employee of the office of the supervisor of the harbor with intent to influence such inspector, deputy inspector, or other employee to permit or overlook any violation of the provisions of this section or of the said Act of June twenty-ninth, eighteen hundred and eighty-eight, shall, on conviction thereof, be fined not less than five hundred dollars nor more than one thousand dollars, and be imprisoned not less than six months nor more than one year.

Every permit issued in accordance with the provisions of this section of this Act, which may not be taken up by an inspector or deputy inspector, shall be returned within four days after issuance to the office of the supervisor of the harbor; such permit shall bear an indorsement by the master of the towboat, or the person acting in such capacity, stating whether the permit has been used, and, if so, the time and place of dumping. Any person violating the provisions of this section shall be liable to a fine of not more than five hundred dollars nor less than one hundred dollars. (25 Stat. 209. 28 Stat. 360. 35 Stat. 426.)

See notes to section 1 of this act, ante, § 9933.

This section, as originally enacted, was as follows:

"In all cases of receiving on board of any scows or boats such forbidden matter or substance as herein described, it shall be the duty of the owner or master, or person acting in such capacity, on board of such scows or boats, before proceeding to take or tow the same to the place of deposit, to apply for and obtain from the supervisor of the harbor appointed hereunder a permit defining the precise limits within which the discharge of such scows or boats may be made; and any deviation from such dumping or discharging place specified in such permit shall be a misdemeanor within the meaning of this act; and the master and engineer, or person or persons acting in such capacity, on board of any tow-boat towing such scows or boats, shall be equally guilty of such offense with the master or person acting in the capacity of master of the scow, and be liable to equal punishment."

It was amended by Act Aug. 18, 1894, c. 229, § 3, cited above, to read as follows:

"In all cases of receiving on board of any scows or boats such forbidden matter or substance as herein described, the owner or master, or person acting in such capacity on board of such scows or boats, before proceeding to take or tow the same to the place of deposit, shall apply for and obtain from the supervisor of the harbor appointed hereunder a permit defining the precise limits within which the discharge of such scows or boats may be made; and it shall not be lawful for the owner or master, or person acting in such capacity, of any tug or towboat to tow or move any scow or boat so loaded with such forbidden matter until such permit shall have been obtained; and every person violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than one thousand nor less than five hundred dollars, and in addition thereto the master of any tug or towboat so offending shall have his license revoked, or suspended for a term to be fixed by the judge before whom tried and convicted. And any deviation from such dumping or discharging place specified in such permit shall be a misdemeanor, and the owner and master, or person acting in the capacity of master, of any scows or boats dumping or discharging such forbidden matter in any place other than that specified in such permit shall be liable to punishment therefor as provided in section one of the said Act of June twenty-ninth, eighteen hundred and eighty-eight; and the owner and master, or person acting in the capacity of master, of any tug or towboat towing such scows or boats shall be liable to equal punishment with the owner and master, or person acting in the capacity of master, of the scows or boats; and, further, every scowman or other employee on board of both scows and towboats shall be deemed to have knowledge of the place of dumping specified in such permit, and the owners and masters, or persons acting in the capacity of masters, shall be liable to punishment, as aforesaid, for any unlawful dumping, within the meaning of this Act or of the said Act of June twenty-ninth, eighteen hundred and eighty-eight, which may be caused by the negligence or ignorance of such scowman or other employee; and, further, neither defect in machinery nor avoidable accidents to scows or towboats, nor unfavorable weather, nor improper handling or moving of scows or boats of any kind whatsoever, shall operate to release the owners and masters and employees of scows and towboats from the penalties hereinbefore mentioned. Every scow or boat engaged in the transportation of dredgings, earth, sand, mud, cellar dirt, garbage, or other offensive material of any description shall have its name or number

and owner's name painted in letters and numbers at least fourteen inches long on both sides of the scow or boat; these names and numbers shall be kept distinctly legible at all times, and no scow or boat not so marked shall be used to transport or dump any such material. The supervisor of the harbor of New York, designated as provided in section five of the said Act of June twenty-ninth, eighteen hundred and eighty-eight, is authorized and directed to appoint inspectors and deputy inspectors, and, for the purpose of enforcing the provisions of this Act and of the Act aforesaid, and of detecting and bringing to punishment offenders against the same, the said supervisor of the harbor, and the inspectors and deputy inspectors so appointed by him, shall have power and authority: First. To arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by this section and by the Act of June twenty-ninth, eighteen hundred and eighty-eight, aforesaid, or who may violate any of the provisions of the same: Provided, That no person shall be arrested without process for any offense not committed in the presence of the supervisor or his inspectors or deputy inspectors, or either of them: And provided further, That whenever any such arrest is made the person or persons so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States. Second. To go on board of any scow or towboat engaged in unlawful dumping of prohibited material, or in moving the same without a permit as required in this section of this Act, and to seize and hold said boats until they are discharged by action of the commissioner, judge, or court of the United States before whom the offending persons are brought. Third. To arrest and take into custody any witness or witnesses to such unlawful dumping of prohibited material, the said witnesses to be released under proper bonds. Fourth. To go on board of any towboat having in tow scows or boats loaded with such prohibited material, and accompany the same to the place of dumping, whenever such action appears to be necessary to secure compliance with the requirements of this Act and of the Act aforesaid. Fifth. To enter gas and oil works and all other manufacturing works for the purpose of discovering the disposition made of sludge, acid, or other injurious material, whenever there is good reason to believe that such sludge, acid, or other injurious material is allowed to run into the tidal waters of the harbor in violation of section one of the aforesaid Act of June twenty-ninth, eighteen hundred and eighty-eight. Every person who, directly or indirectly, gives any sum of money or other bribe, present, or reward or makes any offer of the same to any inspector, deputy inspector, or other employee of the office of the supervisor of the harbor with intent to influence such inspector, deputy inspector, or other employee to permit or overlook any violation of the provisions of this section or of the said Act of June twenty-ninth, eighteen hundred and eighty-eight, shall, on conviction thereof, be fined not less than five hundred dollars nor more than one thousand dollars, and be imprisoned not less than six months nor more than one year. Every permit issued in accordance with the provisions of this section of this Act which may not be taken up by an inspector or deputy inspector shall be returned within forty-eight hours after issuance to the office of the supervisor of the harbor; such permit shall bear an indorsement by the master of the towboat, or the person acting in such capacity, stating whether the permit has been used, and if so the time and place of dumping. Any person violating the provisions of this section shall be liable to a fine of not more than five hundred dollars nor less than one hundred dollars."

Said amended section was further amended by Act May 28, 1908, c. 212, § 8, also cited above, to read as set forth here.

Said section was subsequently amended as to the requirements in regard to life lines, etc., and the painting of names, etc., on scows or boats, by Act Feb. 16, 1909, c. 132, post, § 9936.

Recent sundry civil appropriation acts made appropriations for inspectors and deputy inspectors. The appropriations for the fiscal year 1917 were made by Act July 1, 1916, c. 209, § 1, 39 Stat. 292.

Notes of Decisions

Validity of statute.—See § 9933, ante, and notes thereunder.

The act, prior to amendment by Act 1908, c. 212, § 8, is not unconstitutional because it makes the master of a tugboat criminally liable for the forbidden acts of his associates in the course of their general undertaking, though he may be innocent of criminal intent, since the maxim that crime proceeds from a criminal mind does not apply to statutory offenses. Jaycox v. U. S. (1901) 107 Fed. 938, 47 C. C. A. 83.

This section is valid, both under the police power and under the admiralty jurisdiction. U. S. v. Various Tugs and Scows (D. C. 1915) 225 Fed. 505.

Offenses.—See § 9933, ante, and notes thereunder.

The clause "neither defects in machinery, nor avoidable accidents to

scows or tugboats, nor unfavorable weather, nor improper handling or moving of scows or boats of any kind whatsoever, shall operate to release the owners and masters," in this section prior to amendment by Act 1908, c. 212, § 8, by implication absolves masters of towboats and scows from criminal responsibility for violations caused by unavoidable accidents, but not from those caused by negligence or ignorance of the employés of the scows. Jaycox v. U. S. (1901) 107 Fed. 938, 47 C. C. A. 83.

Under this section, prior to amendment by Act 1908, c. 212, § 8, providing that the master of the towboat, or person acting as such, depositing such matter shall be liable to equal punishment "with the master of the scows for dumping prohibited matter in any place other than that specified in the permit," the fact that the master of a towboat engaged in towing scows laden with refuse was asleep when a forbidden act was committed would not relieve him from liability. Id.

A violation held a misdemeanor. Id.

An offense is not committed until refuse is dumped in some prohibited place, and such place fixes the locus of the crime and the venue for its prosecution. U. S. v. Newark Meadows Imp. Co. (C. C. 1909) 173 Fed. 426.

Where one of the boats used in dumping refuse in New York harbor is innocent, the other may be held primarily liable, and a vessel whose owner and master are neither at fault may be subject to the penalty. U. S. v. Various Tugs and Scows (D. C. 1915) 225 Fed. 505.

All parties are liable, but there is but one wrongful act and but one penalty in amount to be imposed. Id.

Penalties imposed for dumping refuse in tidal waters of New York Harbor. Id.

Criminal prosecutions—Indictment.—Where an indictment is against several defendants, who, it is alleged aided and abetted in the act of dumping, a motion to dismiss as to each defendant on the ground that they were improperly joined is properly overruled, since, the act being a misdemeanor, all were principals, and the indictment consequently charged a joint offense. Jaycox v. U. S. (1901) 107 Fed. 938, 47 C. C. A. 83.

An indictment which charged that M., being the owner, and R., being the master, of a steamer, "did unlawfully dump," and "aid and abet in the dumping" of, refuse matter "into the tidal waters of the harbor of New York, and the waters adjacent thereto"; the place being "at the Southern district of New York, within the admiralty and maritime jurisdiction of the United States, and within the jurisdiction of this court," charged an offense within sections 9918, 9921, ante, as well as within this section, and hence the court would not consider whether the earlier acts were repealed by the act of 1899. U. S. v. Moran (C. C. 1901) 113 Fed. 172.

—— **Venue.**—An offense is not committed until refuse is dumped in some prohibited place, and such place fixes the locus of the crime and the venue for its prosecution. U. S. v. Newark Meadows Imp. Co. (C. C. 1909) 173 Fed. 426.

—— **Defenses.**—Defective machinery means machinery unsuited for the purpose, and does not refer to a sudden breaking down of properly installed and inspected machinery, so that the dumping of a recently overhauled scow because the pawl suddenly broke will be penalized. U. S. v. Various Tugs and Scows (D. C. 1915) 225 Fed. 505.

A breeze, gradually increasing to a gale, was not sufficiently sudden to excuse the master of a tug and the master of the scows from getting to safe anchorage before the necessity of dumping to save the scowman's life on account of the heavy seas, and the negligence was inexcusable, and subjected the tug and scow to a penalty. Id.

The only defense in case of machinery is an accident which was unavoidable and neither the breaking of a part not shown to have been inspected, though there was a general inspection, by reason of which a scow dumped a part of her load, nor the breaking of a link in a chain shown to have been sound, and which was therefore insufficient for the load put on it, is sufficient to sustain the defense. The J. Rich Steers (1915) 228 Fed. 319, 142 C. C. A. 611.

—— **Instructions.**—An instruction on issue whether deviation was caused by an unavoidable accident, due to the stress of weather, all the cargo not having been dumped at the specified place, that the question was whether the weather was so unfavorable that life and property would have been jeopardized in attempting to complete the dump at the specified place, did not so construe the act prior to amendment by Act 1908, c. 212, § 8, as to require a conviction, though perils of the sea required a deviation, so as to render the statute so unjust as to violate the principles of natural justice. Randall v. U. S. (1901) 107 Fed. 935, 47 C. C. A. 80.

—— **Questions for jury.**—Whether a deviation was caused by an unavoidable accident, due to the stress of weather, held for the jury. Randall v. U. S. (1901) 107 Fed. 935, 47 C. C. A. 80.

§ 9936. (Act Feb. 16, 1909, c. 132.) Requirements as to life lines, etc., not to apply to certain scows or boats; place where names, etc., to be painted on such scows or boats.

The requirements in regard to life line or rope contained in section eight of the Act approved May twenty-eighth, nineteen hundred and eight (being chapter two hundred and twelve of the Statutes at Large, first session Sixtieth Congress) entitled "An Act to amend the laws relating to navigation, and for other purposes," shall not apply to any scow or boat the deck outside the coaming or rail of which shall not exceed one foot in width. On any such scow or boat its name or number and owner's name painted in letters and numbers, at least fourteen inches long on both ends of such scow or boat, shall be a compliance with the provisions of the said section in regard to name, number, and owner's name. (35 Stat. 623.)

This was an act entitled as an act to amend section 8 of Act May 28, 1908, which is mentioned also in the last of the act set forth.

Said section 8 amended Act June 29, 1888, c. 496, § 3, and is incorporated in said section as set forth ante, § 9935.

§ 9937. (Act June 29, 1888, c. 496, § 4.) Disposition of dredged matter; penalty.

All mud, dirt, sand, dredgings, and material of every kind and description whatever taken, dredged, or excavated from any slip, basin, or shoal in the harbor of New York, or the waters adjacent or tributary thereto, and placed on any boat, scow, or vessel for the purpose of being taken or towed upon the waters of the harbor of New York to a place of deposit, shall be deposited and discharged at such place or within such limits as shall be defined and specified by the supervisor of the harbor, as in the third section of this act prescribed, and not otherwise. Every person, firm, or corporation being the owner of any slip, basin, or shoal, from which such mud, dirt, sand, dredgings, and material shall be taken, dredged, or excavated, and every person, firm, or corporation in any manner engaged in the work of dredging or excavating any such slip, basin, or shoal, or of removing such mud, dirt, sand, or dredgings therefrom, shall severally be responsible for the deposit and discharge of all such mud, dirt, sand, or dredgings at such place or within such limits so defined and prescribed by said supervisor of the harbor; and for every violation of the provisions of this section the person offending shall be guilty of an offense against this act, and shall be punished by a fine equal to the sum of five dollars for every cubic yard of mud, dirt, sand, dredgings, or material not deposited or discharged as required by this section. Any boat or vessel used or employed in violating any provision of this act, shall be liable to the pecuniary penalties imposed thereby, and may be proceeded against, summarily by way of libel in any district court of the United States, having jurisdiction thereof. (25 Stat. 210.)

See notes to section 1 of this act, ante, § 9933.

Notes of Decisions

Construction in general.—A penal statute is to be construed strictly, especially where a liability is imposed upon persons who may be in no way at fault. U. S. v. Various Tugs and Scows (D. C. 1915) 225 Fed. 505.

Where an employé on board a steamship threw overboard a single scuttle of ashes in a place prohibited by statute, and there was no proof of orders by any one in authority, the steamship was not used or employed in violation of the law, in the sense of the statute, and was not liable in rem to the penalties therein prescribed. U. S. v The Anjer Head (D. C. 1890) 46 Fed. 664.

A steamship from which ashes are dumped in an unlawful place, by firemen presumably acting under orders from some superior officer, is liable as having herself violated the law. U. S. v. The Bombay (D. C. 1891) 46 Fed. 665.

"Person offending" and "used or employed" defined. U. S. v. The Emperor (D. C. 1892) 49 Fed. 751.

A tug which had no other connection

with a violation than that of towing the offending scow is not used or employed in such violation. The J. Rich Steers (1915) 228 Fed. 319, 142 C. C. A. 611.

Authority to discontinue suit for penalty.—The head of the department in charge of the subject has no authority to direct the discontinuance of a suit for the penalty. (1904) 25 Op. Atty. Gen. 220.

"Vessel" defined.—The word "vessel" does not relate to vessels in the sense contemplated by post, §§ 10130, 10131, 10135, authorizing the remission of fines, penalties, and forfeitures by the Secretary of the Treasury. (1904) 25 Op. Atty. Gen. 220.

§ 9938. (Act June 29, 1888, c. 496, § 5.) Supervisor of harbor.

A line officer of the Navy shall be designated by the President of the United States as supervisor of the harbor, to act under the direction of the Secretary of War in enforcing the provisions of this act, and in detecting offenders against the same. This officer shall receive the sea-pay of his grade, and shall have personal charge and supervision under the Secretary of War, and shall direct the patrol boats and other means to detect and bring to punishment offenders against the provisions of this act. (25 Stat. 210.)

See notes to section 1 of this act, ante, § 9933.

The supervisor of the harbor of New York was authorized to appoint inspectors by section 3 of this act, as amended by Act Aug. 18, 1894, c. 299, § 3, and Act May 28, 1908, c. 212, § 8, incorporated into said section, ante, § 9935.

§ 9939. (Act June 25, 1910, c. 436, § 1.) Consent to obstruction by city of New York of navigation of river, etc., within limits of city; location and plans for proposed works to be approved; liability of city for damages.

The consent of Congress is hereby given to the city of New York, in the State of New York, to obstruct navigation of any river or other waterway which does not form a connecting link between other navigable waters of the United States, and lying wholly within the limits of said city, by closing all or any portion of the same or by building structures in or over the same when the said city shall be lawfully authorized to do so by the State of New York: Provided, however, That any such obstruction shall be unlawful unless the location and plans for the proposed work or works before the commencement thereof shall have been filed with and approved by the Secretary of War and Chief of Engineers; and when the plans for any such obstruction have been approved by the Chief of Engineers and by the Secretary of War it shall not be lawful to deviate from such plans either before or after the completion of such obstruction, unless the modification of such plans has previously been submitted to and received the approval of the Chief of Engineers and the Secretary of War: And provided further, That the city of New York shall be liable for any damage that may be inflicted upon private property by reason of any of the provisions of this Act. (36 Stat. 866.)

This section and the section next following were an act entitled "An act to confer upon the City of New York the power to obstruct certain navigable waters wholly within its limits."

Notes of Decisions

Construction of statute.—Discretion is vested in the War Department for approving obstructions. And this act makes it possible for defendants in a suit by the United States to compel the removal of a bridge over a stream to apply to the United States for authority to retain the structure, but does not relieve the court of the necessity of a decision of the issues presented. U. S. v. President, etc., Jamaica & R. Turnpike Road (C. C. 1910) 183 Fed. 598, reversed (1913) 204 Fed. 759, 123 C. C. A. 128.

§ 9940. (Act June 25, 1910, c. 436, § 2.) Reservation of right to amend or repeal act, without liability incurred by United States therefor.

The right to alter, amend, or repeal this Act is hereby expressly

reserved, and the United States shall incur no liability for the alteration, amendment, or repeal thereof to the city of New York, or to the owner or owners, or any other persons interested in any obstruction which shall have been constructed under its provisions. (36 Stat. 867.)

§ 9941. (Act Aug. 18, 1894, c. 299, § 2.) Fishing, etc., for shell fish in New York Harbor channels prohibited; penalty; arrests; process; proceedings.

It shall be unlawful for any person or persons to engage in fishing or dredging for shell fish in any of the channels leading to and from the harbor of New York, or to interfere in any way with the safe navigation of those channels by ocean steamships and ships of deep draft.

Any person or persons violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine or imprisonment, or both, such fine to be not more than two hundred and fifty dollars nor less than fifty dollars, and the imprisonment to be not more than six months nor less than thirty days, either or both united, as the judge before whom conviction is obtained shall decide.

It shall be the duty of the United States Supervisor of the harbor to enforce this Act, and the deputy inspectors of the said supervisor shall have authority to arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by this Act: Provided, That no person shall be arrested without process for any offense not committed in the presence of the supervisor or his inspector or deputy inspectors, or either of them: And provided further, That whenever any such arrest is made the person or persons so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge or court shall proceed in respect thereto as authorized by law in case of crimes against the United States. (28 Stat. 360.)

This section was part of the rivers and harbors appropriation act of 1894, cited above.

The anchorage of vessels in the port of New York was regulated by Act May 16, 1888, c. 257, post, §§ 9947, 9948, and the depositing of refuse in the harbor of New York was made punishable by Act June 29, 1888, c. 496, ante, §§ 9933–9935, 9937.

Provisions for the appointment of supervisor of harbor were contained in Act June 29, 1888, c. 496, § 5, ante, § 9938.

§ 9942. (Act May 19, 1896, c. 208, § 1.) Deposit of refuse, etc., in Potomac River prohibited.

It shall be unlawful for any owner or occupant of any wharf or dock, any master or captain of any vessel, or any person or persons to cast, throw, drop, or deposit any ballast, dirt, oyster shells, or ashes in the water in any part of the Potomac River or its tributaries in the District of Columbia, or on the shores of said river below high-water mark, unless for the purpose of making a wharf, after permission has been obtained from the Commissioners of the District of Columbia for that purpose, which wharf shall be sufficiently inclosed and secured so as to prevent injury to navigation. (29 Stat. 126.)

This section and the three sections next following were an act entitled "An act to establish certain harbor regulations for the District of Columbia."

The anchorage of vessels in the Potomac River was regulated by Act March 2, 1895, c. 172, post, §§ 9952, 9953, chapter "Anchorage Regulations."

Provisions for the determination of harbor lines were made by Act March 3, 1899, c. 458, § 3, ante, § 3366, and by Act July 25, 1912, c. 253, § 1, ante, § 9913.

§ 9943. (Act May 19, 1896, c. 208, § 2.) Deposit of offal prohibited.

It shall be unlawful for any owner or occupant of any wharf or dock, any captain or master of any vessel, or any other person or persons to cast, throw, deposit, or drop in any dock or in the waters of the Potomac River or its tributaries in the District of Columbia any dead fish, fish offal, dead animals of any kind, condemned oysters in the shell, watermelons, cantaloupes, vegetables, fruits, shavings, hay, straw, ice, snow, filth, or trash of any kind whatsoever. (29 Stat. 126.)

§ 9944. (Act May 19, 1896, c. 208, § 3.) Violation of act; penalty.

Any person or persons violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and on conviction thereof in the police court of the District of Columbia shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding six months, or by both such punishments, in the discretion of the court. (29 Stat. 126.)

§ 9945. (Act May 19, 1896, c. 208, § 4.) Improvements by Government unaffected.

Nothing in this Act contained shall be construed to interfere with the work of improvement in or along the said river and harbor, under the supervision of the United States Government. (29 Stat. 126.)

Notes of Decisions

Property of the United States.—The United States is the owner of the submerged land and the bed of navigable part of the Potomac river within the original limits of the District of Columbia. And the submerged area along the water front of the Potomac River just below Alexandria, Va., if filled with material dredged from the river, will remain the property of the United States up to the present high-water mark. (1910) 28 Op. Atty. Gen. 366.

§ 9946. (Act June 23, 1910, c. 359.) Throwing, discharging, etc., refuse matter into Lake Michigan, at certain places, unlawful; exceptions; violation of provisions a misdemeanor; punishment.

It shall not be lawful to throw, discharge, dump, or deposit, or cause, suffer, or procure, to be thrown, discharged, dumped, or deposited, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state into Lake Michigan, at any point opposite or in front of the county of Cook, in the State of Illinois, or the county of Lake in the State of Indiana, within eight miles from the shore of said lake, unless said material shall be placed inside of a breakwater so arranged as not to permit the escape of such refuse material into the body of the lake and cause contamination thereof; and no officer of the Government shall dump or cause or authorize to be dumped any material contrary to the provisions of this Act: Provided, however, That the provisions of this Act shall not apply to work in connection with the construction, repair, and protection of breakwaters and other structures built in aid of navigation, or for the purpose of obtaining water supply. Any person violating any provision of this Act shall be guilty of a misdemeanor, and on conviction thereof shall be fined for each offense not exceeding one thousand dollars. (36 Stat. 593.)

This was an act entitled "An act to prevent the dumping of refuse material in Lake Michigan at or near Chicago."

CHAPTER D

Anchorage Regulations

This chapter includes provisions for the establishment and use of anchorage grounds for vessels in ports and rivers.

Sec.
9947. Establishing and regulating anchorage grounds in the port of New York authorized.
9948. Violation of rules; penalty.
9949. Extension of act authorizing anchorage regulations for the port of New York.
9950. Establishing and regulating anchorage grounds in the port of Chicago authorized.
9951. Violation of rules; penalty.
9952. Anchorage regulations in Potomac River; occupancy of canals; removal of sunken vessels; movement of vessels at wharves.
9953. Performance of duties of harbor master by pilot of police boat; violation of instructions; penalty.
9954. Regulations of movements and anchorage of vessels, etc., in Saint Marys River, authorized; detail of revenue cutters.
9955. Duties and powers of officers of Revenue-Cutter Service.
9956. Violation of rules; penalty.
9957. Establishing and regulating anchorage grounds in Kennebec River authorized.
9958. Violation of rules; penalty.
9959. Regulations of Pearl Harbor Territory of Hawaii.
9959a. Establishment of anchorage grounds in harbors, rivers, bays, and other navigable waters; regulations, and enforcement thereof; penalty for violations of regulations, and seizure of and proceedings against vessel therefor.

§ 9947. (Act May 16, 1888, c. 257, § 1.) Establishing and regulating anchorage grounds in the port of New York authorized.

The [Secretary of the Treasury] is authorized, empowered, and directed to define and establish an anchorage ground for vessels in the bay and harbor of New York, and in the Hudson and East Rivers, to adopt suitable rules and regulations in relation thereto, and to take all necessary measures for the proper enforcement of such rules and regulations. (25 Stat. 151.)

This section and the section next following were part of an act entitled "An act to regulate the anchorage of vessels in the port of New York."

Section 3 of the act provided that the act should take effect immediately.

The words "Secretary of the Treasury," inclosed in brackets in this section and section 2 of the act, were superseded by the creation of the Department of Commerce, with a Secretary of Commerce as the head thereof, and the transfer of the duties and powers imposed by this section on the Secretary of the Treasury to the Secretary of Commerce, by Act Feb. 14, 1903, c. 552, §§ 4, 10, ante, §§ 857, 859.

The provisions of this act were extended to the waters of Kill von Kull, Newark Bay, Arthur Kill, and Raritan Bay, by Act March 3, 1899, c. 424, § 1, post, § 9949.

The depositing of refuse and other matter in the harbor of New York was punishable by Act June 29, 1888, c. 496, ante, §§ 9933–9935, 9937, 9938, and fishing or dredging for shell fish in the New York Harbor channels was made punishable by Act Aug. 18, 1894, c. 299, § 2, ante, § 9941.

Subsequent provisions for establishment of anchorage grounds and for the adoption and enforcement of regulations thereof, were made by Act March 4, 1915, c. 142, § 7, post, § 9959a.

Navigation rules for the Red River of the North and rivers emptying into the Gulf of Mexico and their tributaries are set forth, ante, §§ 7942–7974; for the Great Lakes and their connecting and tributary waters as far east as Montreal, ante, §§ 7910–7941; and for all other harbors, rivers and inland waters of the United States, ante, §§ 7872–7909.

Notes of Decisions

Application and construction in general.—While permission by the superintendent of anchorages in New York Harbor for a derrick to lie alongside a steamer stranded in a frequented channel for the purpose of discharging her cargo relieved the derrick of fault as obstructing navigation, it did not give her all the privileges of a vessel at anchor in anchorage grounds; but she

took the risk of injury by collision with vessels navigating with care and skill. Merritt & Chapman Derrick & Wrecking Co. v. Cornell Steamboat Co. (1911) 185 Fed. 261, 107 C. C. A. 367, affirming decree (D. C. 1909) 174 Fed. 716, and writ of certiorari denied (1911) 31 Sup. Ct. 720, 220 U. S. 617, 55 L. Ed. 611.

The anchoring of a derrick in the East river, for the purpose of raising a sunken vessel, is not unlawful, even though it constitutes a very considerable obstruction to navigation, but in such position the derrick is not entitled to all the immunities, in respect to dangers of collision, of vessels anchored on anchorage grounds. The Chauncey M. Depew (D. C. 1894) 59 Fed. 791.

While an exclusive use of anchorage grounds is not allowed to anchoring vessels so as to exclude other vessels necessarily going over the grounds as from wharves which would not otherwise be available, nevertheless it is not intended that such waters may be used with the same freedom as unrestricted waters, but that vessels shall keep clear of the grounds so as not to collide with vessels properly anchored there, nor embarrass those properly using the waters for purposes of navigation in connection with anchoring. Both of these classes of vessels have a prior right to the use of such waters over those not necessarily there. The Merrill C. Hart (D. C. 1908) 162 Fed. 371, decree affirmed (1911) 188 Fed. 49, 110 C. C. A. 187.

Vessels passing quarantine anchorage in New York Harbor are required to exercise the same high degree of care as though passing down a narrow channel in front of slips from which other vessels are likely to emerge. The Atkins Hughes (D. C. 1912) 199 Fed. 938.

See La Bourgogne (1898) 86 Fed. 475, 30 C. C. A. 203; The James D. Leary v. The Evelyn (1902) 113 Fed. 1019, 51 C. C. A. 620 (affirming decree The James D. Leary [D. C. 1900] 110 Fed. 685), affirmed (1902) 113 Fed. 1019, 51 C. C. A. 620; The Newburgh (1904) 130 Fed. 321, 64 C. C. A. 567 (reversing decree [D. C. 1903] 124 Fed. 954); Lind v. Pennsylvania R. Co. (1905) 139 Fed. 233, 71 C. C. A. 359; Baxter v. International Contracting Co. (D. C. 1894) 65 Fed. 250; The A. P. Skidmore (D. C. 1901) 108 Fed. 972; The El Cid (D. C. 1903) 124 Fed. 1009; The Idlewild (D. C. 1904) 129 Fed. 846; Foley v. McKeever (1900) 67 N. Y. Supp. 559, 56 App. Div. 517.

Establishment of areas of forbidden anchorage.—There is no general authority under existing law conferred on any executive department to establish areas of "forbidden anchorage" in the harbors of the United States. (1907) 26 Op. Atty. Gen. 258.

Authority of department of commerce.—Matters arising under this section have been transferred by ante, §§ 857, 859, to the department of commerce. (1903) 25 Op. Atty. Gen. 37.

§ 9948. (Act May 16, 1888, c. 257, § 2.) Violation of rules; penalty.

In the event of the violation of any such rules or regulations by the owner, master, or person in charge of any vessel, such owner, master, or person in charge of such vessel shall be liable to a penalty of one hundred dollars, and the said vessel may be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel for the recovery of the same in any United States district court for the district within which such vessel may be, and in the name of the officer designated by the [Secretary of the Treasury]. (25 Stat. 151.)

See notes to preceding section.

Notes of Decisions

Authority of department of commerce.—Matters arising under this section have been transferred by ante, §§ 857, 859, to the department of commerce. (1903) 25 Op. Atty. Gen. 37.

Penalty, liability for.—Under authority given by the treasury department to a wrecking company to go at once to the assistance of wrecks, but requiring them to apply, immediately after they begin work, for the proper permit, two wrecking derricks which went to the assistance of a steamer sunk in the middle of the Harlem river, and made fast to her, being drifted with her with the tide until the following morning, when they towed her out of the channel, cannot be subjected to the penalty imposed by this section for anchoring outside of anchorage ground, it appearing that they applied for the required permit on the same day they went to the wreck, and that it was issued within 24 hours, even if the statute be construed as applying to anchoring for the purpose of wrecking operations. The Monarch (D. C. 1898) 89 Fed. 875. See The Russia (D. C. 1869) Fed. Cas. No. 12,168, holding that a general regulation of the harbor masters forbidding vessels to anchor in a certain spot will be held to have been waived where no

notice was given to remove. See, also, The Chauncey M. Depew (D. C. 1894) 59 Fed. 791, for a case in which the court expressed doubt as whether the anchoring of a derrick to raise a wreck is within this statute.

A vessel anchored outside the established anchorage limits in a harbor has the burden of proving that her position could not have contributed to a nearby collision between other vessels. The Vera (D. C. 1912, 1914) 224 Fed. 998, judgment affirmed (1915) 226 Fed. 369, 141 C. C. A. 199.

§ 9949. (Act March 3, 1899, c. 424, § 1.) Extension of act authorizing anchorage regulations for the port of New York.

The Act of May sixteenth, eighteen hundred and eighty-eight, relating to anchorage of vessels in the port of New York, is hereby extended to include the waters of Kill von Kull, Newark Bay, Arthur Kill, and Raritan Bay. (30 Stat. 1081.)

This was a provision following an appropriation for salaries and expenses of the officers and employés of the Revenue-Cutter Service in the sundry civil appropriation act for the fiscal year 1900, cited above.

Act May 16, 1888, c. 257, mentioned in this provision, is set forth ante, §§ 9947, 9948.

§ 9950. (Act Feb. 6, 1893, c. 64, § 1.) Establishing and regulating anchorage grounds in the port of Chicago authorized.

That the [Secretary of the Treasury] be authorized and directed to define and establish anchorage grounds for vessels in the harbors of Chicago, and waters of Lake Michigan adjacent thereto, to adopt suitable rules and regulations in relation to the same, and also to adopt suitable rules and regulations governing the use of marked inshore channels in Lake Michigan in front of the city of Chicago, and to take all necessary measures for the proper enforcement of such rules and regulations. (27 Stat. 431.)

This section and the section next following were an act entitled "An act relating to the anchorage and movement of vessels in the Port of Chicago."

The words "Secretary of the Treasury," inclosed in brackets in this section and the section next following, were superseded by the creation of the Department of Commerce, with a Secretary of Commerce as the head thereof, and the transfer of the duties and powers imposed by this section on the Secretary of the Treasury to the Secretary of Commerce, by Act Feb. 14, 1903, c. 552, §§ 4, 10, ante, §§ 857, 859.

Subsequent provisions for the establishment of anchorage grounds and for the adoption and enforcement of regulations thereof were made by Act March 4, 1915, c. 142, § 7, post, § 9959a.

Notes of Decisions

Authority of department of commerce.—Matters arising under this section have been transferred by ante, §§ 857, 859, to the department of commerce. (1903) 25 Op. Atty. Gen. 37.

§ 9951. (Act Feb. 6, 1893, c. 64, § 2.) Violation of rules; penalty.

In the event of the violation of any such rules or regulations by the owner, master, or person in charge of any vessel, such owner, master, or person in charge of such vessel shall be liable to a penalty of one hundred dollars, and the said vessel may be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel for the recovery of the same in any United States district court for the district within which such vessel may be, and in the name of the officer designated by the [Secretary of the Treasury]. (27 Stat. 431.)

See notes to section 1 of this act, ante, § 9950.

Notes of Decisions

Authority of department of commerce.—Matters arising under this section have been transferred by ante, §§ 857, 859, to the department of commerce. (1903) 25 Op. Atty. Gen. 37.

§ 9952. (Act March 2, 1895, c. 172, § 1.) Anchorage regulations in Potomac River; occupancy of canals; removal of sunken vessels; movement of vessels at wharves.

Every vessel coming to anchor in the Potomac River between the

junction of the Washington and Georgetown channels of said river and the extension of the south line of P street southwest, in the city of Washington, shall anchor as near the flats in said river as possible; so that the channel of said river will not be obstructed; and if such vessel is to remain over twelve hours it shall be moored with both anchors, so as to give room for passing vessels and so as not to swing and obstruct said channel. No vessel shall be permitted to anchor in the Washington channel of the Potomac River between the extended lines of P or K streets south. Vessels coming to anchor above the line of K street south, aforesaid, shall come to anchor as near the flats as possible and so that the channel will not be obstructed; and all vessels coming to anchor shall be so moored by the use of both anchors as to prevent obstruction of the channel within four hundred feet of the nearest wharf, the said anchorage to continue only twenty-four hours, unless otherwise ordered or directed by the harbor master. No vessel shall be permitted to lie in Seventeenth Street Canal, New Jersey Avenue Canal, or James Creek Canal, or at the entrance thereof, so as to obstruct the passage of any vessel going into or out of the same or moving from one place to another therein, unless such obstructing vessel is actually engaged in loading or unloading, and shall then, if deemed expedient by the harbor master, be removed to such place as shall be necessary to give room to passing vessels. Any captain or owner of, or anyone in charge of, any barge, sand scow, or any vessel that may sink in said canals, shall raise and remove the same in five days. Any vessels at the end of wharves or in docks shall, when required by the harbor master, haul either way to accommodate vessels going in or coming out from such wharves or docks. They shall not occupy regular steamers' or sailing packets' berths without permission from the recognized occupants of such wharves and docks. And they are required to rig in all fore-and-aft spars, have boats hoisted up under the bow, and davits turned up, as the harbor master may direct. Vessels when not engaged in loading or discharging cargo shall give place to such vessels as are ready to receive or deliver freights. And if the captain or person in charge of any vessel refuse to move said vessel when notified by the occupant of the wharf at which she is lying, the harbor master shall order him to haul to some other berth, or into the stream. (28 Stat. 740.)

This section and the section next following were part of an act entitled "An Act to establish harbor regulations for the District of Columbia."

Section 3 of the act repealed all acts or parts of acts inconsistent therewith.

Provisions authorizing the determination of harbor lines of the District of Columbia were made by Act March 3, 1899, c. 458, § 3, ante, § 3366, and by Act July 25, 1912, c. 253, § 1, ante, § 9913.

Subsequent provisions for establishment of anchorage grounds and for the adoption and enforcement of regulations thereof were made by Act March 4, 1915, c. 142, § 7, post, § 9959a.

§ 9953. (Act March 2, 1895, c. 172, § 2.) Performance of duties of harbor master by pilot of police boat; violation of instructions; penalty.

The powers and authority herein conferred upon the harbor master may, in his absence or temporary disability, be exercised by the pilot of the harbor police boat. Any person refusing to obey the instructions of the harbor master, or, in case of his absence or temporary disability, the said pilot of the harbor police boat, or any person failing to comply with any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and on conviction thereof in the police court of the District of Columbia shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding six months, or by both such punishments, in the discretion of the court. (28 Stat. 740.)

§ 9954. (Act March 6, 1896, c. 49, § 1, as amended, Act April 26, 1906, c. 1874, § 1.) Regulations of movements and anchorage of vessels, etc., in Saint Marys River, authorized; detail of revenue cutters.

That the Secretary of Commerce [and Labor] be, and he hereby is, authorized and directed to adopt and prescribe suitable rules and regulations governing the movements and anchorage of vessels and rafts in Saint Marys River from Point Iroquois, on Lake Superior, to Point Detour, on Lake Huron, and for the purpose of enforcing the observance of such regulations the Secretary of the Treasury is hereby authorized to detail one or more revenue cutters for duty upon the request of the Secretary of Commerce [and Labor] on said river. (29 Stat. 54. 34 Stat. 136.)

This section and the two sections next following were an act entitled "An Act relating to the anchorage and movements of vessels in Saint Marys River."

This section, as originally enacted, was as follows:

"That the Secretary of the Treasury be, and he hereby is, authorized and directed to adopt and prescribe suitable rules and regulations governing the movements and anchorage of vessels and rafts in Saint Marys River, from Point Iroquois, on Lake Superior, to Point Detour, on Lake Huron, and for the purpose of enforcing the observance of such regulations the said Secretary is hereby authorized to detail one or more revenue cutters for duty on said river."

It was amended by Act April 26, 1906, c. 1874, § 1, cited above, to read as set forth here.

The words "and Labor," inclosed in brackets in this section, were superseded by the creation of the Department of Labor and the change of the designations of the Department of Commerce and Labor, and of the Secretary thereof, to the Department of Commerce and the Secretary of Commerce, by Act March 4, 1913, c. 141, § 1, ante, § 932.

Subsequent provisions for the establishment of anchorage grounds and for the adoption and enforcement of regulations thereof were made by Act March 4, 1915, c. 142, § 7, post, § 9959a.

Notes of Decisions

Operation of statute in general.—This section does not take all the waters on the American side of the boundary line out of the provisions of the treaty by which it was found to be a part of Lake Huron, nor change the character of the water from a lake into a river, the term "St. Mary's river," being used for convenience in designating the waters between the two points mentioned for the purposes of navigation. Ainsworth v. Munoskong Hunting & Fishing Club (1909) 123 N. W. 802, 159 Mich. 61, 16 Detroit Leg. N. 768.

Authority of department of commerce.—Matters arising under this section and sections 9955, 9956, post, have been transferred by ante, §§ 857, 859, to the department of commerce. (1903) 25 Op. Atty. Gen. 37.

Rules governing navigation.—Under the rules supplementary to the statutory rules, and which govern the right of an overtaking vessel to pass another, such vessel is not absolutely prohibited from passing because the vessel ahead fails to assent to her signal, but she may persist in passing provided the place is one where such passing is permitted, and she can safely pass without exceeding the lawful speed, but not otherwise. The North Star (1907) 151 Fed. 168, 80 C. C. A. 536. See The North Star (D. C. 1901) 108 Fed. 436, holding that, under special rule 5, which requires an overtaking steamer desiring to pass, at any place where that is permitted, to signal, and the forward vessel to answer such signal, either assenting or dissenting, such agreement by signals is essential to authorize the overtaking vessel to attempt passing, and she is not justified in taking the failure of the forward vessel to answer her signal as an assent to the passing, and in acting upon it as such. The special rules governing navigation in St. Mary's river, approved by this section and post, §§ 9955, 9956, take precedence of all general rules, where they apply, while, as to matters not covered by them, the general rules for navigation on the Great Lakes, embodied in the White Law of February 8, 1895 (ante, § 7910, et seq.), and those promulgated pursuant to its provisions, govern. These statutory rules are mandatory, and evidence of prior usages and customs cannot justify their violation, but a vessel which disregards them must show, in case of collision, that their violation not only did not, but could not, contribute to the disaster.

Cited without definite application. The North Star (1907) 151 Fed. 168, 80 C. C. A. 536.

§ 9955. (Act March 6, 1896, c. 49, § 2.) Duties and powers of officers of Revenue-Cutter Service.

All officers of the Revenue-Cutter Service who are directed to enforce the regulations prescribed by the above rules are hereby empowered and directed, in case of necessity, or when a proper notice has been disregarded, to use the force at their command to remove from channels or stop any vessel found violating the prescribed rules. (29 Stat. 55.)

See notes to preceding section.

Subsequent provisions creating the Coast Guard, by combining therein the existing Life-Saving Service and Revenue-Cutter Service, were made by Act Jan. 28, 1915, c. 20, ante, § 8459½a.

Notes of Decisions

Rules governing navigation and authority of department of commerce.—
See notes under § 9954, ante.

§ 9956. (Act March 6, 1896, c. 49, § 3, as amended, Act April 26, 1906, c. 1874, § 2.) Violation of rules; penalty.

In the event of the violation of any such regulations or rules of the Secretary of Commerce [and Labor] by the owners, master, or person in charge of such vessel, such owners, masters, or person in charge shall be liable to a penalty not exceeding two hundred dollars: Provided, That the Secretary of Commerce [and Labor] may remit said fine on such terms as he may prescribe: Provided also, That nothing in this Act shall be construed to amend or repeal the Act entitled "An Act to regulate navigation on the Great Lakes and their connecting and tributary waters as far east as Montreal," approved February eighth, eighteen hundred and ninety-five. (29 Stat. 55. 34 Stat. 136.)

This section, as originally enacted, was as follows:

"In the event of the violation of any such regulations or rules of the Secretary of the Treasury by the owners, master, or person in charge of such vessel, such owners, master, or person in charge shall be liable to a penalty of two hundred dollars, and the vessel, its tackle, apparel, furniture, and cargo, at any time used or employed in violation of such regulations, shall be forfeited to the United States: Provided, That the Secretary of the Treasury may remit said fine or release said vessel on such terms as he may prescribe: Provided also, That nothing in this Act shall be construed to amend or repeal the Act entitled 'An Act to regulate navigation on the Great Lakes and connecting tributary waters as far east as Montreal.' "

It was amended by Act April 26, 1906, c. 1874, § 2, cited above, to read as set forth here.

The words "and Labor," inclosed in brackets in this section, were superseded by the creation of the Department of Labor and the change of the designations of the Department of Commerce and Labor, and of the Secretary thereof, to the Department of Commerce and the Secretary of Commerce, by Act March 4, 1913, c. 141, § 1, ante, § 932.

Act Feb. 8, 1895, c. 64, mentioned in this section, establishing rules for preventing collisions on the Great Lakes and their connecting and tributary waters as far east as Montreal, is set forth ante, §§ 7910–7941.

Notes of Decisions

Rules governing navigation and authority of department of commerce.—
See notes under § 9954, ante.

§ 9957. (Act June 6, 1900, c. 819, § 1.) Establishing and regulating anchorage grounds in Kennebec River authorized.

The [Secretary of the Treasury] is authorized, empowered, and directed to define and establish an anchorage ground for vessels in Kennebec River at or near Bath, Maine, to adopt suitable rules and regulations in relation thereto, and to take all necessary measures for the proper enforcement of such rules and regulations. (31 Stat. 682.)

This section and the section next following were part of an act entitled "An act relating to the anchorage of vessels in the Kennebec River at or near Bath, Maine."

Section 3 of the act provided that the act should take effect immediately.

The words "Secretary of the Treasury," inclosed in brackets in this section and the section next following, were superseded by the creation of the Department of Commerce, with a Secretary of Commerce as the head thereof, and the transfer of the duties and powers imposed by this section on the Secretary of the Treasury to the Secretary of Commerce, by Act Feb. 14, 1903, c. 552, §§ 4, 10, ante, §§ 857, 859.

Subsequent provisions for the establishment of anchorage grounds and for the adoption and enforcement of regulations thereof were made by Act March 4, 1915, c. 142, § 7, post, § 9959a.

Notes of Decisions

Authority of department of commerce.—Matters arising under this section have been transferred by ante, §§ 857, 859, to the department of commerce. (1903) 25 Op. Atty. Gen. 37.

§ 9958. (Act June 6, 1900, c. 819, § 2.) Violation of rules; penalty.

In the event of the violation of any such rules or regulations by the owner, master, or person in charge of any vessel, such owner, master, or person in charge of such vessel shall be liable to a penalty of one hundred dollars; and the said vessel may be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel for the recovery of the same in any United States district court for the district within which said vessel may be, and in the name of the officer designated by the [Secretary of the Treasury]. (31 Stat. 682.)

See notes to preceding section.

Notes of Decisions

Authority of department of commerce.—Matters arising under this section have been transferred by ante, §§ 857, 859, to the department of commerce. (1903) 25 Op. Atty. Gen. 37.

§ 9959. (Act Aug. 22, 1912, c. 335, § 1.) Regulations of Pearl Harbor, Territory of Hawaii.

For the proper control, protection, and defense of the naval station, harbor, and entrance channel at Pearl Harbor, Territory of Hawaii, the Secretary of the Navy is hereby authorized, empowered, and directed to adopt and prescribe suitable rules and regulations governing the navigation, movement, and anchorage of vessels of whatsoever character in the waters of Pearl Harbor, island of Oahu, Hawaiian Islands, and in the entrance channel to said harbor, and to take all necessary measures for the proper enforcement of such rules and regulations. (37 Stat. 341.)

This was a provision of the naval appropriation act for the fiscal year 1913, cited above.

Subsequent provisions for the establishment of anchorage grounds and for the adoption and enforcement of regulations thereof were made by Act March 4, 1915, c. 142, § 7, post, § 9959a.

§ 9959a. (Act March 4, 1915, c. 142, § 7.) Establishment of anchorage grounds in harbors, rivers, bays, and other navigable waters; regulations, and enforcement thereof; penalty for violations of regulations, and seizure of and proceedings against vessel therefor.

The Secretary of War is hereby authorized, empowered, and directed to define and establish anchorage grounds for vessels in all harbors, rivers, bays, and other navigable waters of the United States whenever it is manifest to the said Secretary that the maritime or commercial interests of the United States require such anchorage grounds for safe navigation and the establishment of such anchorage grounds shall have been recommended by the Chief of Engineers, and to adopt suitable rules and regulations in relation thereto; and such rules and regulations shall be enforced by the

Revenue-Cutter Service under the direction of the Secretary of the Treasury: Provided, That at ports or places where there is no revenue cutter available such rules and regulations may be enforced by the Chief of Engineers under the direction of the Secretary of War. In the event of the violation of any such rules and regulations by the owner, master, or person in charge of any vessel, such owner, master, or person in charge of such vessel shall be liable to a penalty of $100; and the said vessel may be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel for the recovery of the same in any United States district court for the district within which such vessel may be and in the name of the officer designated by the Secretary of War. (38 Stat. 1053.)

This was a section of the rivers and harbors appropriation act of 1915, cited above.

General provisions for revenue-cutters and boats were made by the Revised Statutes and subsequent acts, and are set forth ante, Title LV A, Chapter 2.

Provisions creating the Coast Guard, by combining therein the existing Life-Saving Service and the Revenue-Cutter Service, were made by Act Jan. 28, 1915, c. 20, ante, § 8459½a.

CHAPTER E

Bridges over Navigable Waters

This chapter includes provisions regulating the construction, maintenance, and operation of bridges over navigable waters, principally the General Bridge Act of March 23, 1906, c. 1130, with previous provisions relating to the subject which may remain in force.

Sec.
9960. Maquoketa River.
9961. Bridges over navigable waters not to be built until plans, etc., approved; plans not to be deviated from unless modification approved.
9962. Bridges built in accordance with act to be lawful structures and post routes; privileges, as to use thereof, of United States, and of telegraph and telephone companies.
9963. Privileges as to use of railroad bridges by other railroad companies; compensation therefor.
9964. Obstructions to navigation by bridges; alterations and removal of obstructions; lights and other signals; draws; tolls.
9965. Failure to comply with orders under act, and violations of act, punishable; penalty; removal of bridge, etc., and proceedings therefor.
9966. Limit of time for commencement and for completion of bridge.
9967. Word "persons" defined.
9968. Reservation of right to amend or repeal act, without liability incurred by United States therefor.
9969. Obstruction to navigation by bridges; construction of aids to navigation; failure to construct, etc.; liability.
9970. Obstruction to navigation by bridges; notice to alter; penalty on failure to alter; appeal to Supreme Court.
9971. Construction of bridges, etc., over navigable waters; approval of plans.
9972. Construction of bridges over Illinois and Mississippi Canal; approval of plans; right of way, etc.
9973. Regulations for drawbridges over navigable waters; violation of rules; penalty.
9974. Expenses of investigations, etc., by Engineer Department; funds from which to be paid.
9975. Deflection of currents by piers, etc.; complaints; investigations; liability.

§ 9960. (R. S. § 5250.) Maquoketa River.

The assent of Congress is given to the construction of bridges across the Maquoketa River, within the State of Iowa, with or without draws, as may be provided by the laws of that State.

Res. July 13, 1868, No. 55, § 1, 15 Stat. 257.

Authority to construct bridges over a part of the Iowa River was granted by R. S. § 5248, and by Act Aug. 18, 1894, c. 299, § 1, ante, §§ 9840, 9841.

General provisions regulating the construction of bridges over navigable waters were made by the Bridge Act of March 23, 1906, c. 1130, post, §§ 9961–9968.

§ 9961. (Act March 23, 1906, c. 1130, § 1.) Bridges over navigable waters not to be built until plans, etc., approved; plans not to be deviated from unless modification approved.

When, hereafter, authority is granted by Congress to any persons to construct and maintain a bridge across or over any of the navigable waters of the United States, such bridge shall not be built or commenced until the plans and specifications for its construction, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of War and Chief of Engineers for their approval, nor until they shall have approved such plans and specifications and the location of such bridge and accessory works; and when the plans for any bridge to be constructed under the provisions of this Act have been approved by the Chief of Engineers and by the Secretary of War it shall not be lawful to deviate from such plans, either before or after completion of the structure, unless the modification of such plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War. (34 Stat. 84.)

This section and the seven sections next following were the Bridge Act of March 23, 1906, c. 1130, entitled "An act to regulate the construction of bridges over navigable waters."

Provisions previous to this act, requiring the consent of Congress and the approval of plans, etc., before construction of bridges over navigable waters, were made by Act March 3, 1899, c. 425, § 9, post, § 9971.

Provisions previous to this act, relating to bridges as obstructions to navigation, for the construction of aids to the passage of draw-openings, etc., and for the alteration of such bridges to render navigation free, etc., were made by Act July 5, 1884, c. 229, § 8, and Act March 3, 1899, c. 425, § 18, post, §§ 9969, 9970.

Notes of Decisions

Power of congress.—See § 9910, ante, and notes thereunder, and § 9971, post, and notes thereunder.

Duty and authority of secretary of war.—See notes under § 9971, post.

The Secretary of War would not be prohibited from approving the plan and location of a bridge across boundary waters if acts of authorization were passed by the legislatures of the states interested. (1899) 22 Op. Atty. Gen. 332.

Necessity of statutory authority for construction of bridges.—See § 9971, post, and notes thereunder.

Construction of bridge act in general.—Bridge Act March 23, 1906 (this section and post, §§ 9962–9968), relates only to bridges the construction of which was authorized since its enactment. State v. White River Valley Ry. Co. (1911) 129 N. W. 1034, 27 S. D. 65. And has no application to the construction of bridges across navigable waters which lie wholly within the limits of a single state. In re City of Seattle (Wash. 1911) 119 Pac. 798.

Under § 9971, post, a bridge could be built across navigable parts of a stream lying wholly within a single state, if authorized by the state or a subdivision thereof, and the location and plans of the bridge were first approved by the Chief of Engineers and Secretary of War; a special act of Congress consenting to the erection of the bridge not being required by Bridge Act (this section, and §§ 9962–9968, post), or otherwise. Id.

Navigable waters of the United States.—See chapter A of this title, ante, and notes thereunder, and § 9910, ante, and notes thereunder and § 9971, post, and notes thereunder.

"Bridge" defined.—The word "bridge" in Act April 2, 1888, c. 53, 25 Stat. 74, prescribing regulations to govern the building of bridges across a river, requiring any bridge thereafter erected to have at least one channel span of stated width and stated height above the water, and providing that any person or corporation having lawful authority "may hereafter erect bridges across said river for railroad or other uses upon compliance with the provisions and requirements of this act," but not otherwise, comprehended not only the span or roadway, but also the abutments and piers upon which it was supported, and the replacing of the wooden superstructure of a bridge, which had become unsafe from decay and long use, by a new superstructure of iron, did not constitute the erection

of a new bridge. U. S. v. Cincinnati & M. V. R. Co. (1904) 134 Fed. 353, 67 C. C. A. 335.

Cited without definite application, O'Keefe v. Staples Coal Co. (D. C. 1910) 201 Fed. 131.

§ 9962. (Act March 23, 1906, c. 1130, § 2.) Bridges built in accordance with act to be lawful structures and post routes; privileges, as to use thereof, of United States, and of telegraph and telephone companies.

Any bridge built in accordance with the provisions of this Act shall be a lawful structure and shall be recognized and known as a post route, upon which no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States than the rate per mile paid for the transportation over any railroad, street railway, or public highway leading to said bridge; and the United States shall have the right to construct, maintain, and repair, without any charge therefor, telegraph and telephone lines across and upon said bridge and its approaches; and equal privileges in the use of said bridge and its approaches shall be granted to all telegraph and telephone companies. (34 Stat. 85.)

Notes of Decisions

State taxation of bridge companies.—The acts of congress prescribing the height, width of span, etc., of bridges to be erected over the Ohio, and declaring that they shall be post roads, do not affect the power of the states to tax the intangible property of the bridge companies. Henderson Bridge Co. v. Kentucky (1897) 17 Sup. Ct. 532, 533, 166 U. S. 150, 41 L. Ed. 953.

§ 9963. (Act March 23, 1906, c. 1130, § 3.) Privileges as to use of railroad bridges by other railroad companies; compensation therefor.

All railroad companies desiring the use of any railroad bridge built in accordance with the provisions of this Act shall be entitled to equal rights and privileges relative to the passage of railway trains or cars over the same and over the approaches thereto upon payment of a reasonable compensation for such use; and in case of any disagreement between the parties in regard to the terms of such use or the sums to be paid all matters at issue shall be determined by the Secretary of War upon hearing the allegations and proofs submitted to him. (34 Stat. 85.)

Notes of Decisions

Railroads within statute.—The word "railroad" in its broadest sense includes a street railroad, while in its technical sense it does not apply to street railroads. The meaning of the word in a statute depends on the context and legislative intent. Massachusetts Loan & Trust Co. v. Hamilton (1898) 88 Fed. 588, 32 C. C. A. 46; (1905) 25 Op. Atty. Gen. 389.

Determination of compensation.—The act of June, 1870, which refers the question of the conditions upon which railway companies shall enjoy the use of the international bridge to the district court of the United States for decision after hearing the proofs and allegations of the parties, implies that the decision shall proceed upon settled principles of law and equity, and not upon arbitrary discretion. Canada Northern Ry. v. International Bridge Co. (D. C. 1880) 7 Fed. 653. But does not confer on the court jurisdiction over a controversy relating solely to the compensation which is due the corporation for the use of the bridge, nor confer authority to fix the amount of such charges or tolls. And it will not be inferred that congress intended to interfere with the judgment of the officers. Canada Southern Ry. Co. v. International Bridge Co. (D. C. 1881) 8 Fed. 190.

Authority of secretary of war under prior statutes.—The Secretary of War has no authority under Joint Res. July 20, 1868 (15 Stat. 258), or Act March 3, 1885 (23 Stat. 435), or Act March 2, 1895 (28 Stat. 942), or Act Feb. 15, 1897 (29 Stat. 528), to grant a revocable license to the Davenport & Suburban Street Railway Company, or to any other street railway company, to use jointly with the Tri-City Railway Company the lower portion of the government bridge across the Mississippi river, connecting the cities of Rock Island, Ill., and Davenport, Iowa. But, since the question is not free from doubt, permission might be granted in order that the matter may be brought before the courts for judicial determination. (1905) 25 Op. Atty. Gen. 389.

§ 9964. (Act March 23, 1906, c. 1130, § 4.) Obstructions to navigation by bridges; alterations and removal of obstructions; lights and other signals; draws; tolls.

No bridge erected or maintained under the provisions of this Act shall at any time unreasonably obstruct the free navigation of the waters over which it is constructed, and if any bridge erected in accordance with the provisions of this Act shall, in the opinion of the Secretary of War, at any time unreasonably obstruct such navigation, either on account of insufficient height, width of span, or otherwise, or if there be difficulty in passing the draw opening or the draw-span of such bridge by rafts, steamboats, or other water craft, it shall be the duty of the Secretary of War, after giving the parties interested reasonable opportunity to be heard, to notify the persons owning or controlling such bridge to so alter the same as to render navigation through or under it reasonably free, easy, and unobstructed, stating in such notice the changes required to be made, and prescribing in each case a reasonable time in which to make such changes, and if at the end of the time so specified the changes so required have not been made, the persons owning or controlling such bridge shall be deemed guilty of a violation of this Act; and all such alterations shall be made and all such obstructions shall be removed at the expense of the persons owning or operating said bridge. The persons owning or operating any such bridge shall maintain, at their own expense, such lights and other signals thereon as the Secretary of Commerce [and Labor] shall prescribe. If the bridge shall be constructed with a draw, then the draw shall be opened promptly by the persons owning or operating such bridge upon reasonable signal for the passage of boats and other water craft. If tolls shall be charged for the transit over any bridge constructed under the provisions of this Act, of engines, cars, street cars, wagons, carriages, vehicles, animals, foot passengers, or other passengers, such tolls shall be reasonable and just, and the Secretary of War may, at any time, and from time to time, prescribe the reasonable rates of toll for such transit over such bridge, and the rates so prescribed shall be the legal rates and shall be the rates demanded and received for such transit. (34 Stat. 85.)

The words "and Labor," inclosed in brackets in this section, were superseded by the creation of the Department of Labor and the change of the designations of the Department of Commerce and Labor, and of the Secretary thereof, to the Department of Commerce and the Secretary of Commerce, by Act March 4, 1913, c. 141, § 1, ante, § 932.

Notes of Decisions

Bridge tender at fault.—A city held liable for injury to a schooner which drifted in a high wind against a drawbridge which the city maintained over the Detroit river for failure of those in charge to open the draw on signal in violation of this section. Dorrington v. City of Detroit (1915) 223 Fed. 232, 138 C. C. A. 474.

Injury to a schooner by collision with a bridge held due solely to the negligence of the bridge tenders. O'Keefe v. Staples Coal Co. (D. C. 1911) 201 Fed. 135.

And see, also, notes under § 9973, post.

Power to fix tolls.—Congress may confer on a federal court authority to fix the amount of toll chargeable by a bridge company for the use of a bridge constructed by it, under an act of the legislatures of Canada and New York, over public navigable waters of the United States, as the exercise of judicial functions is alone involved in determining the amount of such compensation. Canada Southern Ry. Co. v. International Bridge Co. (D. C. 1881) 8 Fed. 190.

Removal on alteration of bridges.—See § 9970, post.

Cited without definite application, Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523.

§ 9965. (Act March 23, 1906, c. 1130, § 5.) Failure to comply with orders under act, and violations of act, punishable; penalty; removal of bridge, etc., and proceedings therefor.

Any persons who shall fail or refuse to comply with the lawful

order of the Secretary of War or the Chief of Engineers, mac in accordance with the provisions of this Act, shall be deemed guil of a violation of this Act, and any persons who shall be guilty of violation of this Act shall be deemed guilty of a misdemeanor and c conviction thereof shall be punished in any court of competent juri diction by a fine not exceeding five thousand dollars, and every mont such persons shall remain in default shall be deemed a new offense ar subject such persons to additional penalties therefor; and in additic to the penalties above described the Secretary of War and the Chi of Engineers may, upon refusal of the persons owning or controllin any such bridge and accessory works to comply with any lawful ord issued by the Secretary of War or Chief of Engineers in regard ther to, cause the removal of such bridge and accessory works at the e pense of the persons owning or controlling such bridge, and suit fc such expense may be brought in the name of the United States again such persons, and recovery had for such expense in any court of con petent jurisdiction; and the removal of any structures erected or mai tained in violation of the provisions of this Act or the order or directio of the Secretary of War or Chief of Engineers made in pursuanc thereof may be enforced by injunction, mandamus, or other summar process, upon application to the circuit court in the district in whic such structure may, in whole or in part, exist, and proper proceeding to this end may be instituted under the direction of the Attorney-Ger eral of the United States at the request of the Secretary of War; an in case of any litigation arising from any obstruction or alleged obstru tion to navigation created by the construction of any bridge under th Act, the cause or question arising may be tried before the circuit cou of the United States in any district which any portion of said obstru tion or bridge touches. (34 Stat. 85.)

Notes of Decisions

Construction of statute in general.—This section relates only to bridges the construction of which was authorized since the enactment of the Bridge Act, of which this section is a part. State v. White River Valley Ry. Co. (1911) 129 N. W. 1034, 27 S. D. 65.

And see, also, notes under § 9961, ante.

Liability for damages.—See §§ 9970 9973, post, and notes thereunder.

Injunction.—See § 9970, post, an notes thereunder.

Cited without definite applicatior Union Bridge Co. v. U. S. (1907) 2 Sup. Ct. 367, 204 U. S. 364, 51 L. Ec 523.

§ 9966. (Act March 23, 1906, c. 1130, § 6.) Limit of time for com mencement and for completion of bridge.

Whenever Congress shall hereafter by law authorize the con struction of any bridge over or across any of the navigable wa ters of the United States, and no time for the commencement an completion of such bridge is named in said Act, the authority thereb granted shall cease and be null and void unless the actual constructio of the bridge authorized in such Act be commenced within one yea and completed within three years from the date of the passage of sucl Act. (34 Stat. 86.)

§ 9967. (Act March 23, 1906, c. 1130, § 7.) Word "persons" de fined.

The word "persons" as used in this Act shall be construed tc import both the singular and the plural, as the case demands, anc shall include municipalities, quasi municipal corporations, corpo rations, companies, and associations. (34 Stat. 86.)

§ 9968. (Act March 23, 1906, c. 1130, § 8.) Reservation of righ to amend or repeal act, without liability incurred by Unitec States therefor.

The right to alter, amend, or repeal this Act is hereby expressly reserved as to any and all bridges which may be built in accordance

with the provisions of this Act, and the United States shall incur no liability for the alteration, amendment, or repeal thereof to the owner or owners or any other persons interested in any bridge which shall have been constructed in accordance with its provisions. (34 Stat. 86.)

§ 9969. (Act July 5, 1884, c. 229, § 8.) Obstruction to navigation by bridges; construction of aids to navigation; failure to construct, etc.; liability.

Whenever the Secretary of War shall have good reason to believe that any railroad or other bridge now or hereafter to be constructed over any of the navigable waters of the United States, under authority of the United States or of any State or Territory, is an obstruction to the free navigation of such waters, by reason of difficulty in passing the draw-opening or the raft-span of said bridge, by rafts, steamboats, or other water-craft, it shall be the duty of the said Secretary, on satisfactory proof thereof, to require the company or persons owning, controlling, or operating said bridge to cause such aids to the passage of said draw-opening or of said raft-span, or of both said draw-opening and raft-span to be constructed, placed, and maintained, at their own cost and expense, in the form of booms, dikes, piers, or other suitable and proper structures for the guiding of said rafts, steamboats, and other water-craft safely through said opening or span, or both said opening or span, as shall be specified in his order in that behalf; and on failure of the company or persons aforesaid to make and establish such additional structures within a reasonable time, the said Secretary shall proceed to cause the same to be built or made at the expense of the United States, and shall refer the matter without delay to the Attorney-General of the United States, whose duty it shall be to institute, in the name of the United States, proceedings in any [circuit or] district court of the United States in which such bridge, or any part thereof, is located, for the recovery of the cost thereof; and all moneys accruing from such proceedings shall be covered into the Treasury of the United States: Provided, That no greater sum than fifteen thousand dollars shall be required to be expended upon any one bridge in a single year: Provided further, That such sum of money as may be necessary to execute the provisions of this act is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, to be paid on the requisition of the Secretary of War. (23 Stat. 148.)

This section was part of the rivers and harbors appropriation act of 1884, cited above.

The words "circuit or," inclosed in brackets in this section, were superseded by the abolition of the circuit courts and the transfer of their jurisdiction to the district courts, by Jud. Code, §§ 289–291, ante, §§ 1266–1268.

Further provisions relating to obstruction to navigation by bridges were made by Act March 3, 1899, c. 425, § 18, post, § 9970.

General provisions regulating the construction of bridges over navigable waters were made by the Bridge Act of March 23, 1906, c. 1130, ante, §§ 9961–9968.

The construction of dams across navigable waters was regulated by the Dam Act of June 21, 1896, c. 3508, amended by Act June 23, 1910, c. 360, post, §§ 9976–9983.

Notes of Decisions

Validity, construction, and operation of statute and proceedings.—See § 9970, post, and notes thereunder.

Cited without definite application, Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 368, 204 U. S. 364, 51 L. Ed. 523; Naumburg v. Milwaukee (1906) 146 Fed. 641, 77 C. C. A. 67 (dissenting opinion); U. S. v. Pittsburgh & L. E. R. Co. (D. C. 1886) 26 Fed. 113, 117.

§ 9970. (Act March 3, 1899, c. 425, § 18.) Obstruction to navig tion by bridges; notice to alter; penalty on failure to alte appeal to Supreme Court.

Whenever the Secretary of War shall have good reason to b lieve that any railroad or other bridge now constructed, or whi may hereafter be constructed, over any of the navigable wate ways of the United States is an unreasonable obstruction to t free navigation of such waters on account of insufficient heig width of span, or otherwise, or where there is difficulty in passing t draw opening or the draw span of such bridge by rafts, steamboa or other water craft, it shall be the duty of the said Secretary, fi giving the parties reasonable opportunity to be heard, to give noti to the persons or corporations owning or controlling such bridge to alter the same as to render navigation through or under it re sonably free, easy, and unobstructed; and in giving such notice shall specify the changes recommended by the Chief of Enginee that are required to be made, and shall prescribe in each case reasonable time in which to make them. If at the end of such ti the alteration has not been made, the Secretary of War shall fort with notify the United States district attorney for the district in whi such bridge is situated, to the end that the criminal proceedings he inafter mentioned may be taken. If the persons, corporation, or a sociation owning or controlling any railroad or other bridge sha after receiving notice to that effect, as hereinbefore required, fr the Secretary of War, and within the time prescribed by him willfu fail or refuse to remove the same or to comply with the lawful ord of the Secretary of War in the premises, such persons, corporatic or association shall be deemed guilty of a misdemeanor, and on co viction thereof shall be punished by a fine not exceeding five tho sand dollars, and every month such persons, corporation, or ass ciation shall remain in default in respect to the removal or alterati of such bridge shall be deemed a new offense, and subject the perso corporation, or association so offending to the penalties above p scribed: Provided, That in any case arising under the provisio of this section an appeal or writ of error may be taken from t district courts [or from the existing circuit courts] direct to the S preme Court either by the United States or by the defendan (30 Stat. 1153.)

This section was part of the rivers and harbors appropriation act of 18 cited above.

The words "or from the existing circuit courts," inclosed in brackets in t section, were superseded by the abolition of the circuit courts and the trans of their jurisdiction to the district courts, by Jud. Code, §§ 289–291, ante, 1266–1268.

This section superseded Act Aug. 11, 1888, c. 860, §§ 9, 10, 25 Stat. 424, amended by Act Sept. 19, 1890, c. 907, §§ 4, 5, 26 Stat. 453, which requi the Secretary of War to provide against obstructions to navigation by brid and prescribed a punishment on the owner's default in making the requi alterations.

The Secretary of War was authorized to make the required changes in bri es obstructing navigation on the owner's failure to do so, and the Attorn General was required to institute proceedings against the owner for the covery of the cost of such changes, by Act July 5, 1884, c. 229, § 8, ante 9969.

Notes of Decisions

1. Constitutionality of statute.
2. —— Of prior statute.
3. Construction of statute in general.
4. —— Of prior statutes.
5. —— Of local acts.
6. Removal or alteration of bridges.
7. Conclusiveness of determination of secretary of war.
8. Notice of alteration, on whom served.
9. —— Requisites.
10. —— Hearing.
11. —— Time for compliance.
12. Alterations or changes in bridges taking of property.
13. Compelling elevation of bridges, proval of plans as condition pre dent.
14. Equitable relief.
15. Liability to fine under statute.
16. —— Under prior statute.

1. Constitutionality of statute.—This section is within the power of Congress. U. S. v. Union Bridge Co. (D. C. 1906) 143 Fed. 377, judgment affirmed Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523. It is not unconstitutional, as delegating legislative or judicial power to the secretary of war. Wisconsin v. Duluth (1877) 96 U. S. 379, 24 L. Ed. 668; Miller v. New York (1883) 109 U. S. 385, 3 Sup. Ct. 228, 27 L. Ed. 971; Marshall Field & Co. v. Clark (1892) 12 Sup. Ct. 495, 143 U. S. 649, 36 L. Ed. 294; U. S. v. Eaton (1891) 12 Sup. Ct. 764, 144 U. S. 677, 36 L. Ed. 591; Lake Shore & Michigan Ry. v. Ohio (1897) 17 Sup. Ct. 357, 165 U. S. 365, 41 L. Ed. 747; In re Kollock (1897) 17 Sup. Ct. 444, 165 U. S. 526, 41 L. Ed. 813; Rider v. U. S. (1900) 20 Sup. Ct. 841, 178 U. S. 251, 44 L. Ed. 1057; Buttfield v. Stranahan (1904) 192 U. S. 470, 24 Sup. Ct. 356, 48 L. Ed. 536; Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 370, 204 U. S. 364, 51 L. Ed. 523 (affirming judgment U. S. v. Union Bridge Co. [D. C. 1906] 143 Fed. 377); President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 216 U. S. 177, 54 L. Ed. 435 (affirming judgment U. S. v. Monongahela Bridge Co. [D. C. 1908] 160 Fed. 712); E. A. Chatfield Co. v. City of New Haven (C. C. 1901) 110 Fed. 788; U. S. v. Moline (D. C. 1897) 82 Fed. 592; (1904) 25 Op. Atty. Gen. 194 (citing [1896] 21 Op. Atty. Gen. 430).

A bridge over an interstate waterway, though erected under the sanction of a state, and not an illegal structure, or an unreasonable obstruction to navigation in the condition of commerce and navigation when erected, must be taken as having been constructed with knowledge of the paramount power of Congress to regulate commerce among the states, and subject to the condition or possibility that Congress might, at some time after its construction, and for the protection or benefit of the public, exert its constitutional power to protect free navigation as it then was against unreasonable obstructions. President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 360, 216 U. S. 177, 54 L. Ed. 435, affirming judgment U. S. v. Monongahela Bridge Co. (D. C. 1908) 160 Fed. 712.

A company which built a bridge over the Allegheny river under a charter from the state of Pennsylvania containing no specifications as to the character of the structure, but expressly providing that it should not obstruct the navigation of the river, and that the piers should be constructed in such manner as to meet the requisitions of the law in regard to obstruction of navigation, holds the franchise granted subject to such conditions, and may be required at any time by any authority having lawful jurisdiction to so alter its bridge as to meet the enlarged requirements of navigation. U. S. v. Union Bridge Co. (D. C. 1906) 143 Fed. 377, judgment affirmed Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523. See, U. S. v. President, etc., Jamaica & R. T. R. (C. C. 1910) 183 Fed. 598, defining the power to legislation over navigable waters.

2. —— Of prior statute.—Act Sept. 19, 1890, § 4, authorizing the secretary of war to give notice for the alteration of bridges that he believes to be unreasonable obstructions to navigation, and empowering the district attorney to prosecute parties refusing to comply with such notice, is not unconstitutional, as vesting the secretary with either judicial or legislative powers. U. S. v. City of Moline (D. C. 1897) 82 Fed. 592; (1896) 21 Op. Atty. Gen. 430. But see U. S. v. Rider (D. C. 1892) 50 Fed. 406, following U. S. v. Keokuk & H. Bridge Co. (D. C. 1891) 45 Fed. 178, and holding that Act Aug. 11, 1888 (25 Stat. 424), §§ 9, 10, providing that, when the secretary of war shall have reason to believe that any bridge is an obstruction to free navigation, he shall give notice requiring the bridge to be so altered as to render navigation through or under it easy and unobstructed, and imposing a penalty on the controllers of the bridge for failing to make such provision, is unconstitutional, in that it delegates to the secretary of war powers exclusively vested in congress.

3. Construction of statute in general.—This section was enacted to secure navigation against unreasonable obstruction. The Secretary of War is not invested by this section with arbitrary power, since he is bound, before making any decision or taking final action, to notify the parties interested of any proposed investigation, by him to give them an opportunity to be heard, and to allow reasonable time to make such alterations as he finds to be necessary to free navigation. President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 360, 216 U. S. 177, 54 L. Ed. 435, affirming judgment U. S. v. Monongahela Bridge Co. (D. C. 1908) 160 Fed. 712.

A bridge over the Mississippi river, constructed under the authority of Sp. Act July 25, 1866, c. 246, 14 Stat. 244, which expressly reserves the right of alteration or amendment so as to prevent or remove all material obstructions to navigation by the construction of bridges, is subject to this section. Hannibal Bridge Co. v. U. S. (1911) 31 Sup. Ct. 603, 221 U. S. 194, 55 L. Ed. 699. See U. S. v. Baltimore & O. R. Co. (1913) 33 Sup. Ct. 850, 229 U. S. 244, 57 L. Ed. 1169.

This section does not delegate to the Secretary of War all the power of Congress in regard to the construction of bridges over navigable waters, and to

declare where bridges shall be built, but it delegates the power only to determine whether an existing bridge is an unreasonable obstruction to navigation and to direct the manner in which the injury can be obviated. E. A. Chatfield Co. v. City of New Haven (C. C. 1901) 110 Fed. 788.

This section superseded Act Aug. 11, 1888, c. 860, §§ 9, 10, as amended by Act Sept. 19, 1890, c. 907, §§ 4, 5 (1904) 25 Op. Atty. Gen. 194. It applies to bridges constructed under the authority of acts of Congress, provision having been made in the previous sections of the act for structures of that nature unauthorized by Congress. The power conferred is administrative. Obstructions to navigation must be material obstructions. (1904) 25 Op. Atty. Gen. 195.

The widening of the channel of the south branch of the Chicago river by the sanitary district of Chicago, under licenses granted by the Secretary of War, does not connect the federal government with that project in such a way as will authorize the Secretary of War, under this section, to require the alteration of the bridge of the Metropolitan West Side Elevated Railway Company until the widening of the channel and the removal of the filled-in land adjoining the west abutment of the bridge has caused that structure to become an actual obstruction to the free navigation of the river. Filled-in land occupied by the west abutment of the bridge, which could not be removed prior to removal of the bridge, should be regarded as constituting a part of the bridge, and the Secretary of War may proceed for the alteration of the bridge when, by reason of the widening of the channel up to that point, it has become an actual obstruction to the free navigation of the river. In such a contingency notice to remove the same should be given to both the railway company and the sanitary district. (1911) 29 Op. Atty. Gen. 139.

The Secretary of War has no authority to order and compel the commissioners of a county to remove an established bridge over a navigable river wholly within the limits of the state and rebuild it in such a manner as to change the course of such river by straightening the same at the point in question and throwing the channel 50 feet to the east. State v. Ashtabula County Com'rs (1905) 28 Ohio Cir. Ct. R. 212.

The right of private parties to invoke the aid of the courts to prevent an unreasonable obstruction to navigation depends on the effect of this statute. E. A. Chatfield v. City of New Haven (C. C. 1901) 110 Fed. 788.

4. —— **Of prior statutes.**—The delegation to the secretary of war by Act Sept. 19, 1890 (26 Stat. 453), §§ 4, 5, 7, of authority to direct changes in existing bridges over any navigable waters of the United States, or of bridges to be erected under legislative auth ity of any state, for the purpose preventing obstructions to navigati showed no intention by congress to ercise exclusive control over navigal waters entirely within the jurisdicti of a state; and this act did not depr the states of power to compel the moval or alteration of bridges erec over such waters without authori Lake Shore & M. S. Ry. Co. v. O (1897) 17 Sup. Ct. 357, 358, 165 U. 365, 41 L. Ed. 747.

A bridge having been built and ma tained in accordance with the requi ments of an act of congress, the sec tary of war cannot declare it an struction to navigation, and require to be changed, remodeled, or rebu under Act Aug. 11, 1888 (25 Stat. 42 §§ 9, 10, providing that when he sl have reason to believe that any bri is an obstruction to free navigation, where there is difficulty in passing draw opening or raft span, the sec tary of war shall give notice requir the bridge to be altered, so as to ren navigation through or under it fr easy, and unobstructed, and that owner of any such bridge shall be lia to a penalty for willfully failing to move the bridge, or to cause the nec sary alterations to be made. U. S Keokuk & H. Bridge Co. (D. C. 18 45 Fed. 178.

Obstructions to navigation cont plated by sections 9 and 10 are such pertain to the structure and plan of bridge, in view of its location. structions caused by failure to prom open the draw of the bridge for pass vessels are not within those secti (1895) 19 Op. Atty. Gen. 395.

The Secretary of War must, un Act Sept. 19, 1890, c. 907, § 4, 26 S 453, ascertain whether, in his judgm the Canal Street bridge across south branch of the Chicago river is unreasonable obstruction to the navigation of that river, and in case decides that it is, proceed as direc by that statute and require such alteration of the bridge as will ren navigation through and under it, s easy, and unobstructed. The rights intersecting lines of freight and of tr el, the needs and the convenience residents, and the business moveme of all who come and all who go elements which help to constitute reasonableness or the unreasonable of an interfering structure built their use, but to some extent obst tive to the waterway. (1891) 20 Atty. Gen. 101.

5. —— **Of local acts.**—A railroad, powered by its charter to bridge navigable streams on its lines, in course of repairing a drawbridge, wl had become unsafe, constructed, in der to prevent the stoppage of trains, a temporary bridge adjoi the old one, making unusual efforts expedite the work. Plaintiff's stea

could have carried freight above the bridge unusually early in the season but for the temporary bridge, and the supports used in the erection of the new bridge, and for the loss occasioned by the obstruction he sues. Held, that the temporary obstruction was not a ground for recovery, since wherever the exercise of a right conferred by law for the benefit of the public is attended with temporary inconvenience to private parties, in common with the public in general, they are not entitled to damages therefor. Hamilton v. Vicksburg, S. & P. R. Co. (1886) 7 Sup. Ct. 206, 119 U. S. 280, 30 L. Ed. 393.

Under Act April 12, 1900, declaring a trestle built by a railroad company over a tide water channel to be a lawful structure, and providing that such modification can be made in the trestle's position and elevation as the secretary of war may order in the interests of navigation, the trestle will be regarded as a lawful structure until the secretary of war shall order modifications which the company shall neglect to make. Frost v. Washington County R. Co. (1901) 51 A. 806, 96 Me. 76, 59 L. R. A. 68.

6. **Removal or alteration of bridges.**—The right of the United States to require the removal or alteration of a bridge as an obstruction to navigation of an interstate waterway is not affected by the fact that it made no objection when the bridge was built, or that it was built under authority from the state, nor do such facts render the government liable to compensate the owner for his loss, where the consent of Congress was not asked; the owner being chargeable with notice of its power over such waters and its right to exercise the same at any time. A company which built a bridge over the Allegheny river under a charter from the state of Pennsylvania containing no specifications as to the character of the structure, but expressly providing that it should not obstruct the navigation of the river, and that the piers should be constructed in such manner as to meet the requisitions of the law in regard to obstruction of navigation, holds the franchise granted subject to such conditions, and may be required at any time by any authority having lawful jurisdiction to so alter its bridge as to meet the enlarged requirements of navigation. U. S. v. Union Bridge Co. (D. C. 1906) 143 Fed. 377, judgment affirmed Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523. But see (1904) 25 Op. Atty. Gen. 194, holding that whether a bridge was so constructed as not to interrupt navigation must be determined by the requirements of navigation at that time, and cannot be made dependent on the interests of future navigation.

The bridge over the Muskingum river at Taylorsville, Ohio, is a nuisance to navigation which ought to be abated. (1890) 19 Op. Atty. Gen. 599.

Whether a bridge over a navigable water of the United States is an "unreasonable" obstruction to navigation must be determined in the first instance by the Secretary of War, whose decision is probably subject to review by the courts. (1890) 19 Op. Atty. Gen. 676.

7. **Conclusiveness of determination of secretary of war.**—Determination of the secretary of war in the due exercise of authority that a bridge is an obstruction is conclusive. U. S. v. Monongahela Bridge Co. (D. C. 1908) 160 Fed. 712, judgment affirmed President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 216 U. S. 177, 54 L. Ed. 435. But a decree in a suit by the United States by procurement of the Secretary of War after enactment of River and Harbor Act March 3, 1899, refusing to enjoin replacement of a bridge over the Ohio river, conformably to Act July 14, 1862, held a conclusive determination as against the Secretary of War, when attempting under supposed authority of this section to compel alterations in the bridge, that in the absence of changed conditions the structure was not subject to that act. U. S. v. Baltimore & O. R. Co. (1913) 33 Sup. Ct. 850, 229 U. S. 244, 57 L. Ed. 1169.

8. **Notice of alteration, on whom served.**—A state is not a person, corporation, or association within sections 4 and 5 of the act of September 19, 1890 (26 Stat. 453). Consequently the Secretary of War is not authorized to serve notice on a state requiring it to alter a bridge which is the property of the state. (1893) 20 Op. Atty. Gen. 606.

9. ——**Requisites.**—A notice to a bridge company to make alterations in a bridge over an interstate waterway, conformably to this section, enacted to secure navigation against unreasonable obstructions, is not insufficient as the basis of a criminal prosecution in case of noncompliance because it bears the signature of the Assistant Secretary of War, instead of the Secretary himself, who is the official named in the statute as the one to give such notice, where the communication shows upon its face that it was from the War Department, and from the Secretary of War, and that the latter, without abrogating his authority under the statute, only used the hand of the Assistant Secretary in order to give the owners of the bridge notice of what was required of them. Hannibal Bridge Co. v. U. S. (1911) 31 Sup. Ct. 603, 606, 221 U. S. 194, 55 L. Ed. 699.

Assuming that Act Aug. 11, 1888, c. 860, §§ 9 and 10, are valid, a notice given by the secretary of war must point out what alterations are required to be made; and a notice is not sufficient which requires the owners "to so alter

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7. Conclusiveness of determination of secretary of war.—Determination of the secretary of war in the due exercise of authority that a bridge is an obstruction is conclusive. U. S. v. Monongahela Bridge Co. (D. C. 1908) 160 Fed. 712, judgment affirmed President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 216 U. S. 177, 54 L. Ed. 435. But a decree in a suit by the United States by procurement of the Secretary of War after enactment of River and Harbor Act March 3, 1899, refusing to enjoin replacement of a bridge over the Ohio river, conformably to Act July 14, 1862, held a conclusive determination as against the Secretary of War, when attempting under supposed authority of this section to compel alterations in the bridge, that in the absence of changed conditions the structure was not subject to that act. U. S. v. Baltimore & O. R. Co. (1913) 33 Sup. Ct. 850, 229 U. S. 244, 57 L. Ed. 1169.

8. Notice of alteration, on whom served.—A state is not a person, corporation, or association within sections 4 and 5 of the act of September 19, 1890 (26 Stat. 453). Consequently the Secretary of War is not authorized to serve notice on a state requiring it to alter a bridge which is the property of the state. (1893) 20 Op. Atty. Gen. 606.

9. —— Requisites.—A notice to a bridge company to make alterations in a bridge over an interstate waterway, conformably to this section, enacted to secure navigation against unreasonable obstructions, is not insufficient as the basis of a criminal prosecution in case of noncompliance because it bears the signature of the Assistant Secretary of War, instead of the Secretary himself, who is the official named in the statute as the one to give such notice, where the communication shows upon its face that it was from the War Department, and from the Secretary of War, and that the latter, without abrogating his authority under the statute, only used the hand of the Assistant Secretary in order to give the owners of the bridge notice of what was required of them. Hannibal Bridge Co. v. U. S. (1911) 31 Sup. Ct. 603, 606, 221 U. S. 194, 55 L. Ed. 699.

Assuming that Act Aug. 11, 1888, c. 860, §§ 9 and 10, are valid, a notice given by the secretary of war must point out what alterations are required to be made; and a notice is not sufficient which requires the owners "to so alter

said bridge as to render navigation through or under it free, easy, and unobstructed," though the notice contains a recital that "the bridge was an obstruction to free navigation by reason of its location, which at stages of water permitting navigation over the Des Moines rapids renders difficult the passage of boats, rafts, etc., through its west draw rest pier." U. S. v. Keokuk & H. Bridge Co. (D. C. 1891) 45 Fed. 178.

10. —— Hearing.—A bridge company convicted for failure to make the alterations in a bridge over an interstate waterway which the Secretary of War, acting under this section requires, was afforded the reasonable opportunity to be heard, contemplated by that law, upon the question whether the bridge was, in fact, an unreasonable obstruction to navigation, where the company had full notice of the action of the officer of engineers, who, under the order of the Secretary, made a tentative examination of the facts, and appeared at the regular final hearing before that officer, with liberty to contest the facts, and introduce any evidence pertinent to the case, and the decision of the Secretary of War was based on the Engineer officer's report of all the facts adduced before him, and which constituted the basis of his conclusion that the bridge was an unreasonable obstruction to navigation. President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 360, 216 U. S. 177, 54 L. Ed. 435.

11. —— Time for compliance.—Where county commissioners of M. County, Ohio, were notified by the secretary of war, Feb. 25, 1891, to provide a state bridge over the M. river, with a "draw" for the passage of boats, on or before September 30, 1891, but the commissioners had no funds with which to provide the "draw," nor could make a levy for that purpose until March or June, 1891, which levy would not be collectible in full before December 20th of the year following, and they had applied to the legislature for the necessary funds without success, and had no opportunity to submit the question of the necessary expenditure, which exceeded $10,000, to a popular vote, as required in case of such excess, the notice did not give a reasonable time in which to provide the "draw." U. S. v. Rider (D. C. 1892) 50 Fed. 406.

12. Alterations or changes in bridges as taking of property.—A railroad bridge over a navigable stream, built under authority of an act of Congress which contained no reservation as to repeal, modification, or alteration, can only be required to be removed or replaced by a new bridge constructed, in accordance with Act March 3, 1899, c. 425, 30 Stat. 1121, by an act of Congress authorizing the same and providing for just compensation. U. S. v. Parkersburg Branch R. Co. (1906) 14 Fed. 224, 74 C. C. A. 354, affirming de cree (C. C. 1905) 134 Fed. 969.

The making of alterations or change in a bridge erected under the sanctio of a state over an interstate waterwa which the Secretary of War, acting u der this section, requires to secure na igation against an unreasonable ol struction, is not a taking of priva property for public use for which t federal Constitution requires compe sation to be made, but is merely inc dental to the exercise by the gover ment of its power to regulate commer among the states. Union Bridge Co. U. S. (1907) 27 Sup. Ct. 367, 375, 2 U. S. 364, 51 L. Ed. 523, affirmi judgment U. S. v. Union Bridge Co. (I C. 1906) 143 Fed. 377.

The action of the Secretary of War requiring changes in a bridge over interstate waterway within a specifi time, and after the parties have be heard, conformably to this section, e acted to secure navigation against u reasonable obstruction, is not such taking of private property for publ use as must, under the federal Const tution, be preceded by making, or su ficiently securing, compensation to t owners of the bridge. President, et of Monongahela Bridge Co. v. U. (1910) 30 Sup. Ct. 356, 360, 216 U. 177, 54 L. Ed. 435, affirming judgme U. S. v. Monongahela Bridge Co. (I C. 1908) 160 Fed. 712.

The mere silence of Congress and i failure directly to interfere and preve the original construction of a brid erected under the sanction of a stat over an interstate waterway, impos no constitutional obligation upon t United States to make compensation f subsequent changes or alterations whi the public good, in its judgment, r quires. Id.

The right of the United States to r quire the removal or alteration of bridge as an obstruction to navigati of an interstate waterway is not fected by the fact that it made no c jection when the bridge was built, that it was built under authority fr the state, nor do such facts render t government liable to compensate t owner for his loss, where the conse of Congress was not asked; the owr being chargeable with notice of its po er over such waters and its right exercise the same at any time. U. S. Union Bridge Co. (D. C. 1906) 143 F 377, judgment affirmed Union Bri Co. v. U. S. (1907) 27 Sup. Ct. 367, 2 U. S. 364, 51 L. Ed. 523.

It is the duty of the Secretary War, under section 4 of the act of 18 to ascertain whether, in his judgme the Canal Street Bridge across south branch of the Chicago river is unreasonable obstruction to the f navigation of that river, and, in case decides that it is, to proceed as direc by that statute and require such

alteration of the bridge as will render navigation through and under it safe, easy, and unobstructed. (1891) 20 Op. Atty. Gen. 101.

Where a bridge was erected by authority of a state before Congress assumed actual jurisdiction over the river for the purposes of navigation, and it was declared an obstruction to navigation by the Secretary of War, the owners or parties controlling the bridge may be required to alter it without compensation by the United States for the expenses incurred. (1896) 21 Op. Atty. Gen. 430. See, also, Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523.

Structures which are unauthorized by law may be summarily removed and without compensation. Those which are authorized by law can only be removed upon making just compensation, unless the authorization by the federal government was accompanied with a reservation of a right to change, modify, or remove. The Secretary of War is not authorized by section 4 of the act of 1890, to require changes to be made in the bridge of the Baltimore & Ohio Railroad Company over the Ohio river at the expense of the owner without compensation, as this act applies only to such bridges as are constructed under the authority of an act of Congress which expressly reserved to Congress the right to require changes or modifications in the structure. But, when the company itself voluntarily prostrates its bridge with the intention of constructing another in its place, the Secretary of War has the right to prescribe conditions as to height, length of span, etc. (1899) 22 Op. Atty. Gen. 343.

Reservation in the act of December 17, 1872 (17 Stat. 398), and the amendatory act of February 14, 1883 (22 Stat. 414), of the power to require the alteration of any bridge constructed under their authority, places beyond question the power in Congress to compel the owners to alter any bridge constructed at their own expense, without compensation, so as to remove all material obstructions to navigation. If the Ohio Falls bridge, which was constructed under the act of July 14, 1862 (12 Stat. 569), and the amendatory act of February 17, 1865 (13 Stat. 431), at the time of its construction complied with all the requirements of those acts and did not then interrupt the navigation of the river, there being in neither of those acts any reservation of power to alter, amend, or repeal the acts, the owners thereof cannot be required to make such changes therein as the interests of navigation may now demand, at their own expense, without compensation. (1904) 25 Op. Atty. Gen. 194.

The Secretary of War cannot require county commissioners to tear down a bridge over a navigable river wholly within state on the ground that it is an unreasonable obstruction to the free navigation of such river without tendering compensation therefor. State v. Ashtabula County Com'rs (1905) 28 Ohio Cir. Ct. R. 212.

13. Compelling elevation of bridge, approval of plans as condition precedent.—A drainage district cannot compel elevation of railroad bridges across a river until reasonable plans therefor are approved by the proper federal authorities. Kaw Valley Drainage Dist. of Wyandotte County v. Kansas City Terminal Ry. Co. (1912) 123 P. 991, 87 Kan. 272.

14. Equitable relief.—Where a private canal constructed and used as a cut-off to take the place commercially of the tortuous channel of a navigable stream has been abandoned, and its uses for such purpose entirely destroyed by the owner of the rights therein, the rights of the public revert to the original channel of the stream, and the United States may maintain a suit to enjoin the obstruction of such channel by a bridge. U. S. v. President, etc., of Jamaica & R. Turnpike Road (C. C. 1910) 183 Fed. 598, decree reversed (1913) 204 Fed. 759, 123 C. C. A. 128. See U. S. v. Baltimore & O. R. Co. (1913) 33 Sup. Ct. 850, 229 U. S. 244, 57 L. Ed. 1169. And see notes under § 9971, post.

15. Liability to fine under statute.—A verdict of guilty against a bridge company in a prosecution under this section for failure to comply with an order of the Secretary of War requiring the defendant to alter a bridge over the Monongahela river at Brownsville, 50 miles above Pittsburg, held sustained by the evidence, where it appeared that, prior to the time the bridge was built in 1832, the river had been declared a navigable stream by the Legislatures of both Pennsylvania and Virginia, and was to a small extent then navigated at that point; that surveys looking to its improved navigation as it has since been improved had been made by both the state and federal governments, and that defendant's charter granted by the state of Pennsylvania expressly provided that the bridge to be erected should not obstruct the navigation of the river. It is not a defense that the bridge was adopted and recognized by the executive department of the government as an integral part of the national pike and post route over which the mails were carried. U. S. v. Monongahela Bridge Co. (D. C. 1908) 160 Fed. 712, judgment affirmed President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 216 U. S. 177, 54 L. Ed. 435.

16. —— Under prior statute.—Failure to comply with an order of the secretary of war directing an alteration in a bridge to facilitate navigation will not

subject municipal officers to criminal prosecution under Act Aug. 11, 1888, as amended by Act Sept. 19, 1890, where such officers have not in their hands the funds to do the work, and under the laws of the state cannot obtain them within the time fixed by the secretary's order for the completion of the work. Failure of municipal officers to suggest any want of public moneys in their hands for the alteration of a bridge, or any want of power to obtain the funds, until after the secretary of war has made an order for such alteration, does not preclude them from setting up those facts in defense of their criminal liability. Rider v. U. S. (1900) 20 Sup. Ct. 838, 178 U. S. 251, 44 L. Ed. 1057, reversing judgment U. S. v. Rider (D. C. 1892) 50 Fed. 406.

Notice was served on a railroad company under Act Aug. 11, 1888, requiring it to alter its bridge over a certain river so that it would not obstruct navigation. Before the time allowed for the purpose had expired, the company was dispossessed of its property, including the bridge, and receivers thereof were appointed, in judicial proceedings instituted by mortgage bondholders. The notice not having been complied with, an action was bro against the receivers and the com to recover the fine imposed by the ute in such cases. Held, that the ceivers would not be held liable, a notice had been served on them in t official capacity, though prior to t appointment they had notice that company had been notified to alter bridge, as the statute required the tice to be served on the person or poration owning or controlling the jectionable structure, and that the pany was not liable, as the fact th had been dispossessed of its prop by judicial proceedings was a suffi excuse for its noncompliance with notice. U. S. v. St. Louis, A. & T Co. (D. C. 1890) 43 Fed. 414.

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§ 9971. (Act March 3, 1899, c. 425, § 9.) Construction of brid etc., over navigable waters; approval of plans.

It shall not be lawful to construct or commence the construct of any bridge, dam, dike, or causeway over or in any port, rc stead, haven, harbor, canal, navigable river, or other naviga water of the United States until the consent of Congress to building of such structures shall have been obtained and u the plans for the same shall have been submitted to and appro by the Chief of Engineers and by the Secretary of War: Provic That such structures may be built under authority of the legislat of a State across rivers and other waterways the navigable porti of which lie wholly within the limits of a single State, provided location and plans thereof are submitted to and approved by Chief of Engineers and by the Secretary of War before construct is commenced: And provided further, That when plans for bridge or other structure have been approved by the Chief of gineers and by the Secretary of War, it shall not be lawful to dev from such plans either before or after completion of the struct unless the modification of said plans has previously been submit to and received the approval of the Chief of Engineers and of Secretary of War. (30 Stat. 1151.)

This section was part of the rivers and harbors appropriation act of 1 cited above.

This section and section 10 of this act, ante, § 9910, superseded Act S 19, 1890, c. 907, § 7, 26 Stat. 454, as amended by Act July 13, 1892, c. § 3, 27 Stat. 88, which prohibited the erection of obstructions to naviga and prohibited the erection of bridges over navigable waters under State islation before the approval of the plans by the Secretary of War, and hibited the alteration of channels unless authorized by said Secretary. A operation of Act Sept. 19, 1890, c. 907, § 10, see said section, ante, § 9910a, notes thereunder.

Provisions prescribing what officers should aid in the enforcement of Sept. 19, 1890, c. 907, §§ 4–10, were made by section 11 thereof, ante, § 9 Said sections 4–9 were superseded by this act, sections 9, 10, 12–16, 18–2C which contained provisions more or less similar to those contained in the perseded sections, and therefore said section 11 may be regarded as applic to this act so far as it contained such substitute provisions.

Penalties for violations of this section were prescribed by section 12 of this act, amended by Act Feb. 20, 1900, c. 23, § 2, ante, § 9917.

The provisions of this section were made applicable to the completed and uncompleted portions of the Illinois and Mississippi canal, by Act June 13, 1902, c. 1079, § 10, post, § 9972.

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1. Necessity of statutory authority for construction of bridges.
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1. Necessity of statutory authority for construction of bridges.—The right to cross navigable water by a bridge must be given by statute. Works v. Junction R. R. (C. C. 1853) Fed. Cas. No. 18,046; Inhabitants of Arundel v. McCulloch (1813) 10 Mass. 70; Commonwealth v. Inhabitants of Charlestown (1822) 18 Mass. (1 Pick.) 180, 11 Am. Dec. 161; Ft. Plain Bridge Co. v. Smith (1864) 30 N. Y. 44; People v. Gutchess (1867) 48 Barb. 656. But see Chenango Bridge Co. v. Paige (1880) 83 N. Y. 178, 38 Am. Rep. 407, holding that a person owning land on both sides of a river can maintain a bridge for his own use, although without authority of the legislature or even in defiance of legislative prohibition, providing he does not thereby interfere with the public easement; but he cannot without legislative authority, maintain such bridge for public use. And see Works v. Junction R. R. (C. C. 1853) Fed. Cas. No. 18,046; Little Rock, M. R. & T. R. Co. v. Brooks (1882) 39 Ark. 403, 43 Am. Rep. 277; Hamilton v. Vicksburg, S. & P. R. Co. (1882) 34 La. Ann. 970, 44 Am. Rep. 451; Fall River Iron Works Co. v. Old Colony & F. R. Co. (1862) 87 Mass. (5 Allen) 221; Attorney General v.. Stevens (1831) 1 N. J. Eq. (Saxt.) 369, 22 Am. Dec. 526; Miller v. Prairie du Chien & M. Ry. Co. (1874) 34 Wis. 533.

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In the absence of federal legislation, a state may, by authorizing the erection of a bridge, obstruct a navigable river. Willson v. The Black Bird Creek Marsh Co. (1829) 2 Pet. 245, 7 L. Ed. 412; Gilman v. Philadelphia (1865) 3 Wall. 713, 18 L. Ed. 96; Escanaba Co. v. Chicago (1882) 107 U. S. 678, 2 Sup. Ct. 185, 27 L. Ed. 442; Cardwell v. American Bridge Co. (1885) 5 Sup. Ct. 423, 113 U. S. 205, 28 L. Ed. 959; Huse v. Glover (1886) 7 Sup. Ct. 313, 119 U. S. 543, 30 L. Ed. 487; Willamette Iron Bridge Co. v. Hatch (1888) 8 Sup. Ct. 811, 815, 125 U. S. 1, 31 L. Ed. 629 (reversing decree Wallamet Iron Bridge Co. v. Same [C. C. 1884] 19 Fed. 347); Lake Shore & M. S. Ry. Co. v. Ohio (1897) 17 Sup. Ct. 357, 165 U. S. 365, 41 L. Ed. 747; City of Chicago v. Chicago Transp. Co. (1915) 222 Fed. 238, 137 C. C. A. 654, L. R. A. 1915F, 1062; Oregon City Transp. Co. v. Columbia St. Bridge Co. (D. C. 1892) 53 Fed. 549; Mauldin v. Central of Georgia Ry. Co. (1913) 61 So. 947, 181 Ala. 591; Whitehurst v. Norfolk & S. R. R. (N. C. 1911) 72 S. E. 73.

Where, under authority of the legislature of West Virginia, it is proposed to construct a bridge over a navigable river within the state, which bridge, if built, will be an obstruction to navigation, but its construction is neither expressly nor impliedly forbidden by any law of congress, there is no warrant for judicial proceedings to prevent the threatened obstruction to navigation. (1886) 18 Op. Atty. Gen. 425.

The power depends solely on the absence of congressional legislation asserting the reserved authority of the general government over all navigable streams, including even those wholly within a state, and ceased to exist from the enactment of Act Sept. 19, 1890 (26 Stat. 454). Egan v. Hart (1897) 17 Sup. Ct. 300, 301, 165 U. S. 188, 41 L. Ed. 680. And expenditure of money by Congress in improving a river and making a port of entry held not an assumption by Congress of power over the river, and the state is not deprived of the power of authorizing a bridge over the river without the assent of Congress. An act admitting

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Cited without definite applicat Cummings v. Chicago (1903) 23 Ct. 472, 476, 188 U. S. 410, 47 L. 525; U. S. v. Hanson (1909) 167 881, 93 C. C. A. 371; U. S. v. Grin (D. C. 1909) 170 Fed. 205 (reve [1911] 31 Sup. Ct. 480, 220 U. S. 55 L. Ed. 563); U. S. v. 11,150 Po of Butter (D. C. 1911) 188 Fed. (affirmed [1912] 195 Fed. 657, 115 C A. 463).

§ 9971. (Act March 3, 1899, c. 425, § 9.) Construction of brid etc., over navigable waters; approval of plans.

It shall not be lawful to construct or commence the construct of any bridge, dam, dike, or causeway over or in any port, rc stead, haven, harbor, canal, navigable river, or other naviga water of the United States until the consent of Congress to building of such structures shall have been obtained and u the plans for the same shall have been submitted to and appro by the Chief of Engineers and by the Secretary of War: Provic That such structures may be built under authority of the legislat of a State across rivers and other waterways the navigable porti of which lie wholly within the limits of a single State, provided location and plans thereof are submitted to and approved by Chief of Engineers and by the Secretary of War before construct is commenced: And provided further, That when plans for bridge or other structure have been approved by the Chief of gineers and by the Secretary of War, it shall not be lawful to dev from such plans either before or after completion of the struct unless the modification of said plans has previously been submi to and received the approval of the Chief of Engineers and of Secretary of War. (30 Stat. 1151.)

This section was part of the rivers and harbors appropriation act of 1 cited above.

This section and section 10 of this act, ante, § 9910, superseded Act 19, 1890, c. 907, § 7, 26 Stat. 454, as amended by Act July 13, 1892, c. § 3, 27 Stat. 88, which prohibited the erection of obstructions to naviga and prohibited the erection of bridges over navigable waters under State islation before the approval of the plans by the Secretary of War, and hibited the alteration of channels unless authorized by said Secretary. A operation of Act Sept. 19, 1890, c. 907, § 10, see said section, ante, § 9910a, notes thereunder.

Provisions prescribing what officers should aid in the enforcement of Sept. 19, 1890, c. 907, §§ 4–10, were made by section 11 thereof, ante, § Said sections 4–9 were superseded by this act, sections 9, 10, 12–16, 18–2 which contained provisions more or less similar to those contained in th perseded sections, and therefore said section 11 may be regarded as applic to this act so far as it contained such substitute provisions.

Penalties for violations of this section were prescribed by section 12 of this act, amended by Act Feb. 20, 1900, c. 23, § 2, ante, § 9917.

The provisions of this section were made applicable to the completed and uncompleted portions of the Illinois and Mississippi canal, by Act June 13, 1902, c. 1079, § 10, post, § 9972.

Notes of Decisions

1. Necessity of statutory authority for construction of bridges.
2. Power of states in absence of federal legislation.
3. Power of congress.
4. — Delegation of power on secretary of war.
5. Construction and operation of statutes permitting bridges.
6. Conflict with treaties.
7. Interstate and intrastate waters within statute.
8. Navigable waters of the United States.
9. — Waters held navigable.
10. — Waters held not navigable.
11. Duty and authority of secretary of war under this section.
12. — Under prior general statutes.
13. — Under local acts.
14. — Notification of approval of plans.
15. — Question of approval.
16. Eminent domain, right to exercise.
17. Contracts for construction of bridge as violative of statute.
18. Bridge a nuisance or unlawful obstruction.
19. — Question for jury.
20. Bridge not nuisance or unlawful obstruction.
21. — Judicial notice.
22. — Burden of proof and presumptions.
23. Obligation of owner of bridge in general.
24. Bridge owner or contractor held liable for damages.
25. Damages held not recoverable.
26. Abatement of bridge.
27. Injunctive relief.
28. Criminal prosecution.
29. Jurisdiction of courts.

1. Necessity of statutory authority for construction of bridges.—The right to cross navigable water by a bridge must be given by statute. Works v. Junction R. R. (C. C. 1853) Fed. Cas. No. 18,046; Inhabitants of Arundel v. McCulloch (1813) 10 Mass. 70; Commonwealth v. Inhabitants of Charlestown (1822) 18 Mass. (1 Pick.) 180, 11 Am. Dec. 161; Ft. Plain Bridge Co. v. Smith (1864) 30 N. Y. 44; People v. Gutchess (1867) 48 Barb. 656. But see Chenango Bridge Co. v. Paige (1880) 83 N. Y. 178, 38 Am. Rep. 407, holding that a person owning land on both sides of a river can maintain a bridge for his own use, although without authority of the legislature or even in defiance of legislative prohibition, providing he does not thereby interfere with the public easement; but he cannot without legislative authority, maintain such bridge for public use. And see Works v. Junction R. R. (C. C. 1853) Fed. Cas. No. 18,046; Little Rock, M. R. & T. R. Co. v. Brooks (1882) 39 Ark. 403, 43 Am. Rep. 277; Hamilton v. Vicksburg, S. & P. R. Co. (1882) 34 La. Ann. 970, 44 Am. Rep. 451; Fall River Iron Works Co. v. Old Colony & F. R. Co. (1862) 87 Mass. (5 Allen) 221; Attorney General v.. Stevens (1831) 1 N. J. Eq. (Saxt.) 369, 22 Am. Dec. 526; Miller v. Prairie du Chien & M. Ry. Co. (1874) 34 Wis. 533.

2. Power of states in absence of federal legislation.—See § 9910, ante, and notes thereunder.

In the absence of federal legislation, a state may, by authorizing the erection of a bridge, obstruct a navigable river. Willson v. The Black Bird Creek Marsh Co. (1829) 2 Pet. 245, 7 L. Ed. 412; Gilman v. Philadelphia (1865) 3 Wall. 713, 18 L. Ed. 96; Escanaba Co. v. Chicago (1882) 107 U. S. 678, 2 Sup. Ct. 185, 27 L. Ed. 442; Cardwell v. American Bridge Co. (1885) 5 Sup. Ct. 423, 113 U. S. 205, 28 L. Ed. 959; Huse v. Glover (1886) 7 Sup. Ct. 313, 119 U. S. 543, 30 L. Ed. 487; Willamette Iron Bridge Co. v. Hatch (1888) 8 Sup. Ct. 811, 815, 125 U. S. 1, 31 L. Ed. 629 (reversing decree Wallamet Iron Bridge Co. v. Same [C. C. 1884] 19 Fed. 347); Lake Shore & M. S. Ry. Co. v. Ohio (1897) 17 Sup. Ct. 357, 165 U. S. 365, 41 L. Ed. 747; City of Chicago v. Chicago Transp. Co. (1915) 222 Fed. 238, 137 C. C. A. 654, L. R. A. 1915F, 1062; Oregon City Transp. Co. v. Columbia St. Bridge Co. (D. C. 1892) 53 Fed. 549; Mauldin v. Central of Georgia Ry. Co. (1913) 61 So. 947, 181 Ala. 591; Whitehurst v. Norfolk & S. R. R. (N. C. 1911) 72 S. E. 73.

Where, under authority of the legislature of West Virginia, it is proposed to construct a bridge over a navigable river within the state, which bridge, if built, will be an obstruction to navigation, but its construction is neither expressly nor impliedly forbidden by any law of congress, there is no warrant for judicial proceedings to prevent the threatened obstruction to navigation. (1886) 18 Op. Atty. Gen. 425.

The power depends solely on the absence of congressional legislation asserting the reserved authority of the general government over all navigable streams, including even those wholly within a state, and ceased to exist from the enactment of Act Sept. 19, 1890 (26 Stat. 454). Egan v. Hart (1897) 17 Sup. Ct. 300, 301, 165 U. S. 188, 41 L. Ed. 680. And expenditure of money by Congress in improving a river and making a port of entry held not an assumption by Congress of power over the river, and the state is not deprived of the power of authorizing a bridge over the river without the assent of Congress. An act admitting

§ 9970. (Act March 3, 1899, c. 425, § 18.) Obstruction to navigation by bridges; notice to alter; penalty on failure to alter; appeal to Supreme Court.

Whenever the Secretary of War shall have good reason to believe that any railroad or other bridge now constructed, or which may hereafter be constructed, over any of the navigable waterways of the United States is an unreasonable obstruction to the free navigation of such waters on account of insufficient height, width of span, or otherwise, or where there is difficulty in passing the draw opening or the draw span of such bridge by rafts, steamboats, or other water craft, it shall be the duty of the said Secretary, first giving the parties reasonable opportunity to be heard, to give notice to the persons or corporations owning or controlling such bridge so to alter the same as to render navigation through or under it reasonably free, easy, and unobstructed; and in giving such notice he shall specify the changes recommended by the Chief of Engineers that are required to be made, and shall prescribe in each case a reasonable time in which to make them. If at the end of such time the alteration has not been made, the Secretary of War shall forthwith notify the United States district attorney for the district in which such bridge is situated, to the end that the criminal proceedings hereinafter mentioned may be taken. If the persons, corporation, or association owning or controlling any railroad or other bridge shall, after receiving notice to that effect, as hereinbefore required, from the Secretary of War, and within the time prescribed by him willfully fail or refuse to remove the same or to comply with the lawful order of the Secretary of War in the premises, such persons, corporation, or association shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, and every month such persons, corporation, or association shall remain in default in respect to the removal or alteration of such bridge shall be deemed a new offense, and subject the persons, corporation, or association so offending to the penalties above prescribed: Provided, That in any case arising under the provisions of this section an appeal or writ of error may be taken from the district courts [or from the existing circuit courts] direct to the Supreme Court either by the United States or by the defendants. (30 Stat. 1153.)

This section was part of the rivers and harbors appropriation act of 1899, cited above.

The words "or from the existing circuit courts," inclosed in brackets in this section, were superseded by the abolition of the circuit courts and the transfer of their jurisdiction to the district courts, by Jud. Code, §§ 289–291, ante, §§ 1266–1268.

This section superseded Act Aug. 11, 1888, c. 860, §§ 9, 10, 25 Stat. 424, as amended by Act Sept. 19, 1890, c. 907, §§ 4, 5, 26 Stat. 453, which required the Secretary of War to provide against obstructions to navigation by bridges, and prescribed a punishment on the owner's default in making the required alterations.

The Secretary of War was authorized to make the required changes in bridges obstructing navigation on the owner's failure to do so, and the Attorney-General was required to institute proceedings against the owner for the recovery of the cost of such changes, by Act July 5, 1884, c. 229, § 8, ante, § 9969.

Notes of Decisions

1. Constitutionality of statute.
2. —— Of prior statute.
3. Construction of statute in general.
4. —— Of prior statutes.
5. —— Of local acts.
6. Removal or alteration of bridges.
7. Conclusiveness of determination of secretary of war.
8. Notice of alteration, on whom served.
9. —— Requisites.
10. —— Hearing.
11. —— Time for compliance.
12. Alterations or changes in bridges as taking of property.
13. Compelling elevation of bridges, approval of plans as condition precedent.
14. Equitable relief.
15. Liability to fine under statute.
16. —— Under prior statute.

1. **Constitutionality of statute.**—This section is within the power of Congress. U. S. v. Union Bridge Co. (D. C. 1906) 143 Fed. 377, judgment affirmed Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523. It is not unconstitutional, as delegating legislative or judicial power to the secretary of war. Wisconsin v. Duluth (1877) 96 U. S. 379, 24 L. Ed. 668; Miller v. New York (1883) 109 U. S. 385, 3 Sup. Ct. 228, 27 L. Ed. 971; Marshall Field & Co. v. Clark (1892) 12 Sup. Ct. 495, 143 U. S. 649, 36 L. Ed. 294; U. S. v. Eaton (1891) 12 Sup. Ct. 764, 144 U. S. 677, 36 L. Ed. 591; Lake Shore & Michigan Ry. v. Ohio (1897) 17 Sup. Ct. 357, 165 U. S. 365, 41 L. Ed. 747; In re Kollock (1897) 17 Sup. Ct. 444, 165 U. S. 526, 41 L. Ed. 813; Rider v. U. S. (1900) 20 Sup. Ct. 841, 178 U. S. 251, 44 L. Ed. 1057; Buttfield v. Stranahan (1904) 192 U. S. 470, 24 Sup. Ct. 356, 48 L. Ed. 536; Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 370, 204 U. S. 364, 51 L. Ed. 523 (affirming judgment U. S. v. Union Bridge Co. [D. C. 1906] 143 Fed. 377); President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 216 U. S. 177, 54 L. Ed. 435 (affirming judgment U. S. v. Monongahela Bridge Co. [D. C. 1908] 160 Fed. 712); E. A. Chatfield Co. v. City of New Haven (C. C. 1901) 110 Fed. 788; U. S. v. Moline (D. C. 1897) 82 Fed. 592; (1904) 25 Op. Atty. Gen. 194 (citing [1896] 21 Op. Atty. Gen. 430).

A bridge over an interstate waterway, though erected under the sanction of a state, and not an illegal structure, or an unreasonable obstruction to navigation in the condition of commerce and navigation when erected, must be taken as having been constructed with knowledge of the paramount power of Congress to regulate commerce among the states, and subject to the condition or possibility that Congress might, at some time after its construction, and for the protection or benefit of the public, exert its constitutional power to protect free navigation as it then was against unreasonable obstructions. President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 360, 216 U. S. 177, 54 L. Ed. 435, affirming judgment U. S. v. Monongahela Bridge Co. (D. C. 1908) 160 Fed. 712.

A company which built a bridge over the Allegheny river under a charter from the state of Pennsylvania containing no specifications as to the character of the structure, but expressly providing that it should not obstruct the navigation of the river, and that the piers should be constructed in such manner as to meet the requisitions of the law in regard to obstruction of navigation, holds the franchise granted subject to such conditions, and may be required at any time by any authority having lawful jurisdiction to so alter its bridge as to meet the enlarged requirements of navigation. U. S. v. Union Bridge Co. (D. C. 1906) 143 Fed. 377, judgment affirmed Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523. See, U. S. v. President, etc., Jamaica & R. T. R. (C. C. 1910) 183 Fed. 598, defining the power to legislation over navigable waters.

2. —— **Of prior statute.**—Act Sept. 19, 1890, § 4, authorizing the secretary of war to give notice for the alteration of bridges that he believes to be unreasonable obstructions to navigation, and empowering the district attorney to prosecute parties refusing to comply with such notice, is not unconstitutional, as vesting the secretary with either judicial or legislative powers. U. S. v. City of Moline (D. C. 1897) 82 Fed. 592; (1896) 21 Op. Atty. Gen. 430. But see U. S. v. Rider (D. C. 1892) 50 Fed. 406, following U. S. v. Keokuk & H. Bridge Co. (D. C. 1891) 45 Fed. 178, and holding that Act Aug. 11, 1888 (25 Stat. 424), §§ 9, 10, providing that, when the secretary of war shall have reason to believe that any bridge is an obstruction to free navigation, he shall give notice requiring the bridge to be so altered as to render navigation through or under it easy and unobstructed, and imposing a penalty on the controllers of the bridge for failing to make such provision, is unconstitutional, in that it delegates to the secretary of war powers exclusively vested in congress.

3. **Construction of statute in general.**—This section was enacted to secure navigation against unreasonable obstruction. The Secretary of War is not invested by this section with arbitrary power, since he is bound, before making any decision or taking final action, to notify the parties interested of any proposed investigation, by him to give them an opportunity to be heard, and to allow reasonable time to make such alterations as he finds to be necessary to free navigation. President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 360, 216 U. S. 177, 54 L. Ed. 435, affirming judgment U. S. v. Monongahela Bridge Co. (D. C. 1908) 160 Fed. 712.

A bridge over the Mississippi river, constructed under the authority of Sp. Act July 25, 1866, c. 246, 14 Stat. 244, which expressly reserves the right of alteration or amendment so as to prevent or remove all material obstructions to navigation by the construction of bridges, is subject to this section. Hannibal Bridge Co. v. U. S. (1911) 31 Sup. Ct. 603, 221 U. S. 194, 55 L. Ed. 699. See U. S. v. Baltimore & O. R. Co. (1913) 33 Sup. Ct. 850, 229 U. S. 244, 57 L. Ed. 1169.

This section does not delegate to the Secretary of War all the power of Congress in regard to the construction of bridges over navigable waters, and to

declare where bridges shall be built, but it delegates the power only to determine whether an existing bridge is an unreasonable obstruction to navigation and to direct the manner in which the injury can be obviated. E. A. Chatfield Co. v. City of New Haven (C. C. 1901) 110 Fed. 788.

This section superseded Act Aug. 11, 1888, c. 860, §§ 9, 10, as amended by Act Sept. 19, 1890, c. 907, §§ 4, 5 (1904) 25 Op. Atty. Gen. 194. It applies to bridges constructed under the authority of acts of Congress, provision having been made in the previous sections of the act for structures of that nature unauthorized by Congress. The power conferred is administrative. Obstructions to navigation must be material obstructions. (1904) 25 Op. Atty. Gen. 195.

The widening of the channel of the south branch of the Chicago river by the sanitary district of Chicago, under licenses granted by the Secretary of War, does not connect the federal government with that project in such a way as will authorize the Secretary of War, under this section, to require the alteration of the bridge of the Metropolitan West Side Elevated Railway Company until the widening of the channel and the removal of the filled-in land adjoining the west abutment of the bridge has caused that structure to become an actual obstruction to the free navigation of the river. Filled-in land occupied by the west abutment of the bridge, which could not be removed prior to removal of the bridge, should be regarded as constituting a part of the bridge, and the Secretary of War may proceed for the alteration of the bridge when, by reason of the widening of the channel up to that point, it has become an actual obstruction to the free navigation of the river. In such a contingency notice to remove the same should be given to both the railway company and the sanitary district. (1911) 29 Op. Atty. Gen. 139.

The Secretary of War has no authority to order and compel the commissioners of a county to remove an established bridge over a navigable river wholly within the limits of the state and rebuild it in such a manner as to change the course of such river by straightening the same at the point in question and throwing the channel 50 feet to the east. State v. Ashtabula County Com'rs (1905) 28 Ohio Cir. Ct. R. 212.

The right of private parties to invoke the aid of the courts to prevent an unreasonable obstruction to navigation depends on the effect of this statute. E. A. Chatfield v. City of New Haven (C. C. 1901) 110 Fed. 788.

4. —— **Of prior statutes.**—The delegation to the secretary of war by Act Sept. 19, 1890 (26 Stat. 453), §§ 4, 5, 7, of authority to direct changes in existing bridges over any navigable waters of the United States, or of bridges to be erected under legislative authority of any state, for the purpose of preventing obstructions to navigation, showed no intention by congress to exercise exclusive control over navigable waters entirely within the jurisdiction of a state; and this act did not deprive the states of power to compel the removal or alteration of bridges erected over such waters without authority. Lake Shore & M. S. Ry. Co. v. Ohio (1897) 17 Sup. Ct. 357, 358, 165 U. S. 365, 41 L. Ed. 747.

A bridge having been built and maintained in accordance with the requirements of an act of congress, the secretary of war cannot declare it an obstruction to navigation, and require it to be changed, remodeled, or rebuilt, under Act Aug. 11, 1888 (25 Stat. 424), §§ 9, 10, providing that when he shall have reason to believe that any bridge is an obstruction to free navigation, or where there is difficulty in passing the draw opening or raft span, the secretary of war shall give notice requiring the bridge to be altered, so as to render navigation through or under it free, easy, and unobstructed, and that the owner of any such bridge shall be liable to a penalty for willfully failing to remove the bridge, or to cause the necessary alterations to be made. U. S. v. Keokuk & H. Bridge Co. (D. C. 1891) 45 Fed. 178.

Obstructions to navigation contemplated by sections 9 and 10 are such as pertain to the structure and plan of the bridge, in view of its location. Obstructions caused by failure to promptly open the draw of the bridge for passing vessels are not within those sections. (1895) 19 Op. Atty. Gen. 395.

The Secretary of War must, under Act Sept. 19, 1890, c. 907, § 4, 26 Stat. 453, ascertain whether, in his judgment, the Canal Street bridge across the south branch of the Chicago river is an unreasonable obstruction to the free navigation of that river, and in case he decides that it is, proceed as directed by that statute and require such an alteration of the bridge as will render navigation through and under it, safe, easy, and unobstructed. The rights of intersecting lines of freight and of travel, the needs and the convenience of residents, and the business movements of all who come and all who go are elements which help to constitute the reasonableness or the unreasonableness of an interfering structure built for their use, but to some extent obstructive to the waterway. (1891) 20 Op. Atty. Gen. 101.

5. —— **Of local acts.**—A railroad, empowered by its charter to bridge the navigable streams on its lines, in the course of repairing a drawbridge, which had become unsafe, constructed, in order to prevent the stoppage of its trains, a temporary bridge adjoining the old one, making unusual efforts to expedite the work. Plaintiff's steamer

could have carried freight above the bridge unusually early in the season but for the temporary bridge, and the supports used in the erection of the new bridge, and for the loss occasioned by the obstruction he sues. Held, that the temporary obstruction was not a ground for recovery, since wherever the exercise of a right conferred by law for the benefit of the public is attended with temporary inconvenience to private parties, in common with the public in general, they are not entitled to damages therefor. Hamilton v. Vicksburg, S. & P. R. Co. (1886) 7 Sup. Ct. 206, 119 U. S. 280, 30 L. Ed. 393.

Under Act April 12, 1900, declaring a trestle built by a railroad company over a tide water channel to be a lawful structure, and providing that such modification can be made in the trestle's position and elevation as the secretary of war may order in the interests of navigation, the trestle will be regarded as a lawful structure until the secretary of war shall order modifications which the company shall neglect to make. Frost v. Washington County R. Co. (1901) 51 A. 806, 96 Me. 76, 59 L. R. A. 68.

6. Removal or alteration of bridges.—The right of the United States to require the removal or alteration of a bridge as an obstruction to navigation of an interstate waterway is not affected by the fact that it made no objection when the bridge was built, or that it was built under authority from the state, nor do such facts render the government liable to compensate the owner for his loss, where the consent of Congress was not asked; the owner being chargeable with notice of its power over such waters and its right to exercise the same at any time. A company which built a bridge over the Allegheny river under a charter from the state of Pennsylvania containing no specifications as to the character of the structure, but expressly providing that it should not obstruct the navigation of the river, and that the piers should be constructed in such manner as to meet the requisitions of the law in regard to obstruction of navigation, holds the franchise granted subject to such conditions, and may be required at any time by any authority having lawful jurisdiction to so alter its bridge as to meet the enlarged requirements of navigation. U. S. v. Union Bridge Co. (D. C. 1906) 143 Fed. 377, judgment affirmed Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523. But see (1904) 25 Op. Atty. Gen. 194, holding that whether a bridge was so constructed as not to interrupt navigation must be determined by the requirements of navigation at that time, and cannot be made dependent on the interests of future navigation.

The bridge over the Muskingum river at Taylorsville, Ohio, is a nuisance to navigation which ought to be abated. (1890) 19 Op. Atty. Gen. 599.

Whether a bridge over a navigable water of the United States is an "unreasonable" obstruction to navigation must be determined in the first instance by the Secretary of War, whose decision is probably subject to review by the courts. (1890) 19 Op. Atty. Gen. 676.

7. Conclusiveness of determination of secretary of war.—Determination of the secretary of war in the due exercise of authority that a bridge is an obstruction is conclusive. U. S. v. Monongahela Bridge Co. (D. C. 1908) 160 Fed. 712, judgment affirmed President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 216 U. S. 177, 54 L. Ed. 435. But a decree in a suit by the United States by procurement of the Secretary of War after enactment of River and Harbor Act March 3, 1899, refusing to enjoin replacement of a bridge over the Ohio river, conformably to Act July 14, 1862, held a conclusive determination as against the Secretary of War, when attempting under supposed authority of this section to compel alterations in the bridge, that in the absence of changed conditions the structure was not subject to that act. U. S. v. Baltimore & O. R. Co. (1913) 33 Sup. Ct. 850, 229 U. S. 244, 57 L. Ed. 1169.

8. Notice of alteration, on whom served.—A state is not a person, corporation, or association within sections 4 and 5 of the act of September 19, 1890 (26 Stat. 453). Consequently the Secretary of War is not authorized to serve notice on a state requiring it to alter a bridge which is the property of the state. (1893) 20 Op. Atty. Gen. 606.

9. —— Requisites.—A notice to a bridge company to make alterations in a bridge over an interstate waterway, conformably to this section, enacted to secure navigation against unreasonable obstructions, is not insufficient as the basis of a criminal prosecution in case of noncompliance because it bears the signature of the Assistant Secretary of War, instead of the Secretary himself, who is the official named in the statute as the one to give such notice, where the communication shows upon its face that it was from the War Department, and from the Secretary of War, and that the latter, without abrogating his authority under the statute, only used the hand of the Assistant Secretary in order to give the owners of the bridge notice of what was required of them. Hannibal Bridge Co. v. U. S. (1911) 31 Sup. Ct. 603, 606, 221 U. S. 194, 55 L. Ed. 699.

Assuming that Act Aug. 11, 1888, c. 860, §§ 9 and 10, are valid, a notice given by the secretary of war must point out what alterations are required to be made; and a notice is not sufficient which requires the owners "to so alter

said bridge as to render navigation through or under it free, easy, and unobstructed," though the notice contains a recital that "the bridge was an obstruction to free navigation by reason of its location, which at stages of water permitting navigation over the Des Moines rapids renders difficult the passage of boats, rafts, etc., through its west draw rest pier." U. S. v. Keokuk & H. Bridge Co. (D. C. 1891) 45 Fed. 178.

10. —— **Hearing.**—A bridge company convicted for failure to make the alterations in a bridge over an interstate waterway which the Secretary of War, acting under this section requires, was afforded the reasonable opportunity to be heard, contemplated by that law, upon the question whether the bridge was, in fact, an unreasonable obstruction to navigation, where the company had full notice of the action of the officer of engineers, who, under the order of the Secretary, made a tentative examination of the facts, and appeared at the regular final hearing before that officer, with liberty to contest the facts, and introduce any evidence pertinent to the case, and the decision of the Secretary of War was based on the Engineer officer's report of all the facts adduced before him, and which constituted the basis of his conclusion that the bridge was an unreasonable obstruction to navigation. President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 360, 216 U. S. 177, 54 L. Ed. 435.

11. —— **Time for compliance.**—Where county commissioners of M. County, Ohio, were notified by the secretary of war, Feb. 25, 1891, to provide a state bridge over the M. river, with a "draw" for the passage of boats, on or before September 30, 1891, but the commissioners had no funds with which to provide the "draw," nor could make a levy for that purpose until March or June, 1891, which levy would not be collectible in full before December 20th of the year following, and they had applied to the legislature for the necessary funds without success, and had no opportunity to submit the question of the necessary expenditure, which exceeded $10,000, to a popular vote, as required in case of such excess, the notice did not give a reasonable time in which to provide the "draw." U. S. v. Rider (D. C. 1892) 50 Fed. 406.

12. **Alterations or changes in bridges as taking of property.**—A railroad bridge over a navigable stream, built under authority of an act of Congress which contained no reservation as to repeal, modification, or alteration, can only be required to be removed or replaced by a new bridge constructed, in accordance with Act March 3, 1899, c. 425, 30 Stat. 1121, by an act of Congress authorizing the same and providing for just compensation. U. S. v. Parkersburg Branch R. Co. (1906) 143 Fed. 224, 74 C. C. A. 354, affirming decree (C. C. 1905) 134 Fed. 969.

The making of alterations or changes in a bridge erected under the sanction of a state over an interstate waterway which the Secretary of War, acting under this section, requires to secure navigation against an unreasonable obstruction, is not a taking of private property for public use for which the federal Constitution requires compensation to be made, but is merely incidental to the exercise by the government of its power to regulate commerce among the states. Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 375, 204 U. S. 364, 51 L. Ed. 523, affirming judgment U. S. v. Union Bridge Co. (D. C. 1906) 143 Fed. 377.

The action of the Secretary of War in requiring changes in a bridge over an interstate waterway within a specified time, and after the parties have been heard, conformably to this section, enacted to secure navigation against unreasonable obstruction, is not such a taking of private property for public use as must, under the federal Constitution, be preceded by making, or sufficiently securing, compensation to the owners of the bridge. President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 360, 216 U. S. 177, 54 L. Ed. 435, affirming judgment U. S. v. Monongahela Bridge Co. (D. C. 1908) 160 Fed. 712.

The mere silence of Congress and its failure directly to interfere and prevent the original construction of a bridge erected under the sanction of a state, over an interstate waterway, imposes no constitutional obligation upon the United States to make compensation for subsequent changes or alterations which the public good, in its judgment, requires. Id.

The right of the United States to require the removal or alteration of a bridge as an obstruction to navigation of an interstate waterway is not affected by the fact that it made no objection when the bridge was built, or that it was built under authority from the state, nor do such facts render the government liable to compensate the owner for his loss, where the consent of Congress was not asked; the owner being chargeable with notice of its power over such waters and its right to exercise the same at any time. U. S. v. Union Bridge Co. (D. C. 1906) 143 Fed. 377, judgment affirmed Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523.

It is the duty of the Secretary of War, under section 4 of the act of 1890, to ascertain whether, in his judgment, the Canal Street Bridge across the south branch of the Chicago river is an unreasonable obstruction to the free navigation of that river, and, in case he decides that it is, to proceed as directed by that statute and require such an

alteration of the bridge as will render navigation through and under it safe, easy, and unobstructed. (1891) 20 Op. Atty. Gen. 101.

Where a bridge was erected by authority of a state before Congress assumed actual jurisdiction over the river for the purposes of navigation, and it was declared an obstruction to navigation by the Secretary of War, the owners or parties controlling the bridge may be required to alter it without compensation by the United States for the expenses incurred. (1896) 21 Op. Atty. Gen. 430. See, also, Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523.

Structures which are unauthorized by law may be summarily removed and without compensation. Those which are authorized by law can only be removed upon making just compensation, unless the authorization by the federal government was accompanied with a reservation of a right to change, modify, or remove. The Secretary of War is not authorized by section 4 of the act of 1890, to require changes to be made in the bridge of the Baltimore & Ohio Railroad Company over the Ohio river at the expense of the owner without compensation, as this act applies only to such bridges as are constructed under the authority of an act of Congress which expressly reserved to Congress the right to require changes or modifications in the structure. But, when the company itself voluntarily prostrates its bridge with the intention of constructing another in its place, the Secretary of War has the right to prescribe conditions as to height, length of span, etc. (1899) 22 Op. Atty. Gen. 343.

Reservation in the act of December 17, 1872 (17 Stat. 398), and the amendatory act of February 14, 1883 (22 Stat. 414), of the power to require the alteration of any bridge constructed under their authority, places beyond question the power in Congress to compel the owners to alter any bridge constructed at their own expense, without compensation, so as to remove all material obstructions to navigation. If the Ohio Falls bridge, which was constructed under the act of July 14, 1862 (12 Stat. 569), and the amendatory act of February 17, 1865 (13 Stat. 431), at the time of its construction complied with all the requirements of those acts and did not then interrupt the navigation of the river, there being in neither of those acts any reservation of power to alter, amend, or repeal the acts, the owners thereof cannot be required to make such changes therein as the interests of navigation may now demand, at their own expense, without compensation. (1904) 25 Op. Atty. Gen. 194.

The Secretary of War cannot require county commissioners to tear down a bridge over a navigable river wholly within state on the ground that it is an unreasonable obstruction to the free navigation of such river without tendering compensation therefor. State v. Ashtabula County Com'rs (1905) 28 Ohio Cir. Ct. R. 212.

13. Compelling elevation of bridge, approval of plans as condition precedent.—A drainage district cannot compel elevation of railroad bridges across a river until reasonable plans therefor are approved by the proper federal authorities. Kaw Valley Drainage Dist. of Wyandotte County v. Kansas City Terminal Ry. Co. (1912) 123 P. 991, 87 Kan. 272.

14. Equitable relief.—Where a private canal constructed and used as a cut-off to take the place commercially of the tortuous channel of a navigable stream has been abandoned, and its uses for such purpose entirely destroyed by the owner of the rights therein, the rights of the public revert to the original channel of the stream, and the United States may maintain a suit to enjoin the obstruction of such channel by a bridge. U. S. v. President, etc., of Jamaica & R. Turnpike Road (C. C. 1910) 183 Fed. 598, decree reversed (1913) 204 Fed. 759, 123 C. C. A. 128. See U. S. v. Baltimore & O. R. Co. (1913) 33 Sup. Ct. 850, 229 U. S. 244, 57 L. Ed. 1169. And see notes under § 9971, post.

15. Liability to fine under statute.—A verdict of guilty against a bridge company in a prosecution under this section for failure to comply with an order of the Secretary of War requiring the defendant to alter a bridge over the Monongahela river at Brownsville, 50 miles above Pittsburg, held sustained by the evidence, where it appeared that, prior to the time the bridge was built in 1832, the river had been declared a navigable stream by the Legislatures of both Pennsylvania and Virginia, and was to a small extent then navigated at that point; that surveys looking to its improved navigation as it has since been improved had been made by both the state and federal governments, and that defendant's charter granted by the state of Pennsylvania expressly provided that the bridge to be erected should not obstruct the navigation of the river. It is not a defense that the bridge was adopted and recognized by the executive department of the government as an integral part of the national pike and post route over which the mails were carried. U. S. v. Monongahela Bridge Co. (D. C. 1908) 160 Fed. 712, judgment affirmed President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 216 U. S. 177, 54 L. Ed. 435.

16. —— Under prior statute.—Failure to comply with an order of the secretary of war directing an alteration in a bridge to facilitate navigation will not

subject municipal officers to criminal prosecution under Act Aug. 11, 1888, as amended by Act Sept. 19, 1890, where such officers have not in their hands the funds to do the work, and under the laws of the state cannot obtain them within the time fixed by the secretary's order for the completion of the work. Failure of municipal officers to suggest any want of public moneys in their hands for the alteration of a bridge, or any want of power to obtain the funds, until after the secretary of war has made an order for such alteration, does not preclude them from setting up those facts in defense of their criminal liability. Rider v. U. S. (1900) 20 Sup. Ct. 838, 178 U. S. 251, 44 L. Ed. 1057, reversing judgment U. S. v. Rider (D. C. 1892) 50 Fed. 406.

Notice was served on a railroad company under Act Aug. 11, 1888, requiring it to alter its bridge over a certain river so that it would not obstruct navigation. Before the time allowed for the purpose had expired, the company was dispossessed of its property, including the bridge, and receivers thereof were appointed, in judicial proceedings instituted by mortgage bondholders. The notice not having been complied with, an action was brought against the receivers and the company to recover the fine imposed by the statute in such cases. Held, that the receivers would not be held liable, as no notice had been served on them in their official capacity, though prior to their appointment they had notice that the company had been notified to alter the bridge, as the statute required the notice to be served on the person or corporation owning or controlling the objectionable structure, and that the company was not liable, as the fact that it had been dispossessed of its property by judicial proceedings was a sufficient excuse for its noncompliance with the notice. U. S. v. St. Louis, A. & T. R. Co. (D. C. 1890) 43 Fed. 414.

Cited without definite application, Cummings v. Chicago (1903) 23 Sup. Ct. 472, 476, 188 U. S. 410, 47 L. Ed. 525; U. S. v. Hanson (1909) 167 Fed. 881, 93 C. C. A. 371; U. S. v. Grimand (D. C. 1909) 170 Fed. 205 (reversed [1911] 31 Sup. Ct. 480, 220 U. S. 506, 55 L. Ed. 563); U. S. v. 11,150 Pounds of Butter (D. C. 1911) 188 Fed. 157 (affirmed [1912] 195 Fed. 657, 115 C. C. A. 463).

§ 9971. (Act March 3, 1899, c. 425, § 9.) Construction of bridges, etc., over navigable waters; approval of plans.

It shall not be lawful to construct or commence the construction of any bridge, dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of War: Provided, That such structures may be built under authority of the legislature of a State across rivers and other waterways the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced: And provided further, That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of War, it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War. (30 Stat. 1151.)

This section was part of the rivers and harbors appropriation act of 1899, cited above.

This section and section 10 of this act, ante, § 9910, superseded Act Sept. 19, 1890, c. 907, § 7, 26 Stat. 454, as amended by Act July 13, 1892, c. 158, § 3, 27 Stat. 88, which prohibited the erection of obstructions to navigation, and prohibited the erection of bridges over navigable waters under State legislation before the approval of the plans by the Secretary of War, and prohibited the alteration of channels unless authorized by said Secretary. As to operation of Act Sept. 19, 1890, c. 907, § 10, see said section, ante, § 9910a, and notes thereunder.

Provisions prescribing what officers should aid in the enforcement of Act Sept. 19, 1890, c. 907, §§ 4–10, were made by section 11 thereof, ante, § 9923. Said sections 4–9 were superseded by this act, sections 9, 10, 12–16, 18–20, of which contained provisions more or less similar to those contained in the superseded sections, and therefore said section 11 may be regarded as applicable to this act so far as it contained such substitute provisions.

Penalties for violations of this section were prescribed by section 12 of this act, amended by Act Feb. 20, 1900, c. 23, § 2, ante, § 9917.

The provisions of this section were made applicable to the completed and uncompleted portions of the Illinois and Mississippi canal, by Act June 13, 1902, c. 1079, § 10, post, § 9972.

Notes of Decisions

1. Necessity of statutory authority for construction of bridges.
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1. Necessity of statutory authority for construction of bridges.—The right to cross navigable water by a bridge must be given by statute. Works v. Junction R. R. (C. C. 1853) Fed. Cas. No. 18,046; Inhabitants of Arundel v. McCulloch (1813) 10 Mass. 70; Commonwealth v. Inhabitants of Charlestown (1822) 18 Mass. (1 Pick.) 180, 11 Am. Dec. 161; Ft. Plain Bridge Co. v. Smith (1864) 30 N. Y. 44; People v. Gutchess (1867) 48 Barb. 656. But see Chenango Bridge Co. v. Paige (1880) 83 N. Y. 178, 38 Am. Rep. 407, holding that a person owning land on both sides of a river can maintain a bridge for his own use, although without authority of the legislature or even in defiance of legislative prohibition, providing he does not thereby interfere with the public easement; but he cannot without legislative authority, maintain such bridge for public use. And see Works v. Junction R. R. (C. C. 1853) Fed. Cas. No. 18,046; Little Rock, M. R. & T. R. Co. v. Brooks (1882) 39 Ark. 403. 43 Am. Rep. 277; Hamilton v. Vicksburg, S. & P. R. Co. (1882) 34 La. Ann. 970, 44 Am. Rep. 451; Fall River Iron Works Co. v. Old Colony & F. R. Co. (1862) 87 Mass. (5 Allen) 221; Attorney General v.. Stevens (1831) 1 N. J. Eq. (Saxt.) 369, 22 Am. Dec. 526; Miller v. Prairie du Chien & M. Ry. Co. (1874) 34 Wis. 533.

2. Power of states in absence of federal legislation.—See § 9910, ante, and notes thereunder.

In the absence of federal legislation, a state may, by authorizing the erection of a bridge, obstruct a navigable river. Willson v. The Black Bird Creek Marsh Co. (1829) 2 Pet. 245, 7 L. Ed. 412; Gilman v. Philadelphia (1865) 3 Wall. 713, 18 L. Ed. 96; Escanaba Co. v. Chicago (1882) 107 U. S. 678, 2 Sup. Ct. 185, 27 L. Ed. 442; Cardwell v. American Bridge Co. (1885) 5 Sup. Ct. 423, 113 U. S. 205, 28 L. Ed. 959; Huse v. Glover (1886) 7 Sup. Ct. 313, 119 U. S. 543, 30 L. Ed. 487; Willamette Iron Bridge Co. v. Hatch (1888) 8 Sup. Ct. 811, 815, 125 U. S. 1, 31 L. Ed. 629 (reversing decree Wallamet Iron Bridge Co. v. Same [C. C. 1884] 19 Fed. 347); Lake Shore & M. S. Ry. Co. v. Ohio (1897) 17 Sup. Ct. 357, 165 U. S. 365, 41 L. Ed. 747; City of Chicago v. Chicago Transp. Co. (1915) 222 Fed. 238, 137 C. C. A. 654, L. R. A. 1915F, 1062; Oregon City Transp. Co. v. Columbia St. Bridge Co. (D. C. 1892) 53 Fed. 549; Mauldin v. Central of Georgia Ry. Co. (1913) 61 So. 947, 181 Ala. 591; Whitehurst v. Norfolk & S. R. R. (N. C. 1911) 72 S. E. 73.

Where, under authority of the legislature of West Virginia, it is proposed to construct a bridge over a navigable river within the state, which bridge, if built, will be an obstruction to navigation, but its construction is neither expressly nor impliedly forbidden by any law of congress, there is no warrant for judicial proceedings to prevent the threatened obstruction to navigation. (1886) 18 Op. Atty. Gen. 425.

The power depends solely on the absence of congressional legislation asserting the reserved authority of the general government over all navigable streams, including even those wholly within a state, and ceased to exist from the enactment of Act Sept. 19, 1890 (26 Stat. 454). Egan v. Hart (1897) 17 Sup. Ct. 300, 301, 165 U. S. 188, 41 L. Ed. 680. And expenditure of money by Congress in improving a river and making a port of entry held not an assumption by Congress of power over the river, and the state is not deprived of the power of authorizing a bridge over the river without the assent of Congress. An act admitting

a state into the Union, and providing that all the navigable waters of said state shall be highways and forever free, did not prohibit obstructions by bridges to the navigation of such waters as authorized by state law where Congress had not assumed control. Gilman v. Philadelphia (1865) 3 Wall. 713, 18 L. Ed. 96; Cardwell v. Bridge Co. (1885) 5 Sup. Ct. 425, 113 U. S. 205, 28 L. Ed. 959; Hamilton v. Vicksburg, S. & P. R. Co. (1886) 7 Sup. Ct. 206, 119 U. S. 280, 30 L. Ed. 393; Willamette Iron Bridge Co. v. Hatch (1888) 8 Sup. Ct. 811, 125 U. S. 1, 31 L. Ed. 629 (reversing decree Wallamet Iron Bridge Co. v. Same [C. C. 1884] 19 Fed. 347); Scheurer v. Columbia St. Bridge Co. (C. C. 1886) 27 Fed. 172; People v. Potrero & B. V. R. Co. (1885) 7 Pac. 445, 67 Cal. 166. But see Hatch v. Wallamet Iron Bridge Co. (C. C. 1881) 6 Fed. 326, holding that the provision is paramount; and a bridge impeding or obstructing free navigation, is unlawful, and parties constructing it may be enjoined at the suit of riparian owners injured thereby.

The erection of a bridge within a state across a navigable river running partly within and partly without the state is not under the exclusive control of congress, and, in the absence of congressional action, the state has authority to regulate the same. Rhea v. Newport N. & M. V. R. Co. (C. C. 1892) 50 Fed. 16.

A state statute cannot give a right to use a bridge across a river beyond low-water mark constituting a boundary of the state. Evansville & H. Traction Co. v. Henderson Bridge Co. (C. C. 1904) 134 Fed. 973.

3. Power of congress.—See § 9910, ante, and notes thereunder.

Congress may regulate or prohibit the construction of bridges across navigable waters of the United States. U. S. v. Milwaukee & St. P. Ry. Co. (C. C. 1873) Fed. Cas. No. 15,778. It may determine the location, plan, and mode of construction of bridges. Texarkana & Ft. S. Ry. Co. v. Parsons (1896) 74 Fed. 408, 20 C. C. A. 481, and cases cited. It has supreme control of a navigable stream where the commerce thereon is interstate and foreign. U. S. v. Rio Grande Dam & Irrigation Co. (1899) 19 Sup. Ct. 770, 174 U. S. 690, 43 L. Ed. 1136; Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523; Philadelphia Co. v. Stimson (1912) 32 Sup. Ct. 340, 223 U. S. 605, 56 L. Ed. 570; Hagerta v. Mississippi River Power Co. (D. C. 1913) 202 Fed. 776.

The United States has power to confer authority on a municipal corporation to build and maintain an interstate bridge over a navigable stream, and to that end to condemn land for approaches in another state. Latinette v. City of St. Louis (1912) 201 Fed. 676, 120 C. C. A. 638. But a grant of power to build a bridge may be withdrawn under a reservation where Congress determines that other requirements than those prescribed were essential to protect navigation. Bridge Co. v. U. S. (1881) 105 U. S. 470, 26 L. Ed. 1143. See, also, U. S. v. Keokuk & H. Bridge Co. (D. C. 1891) 45 Fed. 178; U. S. v. Rider (D. C. 1892) 50 Fed. 406, 410; U. S. v. Moline (D. C. 1897) 82 Fed. 592; (1896) 21 Op. Atty. Gen. 430.

4. —— Delegation of power on secretary of war.—Congress having authorized the construction of a bridge of a given height, over navigable water, may empower the secretary of war to determine whether the proposed structure will be a serious obstruction to navigation, and to authorize changes in the plan of the structure. Miller v. Mayor of New York (1883) 3 Sup. Ct. 228, 109 U. S. 385, 27 L. Ed. 971.

Congress may delegate to one of the chiefs of a department authority to regulate or prohibit the construction of bridges across the navigable waters of the United States. U. S. v. Milwaukee & St. P. Ry. Co. (C. C. 1873) Fed. Cas. No. 15,778.

An act of congress authorizing the erection of a bridge over navigable waters may lawfully devolve upon the secretary of war the duty of determining, from a plan of the proposed bridge to be submitted by the bridge company, whether or not it conforms to a condition in the act that the navigation of the river shall not be injured; there being an express reservation to congress of power to amend or repeal the act. People v. Kelly (1879) 76 N. Y. 475, 5 Abb. N. C. 383.

See (1891) 20 Op. Atty. Gen. 101; (1899) 22 Op. Atty. Gen. 343.

5. Construction and operation of statutes permitting bridges.—A statute granting permission for the construction of a bridge across navigable water of the United States is a grant of a privilege, and must be construed most strictly in favor of the United States. Hannibal & St. J. R. Co. v. Missouri River Packet Co. (1888) 8 Sup. Ct. 874, 880, 125 U. S. 260, 31 L. Ed. 731. That a bridge has been constructed under an act of congress does not render it a legal structure, except in so far as it conforms to the terms and limitations of the act. If the powers granted by the act were exceeded, or were exercised in a manner different from that provided in the grant of authority, the grant will be no protection. Missouri River Packet Co. v. Hannibal & St. J. R. Co. (C. C. 1880) 2 Fed. 285.

The grant of power to a railroad company to bridge a navigable stream carries with it, as a necessary incident,

the right to repair; and, when the piling necessary to such repair is driven in the ordinarily skillful manner, loss resulting therefrom to a person who uses the stream to raft logs is damnum absque injuria. Central Trust Co. v. Wabash, St. L. & P. Ry. Co. (C. C. 1887) 32 Fed. 566.

The right to maintain a railroad bridge lawfully built across a navigable stream carries the right to rebuild the same in whole or in part when required for the safety of travel and transportation, and also the right to build such temporary structures in the stream as may be necessary to prevent the interruption of the operation of the railroad, and to maintain the same for a reasonable length of time. Rogers Sand Co. v. Pittsburgh, Ft. W. & C. Ry. Co. (1905) 139 Fed. 7, 71 C. C. A. 419. Or repair or renew the superstructure when necessary to its safe use, and, where it is at all times, both during and after the alteration, kept and maintained in conformity to the act, the courts have no power to enjoin the work or to abate the structure as a nuisance, on the ground that it is an unlawful obstruction to navigation. U. S. v. Parkersburg Branch R. Co. (1906) 143 Fed. 224, 74 C. C. A. 354, affirming decree (C. C. 1905) 134 Fed. 969. And see Gulf, C. & S. F. Ry. Co. v. Meadows (Tex. Civ. App. 1909) 120 S. W. 521, holding that, where a railroad company tore down a wooden bridge, and erected in its place a new steel structure, it was a "construction" of a bridge within the statute. See, also, Hughes v. Northern Pac. Ry. Co. (C. C. 1883) 18 Fed. 106; St. Louis & St. P. Packet Co. v. Keokuk & H. Bridge Co. (C. C. 1887) 31 Fed. 755; (1885) 18 Op. Atty. Gen. 133; Silver v. Missouri Pac. Ry. Co. (1890) 101 Mo. 79, 13 S. W. 410; Baltimore & O. R. Co. v. Wheeling, P. & C. Transp. Co. (1877) 32 Ohio St. 116; Tuckahoe Canal Co. v. Tuckahoe & J. R. R. Co. (Va. 1840) 11 Leigh, 42, 36 Am. Dec. 374.

Neither this section nor, ante, § 9910, applies to the rebuilding of a bridge which was lawfully in existence when these sections were passed. Rogers Sand Co. v. Pittsburgh, Ft. W. & C. Ry. Co. (1905) 139 Fed. 7, 71 C. C. A. 419.

Section 9910, ante, not only includes the kind of structures specifically referred to in this section, but all others that may be an obstruction to the navigable capacity of the waters of the United States, without reference to whether the obstruction is but slight, and only temporary. Hubbard v. Fort (C. C. 1911) 188 Fed. 987.

This section and ante, § 9910, merely provided that, under circumstances described, the Secretary of War may withdraw objections on the part of the United States to the erection of structures mentioned therein over navigable streams, but Congress did not assume to deprive a state in which such stream may be situated of all jurisdiction thereover. (1909) 27 Op. Atty. Gen. 327. They do not transfer exclusive control over navigable waters within a state to the federal government, but the right to erect structures in such waters is dependent on the concurrent consent of both the state and federal governments. Minnesota Canal & Power Co. v. Pratt (1907) 112 N. W. 395, 101 Minn. 197, 11 L. R. A. (N. S.) 105.

No one may build a bridge over a navigable river within the limits of one state without the concurrent permission of the state and national governments. Gulf, C. & S. F. Ry. Co. v. Meadows (Tex. Civ. App. 1909) 120 S. W. 521, citing Montgomery v. Portland (1903) 23 Sup. Ct. 735, 190 U. S. 89, 47 L. Ed. 965.

A bridge could be built across navigable parts of a stream lying wholly within a single state, if authorized by the state or a subdivision thereof, and the location and plans of the bridge were first approved by the Chief of Engineers and Secretary of War; a special act of Congress consenting to the erection of the bridge not being required by Bridge Act, ante, §§ 9961-9968, or otherwise. In re City of Seattle (1911) 66 Wash. 277, 119 P. 798.

The words "navigable river of the United States" refer to the general character of navigability, and not to the condition as to navigability, and not to the condition as to navigability at the particular point the construction of a bridge is proposed. The sanction of Congress is required for the construction of a proposed bridge across the Niagara river, connecting Niagara Falls, N. Y., with Niagara Falls, Ontario, Canada. (1908) 27 Op. Atty. Gen. 120.

Delegation to the secretary of war by Act Sept. 12, 1890 (26 Stat. 453) §§ 4, 5, 7 of authority to direct changes in existing bridges over any navigable waters of the United States, or of bridges to be erected under legislative authority of any state, for the purpose of preventing obstructions to navigation, showed no intention by congress to exercise exclusive control over navigable waters entirely within a state, and did not deprive states of power to compel removal or alteration of bridges erected over such waters without authority. Lake Shore & M. S. Ry. Co. v. Ohio (1897) 17 Sup. Ct. 357, 358, 165 U. S. 365, 41 L. Ed. 747.

The right of a railroad company to maintain a bridge across the Ohio river, built in conformity to Act July 14, 1862, c. 167, 12 Stat. 569, which contained no reservation of the right to alter or amend it, is not affected by any subsequent acts relating to the same

subject-matter, all of which are by their terms prospective in their operation. U. S. v. Parkersburg Branch R. Co. (C. C. 1905) 134 Fed. 969, decree affirmed (1906) 143 Fed. 224, 74 C. C. A. 354.

In 1892 no general law existed providing for or permitting bridges to be built over navigable waters which divide or extend into two or more states, and no general legislation confers the power of approval on the Secretary of War as to bridges over such waters. (1892) 20 Op. Atty. Gen. 488.

The words "or other works" in Act 1890, c. 907, § 7, as amended in 1892 (chapter 158, § 3), making it unlawful to begin the construction of a "bridge * * * or other works," etc., are restricted to things of the same kind as those just enumerated. (1899) 22 Op. Atty. Gen. 332.

Canals being artificial waterways or means of commercial transportation, as well as natural lakes and rivers, the same principles may be applied to them that are applied to bridges, turnpikes, streets and railroads. Id.

Where a state has granted authority to construct a bridge over a navigable river and the location and plan has been approved by the Secretary of War, the question whether the purchasers of such right are authorized to proceed is one which does not concern the government. (1896) 21 Op. Atty. Gen. 293. And see Oregon City Transp. Co. v. Columbia St. Bridge Co. (D. C. 1892) 53 Fed. 549; Adams v. Ulmer (1890) 39 Atl. 347, 91 Me. 47; City of Buffalo v. Delaware, L. & W. R. Co. (1910) 120 N. Y. Supp. 1081, 136 App. Div. 247, affirming judgment (1908) 112 N. Y. Supp. 690, 60 Misc. Rep. 584.

6. Conflict with treaties.—This section is not in conflict with Webster-Ashburton Treaty 1842, art. 2. Minnesota Canal & Power Co. v. Pratt (1907) 112 N. W. 395, 101 Minn. 197, 11 L. R. A. (N. S.) 105.

7. Interstate and intrastate waters within statute.—Act Sept. 19, 1890, c. 907, §§ 7, 10, 26 Stat. 454, and this section are not limited to waters wholly within a state, but apply to interstate waters as well. Hubbard v. Fort (C. C. 1911) 188 Fed. 987.

8. Navigable waters of the United States.—See chapter A of this title, ante, and notes thereunder, and § 9910, ante.

The term "navigable waters of the United States" defined. U. S. v. Banister Realty Co. (C. C. 1907) 155 Fed. 583.

Act Sept. 19, 1890, c. 907, §§ 7, 10, 26 Stat. 454, and this section, relating to the obstruction of navigable waters, and providing for the construction of wharves, dams, weirs, bridges, etc., are not limited to waters wholly within a state, but apply to interstate waters as well. Hubbard v. Fort (C. C. 1911) 189 Fed. 987.

A stream is not navigable requiring the assent of the War Department of the United States to the construction of a bridge, where it is not capable of bearing either for the whole or a part of a year boats loaded with freight in the regular course of trade. Brantley v. Lee (1913) 77 S. E. 788, 139 Ga. 600.

The navigable waters of the United States are those which form in their ordinary conditions, by themselves, or by uniting with other waters a continued highway over which commerce is, or may be carried on, with other states or foreign countries in the customary mode. People v. Board of Supervisors (1905) 122 Ill. App. 40, and cases cited.

9. —— Waters held navigable.—East River. (1892) 20 Op. Atty. Gen. 479.

Lake Washington ship canal. In re City of Seattle (1911) 119 Pac. 798, 66 Wash. 277.

The Mississippi river in Minnesota, both above and below the Falls of St. Anthony. (1898) 22 Op. Atty. Gen. 52. See, also, U. S. v. Milwaukee & St. P. Ry. Co. (C. C. 1873) Fed. Cas. No. 15,-778.

Niagara river connecting Niagara Falls, N. Y., with Niagara Falls, Ontario, Canada, is navigable. (1908) 27 Op. Atty. Gen. 120, citing in support of definition of navigable waters The Daniel Ball (1870) 10 Wall. 557, 19 L. Ed. 999; The Montello (1870) 11 Wall. 411, 20 L. Ed. 191; The Montello (1874) 20 Wall. 430, 22 L. Ed. 391; Water Power Co. v. Water Commissioners (1897) 18 Sup. Ct. 157, 168 U. S. 349, 42 L. Ed. 497; U. S. v. Rio Grande Irrigation Co. (1898) 19 Sup. Ct. 770, 174 U. S. 690, 43 L. Ed. 1136; Leovy v. U. S. (1900) 20 Sup. Ct. 797, 177 U. S. 621, 44 L. Ed. 914.

And see chapter A of this title, ante, and notes thereunder, and § 9910, ante, and notes thereunder.

10. —— Waters held not navigable.—Where a canal constructed over private ground to shorten a navigable river route had never been dedicated to the public, the owner was entitled to close it at his election; and the government could not compel the removal of a bridge as an obstruction to navigation, under Act Sept. 19, 1890, as amended by Act July 13, 1892 (this section), and Act Feb. 20, 1900. U. S. v. Jamaica & R. Turnpike Co. (1913) 204 Fed. 759, 123 C. C. A. 128, reversing decree (C. C. 1910) 183 Fed. 598.

See chapter A of this title, ante, and notes thereunder and § 9910, ante.

11. Duty and authority of secretary of war under this section.—A condition, attached to the approval by the secre-

tary of war of the erection of a bridge by a city over a canal under the jurisdiction of the federal government, to the effect that the bridge should be removed or rebuilt when the work of constructing the canal might render such action necessary, did not contemplate that the Secretary of War might, subsequently, arbitrarily order the bridge removed and prohibit the erection of another in its place, but that the city might afterwards elect to rebuild at the same place if its plans for rebuilding were approved by the Secretary of War. In re City of Seattle (Wash. 1911) 119 P. 798.

12. —— **Under prior general statutes.** —In Act Sept. 19, 1890 (26 Stat. 453), the provision of section 7 that it should not be lawful to thereafter erect any bridge in any navigable river or navigable waters of the United States, under any act of the legislature or any state, until the location and plan of such bridge should have been submitted to and approved by the secretary of war, contemplated that the function of the secretary should extend only to the form of future structures, since the act would not have provided for the future erection of bridges under state authority if its very purpose was to deny for the future all power to the states on the subject. Lake Shore & M. S. Ry. Co. v. Ohio (1897) 17 Sup. Ct. 357, 358, 165 U. S. 365, 41 L. Ed. 747. His authority is limited to the cases of bridges authorized by state law to be erected over waters, the navigable portions of which lie wholly within the limits of the state. He is not authorized to approve or disapprove the location and plan of the bridge proposed to be erected over the Monongahela river at Bessemer, Pa. (1892) 20 Op. Atty. Gen. 488.

By section 3 of the river and harbor act of 1892 (27 Stat. 110), he is authorized to approve or disapprove of the location or plan of a proposed bridge authorized by a state legislature over waters wholly within the state. (1892) 20 Op. Atty. Gen. 479. And is not prohibited from approving the plan and location of a bridge across boundary waters if acts of authorization were passed by the legislature of the states interested. (1899) 22 Op. Atty. Gen. 332.

As Act Sept. 19, 1890, which prohibits the erection of a bridge in navigable waters without permission of the secretary of war, excepts from its operation bridges the construction of which has been previously authorized by law, such consent is not necessary for a bridge authorized by the state legislature previous to such act. Adams v. Ulmer (1897) 39 A. 347, 91 Me. 47.

13. —— **Under local acts.**—Where Congress by resolution gave its assent that a bridge across the Ohio river at Cincinnati might be constructed in accordance with the state charter, reserving the right to withdraw such assent if the free navigation of the river should be materially obstructed, a judicial decision that the bridge would interfere with navigation was not first necessary to exercise the right to withdraw the assent. Newport & C. Bridge Co. v. U. S. (1881) 105 U. S. 470, 26 L. Ed. 1143.

Under Acts April 1 and June 4, 1872, the secretary of war is authorized to determine whether the construction of a bridge over the Mississippi at a given point would seriously affect navigation, and to prohibit the building of the bridge there, and will not be disturbed. U. S. v. Milwaukee & St. P. Ry. Co. (C. C. 1873) Fed. Cas. No. 15,779.

Under Act Dec. 17, 1872 (17 Stat. 398), and Act Feb. 14, 1883 (22 Stat. 414), authorizing and regulating the construction of bridges over the Ohio river, the Secretary of War has power to disapprove of the plans of the bridges where he is of the opinion that they would unduly obstruct the navigation of the river. (1886) 18 Op. Atty. Gen. 512. He should not approve the plans for the bridge authorized by the act of March 3, 1887 (24 Stat. 501), to be built across the Missouri River between the cities of Omaha and Council Bluffs, unless they provide for a structure of sufficient strength to bear trains of cars drawn by locomotives. (1887) 19 Op. Atty. Gen. 29. It is not his duty under the act of February 28, 1891 (26 Stat. 789), incorporating the Washton & Arlington Railroad Company, to select or approve of the exact location of the bridge to be built across the Potomac river, but rather to approve the plans, specifications, and materials used, and the manner of construction of such bridge. It is his duty to refuse to approve the plans for the construction of a bridge at a place so far removed from the point indicated in the act as to be plainly beyond its scope. He has authority to relocate the bridge as requested by the company, provided the place designated is a reasonable compliance with the terms of the act. (1893) 20 Op. Atty. Gen. 549.

The Hudson Highland Bridge & Railway Company, a corporation created by the legislature of the state of New York, with authority to construct a bridge across the Hudson river between two points in the state of New York cannot lawfully build such bridge without first obtaining the consent of Congress, as required by this section. (1906) 25 Op. Atty. Gen. 601.

14. —— **Notification of approval of plans.**—The notification required by Act March 3, 1869, to be given by the secretary of war, that he approved the plan of the New York and Brooklyn bridge, was sufficient if made through

one of his subordinates. People v. Kelly (1879) 76 N. Y. 475.

15. —— **Question of approval.**—The courts of the state have no judicial knowledge as to whether the plans and specifications for bridges across navigable streams were submitted to and approved by the Chief of Engineers and the Secretary of War as required by federal statutes; this being a question of fact and not of law. Mauldin v. Central of Georgia Ry. Co. (Ala. 1913) 61 So. 947.

16. **Eminent domain, right to exercise.**—Under this section a public service corporation will not be permitted to exercise the power of eminent domain in furtherance of an enterprise involving interference with navigable waters within the state without having first procured the approval of the federal government. Minnesota Canal & Power Co. v. Pratt (1907) 112 N. W. 395, 101 Minn. 197.

The appropriation by eminent domain of land for the approaches and terminal facilities necessary to the use of a bridge erected, under Act Jan. 26, 1901, c. 181, 31 Stat. 741, over a navigable stream, is not forbidden by that act because the plans submitted to the Secretary of War, and specifically approved by him, though subserving the purpose of showing the extent to which navigation would be affected, do not include such terminal and connecting facilities, and cannot, under the act, be altered without his consent. Stone v. Southern Illinois & M. Bridge Co. (1907) 27 Sup. Ct. 615, 616, 206 U. S. 267, 51 L. Ed. 1057, affirming judgment Southern Illinois & M. Bridge Co. v. Stone (1906) 92 S. W. 475, 194 Mo. 175.

Act June 25, 1906, authorizing the city of St. Louis to build and maintain a bridge over the Mississippi river, held to confer power on the city to maintain proceedings in a federal court to condemn land for approaches in the state of Illinois. Latinette v. City of St. Louis (1912) 201 Fed. 676, 120 C. C. A. 638.

17. **Contracts for construction of bridge as violative of statute.**—Only the United States government can raise the question that a contract providing for the construction of a bridge across a navigable stream is in violation of the federal statute requiring the consent of the Secretary of War to the erection of such a bridge. People v. Board of Sup'rs of Whiteside County (1905) 122 Ill. App. 40.

18. **Bridge a nuisance or unlawful obstruction.**—The public benefit arising from the construction of a bridge over a navigable river is no defense to a bill in equity for an injunction to abate it as an obstruction to the free navigation of the river. State of Pennsylvania v. Wheeling & B. Bridge Co. (1851) 54 U. S. (13 How.) 518, 14 L. Ed. 249.

A bridge must be clearly shown to be a nuisance before it can be decreed so. Mississippi & M. R. Co. v. Ward (1862) 67 U. S. (2 Black) 485, 17 L. Ed. 311. See Hannibal & St. J. R. Co. v. Missouri River Packet Co. (1888) 8 Sup. Ct. 874, 125 U. S. 260, 31 L. Ed. 731; Texarkana & Ft. S. Ry. Co. v. Parsons (1896) 74 Fed. 408, 20 C. C. A. 481; South Carolina R. Co. v. Moore (1859) 28 Ga. 398, 73 Am. Dec. 778; Charleston & S. Ry. Co. v. Johnson (1884) 73 Ga. 306; Healy v. Joliet & C. R. Co. (1878) 2 Ill. App. (2 Bradw.) 435; Snyder v. Foster (1889) 77 Iowa, 638, 42 N. W. 506; State v. Inhabitants of Freeport (1857) 43 Me. 198; Commonwealth v. Inhabitants of Charlestown (1822) 18 Mass. (1 Pick.) 180, 11 Am. Dec. 161; People v. Jessup (1898) 51 N. Y. Supp. 228, 28 App. Div. 524 (judgment reversed [1899] 54 N. E. 682, 160 N. Y. 249); Selman v. Wolfe (1863) 27 Tex. 68.

19. —— **Question for jury.** — See Cantrell v. Knoxville, C. G. & L. R. Co. (1891) 90 Tenn. (6 Pickle) 638, 18 S. W. 271; Selman v. Wolfe (1863) 27 Tex. 68.

20. **Bridge not nuisance or unlawful obstruction.**—A bridge constructed over a navigable river in accordance with the act of Congress authorizing it is a lawful structure, however much it may interfere with navigation. Texarkana & Ft. S. Ry. Co. v. Parsons (1896) 74 Fed. 408, 20 C. C. A. 481, and cases cited.

A bridge constructed under the authority of congress and of a state legislature, in the manner authorized by law, is a nuisance. Miller v. City of New York (C. C. 1880) 10 Fed. 513 (decree affirmed [1883] 109 U. S. 385, 3 Sup. Ct. 228, 27 L. Ed. 971); Easton v. New York & L. B. R. Co. (1873) 24 N. J. Eq. (9 C. E. Green) 49; People v. Kelly (1879) 76 N. Y. 475.

A bridge of sufficient elevation, or with a proper draw, is not necessarily an impediment to navigation; nor is any structure such an impediment which facilitates commerce, instead of being a hindrance. Jolly v. Terre Haute Draw-Bridge Co. (C. C. 1853) Fed. Cas. No. 7,441.

A drawbridge over navigable water, although it unavoidably occasions some delay in passing it, is not necessarily such an obstruction to the navigation as to amount to a nuisance. Works v. Junction R. R. (C. C. 1853) Fed. Cas. No. 18,046.

The measurement of the length of a draw, within the meaning of the act of congress authorizing the building of a drawbridge over the Mississippi river at Keokuk, Iowa, and requiring the draw to be 160 feet in length, must be

on a line at right angles to the piers, upon the surface of the water at low-water mark. St. Louis & St. P. Packet Co. v. Keokuk & H. Bridge Co. (C. C. 1887) 31 Fed. 755.

Facts held insufficient to authorize judicial proceedings in behalf of the United States on the ground that bridges are an obstruction to navigation. (1885) 18 Op. Atty. Gen. 200.

A bridge so built that the piers were parallel to the usual and ordinary course of the current, held a sufficient compliance with the act of Congress authorizing it. Silver v. Missouri Pac. Ry. Co. (1890) 101 Mo. 79, 13 S. W. 410.

Complaint held not to show that a bridge across a navigable stream was a public nuisance where it did not show whether it was built since the passage of Act March 3, 1899, §§ 9, 10 (this section and § 9910), ante, or whether it was built without the approval of the War Department as required by that act. Mauldin v. Central of Georgia Ry. Co. (1913) 61 So. 947, 181 Ala. 591.

Where a bridge over a navigable river was erected in accordance with this section, noncompliance with the provisions of the city charter of the municipality in which the bridge was located will not render it a nuisance, so as to entitle one injured by the impediment of navigation to recover. That the plan of a bridge over a navigable stream shows a cessation of the street lines at the river bank and a narrower passage over the river is no ground for claiming the structure to be a nuisance because not in accordance with the plans, which call for the same width as the street. Milwaukee Western Fuel Co. v. City of Milwaukee (1913) 139 N. W. 540, 152 Wis. 247.

A drawbridge constructed and maintained according to proper authority over navigable waters is not an unlawful obstruction to navigation; the owner being bound to provide for the safe and prompt passage of vessels through the draw. Southern Ry. Co. v. Reeder (Ala. 1907) 44 So. 699. And see, also, Wethersfield v. Humphrey (1850) 20 Conn. 218; Bucki v. Cone (1889) 25 Fla. 1, 6 South. 160; Illinois River Packet Co. v. Peoria Bridge Ass'n (1865) 38 Ill. 467; Williams v. Beardsley (1851) 2 Ind. (2 Cart.) 591; Attorney General v. Hudson River R. Co. (1853) 9 N. J. Eq. (1 Stockt.) 526; Pedrick v. Raleigh & P. S. R. Co. (N. C. 1906) 55 S. E. 877; Dugan v. Bridge Co. (1856) 27 Pa. (3 Casey) 303, 67 Am. Dec. 464.

21. —— Judicial notice.—On a complaint for obstructing navigation by a bridge over navigable waters, the court will take judicial notice of an act of congress authorizing its construction by defendant.—Pennsylvania Ry. Co. v. Baltimore & N. Y. Ry. Co. (C. C. 1888) 37 Fed. 129.

22. —— Burden of proof and presumptions.—Where an act authorizing a bridge prescribes details of construction, and requires the plans to be approved by the secretary of war, the burden, in an action for obstructing navigation, is on defendant to show compliance with such provisions. Pennsylvania Ry. Co. v. Baltimore & N. Y. Ry. Co. (C. C. 1888) 37 Fed. 129.

Where a bridge over a navigable river, built under authority of an act of Congress, was maintained for many years, it would be inferred that the plans and location had been approved by the Secretary of War, as required, and that the structure was authorized. Shreveport Cottonwood Co. v. Missouri Valley Bridge & Iron Co. (Ark. 1909) 117 S. W. 750.

Where Congress, without assuming control of all navigable rivers in the United States, made it unlawful to construct a bridge across a navigable river without consent of Congress and approval of the plans by the chief of engineers and Secretary of War, and unlawful to deviate from the plans so approved without consent of such officers, and authorized the building of a railroad bridge across a navigable stream, it will be presumed that the bridge was constructed according to plans approved as required. State v. White River Valley Ry. Co. (1911) 129 N. W. 1034, 27 S. D. 65.

23. Obligation of owner of bridge in general.—A bridge across a navigable stream is an obstruction to navigation tolerated only because of necessity and the convenience of commerce on land, and, the right of navigation being paramount, it is incumbent on the owner of the bridge to so construct it that it may be readily opened to permit the passage of vessels, to place it in charge of persons competent to operate it, and to equip it with lights and signals giving warning of its position in opening and closing, and to give timely warning to approaching vessels if for any reason it cannot be opened. Clement v. Metropolitan West Side Elevated Ry. Co. (1903) 123 Fed. 271, 59 C. C. A. 289. He must adequately guard vessels navigating in its vicinity from any concealed danger to which the bridge exposes navigation. Southern Transp. Co. v. Philadelphia, B. & W. R. Co. (D. C. 1912) 196 Fed. 548, decree affirmed (1913) 205 Fed. 732, 124 C. C. A. 26. Though licensed by Congress to maintain it, he has no right unnecessarily to make it or its approaches dangerous to vessels passing through the draw. Id.

In an action for damages for detention of plaintiff's steamer by a bridge erected by defendant, and by driftwood accumulated against its piers, it appeared that the bridge was constructed under an act requiring that the open-

ings in the draw should be 130 feet in the clear, and that the plans should be approved by the secretary of war, but the openings were only 125 feet and there was no evidence to show that the plans had ever been submitted to, or approved by the secretary of war. The court charged the jury that, if they found that the narrowing of the space in the draw caused the driftwood to accumulate, the railway company was responsible therefor, and, if that was the natural result of the narrowing, they need not particularly investigate any theory that it did not cause the accumulation. Held, that this instruction was more favorable to the railway company than it had a right to ask, and it could not complain of it as error. Texarkana & Ft. S. Ry. Co. v. Parsons (1896) 74 Fed. 408, 20 C. C. A. 481.

In the case of a vessel attempting to pass a bridge across the Chicago river, the city must use every reasonable precaution, as soon as practicable after notice, to remove all obstacles. Scott v. Chicago (C. C. 1866) Fed. Cas. No. 12,526.

A company authorized to construct a bridge over the Allegheny river, in the course of the work, may lawfully drive piles in the bed of the river at a pier site; but if, at an ordinary flood stage, such piles are likely to become a hidden and dangerous obstruction to navigation, it is the duty of the company to mark the place distinctly by a buoy, or otherwise, even though the submerged caisson and piles might create a break on the surface of the water which a skillful navigator would observe in daylight and understand. The Modoc (D. C. 1886) 26 Fed. 718.

Under an act of congress requiring the piers to be built "parallel to the current," the bridge company is required to use only reasonable care and foresight in the location of its piers. If the piers at the time of location are parallel to the current, and by some act of the government subsequent to the erection of the bridge or by any other means not within the control of the company, the current is so changed as to prevent navigation through the piers, it is incumbent upon the company to conform its piers to the new condition of things. But if the company has constructed its piers with reference to the subsequent acts of the government, and has used reasonable diligence and skill in forming and executing its plans, and the change is such as not to unreasonably endanger navigation, negligence is not to be imputed to it. St. Louis & St. P. Packet Co. v. Keokuk & H. Bridge Co. (C. C. 1887) 31 Fed. 755. See Idaho Northern R. Co. v. Post Falls Lumber & Mfg. Co. (1911) 119 P. 1098, 20 Idaho, 695.

24. Bridge owner or contractor held liable for damages.—In an action against persons building a railroad bridge for injuries to plaintiff's steamboat, due to defendants' failure to indicate the position of unfinished piers which were covered by high water, it appeared that the water was not so high as to make navigation dangerous, and that the steamboat at the time of the accident was under perfect control, and had a sufficiency of competent lookouts, and the course she pursued was the customary and proper one. On the other hand, her pilots had passed the locality frequently before, and had opportunity to become familiar with the positions of the piers. There was no break in the water to indicate that the submerged pier was near the surface, and another boat had shortly before taken the same course in safety. Held, that the pilots were not guilty of contributory negligence, since the absence of the buoy which, until it was washed away, indicated the position of the pier, might warrant the inference that the pier was submerged to such an extent as to be no longer dangerous. Casement v. Brown (1893) 13 Sup. Ct. 672, 148 U. S. 615, 37 L. Ed. 582.

Defendants contracted to build the piers for a railroad bridge across a river, and to furnish materials therefor, but before the piers were completed they were submerged by high water, so as to be a dangerous obstruction to navigation, and defendants placed buoys to indicate their position. The buoys were washed away and replaced once. One of them was again washed away, and, after a reasonable time for its replacement had elapsed, and defendants had failed to replace it, a barge in tow of plaintiff's steamer struck the submerged pier, whose position it should have indicated, and was destroyed. Held, that defendants were guilty of negligence. Id.

The faces of piers of a drawbridge were not perpendicular, but were built out under the surface of the water, in irregular projections of steps to the bottom of the river. Contractors, in repairing the bridge, took up piles which had been driven around the piers to ward off vessels. Held, that they were liable for injuries sustained by a vessel striking against the under-water projections of a pier. Vessel Owners' Towing Co. v. Wilson (1894) 63 Fed. 626, 11 C. C. A. 366.

A railroad company held liable for injury to a tug through coming into collision with the abutment of its bridge, which was in a defective condition. Reichert v. Long Island R. Co. (1912) 194 Fed. 407, 114 C. C. A. 369.

Contractor for a bridge over a stream, who stored piles where they were submerged at high water without any buoy or mark, held negligent, and liable for injury to a vessel caused thereby. Red Star Towing & Transportation Co. v. Snare & Triest Co. (1912) 194 Fed. 672, 115 C. C. A. 66.

Although the width between the piers of a bridge may be less than the act of

congress authorizing it requires, yet this will not render the owner of the bridge liable for damages to a passing vessel unless the unlawful structure caused or contributed to the injury. Missouri River Packet Co. v. Hannibal & St. J. R. Co. (C. C. 1880) 2 Fed. 285.

A city held liable in admiralty for an injury to a vessel by a dangerous obstruction left under water in the construction of a bridge built and maintained by the city over a navigable stream. Thompson-Lockhart Co. v. City of Philadelphia (D. C. 1914) 212 Fed. 965.

A city held liable for an injury to a vessel while passing under a bridge maintained by the city, caused by the projection of a stone abutment under water left unguarded. Bernard & Samsel v. City of Philadelphia (D. C. 1914) 212 Fed. 968. And see, also, St. Louis, I. M. & S. Ry. Co. v. Meese (1884) 44 Ark. 414; Armistead v. Shreveport & R. R. Val. Ry. Co. (1901) 32 So. 456, 108 La. 171; Missouri River Packet Co. v. Hannibal & St. J. R. Co. (1883) 79 Mo. 478; Farmers' Co-operative Mfg. Co. v. Albemarle & R. R. Co. (1895) 117 N. C. 579, 23 S. E. 43, 53 Am. St. Rep. 606, 29 L. R. A. 700; Townsend v. McLean Const. Co. (N. C. 1912) 75 S. E. 715; Jutte v. Cincinnati & Newport Bridge Co. (1901) 21 Ohio Cir. Ct. R. 422, 12 O. C. D. 136; Jones v. Seaboard Air Line Ry. Co. (1903) 45 S. E. 188, 67 S. C. 181; Memphis & O. R. Co. v. Hicks (1858) 37 Tenn. (5 Sneed) 427.

25. Damages held not recoverable.—A state is not prohibited from authorizing a railroad to construct a drawbridge over a navigable stream, and where a railroad, empowered by its charter to bridge navigable streams on its lines while repairing a drawbridge, constructed, in order to prevent the stoppage of its trains, a temporary bridge adjoining the old one, and plaintiff's steamer was prevented from passing through the bridge by such temporary work, the temporary obstruction was not a ground for recovery, since wherever the exercise of a right conferred by law for the benefit of the public is attended with temporary inconvenience to private parties in common with the public in general, they are not entitled to damages therefor. Hamilton v. Vicksburg, S. & P. R. Co. (1886) 7 Sup. Ct. 206, 208, 119 U. S. 280, 30 L. Ed. 393.

The defendant railroad company finished repairs to its bridge across a navigable stream in the winter of 1884 and 1885 after the ice had formed on the river. The piles used in the work were cut off at the surface of the ice, and when the ice sank later with the falling river, the stumps were cut again, so that when the ice went out the tops of the piles were from 18 to 30 inches below the surface of the water. The plaintiffs rafted logs from the opening of the season down to July, when the stream became so low that it would not have been navigable even if the stumps had been removed. Held, that the piling had been properly removed, and that the company was not liable in damages for any loss which occurred while the river was susceptible of navigation. Central Trust Co. v. Wabash, St. L. & P. Ry. Co. (C. C. 1887) 32 Fed. 566. See, also, Shreveport Cottonwood Co. v. Missouri Valley Bridge & Iron Co. (Ark. 1909) 117 S. W. 750; Pensacola & A. R. Co. v. Hyer (1893) 32 Fla. 539, 14 South. 381, 22 L. R. A. 368; Illinois River Packet Co. v. Peoria Bridge Ass'n (1865) 38 Ill. 467; Hamilton v. Vicksburg & P. R. Co. (1882) 34 La. Ann. 970, 44 Am. Rep. 451; Blackwell v. Old Colony R. Co. (1877) 122 Mass. 1; Thayer v. New Bedford R. Co. (1878) 125 Mass. 253; Whitehurst & Norfolk & S. R. R. (N. C. 1911) 72 S. E. 73; Monongahela Bridge Co. v. Kirk (1863) 46 Pa. (10 Wright) 112, 84 Am. Dec. 527; South Carolina Steam-Boat Co. v. South Carolina Ry. Co. (1889) 9 S. E. 650, 30 S. C. 539, 4 L. R. A. 209, 14 Am. St. Rep. 923.

26. Abatement of bridge.—In proceedings to abate a bridge across a navigable stream as a nuisance, defendant is entitled to the benefit of every reasonable doubt, the same as in proceedings under an indictment. Mississippi & M. R. Co. v. Ward (1862) 67 U. S. (2 Black) 485, 17 L. Ed. 311. See Thomas v. Wade (1904) 37 So. 743, 48 Fla. 311.

27. Injunctive relief.—The state of Pennsylvania, having constructed, and owning in whole or in part, canals, railroads, and other means of travel and transportation, the revenues of which would be impaired by the obstruction of the Ohio river, created by a bridge at Wheeling in Virginia, has such a direct interest in the matter as will entitle her, there being no complete and adequate remedy at law, to bring a bill in equity in the supreme court of the United States, in the exercise of its original jurisdiction, for an injunction to remove the obstruction. Pennsylvania v. Wheeling & B. Bridge Co. (1851) 54 U. S. (13 How.) 518, 14 L. Ed. 249.

The proprietor of a wharf which is situated upon a navigable river, although he is not the owner of a licensed coasting vessel, a pilot, or a navigator, may file a bill to restrain the erection of a bridge over the stream by authority of the state within whose limits it wholly lies; he being likely to suffer consequential injury therefrom. Id.; Gilman v. City of Philadelphia (1865) 70 U. S. (3 Wall.) 713, 18 L. Ed. 96.

The erection of a bridge across the Hudson river between the city of Troy

and the village of West Troy, in accordance with the provisions of Act N. Y. April, 1872, held not to result in a material obstruction to navigation, and an injunction refused. Silliman v. Troy & W. T. Bridge Co. (C. C. 1873) Fed. Cas. No. 12,853.

A bridge constructed across a navigable stream, as authorized by act of congress and the local legislature, cannot be enjoined as a public nuisance. Miller v. New York (C. C. 1876) Fed. Cas. No. 9,585.

Where a bridge to be constructed over navigable waters, with the draws as proposed, will not cause any appreciable obstruction to commerce, the federal courts will not act to enjoin the same. United States v. Railroad Bridge Co. (C. C. 1855) Fed. Cas. No. 16,114.

Complainant held to fail to show either that its bridge was properly constructed, or that defendant's navigation of the river was dangerous to the bridge, and hence an injunction would be denied. Texas & P. Ry. Co. v. Interstate Transp. Co. (C. C. 1890) 42 Fed. 261.

One who seeks by suit in his own name to compel the removal of an obstruction to navigable waters must show some injury to himself, caused thereby, different from the injury sustained by the general public who navigate such waters. Hence, where complainant, a riparian owner, had free access to the navigable channel in front of his land, held, that he could not, in his own name, maintain a suit to compel the removal of a bridge over such channel, half a mile from his land, though his boats, in navigating to and from adjacent waters, were obstructed by such bridge. A private bridge over the channel between Quantuc bay and East bay, portions of the Great South bay, in Long Island, is an obstruction to navigation, and an application for the removal of such bridge is a proper subject of consideration by a court of equity. Whitehead v. Jessup (C. C. 1893) 53 Fed. 707.

A bill which alleges that complainant owns and operates a manufacturing plant situated on a navigable river, that it owns and operates vessels for the transportation of its products from its factory by water, and that defendants maintain a bridge across such river in violation of the laws of the United States, which constitutes a public nuisance, and which prevents the passage of complainant's vessels to and from its works, and makes it necessary to transship its products, shows special injury which will sustain a suit to abate the nuisance. E. A. Chatfield Co. v. City of New Haven (C. C. 1901) 110 Fed. 788. And see City of Buffalo v. Delaware, L. & W. R. Co. (1908) 112 N. Y. Supp. 690, 60 Misc. Rep. 584; People v. Delaware & Hudson Co. (1912) 135 N. Y. Supp. 339, 75 Misc. Rep. 322. And see notes under § 9970, ante.

28. Criminal prosecution. — See §§ 9910, 9918, 9923, ante, and notes.

Where a bridge over a navigable stream is built for public uses, and produces a public benefit, and leaves a reasonable space for the passage of vessels, it is not indictable. Mississippi & M. R. Co. v. Ward (1862) 67 U. S. (2 Black) 485, 17 L. Ed. 311.

A criminal prosecution for the obstruction of navigable waters of the United States under Act Sept. 19, 1890, §§ 6, 7, 10 (26 Stat. 426), may be maintained, though neither the officers and agents of the United States in charge of works for the improvement of said waters, nor the collectors of customs or other revenue officers, have given information to the district attorney as provided in section 9923. U. S. v. David Burns and Gideon Burns (C. C. 1893) 54 Fed. 351.

29. Jurisdiction of courts. — The courts of the United States have jurisdiction in equity to abate a bridge over a navigable river, although authorized by statute of the state in which it is situated, and although congress has not legislated on the subject, at the suit of any other state, or of any party residing in another state, in danger of irreparable injury. Pennsylvania v. Wheeling & B. Bridge Co. (1851) 54 U. S. (13 How.) 518, 14 L. Ed. 249. See Silver v. Missouri Pac. Ry. Co. (1890) 101 Mo. 79, 13 S. W. 410; Lincks v. Amend (N. J. Ch. 1895) 32 Atl. 755.

Cited without definite application, Salliotte v. King Bridge Co. (1903) 122 Fed. 378, 58 C. C. A. 466, 65 L. R. A. 620 (writ of certiorari denied [1903] 24 Sup. Ct. 841, 191 U. S. 569, 48 L. Ed. 306); Carver v. San Pedro, L. A. & S. L. R. Co. (C. C. 1906) 151 Fed. 334. See, also, U. S. v. Ormsbee (D. C. 1896) 74 Fed. 207, 210, citing Act Sept. 19, 1890, c. 907. § 7, as amended by Act July 13, 1892 c. 158, § 3.

§ 9972. (Act June 13, 1902, c. 1079, § 10.) Construction of bridges over Illinois and Mississippi Canal; approval of plans; right of way, etc.

The provisions of section nine of the river and harbor Act of March third, eighteen hundred and ninety-nine, are hereby made applicable alike to the completed and uncompleted portions of the Illinois and Mississippi Canal. Whenever the Secretary of War shall approve plans for a bridge to be built across said canal he may, in

his discretion, and subject to such terms and conditions as in his judgment are equitable, expedient, and just to the public, grant to the person or corporation building and owning such bridge a right of way across the lands of the United States on either side of and adjacent to the said canal; also the privilege of occupying so much of said lands as may be necessary for the piers, abutments, and other portions of the bridge structure and approaches. (32 Stat. 374.)

This section was part of the river and harbor appropriation act of 1902, cited above.

Act March 3, 1899, c. 425, § 9, mentioned in this section relating to construction of bridges, etc., over navigable waters is set forth ante, § 9971.

§ 9973. (Act Aug. 18, 1894, c. 299, § 5.) Regulations for drawbridges over navigable waters; violation of rules; penalty.

It shall be the duty of all persons owning, operating, and tending the drawbridges now built, or which may hereafter be built across the navigable rivers and other waters of the United States, to open, or cause to be opened, the draws of such bridges under such rules and regulations as in the opinion of the Secretary of War the public interests require to govern the opening of drawbridges for the passage of vessels and other water crafts, and such rules and regulations, when so made and published, shall have the force of law. Every such person who shall willfully fail or refuse to open, or cause to be opened, the draw of any such bridge for the passage of a boat or boats, or who shall unreasonably delay the opening of said draw after reasonable signal shall have been given, as provided in such regulations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than two thousand dollars nor less than one thousand dollars, or by imprisonment (in the case of a natural person) for not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: Provided, That the proper action to enforce the provisions of this section may be commenced before any commissioner, judge, or court of the United States, and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States: Provided further, That whenever, in the opinion of the Secretary of War, the public interests require it, he may make rules and regulations to govern the opening of drawbridges for the passage of vessels and other water crafts, and such rules and regulations, when so made and published, shall have the force of law, and any violation thereof shall be punished as hereinbefore provided. (28 Stat. 362.)

This section was part of the rivers and harbors appropriation act of 1894, cited above.

Provisions for the enforcement of the regulations for drawbridges authorized by this section, in the manner prescribed by Act March 3, 1899, c. 425, § 17, ante, § 9922, were made by Act June 13, 1902, c. 1079, § 6, ante, § 9862.

General provisions regulating the construction of bridges over navigable waters were made by the Bridge Act of March 23, 1906, c. 1130, ante, §§ 9961–9968.

Notes of Decisions

1. Effect of statute.
2. Publication of rules—Necessity.
3. —— Sufficiency.
4. Obstructions interfering with draw.
5. Municipal corporations operating drawbridges.
6. Care required in maintaining drawbridges.
7. —— Repairs.
8. Liability of owner in general.
9. —— Bridge tender at fault.
10. —— Bridge tender not at fault.
11. —— Vessel at fault.
12. —— Vessel not at fault.
13. —— Burden of proof.
14. —— Pleading.
15. —— Evidence.
16. —— Defenses.
17. —— Jury questions.
18. —— Damages.

1. Effect of statute.—Regulations for operation of drawbridges over navigable streams construed. The Yucatan (C. C. A. 1915) 226 Fed. 437.

This section does not add anything to the law on the subject, except to authorize the Secretary of War to adopt rules to govern the opening of draw-

bridges for vessels and other water crafts, which rules, when made and published, have the force of law. And it does not, of its own force, prohibit a railroad company from exercising its privilege under a state statute of closing its drawbridge over a river a reasonable time for repairs. (1899) 22 Op. Atty. Gen. 312.

2. Publication of rules—Necessity.—Rules made pursuant to this section have no force until published, so that a steamboat owner would not be negligent in not observing rules not published. Fugina v. Chicago & N. W. Ry. Co. (1910) 125 N. W. 981, 142 Wis. 144.

3. —— Sufficiency.—Where rules were given to the government officer in charge of improvements of a river at a port, with instructions to deliver copies thereof to the commanding officers of every vessel entering it, but four steamboat captains testified that they never received a copy thereof, it could not be said, as a matter of law, that the rules were published, so as to make it negligent for a boat not to whistle on approaching a drawbridge, as required by the rules. Fugina v. Chicago & N. W. Ry. Co. (1910) 125 N. W. 981, 142 Wis. 144.

4. Obstructions interfering with draw.—The erection of a drawbridge across a navigable stream is an incident to navigation, which cannot be defeated by an obstruction erected between high and low water mark, or so near the bridge as to interfere with the draw. Lenoir County v. Crabtree (1912) 74 S. E. 105, 158 N. C. 357.

5. Municipal corporations operating drawbridges.—A city, in operating a drawbridge forming a part of one of its streets, acts in its private or corporate capacity, and for injury to a vessel from the negligent operation of such draw, the city is liable. Lehigh Valley Transp. Co. v. City of Chicago (1909) 86 N. E. 1093, 237 Ill. 581, affirming judgment (1908) 141 Ill. App. 618.

6. Care required in maintaining drawbridges.—Proprietors of drawbridges over navigable streams are bound to use reasonable means to avoid accidents, and not to obstruct navigation, including the use of available signals to avoid misunderstanding and collision, though not expressly required by statute. Pennsylvania R. Co. v. Central R. Co. of New Jersey (D. C. 1892) 59 Fed. 190, decree affirmed Central R. Co. of New Jersey v. Pennsylvania R. Co. (1893) 59 Fed. 192, 8 C. C. A. 86. And must exercise reasonable care, not only not to impede the safe navigation of passing vessels, but to obviate any unnecessary delay thereto. Central R. Co. of New Jersey v. Pennsylvania R. Co. (1893) 59 Fed. 192, 8 C. C. A. 86, affirming decree Pennsylvania R. Co. v. Central R. Co. of New Jersey (D. C. 1892) 59 Fed. 190.

The duty to take proper care of a bridge includes the duty to make proper provision for the passage of vessels through the draw. The custodians of the bridge are bound to the use of ordinary diligence to avoid accidents to vessels going through the draw in a customary manner, as one of the incidents of the management of the bridge. They are therefore responsible for the want of ordinary care on the part of their servants. Edgerton v. The Mayor (D. C. 1886) 27 Fed. 230. See, also (1899) 22 Op. Atty. Gen. 314, holding that operators of drawbridges must open them in a reasonable manner and at a reasonable time for the passage of vessels consistent with the uses for which drawbridges are built.

7. —— Repairs.—The repair of draws and of the bridges with which they are connected is necessary for their maintenance. A sufficient time should be allowed for repairs, and if they cannot be prosecuted without closing the bridge for a number of successive days, such closing cannot be considered an unreasonable interference with navigation. (1899) 22 Op. Atty. Gen. 312.

A county is not liable for detention of vessels in a river by breakage of the machinery operating a draw in a county bridge, where it does not appear that there was any negligence by the county's agents or servants, or any unreasonable delay in making repairs. Pettit v. Board of Chosen Freeholders of Camden County (D. C. 1898) 87 Fed. 768, decree affirmed (1899) 91 Fed. 998, 34 C. C. A. 159.

Evidence held not to show negligence in failing to promptly repair the draw of a bridge. New Haven Towing Co. v. City of New Haven (D. C. 1903) 126 Fed. 882.

8. Liability of owner in general—In a suit against a city to recover for an injury caused by the draw of a bridge swinging out and striking a passing vessel, where there was evident fault on the part of the vessel or the bridge tender, but it is not satisfactorily located by the evidence, the libel will be dismissed. City of Chicago v. Wisconsin S. S. Co. (1899) 97 Fed. 107, 38 C. C. A. 70.

Under the regulations of the lighthouse board, requiring the suspension of lights on drawbridges, so that three red lights will be seen up and down stream when the draw is closed, and three green lights when it is open, the failure of a city to maintain such lights on a drawbridge erected by it is such negligence as will render it liable for damages to a steamer resulting from such omission. Smith v. City of Shakopee (1900) 103 Fed. 240, 44 C. C. A. 1.

A city held liable for injury to a steamer by striking an unguarded abutment of a drawbridge maintained by the

city. City of Milwaukee v. Kensington S. S. Co. (1912) 199 Fed. 109, 120 C. C. A. 228, affirming decree The Starke (D. C. 1910) 182 Fed. 498.

A tug having a schooner in tow in midstream, with a hawser 190 feet long, passed safely through the draw of a bridge, and the schooner, following straight behind, entered between the fenders of the draw, and proceeded some feet within, when she suddenly sheered, and struck the fender almost bows on. The master of the schooner was at the wheel. There was nothing to show that the current caused the sheer, or that the tug caused it, and the testimony of the master showed that something occurred which he could not explain. Held, that libels against the bridge company and against the tug must be dismissed, retaining a libel by the bridge company against the schooner for further evidence. Charleston Bridge Co. v. The John C. Sweeney and The Relief (D. C. 1893) 55 Fed. 536.

A railroad company which constructed a drawbridge over a navigable river under and in conformity to a license from the War Department is liable for an injury received by a vessel while passing through the draw, caused by striking stone and other material deposited in the river in constructing the bridge, and which obstructed the channel between the piers. Maxon v. Chicago & N. W. Ry. Co. (D. C. 1903) 122 Fed. 555. And see, also, Southern Transp. Co. v. Philadelphia, B. & W. R. Co. (D. C. 1912) 196 Fed. 548 (decree affirmed [1913] 205 Fed. 732, 124 C. C. A. 26); Pharr v. Morgan's L. & T. R. & S. S. Co. (1905) 38 So. 943, 115 La. 138, 10 L. R. A. (N. S.) 710.

9. —— **Bridge tender at fault.**—Where the opening of a railroad drawbridge is so unreasonably delayed after proper signals that a signaling tug, with her tow, is unable to make the passage with safety, and in attempting to pass through, in the exercise of the best judgment and proper diligence of those navigating her, the tow is injured by collision with the bridge, the railroad company is liable. Central R. Co. of New Jersey v. Pennsylvania R. Co. (1893) 59 Fed. 192, 8 C. C. A. 86, affirming decree Pennsylvania R. Co. v. Central R. Co. of New Jersey (D. C. 1892) 59 Fed. 190.

Where the keeper of a drawbridge negligently failed to signal to an approaching vessel that the drawbridge would not then be opened, and, when it was attempted to change the vessel's course, a chain broke, owing to a latent defect, and she ran into the bridge, held, that the negligence of the keeper of the drawbridge was the proximate cause of the injury, and that there was no contributory negligence on the part of the vessel. King v. Ohio & M. R. Co. (C. C. 1885) 25 Fed. 799.

Failure to securely fasten the draw of a bridge when turned to permit vessels to pass through is negligence. Etheridge v. City of Philadelphia (D. C. 1885) 26 Fed. 43.

The owner of a drawbridge over navigable waters is liable for injuries proximately resulting to a vessel by the negligence of the operator of the bridge in failing to promptly open the draw to permit the vessel to pass through. Southern Ry. Co. v. Reeder (Ala. 1907) 44 So. 699. And see City of Chicago v. Mullen (1902) 116 Fed. 292, 54 C. C. A. 94; Munroe v. City of Chicago (1912) 194 Fed. 936, 114 C. C. A. 572 (reversing decree [D. C. 1911] 186 Fed. 564); City of Chicago v. Michigan, I. & I. Line (1912) 201 Fed. 89, 119 C. C. A. 427; Edgerton v. The Mayor (D. C. 1886) 27 Fed. 230; Boland v. Combination Bridge Co. (D. C. 1899) 94 Fed. 888. And see, § 9964, ante, and notes thereunder.

10. —— **Bridge tender not at fault.**—Under the rules prescribed by the federal government requiring drawbridge tenders to open the draw on signal from any steamboat, a drawbridge tender would not be negligent for opening the draw in answer to a steamboat signal, though he knew that the boat could pass under without opening it. Louisville & N. R. Co. v. Moran (1912) 146 S. W. 1131, 148 Ky. 418.

11. —— **Vessel at fault.**—A vessel having given proper signal to open a bridge and prudently proceeding under slow speed, in the absence of warning to the contrary, may presume that the bridge will be opened in time for passage, and is not bound to stop until it has been opened. Clement v. Metropolitan West Side Elevated Ry. Co. (1903) 123 Fed. 271, 59 C. C. A. 289.

When a tug, with a float, attempted to pass through a drawbridge on the Harlem river, but did not approach the draw in line with the opening, and the pilot house of the tug struck the end of the draw, held, that the tug was in fault. Edgerton v. The Mayor (D. C. 1886) 27 Fed. 230. See Hosford v. Wakefield (D. C. 1902) 117 Fed. 945; Dunbar Sullivan Dredging Co. v. Troy & West Troy Bridge Co. (D. C. 1906) 145 Fed. 428; Southern Ry. Co. v. Reeder (Ala. 1907) 44 So. 699.

12. —— **Vessel not at fault.**—See Clement v. Metropolitan West Side Elevated Ry. Co. (1903) 123 Fed. 271, 59 C. C. A. 289; In re Pratt (C. C. 1885) 24 Fed. 335; King v. Ohio & M. R. Co. (C. C. 1885) 25 Fed. 799; Manistee Lumber Co. v. City of Chicago (D. C. 1890) 44 Fed. 87; Boland v. Combination Bridge Co. (D. C. 1899) 94 Fed. 888.

13. —— **Burden of proof.**—An owner of a private bridge held to have the burden of excusing its failure to open the bridge for a vessel and the mere statement that the bridge could not be opened did not relieve the owner from liability. Clement v. Metropolitan West

Side Elevated Ry. Co. (1903) 123 Fed. 271, 59 C. C. A. 289.

In an action to recover for injuries sustained by plaintiff's boat while attempting to go through the draw, the burden of proof was on the plaintiff to show that draw rests were not necessary or lawful parts of the bridge, and that, there being no evidence that such draw rests were unauthorized or dangerous, the question as to their character should not have been submitted to the jury. Silver v. Missouri Pac. Ry. Co. (1890) 101 Mo. 79, 13 S. W. 410.

14. —— **Pleading.**—See Lockwood v. Charleston Bridge Co. (1901) 38 S. E. 112, 629, 60 S. C. 492.

15. —— **Evidence.**—Where, in a steamboat owner's action for injuries to the boat by it being struck by a railroad drawbridge as it was passing through the draw, the evidence did not show, as a matter of law, the publication of rules made by the Secretary of War, pursuant to this section, requiring the whistle to be sounded a sufficient time before leaving a landing to pass through a drawbridge to allow the bridge to be opened, evidence was admissible of a custom existing since the rules were made by which an approaching boat did not sound its whistle unless the drawbridge was closed. Fugina v. Chicago & N. W. Ry. Co. (1910) 125 N. W. 981, 142 Wis. 144.

16. —— **Defenses.**—In an action against a town for the loss of a vessel, resulting from the failure of defendant to open the draw in its bridge, it is no defense that the vessel's master was without a pilot's license, where the master was not guilty of any negligence contributing to the loss. Greenwood v. Town of Westport (D. C. 1894) 60 Fed. 560.

That states on either side of a navigable river have in force statutes prohibiting the doing of certain kinds of work on Sunday does not relieve the owner of a bridge spanning the river from the duty of opening the draw on Sunday to admit the passage of vessels engaged in commerce on the river. Boland v. Combination Bridge Co. (D. C. 1899) 94 Fed. 888.

17. —— **Jury · questions.**—See St. Louis & St. P. Packet Co. v. Keokuk & H. Bridge Co. (C. C. 1887) 31 Fed. 755; Southern Ry. Co. v. Reeder (Ala. 1907) 44 So. 699; Louisville & N. R. Co. v. McDonald (1902) 31 So. 418, 79 Miss. 641; Mattlage v. Board of Chosen Freeholders of Hudson County (1899) 44 A. 756, 63 N. J. Law, 583; Anderson v. Pennsylvania R. Co. (N. J. 1908) 71 A. 333.

18. —— **Damages.**—A bridge owner held liable for the value of a vessel, less the value of such parts as might have been saved by reasonable effort and diligence after she sank. Boland v. Combination Bridge Co. (D. C. 1899) 94 Fed. 888.

Where a railroad drawbridge over a navigable stream was negligently broken by running a freight train thereon when the draw was not closed, and navigation thereby interrupted for 3½ months, the railroad company was liable in damages to private individuals specially injured thereby. Where the obstruction to navigation by the negligent breaking of the drawbridge was such that barges could pass, but steamboats could not, the additional expense of extra steamboats should be allowed as damages. Pharr v. Morgan's L. & T. R. & S. S. Co. (1905) 38 So. 943, 115 La. 138, 10 L. R. A. (N. S.) 710.

Cited without definite application, Naumburg v. Milwaukee (1906) 146 Fed. 641, 77 C. C. A. 67 (dissenting opinion).

§ 9974. (Act March 3, 1905, c. 1482, § 6.) Expenses of investigations, etc., by Engineer Department; funds from which to be paid.

Expenses incurred by the Engineer Department in all investigations, inspections, hearings, reports, service of notice, or other action incidental to examination of plans or sites of bridges or other structures built or proposed to be built in or over navigable waters, or to examinations into alleged violations of laws for the protection and preservation of navigable waters, or to the establishment or marking of harbor lines, shall be payable from any funds which may be available for the improvement, maintenance, operation, or care of the waterways or harbors affected, or if such funds are not available in sums judged by the Chief of Engineers to be adequate, then from any funds available for examinations, surveys, and contingencies of rivers and harbors. (33 Stat. 1148.)

This section was part of the river and harbor appropriation act of 1895, cited above.

Provisions for the protection and preservation of navigable waters and the establishment of harbor lines were made by several acts and parts of acts set forth ante, in chapter C of this title, "Preservation and Protection of Rivers and Harbors and of Improvements."

§ 9975. (Act Aug. 11, 1888, c. 860, § 2.) Deflection of currents by piers, etc.; complaints; investigations; liability.

Whenever complaint shall be made to the Secretary of War that by reason of the placing in any navigable waters of the United States of any bridge pier or abutment, the current of such waters has been so deflected from its natural course as to cause by producing caving of banks or otherwise serious damage or danger to property, it shall be his duty to make inquiry, and if it shall be ascertained that the complaint is well founded, he shall cause the owners or persons operating such bridge to repair such damage or prevent such danger to property by such means as he shall indicate and within such time as he may name, and in default thereof the owners or persons operating such bridge shall be liable in any court of competent jurisdiction to the persons injured in a sum double the amount of said injury: Provided, however, That nothing herein contained shall be construed so as to affect any rights of action which may exist at the time of the passage of this act. (25 Stat. 423.)

This section was part of the river and harbor appropriation act of 1888, cited above.

Notes of Decisions

Bridge pier as nuisance.—This section does not treat as a nuisance a bridge pier deflecting the current, but treats it as lawfully existing. Adams v. Ulmer (1897) 39 Atl. 347, 91 Me. 47.

Liability for deflecting currents by obstructions.—See South Carolina v. Georgia (1876) 93 U. S. 4, 23 L. Ed. 782; Fischer v. Davis (1911) 116 P. 412, 19 Idaho, 493; Idaho Northern R. Co. v. Post Falls Lumber & Mfg. Co. (1911) 119 P. 1098, 20 Idaho, 695; Fowler v. Wood (1906) 85 P. 763, 73 Kan. 511, 6 L. R. A. (N. S.) 162, 117 Am. St. Rep. 534; Minnesota Canal & Power Co. v. Fall Lake Boom Co. (Minn. 1914) 148 N. W. 561; Judson v. Tidewater Lumber Co. (1908) 98 P. 377, 51 Wash. 164; Kuhnis v. Lewis River Boom & Logging Co. (1908) 98 P. 655, 51 Wash. 196; Rogers v. Coal River Boom & Driving Co. (1894) 39 W. Va. 272, 19 S. E. 401; Diedrich v. Northwestern U. Ry. Co. (1877) 42 Wis. 248.

CHAPTER F

Dams and Water Power

This chapter includes provisions regulating the construction, maintenance, and operation of dams across or in navigable waters, and the use, leasing, etc., of water-power created thereby; principally the General Dam Act of June 21, 1906, c. 3508, and amendatory and additional provisions, with previous provisions relating to the subject which may remain in force.

Sec.
9976. Dams across navigable waters not to be built until plans, etc., approved; plans not to be deviated from unless modification approved; conditions, including construction and operation of locks, etc., title to land therefor, and free use of water power; consideration of effect on plan for improvement of waterway; charges for privilege granted, for benefits from storage reservoirs, etc.
9977. Right reserved to construct and operate, in connection with dams built under act, locks, etc., for navigation.
9978. Damages from flowage, etc.; lights and other signals; fishways; failure to maintain same a misdemeanor; punishment.
9979. Forfeiture of rights under act on failure to comply with its provisions or with stipulations, etc., prescribed; revocation of rights when necessary for public use; authority granted to terminate in fifty years; exceptions from limitation.
9980. Failure to comply with orders under act, and violations of act, punishable; penalty; removal of dam, etc., and proceedings therefor.
9981. Limit of time for commencement and for completion of dam.
9982. Reservation of right to amend or repeal act, without liability in-

Sec.
curred by United States therefor.
9983. Definition of words "persons" and "dam" as used in act.
9984. International commission for investigation of waters adjacent to Canada and the United States; report on advisability of dam at outlet of Lake Erie; United States members; appointment; qualifications; assistants; compensation and expenses.
9985. International Waterways Commission; retired officers of Engineer Corps eligible for service.
9986. Muskingum River, Ohio; leases of water powers, etc.
9987. Green and Barren Rivers, Kentucky; leases of water powers, etc.
9988. Cumberland River, Tennessee; leases of water powers, etc.
9989. Diversion of water from Saint Marys River for water power; preservation of level of Lake Superior; conservation of right to flow of water, etc.; compensation for use of water or water power; limitations on grants of rights; leases; regulations.
9990. Wabash River at Mount Carmel, Illinois; leases of water power, etc.
9991. Mississippi River, Saint Paul to Minneapolis; modified project adopted; leases of water power.
9992. Development of water power.

§ 9976. (Act June 21, 1906, c. 3508, § 1, as amended, Act June 23, 1910, c. 360.) Dams across navigable waters not to be built until plans, etc., approved; plans not to be deviated from unless modification approved; conditions, including construction and operation of locks, etc., title to land therefor, and free use of water power; consideration of effect on plan for improvement of waterway; charges for privilege granted, for benefits from storage reservoirs, etc.

When authority has been or may hereafter be granted by Congress, either directly or indirectly or by any official or officials of the United States, to any persons, to construct and maintain a dam for water power or other purpose across or in any of the navigable waters of the United States, such dam shall not be built or commenced until the plans and specifications for such dam and all accessory works, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of War and the Chief of Engineers for their approval, nor until they shall have approved such plans and specifications and the location of such dam and accessory works; and when the plans and specifications for any dam to be constructed under the provisions of this Act have been approved by the Chief of Engineers and by the Secretary of War it shall not be lawful to deviate from such plans or specifications either before or after completion of the structure unless the modification of such plans or specifications has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War: Provided, That in approving the plans, specifications, and location for any dam, such conditions and stipulations may be imposed as the Chief of Engineers and the Secretary of War may deem necessary to protect the present and future interests of the United States, which may include the condition that the persons constructing or maintaining such dam shall construct, maintain, and operate, without expense to the United States, in connection with any dam and accessory or appurtenant works, a lock or locks, booms, sluices, or any other structure or structures which the Secretary of War and the Chief of Engineers or Congress at any time may deem necessary in the interests of navigation, in accordance with such plans as they may approve, and also that whenever Congress shall authorize the construction of a lock or other structures for navigation purposes in connection with such dam, the persons owning such dam shall convey to the United States, free of cost, title to such land as may be required for such constructions and approaches, and shall grant to

the United States free water power or power generated from water power for building and operating such constructions: Provided further, That in acting upon said plans as aforesaid the Chief of Engineers and the Secretary of War shall consider the bearing of said structure upon a comprehensive plan for the improvement of the waterway over which it is to be constructed with a view to the promotion of its navigable quality and for the full development of water power; and, as a part of the conditions and stipulations imposed by them, shall provide for improving and developing navigation, and fix such charge or charges for the privilege granted as may be sufficient to restore conditions with respect to navigability as existing at the time such privilege be granted or reimburse the United States for doing the same, and for such additional or further expense as may be incurred by the United States with reference to such project, including the cost of any investigations necessary for approval of plans and of such supervision of construction as may be necessary in the interests of the United States: Provided further, That the Chief of Engineers and the Secretary of War are hereby authorized and directed to fix and collect just and proper charge or charges for the privilege granted to all dams authorized and constructed under the provisions of this Act which shall receive any direct benefit from the construction, operation, and maintenance by the United States of storage reservoirs at the headwaters of any navigable streams, or from the acquisition, holding, and maintenance of any forested watershed, or lands located by the United States at the headwaters of any navigable stream, wherever such shall be, for the development, improvement, or preservation of navigation in such streams in which such dams may be constructed. (34 Stat. 386. 36 Stat. 593.)

This section and the seven sections next following were the Dam Act of June 21, 1906, c. 3508, first cited above, entitled "An act to regulate the construction of dams across navigable waters." Said act was amended by Act June 23, 1910, c. 360, last cited above, to read as set forth here.

This section, as originally enacted, was as follows:

"When, hereafter, authority is granted by Congress to any persons to construct and maintain a dam for water power or other purposes across any of the navigable waters of the United States, such dams shall not be built or commenced until the plans and specifications for its construction, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of War and Chief of Engineers for their approval, or until they shall have approved such plans and specifications and the location of such dam and accessory works; and when the plans for any dam to be constructed under the provisions of this Act have been approved by the Chief of Engineers and by the Secretary of War it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of such plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War: Provided, That in approving said plans and location such conditions and stipulations may be imposed as the Chief of Engineers and the Secretary of War may deem necessary to protect the present and future interests of the United States, which may include the condition that such persons shall construct, maintain, and operate, without expense to the United States, in connection with said dam and appurtenant works, a lock or locks, booms, sluices, or any other structures which the Secretary of War and the Chief of Engineers at any time may deem necessary in the interest of navigation, in accordance with such plans as they may approve, and also that whenever Congress shall authorize the construction of a lock, or other structures for navigation purposes, in connection with such dam, the person owning such dam shall convey to the United States, free of cost, title to such land as may be required for such constructions and approaches, and shall grant to the United States a free use of water power for building and operating such constructions."

It was amended by Act June 23, 1910, c. 360, last cited above, to read as set forth here.

Authority to construct dams across the Iowa River was granted by R. S. § 5248, and Act Aug. 18, 1894, c. 299, § 1, ante, §§ 9840, 9841.

Provisions prohibiting the construction of any bridge, dam, dike or causeway over navigable waters without the consent of Congress were made by Act March 3, 1899, c. 425, § 9, ante, § 9971.

Provisions for the condemnation of land for the construction of dams were made by Act May 16, 1906, § 2465, amended by Act June 29, 1906, c. 3628, ante, § 9881.

Provisions for surveys for construction of dams were made by Act Jan. 25, 1910, c. 382, § 3, ante, § 9867.

Notes of Decisions

Power of states in absence of federal legislation.—See § 9910, ante, and notes thereunder.

A party is not liable for obstructing the navigation of a river wholly within the limits of a state by means of a dam which he has erected under authority of a state statute and pursuant to the requirements thereof. Pound v. Turck (1877) 95 U. S. 459, 24 L. Ed. 525.

In the absence of federal statute, a state may by statute authorize the erection of a dam across a navigable river within its limits. Id.; Manigault v. Springs (1905) 26 Sup. Ct. 127, 199 U. S. 473, 50 L. Ed. 274. Though it may involve a partial obstruction to navigation. Woodman v. Kilbourn Mfg. Co. (C. C. 1867) Fed. Cas. No. 17,978. And a constitutional provision that all navigable waters shall remain public highways does not prevent the state from authorizing a dam across a navigable stream for drainage. Manigault v. Springs (1905) 26 Sup. Ct. 127, 99 U. S. 473, 50 L. Ed. 274. See U. S. v. Rio Grande Dam & Irrigation Co. (1899) 19 Sup. Ct. 770, 174 U. S. 690, 43 L. Ed. 1136, for a discussion of the powers of states in absence of congressional action.

Power of congress.—See § 9910, ante, and notes thereunder.

Congress has supreme control of a navigable stream where the commerce thereon is interstate and foreign. U. S. v. Rio Grande Dam & Irrigation Co. (1899) 19 Sup. Ct. 770, 174 U. S. 690, 43 L. Ed. 1136; Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523; Philadelphia Co. v. Stimson (1912) 32 Sup. Ct. 340, 223 U. S. 605, 56 L. Ed. 570; Hagerta v. Mississippi River Power Co. (D. C. 1913) 202 Fed. 776.

Statutory authority for dams.—The right of a riparian owner on a stream notoriously navigable, or declared so by legislative enactment, to dam for milling purposes, must be conferred by an exercise of the legislative will amounting to a license. York Haven Water & Power Co. v. York Haven Paper Co. (1912) 201 Fed. 270, 119 C. C. A. 508, reversing decree York Haven Paper Co. v. York Haven Water & Power Co. (C. C. 1911) 194 Fed. 255.

Quære if the legislature of one state can authorize a dam locally in that state to be raised, so as to flow back a public river running into another state, to the injury of mill privileges locally situate in the latter state. Fanum v. Blackstone Canal Corp. (C. C. 1830) Fed. Cas. No. 4,675. See (1909) 27 Op. Atty. Gen. 327, declaring that Congress has authorized no one to give assent for the United States to the construction of the dam, though the legislature of a state should, so far as it has power to do, authorize its construction.

—— **Meaning of "assent."**—The word "assent," as used in an act of Congress of February 9, 1905, granting the right to a company to build a dam across the Mississippi river, held equivalent in meaning to "authorize." Hagerla v. Mississippi River Power Co. (D. C. 1913) 202 Fed. 776.

Navigable waters of the United States.—See chapter A of this title, ante, and notes thereunder, and §§ 9910, 9971, ante, and notes thereunder.

A finding that a stream is navigable up to the junction with it of another stream, but that the portion above the junction, on which it was proposed to build a dam, is not navigable, has no channel, and is "nothing but a high-water outlet, going dry every summer at many places, choked with rafts, and filled with sand, reefs, etc.," is, in effect, a finding that the navigability of the stream below the junction is not influenced by the flow of water from that portion above and hence that such navigability would not be injured by the erection of a dam. Egan v. Hart (1897) 17 Sup. Ct. 300, 165 U. S. 188, 41 L. Ed. 680.

A pass or crevasse caused by the overflow of the Mississippi river, making a channel to the Gulf of Mexico, through which a few fishermen have occasionally gone with small vessels carrying oysters for planting, and through which one or two cargoes of willows and timber may have passed, but which has not been used for any purpose of interstate commerce, and the gulf end of which has become closed, does not constitute a navigable water of the United States in such a sense that a dam erected therein for the purpose and with the effect of reclaiming overflowed lands and rendering them fit for cultivation will constitute an obstruction in navigable waters, within the prohibition of the act of Sept. 19, 1890, against such obstructions without authority of the secretary of war. Leovy v. U. S. (1900) 20 Sup. Ct. 797, 177 U. S. 621, 44 L. Ed. 914, reversing judgment (1899) 92 Fed. 344, 34 C. C. A. 392.

The St. Louis and Cloquet rivers are navigable waters of the United States,

and the Secretary of War has authority to authorize their obstruction by dams, but he cannot revoke his permit after large expenditures have been made on the faith thereof. (1894) 20 Op. Atty. Gen. 713; (1894) 21 Op. Atty. Gen. 41.

Waters held not navigable.—A meandered slough, dry during the greater portion of the year, except during high tide, at which time it was navigable for a short distance for small craft and floating logs, held not navigable, so as to require the consent of the federal government for the construction of a dam at its mouth. State v. Superior Court of Skagit County (1906) 85 P. 264, 42 Wash. 491.

And see, also, chapter A of this title, ante, and notes thereunder, and §§ 9910, 9971, ante, and notes thereunder.

Compensation for privilege of constructing dams.—The Chief of Engineers and the Secretary of War are not authorized to require as a condition to a license for the construction of a dam across a navigable river, the payment of a sum or sums by way of compensation for the privilege granted, although they may require such payments or assumption of expenses as are necessary or proper to insure the navigability of the stream. Within the scope of the powers granted by Congress in this regard the discretion of the Chief of Engineers and the Secretary of War is not limited. (1909) 27 Op. Atty. Gen. 462.

Dams as obstruction.—The construction of a dam in a river at a point where it is not navigable, which so retards the flow of water as to affect the navigability at a point where it was navigable before, is prohibited. U. S. v. Rio Grande Dam & Irrigation Co. (1899) 19 Sup. Ct. 770, 174 U. S. 690, 43 L. Ed. 1136.

The construction of a dam in a river was not objectionable as an obstruction to navigation where there was no present navigation on the river in fact. People v. Economy Light & Power Co. (1909) 89 N. E. 760, 241 Ill. 290.

Where no provision was made by an apron or sluiceway to pass logs around or over a milldam constructed in a navigable stream, and a rise of four or five feet is required to pass the logs over the dam, whereas they could be floated on a depth of from two to three feet, so that more water was required to float them over the dam than on the natural stream, the dam was an obstruction. Trullinger v. Howe (Or. 1908) 97 P. 548, decree modified on rehearing (1909) 99 P. 880.

—— **As nuisance.**—No one has a right to maintain a dam across a navigable stream, so as to obstruct its flow and cause salt water to overflow on the land of another and stagnate, thereby causing the death of trees on the land; and such action constitutes a nuisance, for which the owner of the land has a cause of action for its abatement. Clement v. Louisiana Irrigation & Mill Co. (1911) 56 So. 902, 129 La. 825.

§ 9977. (Act June 21, 1906, c. 3508, § 2, as amended, Act June 23, 1910, c. 360.) Right reserved to construct and operate, in connection with dams built under act, locks, etc., for navigation.

The right is hereby reserved to the United States to construct, maintain, and operate, in connection with any dam built in accordance with the provisions of this Act, a suitable lock or locks, booms, sluices, or any other structures for navigation purposes, and at all times to control the said dam and the level of the pool caused by said dam to such an extent as may be necessary to provide proper facilities for navigation. (34 Stat. 386. 36 Stat. 594.)

This section, as originally enacted, was as follows:

"The right is hereby reserved to the United States to construct, maintain and operate, in connection with any dam built under the provisions of this Act, a suitable lock or locks, or any other structures for navigation purposes, and at all times to control the said dam and the level of the pool caused by said dam to such an extent as may be necessary to provide proper facilities for navigation."

It was amended by Act June 23, 1910, c. 360, last cited above, to read as set forth here.

See notes to preceding section.

§ 9978. (Act June 21, 1906, c. 3508, § 3, as amended, Act June 23, 1910, c. 360.) Damages from flowage, etc.; lights and other signals; fishways; failure to maintain same a misdemeanor; punishment.

The persons constructing, maintaining, or operating any dam or appurtenant or accessory works, in accordance with the provisions of this Act, shall be liable for any damage that may be in-

flicted thereby upon private property, either by overflow or otherwise. The persons owning or operating any such dam, or accessory works, subject to the provisions of this Act, shall maintain, at their own expense, such lights and other signals thereon and such fishways as the Secretary of Commerce [and Labor] shall prescribe, and for failure so to do in any respect shall be deemed guilty of a misdemeanor and subject to a fine of not less than five hundred dollars, and each month of such failure shall constitute a separate offense and subject such persons to additional penalties therefor. (34 Stat. 386. 36 Stat. 594.)

This section, as originally enacted, was as follows:

"The person, company, or corporation building, maintaining, or operating any dam and appurtenant works, under the provisions of this Act, shall be liable for any damage that may be inflicted thereby upon private property, either by overflow or otherwise. The persons owning or operating any such dam shall maintain, at their own expense, such lights and other signals thereon and such fishways as the Secretary of Commerce and Labor shall prescribe."

It was amended by Act June 23, 1910, c. 360, last cited above, to read as set forth here.

See notes to section 1 of this act, ante, § 9976.

The words "and Labor," inclosed in brackets in this section, were superseded by the creation of the Department of Labor and the change of the designations of the Department of Commerce and Labor, and of the Secretary thereof, to the Department of Commerce, and the Secretary of Commerce, by Act March 4, 1913, c. 141, § 1, ante, § 932.

Provisions for the construction of fishways were made by Act Aug. 11, 1888, c. 860, § 11, ante, § 9892.

Notes of Decisions

Damages for flowage.—See Trullinger v. Howe (Or. 1908) 97 P. 548, decree modified on rehearing (1909) 99 P. 880.

§ 9979. (Act June 21, 1906, c. 3508, § 4, as amended, Act June 23, 1910, c. 360.) Forfeiture of rights under act on failure to comply with its provisions or with stipulations, etc., prescribed; revocation of rights when necessary for public use; authority granted to terminate in fifty years; exceptions from limitation.

All rights acquired under this Act shall cease and be determined if the person, company, or corporation acquiring such rights shall, at any time, fail, after receiving reasonable notice thereof, to comply with any of the provisions and requirements of the Act, or with any of the stipulations and conditions that may be prescribed as aforesaid by the Chief of Engineers and the Secretary of War, including the payment into the Treasury of the United States of the charges provided for by section one of this Act: Provided, That Congress may revoke any rights conferred in pursuance of this Act whenever it is necessary for public use, and, in the event of any such revocation by Congress, the United States shall pay the owners of any dam and appurtenant works built under authority of this Act, as full compensation, the reasonable value thereof, exclusive of the value of the authority or franchise granted, such reasonable value to be determined by mutual agreement between the Secretary of War and the said owners, and in case they cannot agree, then by proceedings instituted in the United States [circuit] court for the condemnation of such properties: And provided also, That the authority granted under or in pursuance of the provisions of this Act shall terminate at the end of a period not to exceed fifty years from the date of the original approval of the project under this Act, unless sooner revoked as herein provided or Congress shall otherwise direct: Provided, however, That this limitation shall not apply to any corporation or individual heretofore authorized by the United

States, or by any State, to construct a dam in or across a navigable waterway, upon which dam expenditures of money have heretofore been made in reliance upon such grant or grants. (34 Stat. 386. 36 Stat. 595.)

This section, as originally enacted, was as follows:

"All rights acquired under this Act shall cease and be determined if the person, company, or corporation acquiring such rights shall, at any time, fail to comply with any of the provisions and requirements of the Act, or with any of the stipulations and conditions that may be prescribed as aforesaid by the Chief of Engineers and the Secretary of War."

It was amended by Act June 23, 1910, c. 360, last cited above, to read as set forth here.

See notes to section 1 of this act, ante, § 9976.

The word "circuit," inclosed in brackets in this section, was superseded by the abolition of the circuit courts and the transfer of their jurisdiction to the district courts, by Jud. Code, §§ 289–291, ante, §§ 1266–1268.

§ 9980. (Act June 21, 1906, c. 3508, § 5, as amended, Act June 23, 1910, c. 360.) Failure to comply with orders under act, and violations of act, punishable; penalty; removal of dam, etc., and proceedings therefor.

Any persons who shall fail or refuse to comply with the lawful order of the Secretary of War and the Chief of Engineers, made in accordance with the provisions of this Act, shall be deemed guilty of a violation of this Act, and any persons who shall be guilty of a violation of this Act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, and every month such persons shall remain in default shall be deemed a new offense and subject such persons to additional penalties therefor; and in addition to the penalties above described the Secretary of War and the Chief of Engineers may, upon refusal of the persons owning or controlling any such dam and accessory works to comply with any lawful order issued by the Secretary of War or Chief of Engineers in regard thereto, cause the removal of such dam and accessory works as an obstruction to navigation at the expense of the persons owning or controlling such dam, and suit for such expense may be brought in the name of the United States against such persons, and recovery had for such expense in any court of competent jurisdiction. Said provision as to recovery of expense shall not apply wherever the United States has been previously reimbursed for such removal; and the removal or any structures erected or maintained in violation of the provisions of this Act or the order or direction of the Secretary of War or the Chief of Engineers made in pursuance thereof may be enforced by injunction, mandamus, or other summary process, upon application to the [circuit] court in the district in which such structure may, in whole or in part, exist, and proper proceedings to this end may be instituted under the direction of the Attorney-General of the United States at the request of the Chief of Engineers or the Secretary of War; and in case of any litigation arising from any obstruction or alleged obstruction to navigation created by the construction of any dam under this Act the cause or question arising may be tried before the [circuit] court of the United States in any district in which any portion of said obstruction or dam touches. (34 Stat. 386. 36 Stat. 595.)

This section, as originally enacted, did not contain the provision, following the words "any court of competent jurisdiction," set forth here, as follows:

"Said provision as to recovery of expense shall not apply wherever the United States has been previously reimbursed for such removal."

That provision was inserted by amendment by Act June 23, 1910, c. 360, last cited above, making the section read as set forth here.

See notes to section 1 of this act, ante, § 9976.

The word "circuit," inclosed in brackets in the two places where it occurs in

this section was superseded by the abolition of the circuit courts and the transfer of their jurisdiction to the district courts, by Jud. Code, §§ 289–291, ante, §§ 1266–1268.

Notes of Decisions

Remedy for unauthorized dams.— Remedy of the United States in case of an unauthorized erection of a dam across navigable waters is by injunction, under section 10 of the act of September 19, 1890 (26 Stat. 454), and if the dam has been constructed, also by criminal prosecution. (1897) 21 Op. Atty. Gen. 518.

If waters confined by a dam were wholly inclosed by plaintiffs' land, and were navigable, and the dam was a purpresture, it could only be abated at the instance of the state or national government; plaintiffs having color of title to the water-covered lands. Bolsa Land Co. v. Burdick (Cal. 1907) 90 P. 532.

§ 9981. (Act June 21, 1906, c. 3508, § 6, as amended, Act June 23, 1910, c. 360.) Limit of time for commencement and for completion of dam.

Whenever Congress shall hereafter by law authorize the construction of any dam across any of the navigable waters of the United States, and no time for the commencement and completion of such dam is named in said Act, the authority thereby granted shall cease and be null and void unless the actual construction of the dam authorized in such Act be commenced within one year and completed within three years from the date of the passage of such Act. (34 Stat. 387. 36 Stat. 596.)

The language of this section, as originally enacted, was not changed by the amendment of the act by Act June 23, 1910, c. 360, last cited above.

See notes to section 1 of this act, ante, § 9976.

§ 9982. (Act June 21, 1906, c. 3508, § 7, as amended, Act June 23, 1910, c. 360.) Reservation of right to amend or repeal act, without liability incurred by United States therefor.

The right to alter, amend, or repeal this Act is hereby expressly reserved as to any and all dams which may be constructed in accordance with the provisions of this Act, and the United States shall incur no liability for the alteration, amendment, or repeal thereof to the owner or owners or any other persons interested in any dam which shall have been constructed in accordance with its provisions. (34 Stat. 387. 36 Stat. 596.)

The language of this section, as originally enacted, was not changed by the amendment of the act by Act June 23, 1910, c. 360, last cited above.

See notes to section 1 of this act, ante, § 9976.

§ 9983. (Act June 21, 1906, c. 3508, § 8, as amended, Act June 23, 1910, c. 360.) Definition of words "persons" and "dam" as used in act.

The word "persons" as used in this Act shall be construed to import both the singular and the plural, as the case demands, and shall include corporations, companies, and associations. The word "dam" as used in this Act shall be construed to import both the singular and the plural, as the case demands. (34 Stat. 387. 36 Stat. 596.)

This section, as originally enacted, did not contain the last sentence thereof as set forth here, relating to the construction of the word "dam" as used in the act. That sentence was added by amendment by Act June 23, 1910, c. 360, last cited above, making the section read as set forth here.

See notes to section 1 of this act, ante, § 9976.

§ 9984. (Act June 13, 1902, c. 1079, § 4.) International commission for investigation of waters adjacent to Canada and the United States; report on advisability of dam at outlet of Lake Erie; United States members; appointment; qualifications; assistants; compensation and expenses.

The President of the United States is hereby requested to invite the Government of Great Britain to join in the formation of an

international commission, to be composed of three members from the United States and three who shall represent the interests of the Dominion of Canada, whose duty it shall be to investigate and report upon the conditions and uses of the waters adjacent to the boundary lines between the United States and Canada, including all of the waters of the lakes and rivers whose natural outlet is by the River Saint Lawrence to the Atlantic Ocean; also upon the maintenance and regulation of suitable levels; and also upon the effect upon the shores of these waters and the structures thereon, and upon the interests of navigation, by reason of the diversion of these waters from or change in their natural flow; and, further, to report upon the necessary measures to regulate such diversion, and to make such recommendations for improvements and regulations as shall best subserve the interests of navigation in said waters. The said commissioners shall report upon the advisability of locating a dam at the outlet of Lake Erie, with a view to determining whether such dam will benefit navigation, and if such structure is deemed advisable, shall make recommendations to their respective Governments looking to an agreement or treaty which shall provide for the construction of the same, and they shall make an estimate of the probable cost thereof. The President, in selecting the three members of said Commission who shall represent the United States, is authorized to appoint one officer of the Corps of Engineers of the United States Army, one civil engineer well versed in the hydraulics of the Great Lakes, and one lawyer of experience in questions of international and riparian law, and said Commission shall be authorized to employ such persons as it may deem needful in the performance of the duties hereby imposed; and for the purpose of paying the expenses and salaries of said Commission the Secretary of War is authorized to expend from the amounts heretofore appropriated for the Saint Marys River at the Falls, the sum of twenty thousand dollars, or so much thereof as may be necessary to pay that portion of the expenses of said Commission chargeable to the United States. (32 Stat. 373.)

This section was part of the river and harbor appropriation act of 1902, cited above.

Annual appropriations for continuing the work of the commission were made by subsequent sundry civil appropriation acts. The appropriation for the fiscal year 1907, by Act June 30, 1906, c. 3914, § 1, was accompanied by a provision that retired officers of the Corps of Engineers should be eligible for service on the commission, post, § 9985. The provisions for the fiscal year ending 1914 were by Act June 23, 1913, c. 3, 38 Stat. 38, and Act Oct. 22, 1913, c. 32, 38 Stat. 214. Subsequent sundry civil appropriation acts made no appropriations for the work of the commission.

Provisions authorizing the commission to recommend regulations of the canal and works diverting water from the Saint Marys River were made by section 1 of this act amended by Act March 3, 1909, c. 264, § 12, post, § 9989.

The President was requested to open negotiations with Great Britain for providing by treaty for maintaining water levels in the Great Lakes and the waters connected therewith, by a provision of Act March 3, 1909, c. 264, § 11, 35 Stat. 820.

§ 9985. (Act June 30, 1906, c. 3914, § 1.) International Waterways Commission; retired officers of Engineer Corps eligible for service.

International Waterways Commission: * * And retired officers of the Corps of Engineers of the United States Army shall be eligible for service on said commission. (34 Stat. 743.)

This was a provision of the sundry civil appropriation act for the fiscal year 1907, cited above.

See notes to Act June 13, 1902, c. 1079, § 4, ante, § 9984.

§ 9986. (Act Aug. 11, 1888, c. 860, § 1.) Muskingum River, Ohio; leases of water powers, etc.

Improving Muskingum River, Ohio, * * and the Secretary of

War is hereby authorized and empowered to grant leases or licenses for the use of the water powers on the Muskingum River at such rate and on such conditions and for such periods of time as may seem to him just, equitable, and expedient: Provided, That the leases or licenses shall be limited to the use of the surplus water not required for navigation. And he is also empowered to grant leases or licenses for the occupation of such lands belonging to the United States on said Muskingum River as may be required for millsites or for other purposes not inconsistent with the requirements of navigation; and all moneys received under such leases or licenses shall be turned into the Treasury of the United States, and the itemized statement thereof shall accompany the annual report of the Chief of Engineers. (25 Stat. 417.)

These were provisions of section 1 of the river and harbor appropriation act of 1888, cited above.

Notes of Decisions

Lease of water for power plant.—A lease granting to defendant the right for 20 years to use the surplus water not required for navigation at dam No. 9 on the Muskingum river for the purpose of operating an electric power plant, not exceeding 6,000 feet per minute, to be taken from the overflow canal and returned thereto, and providing that the quantity used should be determined from the tables prepared by the manufacturer of the wheels used or in the absence of such tables by the engineer in charge, the lessee to pay rent for the quantity asked for until the wheels were in place; also, that the water in the pool should not be lowered below a certain stage, but, in case of shortage, the leases first granted should have the preference and a rebate allowed for water required and not furnished, contemplated the use of the water for operating a power plant only, and the government was not obliged to furnish it for any other purpose, and until a plant was installed, it might properly refuse to furnish water demanded for any other purpose or to go to waste, to the possible detriment of subsequent lessees; and that such refusal did not relieve defendant from the obligation to pay rent for the 6,000 feet named in the lease, which, and not the quantity so demanded, was the quantity "asked for" within the meaning of the lease. U. S. v. Shryock (C. C. 1908) 162 Fed. 790.

Protection by injunction of water power.—Where parties on opposite sides of a stream between two states each have a water power, and own the land to the center line, so that each owns one-half of a dam, they are tenants in common of the water; and if one construct a canal on his own side, and draw off the water, the other has a right of action which he may enforce by injunction in the state where the canal is built. In such case the laws which govern are those of the state within whose borders the injurious act is done. Stillman v. White Rock Mfg. Co. (C. C. 1847) Fed. Cas. No. 13,446.

In the case of mills owned in severalty on the same milldam, one cannot divert the water to his mill by means of a canal into the pond above the dam, though he takes less than he would naturally use at his mill on the dam. Webb v. Portland Mfg. Co. (C. C. 1838) Fed. Cas. No. 17,322.

§ 9987. (Act Sept. 19, 1890, c. 907, § 1.) Green and Barren Rivers, Kentucky; leases of water powers, etc.

The Secretary of War is hereby authorized and empowered to grant leases or licenses for the use of the water-powers on the Green and Barren Rivers at such a rate and on such conditions and for such periods of time as may seem to him just, equitable, and expedient; said leases not to exceed the period of twenty years: Provided, That the leases or licenses shall be limited to the use of the surplus water not required for navigation. And he is also empowered to grant leases or licenses for the occupation of such lands belonging to the United States on said Green and Barren Rivers as may be required for millsites or for other purposes not inconsistent with the requirements of navigation; said leases or licenses not to extend beyond the period of twenty years; and all moneys received under such leases or licenses shall be turned into the Treasury of the United States, and the itemized statement thereof shall accompany the annual report of the Chief of Engineers. But nothing in this act shall be construed to

affect any vested right, if such there be, of any lessee of water-power on said river. (26 Stat. 447.)

These were provisions of section 1 of the river and harbor appropriation act of 1890, cited above.

§ 9988. (Act June 13, 1902, c. 1079, § 1.) Cumberland River, Tennessee; leases of water powers, etc.

Improving Cumberland River, Tennessee, above Nashville: For the completion of Lock and Dam Numbered One and for maintenance, * *. And the Secretary of War is hereby authorized, in his discretion, to grant leases or licenses to the highest responsible bidder for the use of the water power created by said dam, at such a rate and on such conditions and for such periods of time as may seem to him expedient; and he is also authorized, in his discretion, to issue permits for the construction, maintenance, and operation of inlet and outlet canals and other structures, on such plans as he may approve, for the diversion of water aforesaid: Provided, That any lease or license so granted shall be limited to the use of the surplus water not required for navigation, and no structures shall be built and no operations be conducted which shall in any manner injure navigation, interfere with the operations of the Government, or impair the usefulness of any improvement made by the Government for the benefit of navigation; and the right of Congress to alter, amend, or repeal the provisions of this paragraph is hereby expressly reserved: Provided further, That before leasing or licensing such water privileges, or issuing permits for the construction and operation of such canals, or otherwise disposing of any water power or privilege, the Secretary of War shall first advertise the same in one or more daily papers at Nashville, for sixty days immediately preceding, stating specifically the right or privilege proposed to be leased or conveyed, with its exact limitations, inviting bids for the same, and he may, in his discretion, then lease the same for a specific term of years at so much per year, to be paid semiannually in cash into the Treasury, and the Secretary of War shall reserve the right to reject any or all bids. (32 Stat. 358.)

These were provisions of section 1 of the river and harbor appropriation act of 1902, cited above.

§ 9989. (Act June 13, 1902, c. 1079, § 1, as amended, Act March 3, 1909, c. 264, § 12.) Diversion of water from Saint Marys River for water power; preservation of level of Lake Superior; conservation of right to flow of water, etc.; compensation for use of water or water power; limitations on grants of rights; leases; regulations.

Subject to the express precedent conditions hereinafter mentioned, the Michigan Lake Superior Power Company, of Sault Sainte Marie, Michigan, its successors and assigns, after first obtaining consent of the Secretary of War and the Chief of Engineers and their approval of the said canal and remedial works proposed, is hereby authorized to divert water from the Saint Marys River into its water-power canal now being constructed at Sault Sainte Marie, Michigan, for water-power purposes while and so long as such works and diversion of water from said river shall not injuriously affect navigation therein, nor impair or diminish the water levels or any natural increase thereof either in Lake Superior or in the United States ship canal and locks or the navigable channels, locks, or ship canals connected therewith, whether natural or artificial, now existing or which may hereafter be established or created by the United States for navigation purposes. And conditioned further, that said company shall establish, maintain and operate suitable and sufficient remedial and controlling works in the rapids of said river, to the approval of the Secretary of War and the Chief of Engineers; and said company shall maintain and operate

said canal and works in accordance with any rules and regulations that may hereafter be recommended by any International Commission and that shall become operative. Whenever, in the judgment of the Secretary of War, the operation of said canal and remedial and controlling works, or either of them, either in themselves or in conjunction with any other canal or canals in the United States or Canada which now or hereafter may exist, is injuriously affecting water levels or the navigation of Lake Superior, the River Saint Marys or other channels, locks or ship canals connected therewith as hereinbefore provided, he shall impose upon said Company such rules and regulations for the operation of said canal and remedial works, as may, in his opinion, be necessary to prevent such injury. It shall become his duty, and he shall have the authority to enter upon the property of said Company and to close said canal in whole or in part to the extent necessary to maintain water levels and to require said Company, at its own expense, to remove, add to or modify said works or any part thereof to the extent necessary to maintain water levels. Neither the Secretary of War nor the Chief of Engineers or any officer or other person acting under direction of them or either of them, shall be in any way liable by reason of anything done in the execution of this provision.

All remedies herein provided however, shall be cumulative and shall be without prejudice to any other remedies either of the United States or of individuals for failure of said Company to maintain said levels for navigation purposes as herein provided.

Nothing herein contained shall be held to affect any existing riparian or other rights of any person or corporation, or the existing remedies therefor, or any action at law or equity now pending. The right is hereby expressly reserved to Congress to alter, amend or repeal the provisions contained in this paragraph.

The right to the flow of water, and riparian, water power, and other rights, now or hereafter owned by the United States in the Saint Marys River in Michigan shall be forever conserved for the benefit of the Government of the United States, primarily for the purposes of navigation and incidentally for the purpose of having the water power developed, either for the direct use of the United States, or by lease or other agreement, through the Secretary of War, who is hereby authorized to make such leases or agreements: Provided, That a just and reasonable compensation shall be paid for the use of all waters or water power now or hereafter owned in said Saint Marys River by the United States, whether utilized in said river or in any lateral canal, said compensation to be fixed by the Secretary of War: Provided further, That under no circumstances shall any rights be granted in said river which will interfere with the needs and uses of navigation, or which will limit the absolute control of said land and waters when desired for purposes of navigation by the United States, or for a longer period than thirty years, and the Secretary of War, in his discretion, may provide for readjustment of compensation at periods of ten years, nor shall any such rights be granted without just and adequate compensation. It is intended that any excess of water in the Saint Marys River at Sault Sainte Marie over and above the amount now or hereafter required for the uses of navigation shall be leased for power purposes by the Secretary of War upon such terms and conditions as shall be best calculated in his judgment to insure the development thereof. The Secretary of War may, as often as necessary, make such regulations as in his judgment are reasonable and just and best calculated to carry out the purposes of this section. (32 Stat. 361. 35 Stat. 821.)

The first three paragraphs set forth here were provisions following an appropriation for improvements of Saint Marys River, in section 1 of the river and

harbor appropriation act of 1902, cited above. The last paragraph, beginning with the words "The right to the flow of water," etc., was added thereto by amendment of said act by Act March 3, 1909, c. 264, § 12, also cited above.

Provisions for the revocation of licenses for use of water power at Saint Marys Falls Ship Canal, to take effect January 1, 1911, were made by Act March 3, 1909, c. 264, § 11, 35 Stat. 820.

Notes of Decisions

Taking for public use.—Lawful building of a dam by the United States to increase depth of water in a harbor in a navigable river submerged an island to a greater extent than before gives subsequent purchaser no right to relief in an action against the Secretary of War. Philadelphia Co. v. Stimson (1912) 32 Sup. Ct. 340, 223 U. S. 605, 56 L. Ed. 570, affirming decree Same v. Dickinson (1909) 33 App. D. C. 338.

The taking by the United States for purposes of navigation under ante, § 9880, all property north of the St. Marys Falls ship canal between such canal and international boundary line, is none the less for public use because this section permits the lease by the Secretary of War of any water power resulting from such conservation and the works the government may construct. And an owner of the bed and shore of the St. Marys river, having no property right in the flow of the river which has been taken by the United States cannot complain because the Secretary of War may lease any water power resulting from the conservation of the flow of the river and the works the government may construct. U. S. v. Chandler-Dunbar Water Power Co. (1913) 33 Sup. Ct. 667, 229 U. S. 53, 57 L. Ed. 1063.

Obstructions by docks.—See Ryan v. Brown (1869) 18 Mich. 196, 100 Am. Dec. 154.

§ 9990. (Act March 3, 1909, c. 264, § 9.) Wabash River at Mount Carmel, Illinois; leases of water power, etc.

The Secretary of War is hereby authorized and empowered to grant leases or licenses for the use of the water power created by the government dam of the Wabash River at Mount Carmel, Illinois, at such a rate, and on such conditions, and for such periods of time, as may seem to him just, equitable, and expedient; the said leases or licenses to be limited to the use of the surplus water not required for navigation, and to a period not exceeding twenty years; and he is also empowered to grant leases or licenses, not exceeding twenty years, for the occupation of such land belonging to the United States on said river as may be required for mill sites or other industrial purposes not inconsistent with the requirements of navigation: Provided, That all moneys received under such leases or licenses shall be deposited in the Treasury of the United States, and an itemized statement thereof shall accompany the annual report of the Chief of Engineers. (35 Stat. 819.)

These provisions were part of section 9 of the river and harbor act of 1909, cited above.

§ 9991. (Act June 25, 1910, c. 382, § 1.) Mississippi River, Saint Paul to Minneapolis; modified project adopted; leases of water power.

Improving Mississippi River, from Saint Paul to Minneapolis: The modified project recommended by the Chief of Engineers in his report dated March third, nineteen hundred and ten, printed in House Document Numbered Seven hundred and forty-one, Sixty-first Congress, second session, is hereby adopted, and all future work on said improvement shall be prosecuted in accordance therewith: Provided, That in the making of leases for water power a reasonable compensation shall be secured to the United States, and the rates as fixed shall be subject to revision by Congress. (36 Stat. 659.)

These provisions were part of section 1 of the river and harbor appropriation act of 1910, cited above.

§ 9992. (Act July 25, 1912, c. 253, § 12.) Development of water power.

In order to make possible the economical future development of water power the Secretary of War, upon recommendation of the

Chief of Engineers, is hereby authorized, in his discretion, to provide in the permanent parts of any dam authorized at any time by Congress for the improvement of navigation such foundations, sluices, and other works, as may be considered desirable for the future development of its water power. (37 Stat. 233.)

This section was part of the rivers and harbors appropriation act of 1912, cited above.

CHAPTER G

The Mississippi River Commission

This chapter includes provisions relating to the Mississippi River Commission, established for the improvement of said river, principally Act June 28, 1879, c. 43, and subsequent amendatory and additional provisions.

The Missouri River Commission, created by Act July 5, 1884, c. 229, § 1, 23 Stat. 144, charged with the duty of superintending the improvement of the Missouri River, was abolished by Act June 13, 1902, c. 1079, § 1, 32 Stat. 367, which repealed the provisions creating the Commission and prescribing its powers, etc., and required it to submit a report of its proceedings and to transfer to and place under control of the Secretary of War all vessels, etc., and other property pertaining to the improvement of the Missouri River, and directed him to control all property previously under the control of the Commission and all works previously under its supervision.

Sec.
9993. Mississippi River Commission created.
9994. Appointment of commission; compensation; tenure.
9995. Compensation of member appointed from Coast and Geodetic Survey.
9996. Traveling expenses of civilian members and Assistant-Engineer of Board of Engineers.
9997. Duties of commission; detail of assistants, etc.; additional force.
9998. Plans; report.
9999. Plans for immediate works.
10000. Secretary of commission.
10001. Disposition of appropriation for commission.
10002. Funds appropriated for improving Mississippi River between Head of Passes and mouth of Ohio River allotted to levees; expenditure.
10002a. Allotments for improvements on Mississippi River and Ohio River.
10002b. Improvement of Ohio River not under jurisdiction of commission.
10002c. Jurisdiction of commission extended.
10003. Offices and meetings of commission.

§ 9993. (Act June 28, 1879, c. 43, § 1.) Mississippi River Commission created.

A commission is hereby created to be called "The Mississippi River Commission", to consist of seven members. (21 Stat. 37.)

This was the first section of an act entitled "An act to provide for the appointment of a 'Mississippi River Commission' for the improvement of said river from the Head of the Passes near its mouth to its head-waters."

The remaining sections of said act as originally enacted, sections 2–7 thereof, are set forth post, §§ 9994, 9997–10001.

Another section, added to the act, as section 8 thereof, by amendment by Act Feb. 18, 1901, c. 377, is set forth post, § 10003.

Notes of Decisions

Construction of statute.—Nothing in the congressional legislation creating the commission, with power to improve the navigation of the river and to build levees for that purpose, justifies the conclusion that, irrespective of navigation, Congress assumed the control of the entire work of protection from overflow by levees, to the displacement of the state or local authorities. Jackson v. U. S. (1913) 33 Sup. Ct. 1011, 230 U. S. 1, 57 L. Ed. 1363.

Cited without definite application, Overton v. U. S. (1909) 45 Ct. Cl. 17.

§ 9994. (Act June 28, 1879, c. 43, § 2.) Appointment of commission; compensation; tenure.

The President of the United States shall, by and with the advice and consent of the Senate, appoint seven commissioners, three of

whom shall be selected from the Engineer Corps of the Army, one from the Coast and Geodetic Survey, and three from civil life, two of whom shall be civil engineers. And any vacancy which may occur in the commission shall in like manner be filled by the President of the United States; and he shall designate one of the commissioners appointed from the Engineer Corps of the Army to be president of the commission. The commissioners appointed from the Engineer Corps of the Army and the Coast and Geodetic Survey shall receive no other pay or compensation than is now allowed them by law, and the other three commissioners shall receive as pay and compensation for their services each the sum of three thousand dollars per annum; and the commissioners appointed under this act shall remain in office subject to removal by the President of the United States. (21 Stat. 37.)

See notes to preceding section.

The provision of this section relating to the compensation of the commissioners appointed from the Coast and Geodetic Survey was modified by a provision of Act June 25, 1910, c. 382, § 1, post, § 9995.

Provisions relating to traveling expenses of the civilian members of the Commission, etc., were made by Act July 25, 1912, c. 253, § 1, post, § 9996.

Notes of Decisions

Compensation.—Where a statute provides that officers shall discharge additional duties and they "shall receive no other pay or compensation than is now allowed them by law," the pay at the time of the appointment fixes the amount to be paid in the new position. Whiting v. U. S. (1900) 35 Ct. Cl. 291. And see (1880) 16 Op. Atty. Gen. 559, holding that the members of the Commission who are appointed from the Engineer Corps of the Army are entitled to mileage, at the rate of 8 cents per mile, for all travel required of them by that commission pertinent to the objects for which it was constituted. Travel so required is travel under orders, within Act July 24, 1876, c. 226, § 2 (superseded by ante, § 2126).

And see § 10001, post and notes thereunder.

§ 9995. (Act June 25, 1910, c. 382, § 1.) Compensation of member appointed from Coast and Geodetic Survey.

From and after the date of the approval of this Act the member of said commission appointed from the Coast and Geodetic Survey shall receive the same annual compensation as other civilian members of said commission, and the excess of said compensation over and above the compensation he receives from the Coast and Geodetic Survey shall be paid from the funds of said commission. (36 Stat. 658.)

This was a proviso annexed to an appropriation for improving the Mississippi River, etc., in the river and harbor appropriation act of 1910, cited above.

§ 9996. (Act July 25, 1912, c. 253, § 1.) Traveling expenses of civilian members and Assistant-Engineer of Board of Engineers.

The traveling expenses of the civilian members of the Mississippi River Commission, and of the Assistant Engineer of the Board of Engineers for Rivers and Harbors, when on duty, shall be computed and paid in the same way as the traveling expenses of the Army members of said commission and of said board. (37 Stat. 218.)

This was a provision accompanying an appropriation for the Mississippi River Commission in the river and harbor appropriation act of 1912, cited above.

§ 9997. (Act June 28, 1879, c. 43, § 3.) Duties of commission; detail of assistants, etc.; additional force.

It shall be the duty of said commission to direct and complete such surveys of said river, between the Head of the Passes near its mouth to its headwaters as may now be in progress, and to make such additional surveys, examinations, and investigations, topo-

graphical, hydrographical, and hydrometrical, of said river and its tributaries, as may be deemed necessary by said commission to carry out the objects of this act. And to enable said commission to complete such surveys, examinations, and investigations, the Secretary of War shall, when requested by said commission, detail from the Engineer Corps of the Army such officers and men as may be necessary, and shall place in the charge and for the use of said commission such vessel or vessels and such machinery and instruments as may be under his control and may be deemed necessary. And the [Secretary of the Treasury] shall, when requested by said commission in like manner detail from the Coast and Geodetic Survey such officers and men as may be necessary, and shall place in the charge and for the use of said commission such vessel or vessels and such machinery and instruments as may be under his control and may be deemed necessary. And the said commission may, with the approval of the Secretary of War, employ such additional force and assistants, and provide, by purchase or otherwise, such vessels or boats and such instruments and means as may be deemed necessary. (21 Stat. 38.)

See notes to section 1 of this act, ante, § 9993.

The words "Secretary of the Treasury," inclosed in brackets in this section, were superseded by the transfer from the Department of the Treasury to the Department of Commerce of the Coast and Geodetic Survey, and the transfer to the head of the Department of Commerce of the powers and duties pertaining to the Survey, by Act Feb. 14, 1903, c. 552, §§ 4, 10, ante, §§ 857, 859.

§ 9998. (Act June 28, 1879, c. 43, § 4.) Plans; report.

It shall be the duty of said commission to take into consideration and mature such plan or plans and estimates as will correct, permanently locate, and deepen the channel and protect the banks of the Mississippi River; improve and give safety and ease to the navigation thereof; prevent destructive floods; promote and facilitate commerce, trade, and the postal service; and when so prepared and matured, to submit to the Secretary of War a full and detailed report of their proceedings and actions, and of such plans, with estimates of the cost thereof, for the purposes aforesaid, to be by him transmitted to Congress: Provided, That the commission shall report in full upon the practicability, feasibility, and probable cost of the various plans known as the jetty system, the levee system, and the outlet system, as well as upon such others as they deem necessary. (21 Stat. 38.)

The Secretary of War was directed to cause the report of the Mississippi River Commissions to be printed by Act Aug. 11, 1888, c. 860, § 8, ante, § 9873.

The rivers and harbors appropriation act of July 27, 1916, c. 260, § 1, 39 Stat., made an appropriation for continuing improvement of the Mississippi River with a view of securing a permanent channel depth of nine feet, to be expended under the direction of the Secretary of War in accordance with the plans of the Commission, as approved by the Chief of Engineers, for the general improvement of the river, for the building of levees, and for surveys, including the survey from Head of Passes to the headwaters of the river, to promote the interests of commerce.

The rivers and harbors appropriation act of July 27, 1916, c. 260, 39 Stat. 402, also provided for a survey and report by the Commission of the Atchafalaya River in accordance with the general plan of the commission for the improvement of the Mississippi River.

§ 9999. (Act June 28, 1879, c. 43, § 5.) Plans for immediate works.

The said commission may, prior to the completion of all the surveys and examinations contemplated by this act, prepare, and submit to the Secretary of War plans, specifications, and estimates of costs for such immediate works as, in the judgment of said commission, may constitute a part of the general system of works herein contemplated, to be by him transmitted to Congress. (21 Stat. 38.)

§ 10000. (Act June 28, 1879, c. 43, § 6.) Secretary of commission.

The Secretary of War may detail from the Engineer Corps of the Army of the United States an officer to act as secretary of said commission. (21 Stat. 38.)

§ 10001. (Act June 28, 1879, c. 43, § 7.) Disposition of appropriation for commission.

The Secretary of War is hereby authorized to expend the sum of one hundred and seventy-five thousand dollars, or so much thereof as may be necessary, for the payment of the salaries herein provided for, and of the necessary expenses incurred in the completion of such surveys as may now be in progress, and of such additional surveys, examinations, and investigations as may be deemed necessary, reporting the plans and estimates, and the plans, specifications, and estimates contemplated by this act, as herein provided for; and said sum is hereby appropriated for said purposes out of any money in the Treasury not otherwise appropriated. (21 Stat. 38.)

Appropriations for the Commission are made in the several rivers and harbors appropriation acts. The provision for the fiscal year 1917 "including salaries, clerical, office, traveling, and miscellaneous expenses" of the Commission, was by Act July 27, 1916, c. 260, § 1, 39 Stat. 401.

Notes of Decisions

Mileage as necessary expense.—Mileage to members appointed from the Engineer Corps of the Army should be paid out of the appropriation made in this section for "necessary expenses." (1880) 16 Op. Atty. Gen. 559. And see § 9994, ante.

§ 10002. (Act July 27, 1916, c. 260, § 1.) Funds appropriated for improving Mississippi River between Head of Passes and mouth of Ohio River allotted to levees; expenditure.

Any funds which are herein, or may hereafter be, appropriated by Congress for improving the Mississippi River between Head of Passes and the mouth of the Ohio River, and which may be allotted to levees, may be expended, under the direction of the Secretary of War, in accordance with the plans, specifications, and recommendations of the Mississippi River Commission, as approved by the Chief of Engineers, for levees upon any part of said river between Head of Passes and Rock Island, Illinois, in such manner as, in their opinion, shall best improve navigation and promote the interest of commerce at all stages of the river. (39 Stat. 402.)

This was a provision of section 1 of the rivers and harbors appropriation act of 1916, cited above.

This provision superseded Act June 4, 1906, c. 2572, 34 Stat. 208, which contained provisions more or less similar.

Notes of Decisions

Location of levees.—This section vests a large discretion in the officers as to the location of the levees, and in the exercise of such discretion they may lawfully locate a levee at a distance from the bank of the river. Houck v. U. S. (1912) 201 Fed. 862, 120 C. C. A. 200; Cape Girardeau & T. B. T. R. Co. v. Jordan (1912) 201 Fed. 868, 120 C. C. A. 206.

Liability of United States for erection of levees.—Acts not constituting a taking. Bedford v. U. S. (1904) 24 Sup. Ct. 238, 192 U. S. 217, 48 L. Ed. 414; Jackson v. U. S. (1913) 33 Sup. Ct. 1011, 230 U. S. 1, 57 L. Ed. 1363. Damage to lands and crops from increase in volume of water from prevention of outflow by work done by the federal government in the tributaries of the Mississippi to improve navigation held too remote. Jackson v. U. S. (1913) 33 Sup. Ct. 1011, 230 U. S. 1, 57 L. Ed. 1363. And see (1893) 20 Op. Atty. Gen. 625, holding that the United States will not render itself liable in damages to persons owning property along the Mississippi river on whose land it proposes to build levees, for the reason that the State of Louisiana is the owner of a servitude or interest in the lands of all riparian owners along that river for the purpose of building levees to restrain its waters within definite limits during flood times, and has surrendered to the United States for that purpose its servitude in the lands in question.

§ 10002a. (Act July 27, 1916, c. 260, § 1.) Allotments for improvements on Mississippi River and Ohio River.

Mississippi River from Head of Passes to the mouth of the Ohio River: * * The watercourses connected with said river and the harbors upon it, now under the control of the Mississippi River Commission and under improvement, together with the harbor at Vicksburg, Mississippi, and the Ohio River from its mouth to the mouth of the Cache River, which are hereby transferred to and placed under the control and jurisdiction of such commission, may, in the discretion of said commission, upon approval by the Chief of Engineers, receive allotments for improvements now under way or hereafter to be undertaken, to be paid for from the amount herein appropriated. (39 Stat. 402.)

This was a further provision of section 1 of the rivers and harbors appropriation act of 1916, cited above.

§ 10002b. (Act July 27, 1916, c. 260, § 1.) Improvement of Ohio River not under jurisdiction of commission.

Mississippi River from Head of Passes to the mouth of the Ohio River: * * That no part of the improvement of the Ohio River, with a view to the construction of locks and dams, shall be considered as transferred to or placed under the control and jurisdiction of the Mississippi River Commission. (39 Stat. 402.)

This was a further provision of section 1 of the rivers and harbors appropriation act of 1916, cited above.

§ 10002c. (Act July 27, 1916, c. 260, § 1.) Jurisdiction of commission extended.

The jurisdiction of the Mississippi River Commission is hereby extended so as to include that part of the Arkansas River between its mouth and the intersection thereof with the division line between Lincoln and Jefferson Counties, and any funds which are herein or may be hereafter appropriated by Congress for improving the Mississippi River between Head of Passes and the mouth of the Ohio River, and which may be allotted to levees and bank revetment, may be expended within the limits of said extended jurisdiction under the direction of the Secretary of War, in accordance with the plans, specifications, and recommendations of the Mississippi River Commission, as approved by the Chief of Engineers, and upon like terms and conditions for levees and bank revetment upon any part of the Mississippi River now under the jurisdiction of said commission, and in such manner as will best promote and accomplish the purposes for which commission was created, in so far as the territory hereby added to its said jurisdiction may be involved. (39 Stat. 402.)

This was a further provision of section 1 of the rivers and harbors appropriation act of 1916, cited above.

§ 10003. (Act June 28, 1879, c. 43, § 8, as amended, Act Feb. 18, 1901, c. 377.) Offices and meetings of commission.

The headquarters and general offices of said commission shall be located at some city or town on the Mississippi River, to be designated by the Secretary of War, and the meetings of the commission except such as are held on Government boats during the time of the semiannual inspection trips of the commission shall be held at said headquarters and general offices, the times of said meetings to be fixed by the president of the commission, who shall cause due notice of such meetings to be given members of the commission and the public. (31 Stat. 793.)

This section was added to Act June 28, 1879, c. 43, which created the Commission, as section 8 thereof, by amendment by Act Feb. 18, 1901, c. 377, cited above.

CHAPTER H

The California Débris Commission

This chapter includes provisions relating to the California Débris Commission, established for the improvement and protection of the navigability of certain rivers in California, as against encroachment and damage from débris resulting from mining operations, and other causes, principally Act March 1, 1893, c. 183, with subsequent provisions amendatory thereof and incidental thereto.

Sec.
10004. California Débris Commission created; appointment; powers.
10005. Organization; compensation; rules of procedure.
10006. Mileage to officers of Commission.
10007. Jurisdiction; injurious hydraulic mining prohibited.
10008. Duty of commission; plans.
10009. Surveys of sites for débris, etc.; examination of hydraulic, etc., mines, etc.
10010. Observations of conditions of navigable channels.
10011. Annual report; contents.
10012. Definition of "hydraulic mining" and "mining by hydraulic process."
10013. Petitions by hydraulic miners.
10014. Surrender to United States of right to regulate the débris; use of other processes, etc., not affected.
10015. Petitions for common dumping grounds.
10016. Publication of notice of petition; examination pending publication; hearing.
10017. Order by commission directing methods of mining; taxes on gross proceeds; authorizing hydraulic mining without restraining or impounding works, etc.
10018. Supervision of work by commission.
10019. Conditions precedent for commencing mining operations.
10020. Allotment of expenses for constructing common dumping grounds.
10021. Limitation of quantity of débris washed away.
10022. Modification and revocation of orders.
10023. Violation of conditions; penalty.
10024. Examinations of mines; reports.
10025. Use of public lands and materials.
10026. Malicious injury to works and navigation; penalty.
10027. Tax on gross proceeds of hydraulic mines; ascertainment and payment; "Débris Fund" created.
10028. Co-operation by commission with State authorities.
10029. Appropriations from "Débris Fund," etc., for construction of dams, etc.
10030. Acceptance from California of dredger, etc., authorized; liability of California for part payment for construction of restraining works, etc.; contracts for labor.

§ 10004. (Act March 1, 1893, c. 183, § 1.) California Débris Commission created; appointment; powers.

A commission is hereby created, to be known as the California Debris Commission, consisting of three members. The President of the United States shall, by and with the advice and consent of the Senate, appoint the commission from officers of the Corps of Engineers, United States Army. Vacancies occurring therein shall be filled in like manner. It shall have the authority, and exercise the powers hereinafter set forth, under the supervision of the Chief of Engineers and direction of the Secretary of War. (27 Stat. 507.)

This was the first section of an act entitled "An act to create the California Débris Commission and regulate hydraulic mining in the State of California." The remaining sections of the act, sections 2–25 thereof, are set forth post, §§ 10005–10029.

Notes of Decisions

Protection of navigation.—It is the duty of the United States to take prompt action by an information in chancery to restrain hydraulic mining operations in California which are creating obstructions to the navigation of

rivers in the state. (1886) 18 Op. Atty. Gen. 404.

Constitutionality of act.—The act of March 1, 1893 (this section and sections 10005, 10007–10029, post), is within the constitutional powers of congress to regulate commerce, which includes navigation. North Bloomfield Gravel Min. Co. v. U. S. (1898) 88 Fed. 664, 32 C. C. A. 84, affirming decree U. S. v. North Bloomfield Gravel-Min. Co. (C. C. 1897) 81 Fed. 243.

—— **Intervention by government.**—Where the superior court granted a temporary injunction on a suit by a county restraining a company operating under a license from the commission from mining by the hydraulic process, and there was no question touching the validity of the powers granted to the commission, the government should not intervene in the suit. (1899) 22 Op. Atty. Gen. 554.

Construction of act in general.—Act March 1, 1893 (this section and sections 10005, 10007–10029, post), requiring owners of mining ground in the territory drained by the Sacramento and San Joaquin river systems, who desire to mine the same by the hydraulic process, to file petitions, and obtain permits from the commission thereby created, is mandatory, and applies to all owners mining by that process, though they may have erected impounding works, such as are required by the act, before its passage. North Bloomfield Gravel-Min. Co. v. U. S. (1898) 88 Fed. 664, 32 C. C. A. 84, affirming decree U. S. v. North Bloomfield Gravel-Min. Co. (C. C. 1897) 81 Fed. 243. And the fact that prior to the passage of said act the United States had filed a bill to restrain a certain corporation from carrying on hydraulic mining so as to interfere with the navigability of such rivers, and that a decree had been entered adjudging that impounding works erected by the company pending the suit were sufficient to remove all injurious matter, and that the company could not thereafter be restrained under the then existing law, is no defense to a suit by the United States to enforce compliance with the act of 1893. U. S. v. North Bloomfield Gravel-Min. Co. (C. C. 1897) 81 Fed. 243.

Civil office.—The members of the commission, established by this section do not hold civil office within section 1993, ante, nor does section 1995, ante, necessitate their withdrawal from the Engineer Corps. (1893) 20 Op. Atty. Gen. 604.

§ 10005. (Act March 1, 1893, c. 183, § 2.) Organization; compensation; rules of procedure.

Said commission shall organize within thirty days after its appointment by the selection of such officers as may be required in the performance of its duties, the same to be selected from the members thereof. The members of said commission shall receive no greater compensation than is now allowed by law to each, respectively, as an officer of said Corps of Engineers. It shall also adopt rules and regulations, not inconsistent with law, to govern its deliberations and prescribe the method of procedure under the provisions of this act. (27 Stat. 507.)

§ 10006. (Act June 6, 1900, c. 791, § 1.) Mileage to officers of Commission.

So much of the Act of March third, eighteen hundred and ninety-nine, as provides that the members of the California Débris Commission shall receive only actual expenses in lieu of mileage while traveling on duty is hereby repealed, and hereafter the officers of the commission shall receive the mileage allowed by law. (31 Stat. 631.)

This was a provision accompanying an appropriation for the expenses of the Commission in the sundry civil appropriation act for the fiscal year 1901, cited above.

Act March 3, 1899, c. 424, § 1, 30 Stat. 1109, mentioned in this section, provided that the officers of the Commission traveling on duty might be paid their actual traveling expenses, in lieu of mileage allowed by law, and should thereafter receive no mileage.

§ 10007. (Act March 1, 1893, c. 183, § 3.) Jurisdiction; injurious hydraulic mining prohibited.

The jurisdiction of said commission, in so far as the same affects mining carried on by the hydraulic process, shall extend to all such mining in the territory drained by the Sacramento and San Joaquin river systems in the State of California. Hydraulic mining, as de-

fined in section eight hereof, directly or indirectly injuring the navigability of said river systems, carried on in said territory other than as permitted under the provisions of this act is hereby prohibited and declared unlawful. (27 Stat. 507.)

See notes to section 1 of this act, ante, § 10004.

Notes of Decisions

Jurisdiction of commission. — The North Bloomfield Gravel Mining Company, of California, is within the jurisdiction of the commission. (1894) 21 Op. Atty. Gen. 62. And see U. S. v. North Bloomfield Gravel Mining Co. (C. C. 1892) 53 Fed. 625.

§ 10008. (Act March 1, 1893, c. 183, § 4.) Duty of commission; plans.

It shall be the duty of said commission to mature and adopt such plan or plans, from examinations and surveys already made and from such additional examinations and surveys as it may deem necessary, as will improve the navigability of all the rivers comprising said systems, deepen their channels, and protect their banks. Such plan or plans shall be matured with a view of making the same effective as against the encroachment of and damage from debris resulting from mining operations, natural erosion, or other causes, with a view of restoring, as near as practicable and the necessities of commerce and navigation demand, the navigability of said rivers to the condition existing in eighteen hundred and sixty, and permitting mining by the hydraulic process, as the term is understood in said state, to be carried on, provided the same can be accomplished, without injury to the navigability of said rivers or the lands adjacent thereto. (27 Stat. 507.)

§ 10009. (Act March 1, 1893, c. 183, § 5.) Surveys of sites for débris, etc.; examination of hydraulic, etc., mines, etc.

That it shall further examine, survey, and determine the utility and practicability, for the purposes hereinafter indicated, of storage sites in the tributaries of said rivers and in the respective branches of said tributaries, or in the plains, basins, sloughs, and tule and swamp lands adjacent to or along the course of said rivers, for the storage of debris or water or as settling reservoirs, with the object of using the same by either or all of these methods to aid in the improvement and protection of said navigable rivers by preventing deposits therein of debris resulting from mining operations, natural erosion, or other causes, or for affording relief thereto in flood time and providing sufficient water to maintain scouring force therein in the summer season; and in connection therewith to investigate such hydraulic and other mines as are now or may have been worked by methods intended to restrain the debris and material moved in operating such mines by impounding dams, settling reservoirs, or otherwise, and in general to make such study of and researches in the hydraulic mining industry as science, experience, and engineering skill may suggest as practicable and useful in devising a method or methods whereby such mining may be carried on as aforesaid. (27 Stat. 508.)

Notes of Decisions

Authority of commission.—The right of the commission to enter on lands where hydraulic mining is carried on, or is supposed to be unlawfully conducted, seems entirely clear under this section. This section and post, §§ 10013, 10024, 10026, give the commission ample means to ascertain the method of conduct of the mining industry to protect navigation and punish violators of the law. (1894) 21 Op. Atty. Gen. 62.

Resort to equity.—Resort may be had to a court of equity to compel allowance of inspection of premises where hydraulic mining is being, or is supposed to be, unlawfully conducted. (1894) 21 Op. Atty. Gen. 62.

§ 10010. (Act March 1, 1893, c. 183, § 6.) Observations of conditions of navigable channels.

The said commission shall from time to time note the conditions of the navigable channels of said river systems, by cross-section surveys or otherwise, in order to ascertain the effect therein of such hydraulic mining operations as may be permitted by its orders and such as is caused by erosion, natural or otherwise. (27 Stat. 508.)

§ 10011. (Act March 1, 1893, c. 183, § 7.) Annual report; contents.

Said commission shall submit to the Chief of Engineers, for the information of the Secretary of War, on or before the fifteenth day of November of each year, a report of its labors and transactions, with plans for the construction, completion, and preservation of the public works outlined in this act, together with estimates of the cost thereof, stating what amounts can be profitably expended thereon each year. The Secretary of War shall thereupon submit same to Congress on or before the meeting thereof. (27 Stat. 508.)

§ 10012. (Act March 1, 1893, c. 183, § 8.) Definition of "hydraulic mining" and "mining by hydraulic process."

For the purposes of this act "hydraulic mining" and "mining by the hydraulic process," are hereby declared to have the meaning and application given to said terms in said State. (27 Stat. 508.)

§ 10013. (Act March 1, 1893, c. 183, § 9.) Petitions by hydraulic miners.

The individual proprietor or proprietors, or in case of a corporation its manager or agent appointed for that purpose, owning mining ground in the territory in the State of California mentioned in section three hereof, which it is desired to work by the hydraulic process, must file with said commission a verified petition, setting forth such facts as will comply with law and the rules prescribed by said commission. (27 Stat. 508.)

Section 3 of this act, mentioned in this section, is set forth ante, § 10007.

Notes of Decisions

Petitions.—See notes under § 10004, ante.

Authority of commission and resort to equity.—See notes under § 10009, ante.

§ 10014. (Act March 1, 1893, c. 183, § 10.) Surrender to United States of right to regulate the débris; use of other processes, etc., not affected.

Said petition shall be accompanied by an instrument duly executed and acknowledged, as required by the law of the said State, whereby the owner or owners of such mine or mines surrender to the United States the right and privilege to regulate by law, as provided in this act, or any law that may hereafter be enacted, or by such rules and regulations as may be prescribed by virtue thereof, the manner and method in which the debris resulting from the working of said mine or mines shall be restrained, and what amount shall be produced therefrom; it being understood that the surrender aforesaid shall not be construed as in any way affecting the right of such owner or owners to operate said mine or mines by any other process or method now in use in said State: Provided, That they shall not interfere with the navigability of the aforesaid rivers. (27 Stat. 509.)

Notes of Decisions

Constitutionality of statute.—The requirement that all owners should execute an instrument surrendering to the United States the right to regulate the disposal of the débris does not render the act unconstitutional as taking prop-

erty rights without compensation, as such instrument in fact adds nothing to the authority already possessed by Congress. North Bloomfield Gravel Min. Co. v. U. S. (1898) 88 Fed. 664, 32 C. C. A. 84, affirming decree U. S. v. North Bloomfield Gravel-Min. Co. (C. C. 1897) 81 Fed. 243.

§ 10015. (Act March 1, 1893, c. 183, § 11.) Petitions for common dumping grounds.

The owners of several mining claims situated so as to require a common dumping ground or dam or other restraining works for the débris issuing therefrom in one or more sites may file a joint petition setting forth such facts in addition to the requirements of section nine hereof; and where the owner of a hydraulic mine or owners of several such mines have and use common dumping sites for impounding débris or as settling reservoirs, which sites are located below the mine of an applicant not entitled to use same, such fact shall also be stated in said petition. Thereupon the same proceedings shall be had as provided for herein. (27 Stat. 509.)

§ 10016. (Act March 1, 1893, c. 183, § 12.) Publication of notice of petition; examination pending publication; hearing.

A notice specifying briefly the contents of said petition and fixing a time previous to which all proofs are to be submitted shall be published by said commission in some newspaper or newspapers of general circulation in the communities interested in the matter set forth therein. If published in a daily paper such publication shall continue for at least ten days; if in a weekly paper in at least three issues of the same. Pending publication thereof said commission, or a committee thereof, shall examine the mine and premises described in such petition. On or before the time so fixed all parties interested, either as petitioners or contestants, whether miners or agriculturists, may file affidavits, plans, and maps in support of their respective claims. Further hearings, upon notice to all parties of record, may be granted by the commission when necessary. (27 Stat. 509.)

Notes of Decisions

Injuries subsequent to hearing.— These provisions were not intended to conclude the owners of lands below with respect to subsequent injuries. Sutter County v. Nicols (Cal. 1908) 93 P. 872.

§ 10017. (Act March 1, 1893, c. 183, § 13, as amended, Act Feb. 27, 1907, c. 2077.) Order by commission directing methods of mining; taxes on gross proceeds; authorizing hydraulic mining without restraining or impounding works, etc.

In case a majority of the members of said Commission, within thirty days after the time so fixed, concur in the decision in favor of the petitioner or petitioners, the said Commission shall thereupon make an order directing the methods and specifying in detail the manner in which operations shall proceed in such mine or mines; what restraining or impounding works, if any, if facilities therefor can be found, shall be built and maintained; how and of what material; where to be located; and in general set forth such further requirements and safeguards as will protect the public interests and prevent injury to the said navigable rivers and the lands adjacent thereto, with such further conditions and limitations as will observe all the provisions of this Act in relation to the working thereof and the payment of taxes on the gross proceeds of the same: Provided, That all expense incurred in complying with said order shall be borne by the owner or owners of such mine or mines: And provided further, That where it shall appear to said Commission that hydraulic mining may be carried on without injury to the navigation of said navigable rivers and the lands adjacent thereto, an order may be made authorizing such mining to be carried on without requiring the construction of any restraining or impounding works or any settling reservoirs: And pro-

vided also, That where such an order is made a license to mine, no taxes provided for herein on the gross proceeds of such mining operations shall be collected. (27 Stat. 509. 34 Stat. 1001.)

This section, as originally enacted, did not contain the two last provisos annexed thereto, as set forth here. It was amended by Act Feb. 27, 1907, c. 2077, last cited above, by making slight changes in the original provisions, principally the insertion, after the words "what restraining or impounding works," of the words "if any," and by adding at the end of the section as originally enacted, the two further provisos relating to authorizing hydraulic mining without restraining or impounding works, etc., making the entire section read as set forth here.

Notes of Decisions

Procurement of permits.—See notes under § 10004, ante.

Effect of compliance with order of commission.—This act was not intended to exonerate the miner from liability for injuries by débris, nor to limit the powers of the state courts to protect property from threatened injury, and to redress injury thereto from the operation of hydraulic mines, though carried on in compliance with the plans of the commmission. Sutter County v. Nicols (Cal. 1908) 93 P. 872.

§ 10018. (Act March 1, 1893, c. 183, § 14.) Supervision of work by commission.

Such petitioner or petitioners must within a reasonable time present plans and specifications of all works required to be built in pursuance of said order for examination, correction, and approval by said commission; and thereupon work may immediately commence thereon under the supervision of said commission or representative thereof attached thereto from said Corps of Engineers, who shall inspect same from time to time. Upon completion thereof, if found in every respect to meet the requirements of the said order and said approved plans and specifications, permission shall thereupon be granted to the owner or owners of such mine or mines to commence mining operations, subject to the conditions of said order and the provisions of this act. (27 Stat. 509.)

§ 10019. (Act March 1, 1893, c. 183, § 15.) Conditions precedent for commencing mining operations.

No permission granted to a mine owner or owners under this act shall take effect, so far as regards the working of a mine, until all impounding dams or other restraining works, if any are prescribed by the order granting such permission, have been completed and until the impounding dams or other restraining works or settling reservoirs provided by said commission have reached such a stage as, in the opinion of said commission, it is safe to use the same: Provided, however, That if said commission shall be of the opinion that the restraining and other works already constructed at the mine or mines shall be sufficient to protect the navigable rivers of said systems and the work of said commission, then the owner or owners of such mine or mines may be permitted to commence operations. (27 Stat. 509.)

§ 10020. (Act March 1, 1893, c. 183, § 16.) Allotment of expenses for constructing common dumping grounds.

In case the joint petition referred to in section eleven hereof is granted, the commission shall fix the respective amounts to be paid by each owner of such mines toward providing and building necessary impounding dams or other restraining works. In the event of a petition being filed after the entry of such order, or in case the impounding dam or dams or other restraining works have already been constructed and accepted by said commission, the commission shall fix such amount as may be reasonable for the privilege of dumping therein, which amount shall be divided between the original owners of such impounding dams or other restraining works in pro-

portion to the amount respectively paid by each party owning same. The expense of maintaining and protecting such joint dam or works shall be divided among mine-owners using the same in such proportion as the commission shall determine. In all cases where it is practicable, restraining and impounding works are to be provided, constructed, and maintained by mine-owners near or below the mine or mines before reaching the main tributaries of said navigable waters. (27 Stat. 509.)

Section 11 of this act, mentioned in this section, is set forth ante, § 10015.

§ 10021. (Act March 1, 1893, c. 183, § 17.) Limitation of quantity of débris washed away.

At no time shall any more débris be permitted to be washed away from any hydraulic mine or mines situated on the tributaries of said rivers and the respective branches of each, worked under the provisions of this act, than can be impounded within the restraining works erected. (27 Stat. 509.)

Notes of Decisions

Obstruction of navigation.—See Woodruff v. North Bloomfield Gravel Min. Co. (C. C. 1884) 18 Fed. 753; People v. Gold Run Ditch & Mining Co. (1884) 66 Cal. 138, 4 Pac. 1152, 56 Am. Rep. 80.

§ 10022. (Act March 1, 1893, c. 183, § 18.) Modification and revocation of orders.

The said commission may at any time, when the condition of the navigable rivers or when the capacities of all impounding and settling facilities erected by mine-owners or such as may be provided by Government authority require same, modify the order granting the privilege to mine by the hydraulic mining process so as to reduce amount thereof to meet the capacities of the facilities then in use, or if actually required in order to protect the navigable rivers from damage, may revoke same until the further notice of the commission. (27 Stat. 509.)

§ 10023. (Act March 1, 1893, c. 183, § 19.) Violation of conditions; penalty.

An intentional violation on the part of a mine owner or owners, company, or corporation, or the agents or employees of either, of the conditions of the order granted pursuant to section thirteen, or such modifications thereof as may have been made by said commission, shall work a forfeiture of the privileges thereby conferred, and upon notice being served by the order of said commission upon such owner or owners, company, or corporation, or agent in charge, work shall immediately cease. Said commission shall take necessary steps to enforce its orders in case of the failure, neglect, or refusal of such owner or owners, company, or corporation, or agents thereof, to comply therewith, or in the event of any person or persons, company, or corporation working by said process in said territory contrary to law. (27 Stat. 510.)

Section 13 of this act, mentioned in this section, is set forth ante, § 10017.

Notes of Decisions

Protection of navigability of streams.—The Commission is authorized under this section to take necessary steps to prevent injury to the navigability of the Sacramento river by the operations of a certain company engaged in hydraulic mining. (1894) 21 Op. Atty. Gen. 10.

The provisions of the above-named act may be enforced by an injunction, to be obtained from one of the judges of the federal courts in California on a bill in equity, brought by the district attorney in the name of the United States. Id.

§ 10024. (Act March 1, 1893, c. 183, § 20.) Examinations of mines; reports.

Said commission, or a committee therefrom, or officer of said corps assigned to duty under its orders, shall, whenever deemed necessary, visit said territory and all mines operating under the provisions of this act. A report of such examination shall be placed on file. (27 Stat. 510.)

Notes of Decisions

Authority of commission and resort to equity.—See notes under § 10009, ante.

§ 10025. (Act March 1, 1893, c. 183, § 21.) Use of public lands and materials.

The said commission is hereby granted the right to use any of the public lands of the United States, or any rock, stone, timber, trees, brush, or material thereon or therein, for any of the purposes of this act; and the Secretary of the Interior is hereby authorized and requested, after notice has been filed with the Commissioner of the General Land Office by said commission, setting forth what public lands are required by it under the authority of this section, that such land or lands shall be withdrawn from sale and entry under the laws of the United States. (27 Stat. 511.)

§ 10026. (Act March 1, 1893, c. 183, § 22.) Malicious injury to works and navigation; penalty.

Any person or persons who willfully or maliciously injure, damage, or destroy, or attempt to injure, damage, or destroy, any dam or other work erected under the provisions of this act for restraining, impounding, or settling purposes, or for use in connection therewith, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed the sum of five thousand dollars or be imprisoned not to exceed five years, or by both such fine and imprisonment, in the discretion of the court. And any person or persons, company or corporation, their agents or employees, who shall mine by the hydraulic process directly or indirectly injuring the navigable waters of the United States, in violation of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: Provided, That this section shall take effect on the first day of May, eighteen hundred and ninety-three. (27 Stat. 511.)

Notes of Decisions

See notes under § 10009, ante.

§ 10027. (Act March 1, 1893, c. 183, § 23.) Tax on gross proceeds of hydraulic mines; ascertainment and payment; "Débris Fund" created.

Upon the construction by the said commission of dams or other works for the detention of débris from hydraulic mines and the issuing of the order provided for by this act to any individual, company, or corporation to work any mine or mines by hydraulic process, the individual, company or corporation operating thereunder working any mine or mines by hydraulic process, the debris from which flows into or is in whole or in part restrained by such dams or other works erected by said commission, shall pay a tax of three per centum on the gross proceeds of his, their, or its mine so worked; which tax of three per centum shall be ascertained and paid in accordance with regulations to be adopted by the Secretary of the

Treasury, and the Treasurer of the United States is hereby authorized to receive the same. All sums of money paid into the Treasury under this section shall be set apart and credited to a fund to be known as the "Debris Fund," and shall be expended by said commission under the supervision of the Chief of Engineers and direction of the Secretary of War, in addition to the appropriations made by law in the construction and maintenance of such restraining works and settling reservoirs as may be proper and necessary: Provided, That said commission is hereby authorized to receive and pay into the Treasury from the owner or owners of mines worked by the hydraulic process, to whom permission may have been granted so to work under the provisions hereof, such money advances as may be offered to aid in the construction of such impounding dams or other restraining works, or settling reservoirs, or sites therefor, as may be deemed necessary by said commission to protect the navigable channels of said river systems, on condition that all moneys so advanced shall be refunded as the said tax is paid into the said debris fund: And provided further, That in no event shall the Government of the United States be held liable to refund same except as directed by this section. (27 Stat. 511.)

§ 10028. (Act March 1, 1893, c. 183, § 24.) Co-operation by commission with State authorities.

That for the purpose of securing harmony of action and economy in expenditures in the work to be done by the United States and the State of California, respectively, the former in its plans for the improvement and protection of the navigable streams and to prevent the depositing of mining debris or other materials within the same, and the latter in its plans authorized by law for the reclamation, drainage, and protection of its lands, or relating to the working of hydraulic mines, the said commission is empowered to consult thereon with a commission of engineers of said State, if authorized by said State for said purpose, the result of such conference to be reported to the Chief of Engineers of the United States Army, and if by him approved shall be followed by said commission. (27 Stat. 511.)

§ 10029. (Act March 1, 1893, c. 183, § 25.) Appropriations from "Débris Fund," etc., for construction of dams, etc.

Said commission, in order that such material as is now or may hereafter be lodged in the tributaries of the Sacramento and San Joaquin River systems resulting from mining operations, natural erosion, or other causes, shall be prevented from injuring the said navigable rivers or such of the tributaries of either as may be navigable and the land adjacent thereto, is hereby directed and empowered, when appropriations are made therefor by law, or sufficient money is deposited for that purpose in said debris fund, to build at such points above the head of navigation in said rivers and on the main tributaries thereof, or branches of such tributaries, or any place adjacent to the same, which in the judgment of said commission, will effect said object (the same to be of such material as will insure safety and permanency), such restraining or impounding dams and settling reservoirs, with such canals, locks, or other works adapted and required to complete same. The recommendations contained in Executive Document Numbered Two hundred and sixty-seven, Fifty-first Congress, second session, and Executive Document Numbered Ninety-eight, Forty-seventh Congress, First session, as far as they refer to impounding dams, or other restraining works, are hereby adopted, and the same are directed to be made the basis of operations. The sum of fifteen thousand dollars is hereby appropriated,

from moneys in the Treasury not otherwise appropriated, to be immediately available to defray the expenses of said commission. (27 Stat. 511.)

Executive Document No. 67, mentioned in this section, contained a report of Lieut. Col. G. H. Mendell, Corps of Engineers, U. S. A., dated January 26, 1882, prepared pursuant to a provision in Act June 14, 1880, c. 211, 21 Stat. 196. Executive Document No. 98, also mentioned in this section, contained a report by a board of engineers created by Act Oct. 1, 1888, c. 1057, 25 Stat. 498.

Appropriations "defraying the expenses of the commission in carrying on the work authorized by" this act were made by the sundry civil appropriation act for the fiscal year 1917. Act July 1, 1916, c. 209, 39 Stat. 292.

§ 10030. (Act March 3, 1899, c. 425, § 1.) Acceptance from California of dredger, etc., authorized; liability of California for part payment for construction of restraining works, etc.; contracts for labor.

The Secretary of War is hereby authorized to accept from the State of California the use of any dredger, or appliances owned or controlled by said State, conformably to any offer thereof by the said State; and the Secretary of War is hereby authorized to use any such dredger or appliances in any river or harbor improvement that may be prosecuted therein by the United States, either on the part of the United States alone or conjointly with said State; Provided, That nothing shall be paid to the State of California for the use of said dredger, and that nothing herein contained shall create any liability against the United States.

The provisions of an Act of Congress, entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-nine, and for other purposes," approved July first, eighteen hundred and ninety-eight, authorizing the Secretary of War, in expending certain specified appropriations in the preparation for and construction of certain works for the restraining or impounding of mining débris in the State of California, to enter into a contract or contracts wherein the contractor or contractors shall look solely to that State for one-half of such expense, and that the United States shall in no wise be liable for said one-half, are hereby extended to any appropriations, when made, that may hereafter be made for said purposes.

The Secretary of War, in carrying out the provisions of any Act of Congress providing for the restraining or impounding of mining débris in California, may, in his discretion, when in his judgment the aggregate of appropriations already made by said State and Congress and available therefor are sufficient to complete the same, undertake the works necessary thereto by hired labor and by purchase of supplies and materials therefor, and may accept payments on account thereof as the work progresses under and according to the provisions of the acts of the legislature of said State for such purposes. (30 Stat. 1148.)

These were provisions of section 1 of the river and harbor appropriation act of 1899, cited above.

Act July 1, 1898, c. 546, § 1, 30 Stat. 631, mentioned in this section, authorized the Secretary of War, in contracting for the construction of certain proposed works, to enter into an agreement that the contractor should look solely to California for half of the expenses.

CHAPTER I

The Panama Canal and the Canal Zone

This chapter includes provisions for the maintenance, protection, and operation of the Panama Canal, and for the sanitation and government of the Canal Zone as an adjunct to the canal, principally the Panama Canal Act of Aug. 24, 1912, c. 390, and previous and subsequent provisions, of a permanent nature and remaining in force, relating to the canal, the Canal Zone, and the Panama Railroad.

Sec.
10031. Acquisition of Canal Zone; authority to construct and maintain and operate the Panama Canal; authority to maintain and operate the Panama Railroad.
10032. Leases by President of public lands in Canal Zone authorized; conditions; preference to occupants.
10033. Lands to be leased which it is not contemplated to use in canal construction or to set aside as town site; leases subject to right, if necessary, to occupy or use land.
10034. Reservation in leases of mineral, oil, and gas rights.
10035. Land survey of Canal Zone authorized.
10036. Exercise of powers of President under act through Canal Commission or otherwise.
10037. Canal Zone; territory included; acquisition of additional land authorized.
10038. Former laws, regulations, etc., continued.
10039. Acquisition of title to all lands within Zone authorized.
10040. President authorized to discontinue the Isthmian Canal Commission; completion and operation of canal by governor and others; compensation of army or navy officers appointed to positions in Zone; governor; appointment; term; salary; other officials; appointment; removal; compensation; opening of canal; report of Commission on Fine Arts.
10041. President authorized to prescribe and change tolls; notice of change; basis of tolls; maximum and minimum net tonnage tolls; maximum and minimum tolls not based on tonnage; maximum passenger toll; operating regulations; claims for damages to vessels; compensation for injuries to employees.
10041a. Act not to be construed as waiver, etc., of right of United States to discriminate in favor of its vessels by exemption from tolls, or of any right of sovereignty over, or ownership, control, etc., of canal.
10042. Erection and operation of radiocommunication installations; maintenance and operation of docks, storehouses, etc.; use of receipts; reports.
10043. Powers and duties of governor; civil government of Zone adjunct of canal; President to determine towns and subdivisions of Zone; magistrate's courts; jurisdiction; appointment of magistrates and constables; to be citizens of United States; President to establish rules, etc., of courts; notaries public.
10044. District Court; divisions; rules of practice; jurisdiction; jurors; district attorney and marshal; duties; appointment, tenure, and compensation of judge, attorney, and marshal; clerk; acting judge.
10045. Transfer of causes and records from existing courts; temporary continuance of supreme court; duties of existing court officers transferred to similar officers of new courts; practice and procedure of existing courts continued; appeals to circuit court of appeals; review by United States Supreme Court.
10046. (Superseded.)
10047. Laws and treaties for extradition and rendition of fugitives from justice extended to Canal Zone.
10048. Canal and Zone to be under exclusive control of army during war.
10049. Designation of act; right to amend or repeal its provisions or regulations thereunder, reserved.
10050. Payments for Toro Point Light prohibited.
10051. Division of record authorized; preservation of useful or historical papers; destruction of useless papers.
10051a. President authorized to make rules and regulations for sanitation for Canal Zone; penalty for violation.

Sec.
10051b. President authorized to make regulations for assessing and collecting taxes in Canal Zone; limitation of amount.
10051c. President authorized to make rules and regulations for the use of highways in Canal Zone; license of motor vehicles; reciprocal regulations with respect to Panama.
10051d. Breach of the peace or disorderly conduct in Canal Zone.
10051e. Penalty for violation of regulations established by President.
10051f. Interest on deposit money orders issued in Canal Zone in lieu of postal savings certificates.
10051g. Disposition of interest received from money order funds deposited in banks.
10051h. Fees of customs officer for certifying invoices, etc.
10051i. Laws relating to seamen of vessels of United States applicable to vessels at Canal Zone.
10051j. Regulations by President as to passage of persons through Canal Zone; penalty for violation of rules; penalty for injury or obstruction of Canal; murder.
10051k. Repeal.
10052. Payment by Panama Railroad Company of annual subsidy under concession granted by Colombia, not to be required.
10053. Panama Railroad Company to carry no insurance, nor make further payment on notes given by it to the United States.
10054. Panama Railroad Company not to be required to give bond in contracts for services, etc., to Army, Navy, etc., such contracts may be for less than one year; writing not required.
10054a. Consolidation of functions in regard to funds of Canal Zone government and Panama Railroad operations, to funds appropriated for Panama Canal authorized.
10054b. Accounting by collecting officers of canal; regulations.
10054c. Accounting by collecting officers of canal; regulations to provide for examination of accounts and vouchers, etc., at Canal Zone; expenses of persons designated therefor.

§ 10031. (Act June 28, 1902, c. 1302, § 2.) Acquisition of Canal Zone; authority to construct and maintain and operate the Panama Canal; authority to maintain and operate the Panama Railroad.

The President is hereby authorized to acquire from the Republic of Colombia, for and on behalf of the United States, upon such terms as he may deem reasonable, perpetual control of a strip of land, the territory of the Republic of Colombia, not less than six miles in width, extending from the Caribbean Sea to the Pacific Ocean, and the right to use and dispose of the waters thereon, and to excavate, construct, and to perpetually maintain, operate, and protect thereon a canal, of such depth and capacity as will afford convenient passage of ships of the greatest tonnage and draft now in use, from the Caribbean Sea to the Pacific Ocean, which control shall include the right to perpetually maintain and operate the Panama Railroad, if the ownership thereof, or a controlling interest therein, shall have been acquired by the United States, and also jurisdiction over said strip and the ports at the ends thereof to make such police and sanitary rules and regulations as shall be necessary to preserve order and preserve the public health thereon, and to establish such judicial tribunals as may be agreed upon thereon as may be necessary to enforce such rules and regulations.

The President may acquire such additional territory and rights from Colombia as in his judgment will facilitate the general purpose hereof. (32 Stat. 481.)

This was section 2 of the first act to authorize the construction of an interoceanic canal, entitled "An act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific Oceans."

Sections 1 and 3–7 of the act, authorizing the acquisition of the rights, franchises, etc., and property owned by the New Panama Canal Company of France, including the capital stock of the Panama Railroad Company, making appropriations and other provisions for payment therefor and for the right of way to be acquired under this section and for the construction of the canal, and

creating the Isthmian Canal Commission, are omitted, as temporary merely and executed.

The provisions of this section, also, authorizing the acquisition of the Canal Zone and the construction of the canal thereon, may be regarded as temporary and executed, but the provisions authorizing the perpetual maintenance and operation of the canal and the Panama Railroad are permanent in their nature.

Section 8 of this act, which authorized the issuance and sale of bonds to defray expenditures authorized by the act, is set forth ante, § 6826, with subsequent provisions relating to said bonds and additional bonds issued for the same purpose, ante, §§ 6827–6829.

Leases of the public lands of the Canal Zone were authorized by Act Feb. 27, 1909, c. 224, post, §§ 10032–10036.

Provisions for the temporary government of the Canal Zone of Act April 28, 1904, c. 1758, 33 Stat. 429, were superseded by the subsequent provisions for the operation of the canal and the government of the zone of the Panama Canal Act of Aug. 24, 1912, c. 390, post, §§ 10032–10049.

Subsequent provisions for the government of the zone were made by Act Aug. 21, 1916, c. 371, post, §§ 10051a–10051k.

Other provisions of acts subsequent to this act, supplemental thereto, or otherwise relating to the work of construction of the canal or contracts therefor, are contained in Act Dec. 21, 1905, c. 3, 34 Stat. 5, Res. June 25, 1906, No. 35, 34 Stat. 835, Act June 29, 1906, c. 3597, 34 Stat. 611, and the provisions of the various appropriation acts for the construction of the canal, are also omitted, as temporary merely.

Subsequent provisions relating to the operation of the Panama Railroad were made by Act June 25, 1910, c. 384, § 2, and Act March 4, 1911, c. 285, §§ 2, 6, post, §§ 10052–10054.

The requirement of Act June 19, 1912, c. 174, § 1, ante, § 8921, that public contracts shall provide for an eight hour work day for laborers or mechanics, may be waived until January 1, 1915, as to contracts entered into in connection with the construction of the Isthmian Canal, by section 2 of that act, ante, § 8922.

Provisions for Panama Canal bonds were made by Act June 28, 1902, c. 1302, § 8, Act Dec. 21, 1905, c. 3, § 1, Act Aug. 5, 1909, c. 6, § 39, and Act July 1, 1916, c. 209, § 1, ante, §§ 6826–6828a.

Notes of Decisions

Power of congress to construct the Panama Canal.—Congress has power to construct the Panama Canal in the territory acquired by the treaty of November 18, 1903, 33 Stat. 2234, with the Republic of Panama. Wilson v. Shaw (1907) 27 Sup. Ct. 233, 235, 204 U. S. 24, 51 L. Ed. 351, affirming decree (1905) 25 App. D. C. 510.

Power of President.—See (1903) 25 Op. Atty. Gen. 54; (1905) 25 Op. Atty. Gen. 484, 550; (1906) 25 Op. Atty. Gen. 557. And see (1909) 27 Op. Atty. Gen. 167, holding that the license granted by the President on January 10, 1906, to an oil company to construct, operate, and maintain a pipe line over and across the Isthmus of Panama, one of the conditions being that the company should furnish the Isthmian Canal authorities with oil for fuel purposes at 90 cents per barrel, which license was revocable at the will of the President, may be abandoned at any time by the oil company without the consent of the President. As long as the company enjoys the license it must furnish the oil demanded, notwithstanding the optional character of the contract. The rights of the parties under the contract have not been modified by the fact that the Canal Commission has expended a large sum of money in adapting the boiler plants to oil fuel on the faith of the license and the price of oil mentioned in the contract. The company has the right to remove its pipe line upon the revocation or abandonment of the license, and it cannot be prevented from so doing by the Isthmian Canal authorities. (1909) 27 Op. Atty. Gen. 167.

Title to and sovereignty of the Canal Zone.—Subsequent ratification by Congress is a sufficient answer to the contention that the title of the United States to the Isthmian or Panama Canal Zone was not acquired as provided in Act June 28, 1902, c. 1302, 32 Stat. 481, by treaty with the Republic of Columbia. Failure to define the exact boundary of the zone in Treaty Nov. 18, 1903 (33 Stat. 2234), with the Republic of Panama does not affect the title of the United States, where the description is sufficient for identification, and the boundaries have been practically identified by the concurrent action of the two nations alone interested. The title of the United States under the treaty is no less perfect because of the omission from that treaty of some of the technical terms used in ordinary conveyances of real estate. Wilson v. Shaw (1907) 27 Sup. Ct. 233, 235, 204 U. S. 24, 51 L. Ed. 351.

The words "sovereign rights" "within the Zone," in the treaty, mean, among other things, the right to the allegiance of the Zone's people. The sovereignty of the Canal Zone is not an open or doubtful question. Citizens of Panama

who were residents of the Canal Zone at the time of the treaty between the United States and Panama, and who have not taken any affirmative action to retain citizenship in that Republic, owe allegiance to the United States and are entitled to passports. (1907) 26 Op. Atty. Gen. 376. And see (1902) 24 Op. Atty. Gen. 144.

Applicability of statutes to Canal Zone.—The effect of the order of the President of December 3, 1904, is to prevent the direct shipment of merchandise into the Canal Zone, and distilled spirits withdrawn for shipment to Panama or Colon, although ultimately to go to the Canal Zone, are withdrawn for shipment to a foreign country within the letter and spirit of the statutes. (1905) 25 Op. Atty. Gen. 324.

The Eight-Hour law (ante, § 8913), does not apply to the office force of the Isthmian Canal Commission stationed on the Isthmus of Panama, or to any of the employees of the government who are not within the ordinary meaning of the words "laborers and mechanics," but applies to the employment of laborers and mechanics in the construction of the Panama Canal. (1905) 25 Op. Atty. Gen. 441. It does not apply to laborers and mechanics in the employment of the Panama Railroad & Steamship Line; such persons being employed by the corporation, and not by the United States. (1905) 25 Op. Atty. Gen. 465.

The Canal Zone is not one of the possessions of the United States within the tariff act of 1909, but rather a place subject to the use, occupation, and control of the United States, for the purpose of constructing and maintaining a ship canal connecting the waters of the Atlantic and Pacific Oceans. And the clause of the tariff act of August 5, 1909 (36 Stat. 11), which provides that the rate of duty prescribed in the dutiable list of that section shall be levied, collected, and paid upon all articles imported from any foreign country into the United States or into any of its possessions (except the Philippine Islands and the islands of Guam and Tutuila), does not apply to the Canal Zone. (1909) 27 Op. Atty. Gen. 594. And see notes under § 10044, post.

§ 10032. (Act Feb. 27, 1909, c. 224, § 1.) Leases by President of public lands in Canal Zone authorized; conditions; preference to occupants.

The President is hereby authorized to grant leases of the public lands in the Canal Zone, Isthmus of Panama, for such period, not exceeding twenty-five years, and upon such terms and conditions as he may deem advisable. No lease, however, shall be granted for a tract of land in excess of fifty hectares, nor to any person who shall not have first established, by affidavit and by such other proof as may be required, that such person is the head of a family or over the age of twenty-one years, and that the application for a lease is made in good faith for the purposes of actual settlement and cultivation, and not for the benefit of any other person whatsoever, and that such person will faithfully comply with all the requirements of law as to settlement, residence, and cultivation. In granting such leases preference shall be accorded to actual occupants of lands in good faith. (35 Stat. 658.)

This section and the four sections next following were an act entitled "An act relating to the use, control, and ownership of lands in the Canal Zone, Isthmus of Panama."

§ 10033. (Act Feb. 27, 1909, c. 224, § 2.) Lands to be leased which it is not contemplated to use in canal construction or to set aside as town site; leases subject to right, if necessary, to occupy or use land.

No portion of the lands of the United States within the Canal Zone shall be leased hereunder unless it shall first be made to appear, by a statement or plat filed by the Isthmian Canal Commission with the collector of revenues for the Canal Zone, that it is not contemplated to use such lands in the work of canal construction or to set the same aside as a town site; and all leases shall be made subject to the provision that if at any time it shall become necessary, notwithstanding, for the United States to occupy or use any portion of the leased lands, it shall have the right to so do without further compensation to the lessee than for the reasonable value of the necessary

improvements made upon said tracts by the lessee, the same to be determined by the courts of the Canal Zone. (35 Stat. 658.)

The President was authorized to declare all land within the limits of the Canal Zone to be necessary for the construction, operation, maintenance, sanitation or protection of the canal, and to extinguish all claims thereto, by the Panama Canal Act of Aug. 24, 1912, c. 390, § 3, post, § 10039.

§ 10034. (Act Feb. 27, 1909, c. 224, § 3.) Reservation in leases of mineral, oil, and gas rights.

All leases of lands hereunder shall reserve to the United States all mineral, oil, and gas rights in the lands leased. (35 Stat. 658.)

§ 10035. (Act Feb. 27, 1909, c. 224, § 4.) Land survey of Canal Zone authorized.

The President may, in his discretion, require a land survey to be made of the Canal Zone. (35 Stat. 658.)

§ 10036. (Act Feb. 27, 1909, c. 224, § 5.) Exercise of powers of President under act through Canal Commission or otherwise.

The powers conferred upon the President under this Act may be exercised by him through the Isthmian Canal Commission or in such other manner as he may designate. (35 Stat. 658.)

The President was authorized to discontinue the Isthmian Canal Commission when the construction of the canal had reached a stage where it was no longer needed and to govern the Canal and Canal Zone through a governor and such other officers as he deemed best by the Panama Canal Act of Aug. 24, 1912, c. 390, § 4, post, § 10040.

§ 10037. (Act Aug. 24, 1912, c. 390, § 1.) Canal Zone; territory included; acquisition of additional land authorized.

The zone of land and land under water of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the canal now being constructed thereon, which zone begins in the Caribbean Sea three marine miles from mean low-water mark and extends to and across the Isthmus of Panama into the Pacific Ocean to the distance of three marine miles from mean low-water mark, excluding therefrom the cities of Panama and Colon and their adjacent harbors located within said zone, as excepted in the treaty with the Republic of Panama dated November eighteenth, nineteen hundred and three, but including all islands within said described zone, and in addition thereto the group of islands in the Bay of Panama named Perico, Naos, Culebra, and Flamenco, and any lands and waters outside of said limits above described which are necessary or convenient or from time to time may become necessary or convenient for the construction, maintenance, operation, sanitation, or protection of the said canal or of any auxiliary canals, lakes, or other works necessary or convenient for the construction, maintenance, operation, sanitation, or protection of said canal, the use, occupancy, or control whereof were granted to the United States by the treaty between the United States and the Republic of Panama, the ratifications of which were exchanged on the twenty-sixth day of February, nineteen hundred and four, shall be known and designated as the Canal Zone, and the canal now being constructed thereon shall hereafter be known and designated as the Panama Canal. The President is authorized, by treaty with the Republic of Panama, to acquire any additional land or land under water not already granted, or which was excepted from the grant, that he may deem necessary for the operation, maintenance, sanitation, or protection of the Panama Canal, and to exchange any land or land under water not deemed necessary for such purposes for other land or land under water which may be deemed necessary for such purposes, which

additional land or land under water so acquired shall become part of the Canal Zone. (37 Stat. 560.)

This was the first section of the Panama Canal Act of 1912, entitled "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal, and the sanitation and government of the Canal Zone."

Sections 2–9, 12–14 of the act are set forth post, §§ 10038–10049.

Section 10 of said act was superseded by Act Aug. 21, 1916, c. 371, § 10, post, § 10051j.

Provisions of section 11 of said act, which amended the Interstate Commerce Act of Feb. 4, 1887, c. 104, §§ 5, 6, are incorporated in those sections as set forth, ante, §§ 8567, 8569.

Other provisions of said section 11 of this act, forbidding the use of the canal by ships owned or operated in violation of the anti-trust laws, or by competing railroads, are set forth ante, § 8836.

Subsequent provisions for the government of the Canal Zone were made by Act Aug. 21, 1916, c. 371, post, §§ 10051a–10051k.

§ 10038. (Act Aug. 24, 1912, c. 390, § 2.) Former laws, regulations, etc., continued.

All laws, orders, regulations, and ordinances adopted and promulgated in the Canal Zone by order of the President for the government and sanitation of the Canal Zone and the construction of the Panama Canal are hereby ratified and confirmed as valid and binding until Congress shall otherwise provide. (37 Stat. 561.)

A further provision of this section, continuing in operation the existing courts until the courts provided by this act should be established is omitted as temporary merely.

All laws affecting imports of articles, etc., and entry of persons into the United States from foreign countries apply to articles, etc., and persons coming from the Canal Zone, Isthmus of Panama, by Act March 3, 1905, c. 1311, ante, § 5323.

Subsequent provisions for the government of the Canal Zone were made by Act Aug. 21, 1916, c. 371, post, §§ 10051a–10051k.

§ 10039. (Act Aug. 24, 1912, c. 390, § 3.) Acquisition of title to all lands within Zone authorized.

The President is authorized to declare by Executive order that all land and land under water within the limits of the Canal Zone is necessary for the construction, maintenance, operation, sanitation, or protection of the Panama Canal, and to extinguish, by agreement when advisable, all claims and titles of adverse claimants and occupants. Upon failure to secure by agreement title to any such parcel of land or land under water the adverse claim or occupancy shall be disposed of and title thereto secured in the United States and compensation therefor fixed and paid in the manner provided in the aforesaid treaty with the Republic of Panama, or such modification of such treaty as may hereafter be made. (37 Stat. 561.)

The President was authorized to grant leases of the public lands within the Canal Zone, reserving therein a right to occupy the lands upon payment of compensation for necessary improvements only, by Act Feb. 27, 1909, c. 224, ante, §§ 10032–10036.

§ 10040. (Act Aug. 24, 1912, c. 390, § 4.) President authorized to discontinue the Isthmian Canal Commission; completion and operation of canal by governor and others; compensation of army or navy officers appointed to positions in Zone; governor; appointment; term; salary; other officials; appointment; removal; compensation; opening of canal; report of Commission on Fine Arts.

When in the judgment of the President the construction of the Panama Canal shall be sufficiently advanced toward completion to render the further services of the Isthmian Canal Commission unnecessary the President is authorized by Executive order to discontinue the Isthmian Canal Commission, which, together with the

present organization, shall then cease to exist; and the President is authorized thereafter to complete, govern, and operate the Panama Canal and govern the Canal Zone, or cause them to be completed, governed, and operated, through a governor of the Panama Canal and such other persons as he may deem competent to discharge the various duties connected with the completion, care, maintenance, sanitation, operation, government, and protection of the canal and Canal Zone. If any of the persons appointed or employed as aforesaid shall be persons in the military or naval service of the United States, the amount of the official salary paid to any such person shall be deducted from the amount of salary or compensation provided by or which shall be fixed under the terms of this Act. The governor of the Panama Canal shall be appointed by the President, by and with the advice and consent of the Senate, commissioned for a term of four years, and until his successor shall be appointed and qualified. He shall receive a salary of ten thousand dollars a year. All other persons necessary for the completion, care, management, maintenance, sanitation, government, operation, and protection of the Panama Canal and Canal Zone shall be appointed by the President, or by his authority, removable at his pleasure, and the compensation of such persons shall be fixed by the President, or by his authority, until such time as Congress may by law regulate the same, but salaries or compensation fixed hereunder by the President shall in no instance exceed by more than twenty-five per centum the salary or compensation paid for the same or similar services to persons employed by the Government in continental United States. That upon the completion of the Panama Canal the President shall cause the same to be officially and formally opened for use and operation.

Before the completion of the canal, the Commission of Arts may make report to the President of their recommendation regarding the artistic character of the structures of the canal, such report to be transmitted to Congress. (37 Stat. 561.)

The Isthmian Canal Commission, to enable the President to construct the canal, was created by Act June 28, 1902, c. 1302, § 7, 32 Stat. 483.

Notes of Decisions

Authority of canal commission discontinued by this section.—See (1900) 23 Op. Atty. Gen. 163; (1906) 26 Op. Atty. Gen. 1. And see § 10051, post.

Contracts made by commission.—Provisions in schedule for construction of barges for the United States, giving in detail the weight and dimensions of structural materials, held not affected by provision in contract for construction of barges in accordance with specifications in such schedule. Irreconcilable conflict between essential provisions of contract for construction of barges for the United States, which will prevent the contractor from recovering for failure to carry it out, held to exist where the specifications prescribe the weight and dimensions of the structural materials, while the contract provides for construction in accordance with specifications with modifications shown by proposals contained in contractor's bid. U. S. v. Ellicott (1912) 32 Sup. Ct. 334, 339, 223 U. S. 524, 56 L. Ed. 535, reversing judgment Ellicott Machine Co. v. U. S. (1908) 43 Ct. Cl. 469.

§ 10041. (Act Aug. 24, 1912, c. 390, § 5, as amended, Act June 15, 1914, c. 106, § 1.) President authorized to prescribe and change tolls; notice of change; basis of tolls; maximum and minimum net tonnage tolls; maximum and minimum tolls not based on tonnage; maximum passenger toll; operating regulations; claims for damages to vessels; compensation for injuries to employees.

The President is hereby authorized to prescribe and from time to time change the tolls that shall be levied by the Government of the

United States for the use of the Panama Canal: Provided, That no tolls, when prescribed as above, shall be changed, unless six months' notice thereof shall have been given by the President by proclamation.

* * * * * * * * * *

Tolls may be based upon gross or net registered tonnage, displacement tonnage, or otherwise, and may be based on one form of tonnage for warships and another for ships of commerce. The rate of tolls may be lower upon vessels in ballast than upon vessels carrying passengers or cargo. When based upon net registered tonnage for ships of commerce the tolls shall not exceed $1.25 per net registered ton, nor be less than 75 cents per net registered ton, subject, however, to the provisions of article nineteen of the convention between the United States and the Republic of Panama, entered into November eighteenth, nineteen hundred and three. If the tolls shall not be based upon net registered tonnage, they shall not exceed the equivalent of one dollar and twenty-five cents per net registered ton as nearly as the same may be determined, nor be less than the equivalent of seventy-five cents per net registered ton. The toll for each passenger shall not be more than one dollar and fifty cents. The President is authorized to make and from time to time amend regulations governing the operation of the Panama Canal, and the passage and control of vessels through the same or any part thereof, including the locks and approaches thereto, and all rules and regulations affecting pilots and pilotage in the canal or the approaches thereto through the adjacent waters.

Such regulations shall provide for prompt adjustment by agreement and immediate payment of claims for damages which may arise from injury to vessels, cargo, or passengers from the passing of vessels through the locks under the control of those operating them under such rules and regulations. In case of disagreement suit may be brought in the district court of the Canal Zone against the governor of the Panama Canal. The hearing and disposition of such cases shall be expedited and the judgment shall be immediately paid out of any moneys appropriated or allotted for canal operation.

The President shall provide a method for the determination and adjustment of all claims arising out of personal injuries to employees thereafter occurring while directly engaged in actual work in connection with the construction, maintenance, operation, or sanitation of the canal or of the Panama Railroad, or of any auxiliary canals, locks, or other works necessary and convenient for the construction, maintenance, operation, or sanitation of the canal, whether such injuries result in death or not, and prescribe a schedule of compensation therefor, and may revise and modify such method and schedule at any time; and such claims, to the extent they shall be allowed on such adjustment, if allowed at all, shall be paid out of the moneys hereafter appropriated for that purpose or out of the funds of the Panama Railroad Company, if said company was responsible for said injury, as the case may require. And after such method and schedule shall be provided by the President, the provisions of the Act entitled "An Act granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment," approved May thirtieth, nineteen hundred and eight, and of the Act entitled "An Act relating to injured employees on the Isthmian Canal," approved February twenty-fourth, nineteen hundred and nine, shall not apply to personal injuries thereafter received and

claims for which are subject to determination and adjustment as provided in this section. (37 Stat. 562. 38 Stat. 385.)

The second paragraph of this section, omitted here, amended R. S. § 4132, prescribing what vessels should be entitled to registry, and is incorporated in that section as set forth ante, § 7709.

This section was amended by Act June 15, 1914, c. 106, cited above, by repealing the following sentence, "No tolls shall be levied upon vessels engaged in the coastwise trade of the United States," as originally contained in this section following the words "Provided, That no tolls, when prescribed as above, shall be changed, unless six months' notice thereof shall have been given by the President by proclamation," and by striking out, after the words "when based upon net registered tonnage for ships of commerce the tolls shall not exceed one dollar and twenty-five cents per net registered ton, nor be less," the words "other than for vessels of the United States and its citizens, than the estimated proportionate cost of the actual maintenance and operation of the canal," and by inserting in lieu thereof the words "than 75 cents per net registered ton," so as to make the section read as set forth here.

This section superseded Act March 4, 1911, c. 285, § 5, 36 Stat. 1452, which provided that Act May 30, 1908, c. 236, ante, §§ 8923–8929, relating to compensation for injuries to employés of the United States, should apply to employés on the Isthmian Canal.

Provisions abolishing tolls on United States canals were made by Act July 5, 1884, c. 229, § 4, amended by Act March 3, 1909, c. 264, § 6, ante, § 9860.

The last paragraph of this section was repealed by Act Sept. 7, 1916, c. 458, ante, §§ 8932a–8932uu, which provided that the United States should pay compensation for the disability or death of an employé resulting from a personal injury while in the performance of his duty and which repealed inconsistent acts or parts of acts with a saving provision for payment of compensation under existing law for injuries occurring before September 7, 1916.

Provisions extending the thanks of Congress to certain Army and Navy officers, members of the Isthmian Canal Commission, and advancing such officers in rank, the advancement in rank of certain officers of the Public Health Service detailed for duty with the Canal Commission, the retirement of such officers, and the advancement in rank upon retirement of certain officers of the Army and Navy detailed for duty with said Commission are contained in Act March 4, 1915, c. 167, ante, §§ 1899e, 1899f, 2049b, and 2068e.

§ 10041a. (Act June 15, 1914, c. 106, § 2.) Act not to be construed as waiver, etc., of right of United States to discriminate in favor of its vessels by exemption from tolls, or of any right of sovereignty over, or ownership, control, etc., of canal.

The passage of this Act shall not be construed or held as a waiver or relinquishment of any right the United States may have under the treaty with Great Britain, ratified the twenty-first of February, nineteen hundred and two, or the treaty with the Republic of Panama, ratified February twenty-sixth, nineteen hundred and four, or otherwise, to discriminate in favor of its vessels by exempting the vessels of the United States or its citizens from the payment of tolls for passage through said canal, or as in any way waiving, impairing, or affecting any right of the United States under said treaties, or otherwise, with respect to the sovereignty over or the ownership, control, and management of said canal and the regulation of the conditions or charges of traffic through the same. (38 Stat. 386.)

This was part of section 2 of an act entitled "An act to amend section five of 'An act to provide for the opening, maintainance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone,' approved August twenty-fourth, nineteen hundred and twelve." The other provision of this section amended Act Aug. 24, 1912, c. 390, § 5, and is incorporated into that section as set forth ante, § 10041.

Section 1 of this act amended said section 5 so as to make said section read as set forth ante, § 10041.

§ 10042. (Act Aug. 24, 1912, c. 390, § 6.) Erection and operation of radio-communication installations; maintenance and operation of docks, storehouses, etc.; use of receipts; reports.

The President is authorized to cause to be erected, maintained, and operated, subject to the International Convention and the Act of Congress to regulate radio-communication, at suitable places

along the Panama Canal and the coast adjacent to its two terminals, in connection with the operation of said canal, such wireless telegraphic installations as he may deem necessary for the operation, maintenance, sanitation, and protection of said canal, and for other purposes. If it is found necessary to locate such installations upon territory of the Republic of Panama, the President is authorized to make such agreement with said Government as may be necessary, and also to provide for the acceptance and transmission, by said system, of all private and commercial messages, and those of the Government of Panama, on such terms and for such tolls as the President may prescribe: Provided, That the messages of the Government of the United States and the departments thereof, and the management of the Panama Canal, shall always be given precedence over all other messages. The President is also authorized, in his discretion, to enter into such operating agreements or leases with any private wireless company or companies as may best insure freedom from interference with the wireless telegraphic installations established by the United States. The President is also authorized to establish, maintain, and operate, through the Panama Railroad Company or otherwise, dry docks, repair shops, yards, docks, wharves, warehouses, storehouses, and other necessary facilities and appurtenances for the purpose of providing coal and other materials, labor, repairs, and supplies for vessels of the Government of the United States and, incidentally, for supplying such at reasonable prices to passing vessels, in accordance with appropriations hereby authorized to be made from time to time by Congress as a part of the maintenance and operation of the said canal. Moneys received from the conduct of said business may be expended and reinvested for such purposes without being covered into the Treasury of the United States; and such moneys are hereby appropriated for such purposes, but all deposits of such funds shall be subject to the provisions of existing law relating to the deposit of other public funds of the United States, and any net profits accruing from such business shall annually be covered into the Treasury of the United States. Monthly reports of such receipts and expenditures shall be made to the President by the persons in charge, and annual reports shall be made to the Congress. (37 Stat. 563.)

In addition to the powers and duties mentioned in this section, the President is empowered to transfer to the Governor of the Panama Canal the administration of the Employés' Compensation Act of Sept. 7, 1916, c. 458, ante, §§ 8932a–8932uu, in so far as Panama employés are affected by section 42 of said act, ante, § 8932uu.

§ 10043. (Act Aug. 24, 1912, c. 390, § 7.) Powers and duties of governor; civil government of zone adjunct of canal; President to determine towns and subdivisions of zone; magistrate's courts; jurisdiction; appointment of magistrates and constables; to be citizens of United States; President to establish rules, etc., of courts; notaries public.

The governor of the Panama Canal shall, in connection with the operation of such canal, have official control and jurisdiction over the Canal Zone and shall perform all duties in connection with the civil government of the Canal Zone, which is to be held, treated, and governed as an adjunct of such Panama Canal. Unless in this Act otherwise provided all existing laws of the Canal Zone referring to the civil governor or the civil administration of the Canal Zone shall be applicable to the governor of the Panama Canal, who shall perform all such executive and administrative duties required by existing law. The President is authorized to determine or cause to be determined what towns shall exist in the Canal Zone and sub-

divide and from time to time resubdivide said Canal Zone into subdivisions, to be designated by name or number, so that there shall be situated one town in each subdivision, and the boundaries of each subdivision shall be clearly defined. In each town there shall be a magistrate's court with exclusive original jurisdiction coextensive with the subdivision in which it is situated of all civil cases in which the principal sum claimed does not exceed three hundred dollars, and all criminal cases wherein the punishment that may be imposed shall not exceed a fine of one hundred dollars, or imprisonment not exceeding thirty days, or both, and all violations of police regulations and ordinances and all actions involving possession or title to personal property or the forcible entry and detainer of real estate. Such magistrates shall also hold preliminary investigations in charges of felony and offenses under section ten of this Act, and commit or bail in bailable cases to the district court. A sufficient number of magistrates and constables, who must be citizens of the United States, to conduct the business of such courts, shall be appointed by the governor of the Panama Canal for terms of four years and until their successors are appointed and qualified, and the compensation of such persons shall be fixed by the President, or by his authority, until such time as Congress may by law regulate the same. The rules governing said courts and prescribing the duties of said magistrates and constables, oaths and bonds, the times and places of holding such courts, the disposition of fines, costs, forfeitures, enforcements of judgments, providing for appeals therefrom to the district court, and the disposition, treatment, and pardon of convicts shall be established by order of the President. The governor of the Panama Canal shall appoint all notaries public, prescribe their powers and duties, their official seal, and the fees to be charged and collected by them. (37 Stat. 564.)

The acknowledgment of deeds affecting lands in the District of Columbia or any Territory of the United States before a notary public or judge in the Canal Zone was authorized, provided the certificate of acknowledgment was accompanied by a certificate of the official character of the notary by the governor of the canal, by Act June 28, 1906, c. 3585, ante, § 3261.

§ 10044. (Act Aug. 24, 1912, c. 390, § 8.) District Court; divisions; rules of practice; jurisdiction; jurors; district attorney and marshal; duties; appointment, tenure, and compensation of judge, attorney, and marshal; clerk; acting judge.

There shall be in the Canal Zone one district court with two divisions, one including Balboa and the other including Cristobal; and one district judge of the said district, who shall hold his court in both divisions at such time as he may designate by order, at least once a month in each division. The rules of practice in such district court shall be prescribed or amended by order of the President. The said district court shall have original jurisdiction of all felony cases, of offenses arising under section ten of this Act, all causes in equity; admiralty and all cases at law involving principal sums exceeding three hundred dollars and all appeals from judgments rendered in magistrates' courts. The jurisdiction in admiralty herein conferred upon the district judge and the district court shall be the same that is exercised by the United States district judges and the United States district courts, and the precedure and practice shall also be the same. The district court or the judge thereof shall also have jurisdiction of all other matters and proceedings not herein provided for which are now within the jurisdiction of the Supreme Court of the Canal Zone, of the Circuit Court of the Canal Zone, the District Court of the Canal Zone, or

the judges thereof. Said judge shall provide for the selection, summoning, serving, and compensation of jurors from among the citizens of the United States, to be subject to jury duty in either division of such district, and a jury shall be had in any criminal case or civil case at law originating in said court on the demand of either party. There shall be a district attorney and a marshal for said district. It shall be the duty of the district attorney to conduct all business, civil and criminal, for the Government, and to advise the governor of the Panama Canal on all legal questions touching the operation of the canal and the administration of civil affairs. It shall be the duty of the marshal to execute all process of the court, preserve order therein, and do all things incident to the office of marshal. The district judge, the district attorney, and the marshal shall be appointed by the President, by and with the advice and consent of the Senate, for terms of four years each, and until their successors are appointed and qualified, and during their terms of office shall reside within the Canal Zone, and shall hold no other office nor serve on any official board or commission nor receive any emoluments except their salaries. The district judge shall receive the same salary paid the district judges of the United States, and shall appoint the clerk of said court, and may appoint one assistant when necessary, who shall receive salaries to be fixed by the President. The district judge shall be entitled to six weeks' leave of absence each year with pay. During his absence or during any period of disability or disqualification from sickness or otherwise to discharge his duties the same shall be temporarily performed by any circuit or district judge of the United States who may be designated by the President, and who, during such service, shall receive the additional mileage and per diem allowed by law to district judges of the United States when holding court away from their homes. The district attorney and the marshal shall be paid each a salary of five thousand dollars per annum. (37 Stat. 565.)

Notes of Decisions

Applicability of statutes.—The Canal Zone is not within Act Aug. 13, 1894 (ante, § 3294). (1909) 27 Op. Atty. Gen. 136. A surety company may be accepted as surety on the official bond of an officer of the government who is to discharge his duties in the Panama Canal Zone, provided the surety company has appointed process agents in the judicial district in which the principal in the bond resided at the time it was made or guaranteed, and in the judicial district in which the office is located to which it is returnable, and provided the company has also complied with all other legal requirements. (1909) 27 Op. Atty. Gen. 208. And see notes under § 10031, ante.

§ 10045. (Act Aug. 24, 1912, c. 390, § 9.) Transfer of causes and records from existing courts; temporary continuance of supreme court; duties of existing court officers transferred to similar officers of new courts; practice and procedure of existing courts continued; appeals to circuit court of appeals; review by United States Supreme Court.

The records of the existing courts and all causes, proceedings, and criminal prosecutions pending therein as shown by the dockets thereof, except as herein otherwise provided, shall immediately upon the organization of the courts created by this Act be transferred to such new courts having jurisdiction of like cases, be entered upon the dockets thereof, and proceed as if they had originally been brought therein, whereupon all the existing courts, except the supreme court of the Canal Zone, shall cease to exist. The President may continue the supreme court of the Canal Zone and retain the judges thereof in office for such time as to him may seem necessary to determine finally any causes and proceedings which may be pending therein. All laws of the Canal Zone imposing du-

ties upon the clerks or ministerial officers of existing courts shall apply and impose such duties upon the clerks and ministerial officers of the new courts created by this Act having jurisdiction of like cases, matters, and duties.

All existing laws in the Canal Zone governing practice and procedure in existing courts shall be applicable and adapted to the practice and procedure in the new courts.

The Circuit Court of Appeals of the Fifth Circuit of the United States shall have jurisdiction to review, revise, modify, reverse, or affirm the final judgments and decrees of the District Court of the Canal Zone and to render such judgments as in the opinion of the said appellate court should have been rendered by the trial court in all actions and proceedings in which the Constitution, or any statute, treaty, title, right, or privilege of the United States, is involved and a right thereunder denied, and in cases in which the value in controversy exceeds one thousand dollars, to be ascertained by the oath of either party, or by other competent evidence, and also in criminal causes wherein the offense charged is punishable as a felony. And such appellate jurisdiction, subject to the right of review by or appeal to the Supreme Court of the United States as in other cases authorized by law, may be exercised by said circuit court of appeals in the same manner, under the same regulations, and by the same procedure as nearly as practicable as is done in reviewing the final judgments and decrees of the district courts of the United States. (37 Stat. 565.)

§ 10046. (Superseded.)

This section, which was Act Aug. 24, 1912, c. 390, § 10, 37 Stat. 566, read as follows:

"After the Panama Canal shall have been completed and opened for operation the governor of the Panama Canal shall have the right to make such rules and regulations, subject to the approval of the President, touching the right of any person to remain upon or pass over any part of the Canal Zone as may be necessary. Any person violating any of such rules or regulations shall be guilty of a misdemeanor, and on conviction in the District Court of the Canal Zone shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding a year, or both, in the discretion of the court. It shall be unlawful for any person, by any means or in any way, to injure or obstruct, or attempt to injure or obstruct, any part of the Panama Canal or the locks thereof or the approaches thereto. Any person violating this provision shall be guilty of a felony, and on conviction in the District Court of the Canal Zone shall be punished by a fine not exceeding ten thousand dollars or by imprisonment not exceeding twenty years, or both, in the discretion of the court. If the act shall cause the death of any person within a year and a day thereafter, the person so convicted shall be guilty of murder and shall be punished accordingly."

It was superseded by Act Aug. 21, 1916, c. 371, § 10, post, § 10051j.

§ 10047. (Act Aug. 24, 1912, c. 390, § 12.) Laws and treaties for extradition and rendition of fugitives from justice extended to Canal Zone.

All laws and treaties relating to the extradition of persons accused of crime in force in the United States, to the extent that they may not be in conflict with or superseded by any special treaty entered into between the United States and the Republic of Panama with respect to the Canal Zone, and all laws relating to the rendition of fugitives from justice as between the several States and Territories of the United States, shall extend to and be considered in force in the Canal Zone, and for such purposes and such purposes only the Canal Zone shall be considered and treated as an organized Territory of the United States. (37 Stat. 569.)

§ 10048. (Act Aug. 24, 1912, c. 390, § 13.) Canal and Zone to be under exclusive control of army during war.

In time of war in which the United States shall be engaged, or when, in the opinion of the President, war is imminent, such officer of the Army as the President may designate shall, upon the order of the President, assume and have exclusive authority and jurisdiction over the operation of the Panama Canal and all of its adjuncts, appendants, and appurtenances, including the entire control and government of the Canal Zone, and during a continuance of such condition the governor of the Panama Canal shall, in all respects and particulars as to the operation of such Panama Canal, and all duties, matters, and transactions affecting the Canal Zone, be subject to the order and direction of such officer of the Army. (37 Stat. 569.)

§ 10049. (Act Aug. 24, 1912, c. 390, § 14.) Designation of act; right to amend or repeal its provisions or regulations thereunder reserved.

This Act shall be known as, and referred to as, the Panama Canal Act, and the right to alter, amend, or repeal any or all of its provisions or to extend, modify, or annul any rule or regulation made under its authority is expressly reserved. (37 Stat. 569.)

§ 10050. (Act Aug. 24, 1912, c. 355, § 4.) Payments for Toro Point Light prohibited.

Hereafter no payments shall be made for maintenance or other charge in connection with the Toro Point Light, Isthmus of Panama, out of moneys of the United States or of the Panama Railroad Company. (37 Stat. 486.)

This section was part of the sundry civil appropriation act for the fiscal year 1913, cited above.

§ 10051. (Act Aug. 24, 1912, c. 355, § 5.) Division of record authorized; preservation of useful or historical papers; destruction of useless papers.

The chairman of the Isthmian Canal Commission is authorized to establish a division of records and, as the requirements of the service permit, to consolidate in the custody thereof the files of papers and other records which have accumulated or which may accumulate during the period of the construction of the Isthmian Canal; and he is directed to carefully preserve, properly index, and arrange for use all papers needed or useful in the transaction of current business or having a permanent value or historical interest; and he is authorized to destroy or otherwise dispose of duplications in the files and other papers which are not needed or useful in the transaction of current business and have no permanent value or historical interest and which have been recommended to him for destruction or other disposition by a committee of three competent persons who have personally examined the papers and in connection with their recommendation have submitted a concise statement of the condition and character thereof. (37 Stat. 486.)

This section was part of the sundry civil appropriation act for the fiscal year 1913, cited above.

Notes of Decisions

Authority of canal commission.—See notes under § 10040, ante.

§ 10051a. (Act Aug. 21, 1916, c. 371, § 1.) President authorized to make rules and regulations for sanitation for Canal Zone; penalty for violation.

Until otherwise provided by Congress, the President is authorized to make rules and regulations in matters of sanitation, health,

and quarantine for the Canal Zone or to modify or change existing rules and regulations and those hereafter made from time to time. Violations of any quarantine regulations provided for herein shall be punished by fine not to exceed $500 or by imprisonment in jail not to exceed ninety days, or by both such fine and imprisonment, in the court's discretion; and a violation of any sanitary regulations hereunder shall be punished by a fine not to exceed $25 or by imprisonment in jail not to exceed thirty days, or by both such fine and imprisonment, in the court's discretion. Each day such violation may continue shall constitute a separate offense. (39 Stat. 527.)

This section and the ten sections next following were an act entitled "An act extending certain privileges of Canal employés to other officials on the Canal Zone and authorizing the President to make rules and regulations affecting health, sanitation, quarantine, taxation, public roads, self-propelled vehicles, and police powers on the Canal Zone, and for other purposes, including provision as to certain fees, money orders and interest deposits."

Previous provisions for the Canal Zone and the sanitation and government thereof were made by the Panama Canal Act of Aug. 24, 1912, c. 390, set forth or referred to ante, §§ 10037–10049.

§ 10051b. (Act Aug. 21, 1916, c. 371, § 2.) President authorized to make regulations for assessing and collecting taxes in Canal Zone; limitation of amount.

Until otherwise provided by Congress, the President is hereby authorized to make and from time to time change rules and regulations for levying, assessing, and collecting ad valorem, excise, license, and franchise taxes in the Canal Zone, or to modify or change existing rules or regulations for that purpose. Ad valorem taxes imposed shall not exceed one per centum of the value of the property, nor shall franchise or excise taxes exceed two per centum of gross earnings. (39 Stat. 528.)

§ 10051c. (Act Aug. 21, 1916, c. 371, § 3.) President authorized to make rules and regulations for the use of highways in Canal Zone; license of motor vehicles; reciprocal regulations with respect to Panama.

Until otherwise provided by Congress, it shall be lawful for the President to make, publish, and enforce all rules and regulations for the use of the public roads and highways in the Canal Zone, and also for regulating, licensing, and taxing the use and operation of all self-propelled vehicles using the public highways, including speed limit, signals, tags, license fees, and all detailed regulations which may be from time to time deemed necessary in the exercise of the authority hereby conferred. The taxes on automobiles may be graded according to the value or the power of the machine, and such rules and regulations as now exist may be changed by such order from time to time, and any that may be hereafter made may be changed from time to time. The President may make mutual agreements with the Republic of Panama touching the reciprocal use of the highways of the Canal Zone and the Republic of Panama by self-propelled vehicles touching taxes and license fees, and any other matter of regulation to establish comity for the convenience of the residents of the two jurisdictions. (39 Stat. 528.)

§ 10051d. (Act Aug. 21, 1916, c. 371, § 4.) Breach of the peace or disorderly conduct in Canal Zone.

It shall be unlawful to commit any breach of the peace or engage in or permit any disorderly, indecent, or immoral conduct in the Canal Zone. The President is authorized to enforce this provision by making rules and regulations to assert and exercise the po-

lice power in the Canal Zone, or for any portion or division thereof, and he may amend or change any such regulation now existing or hereafter made. (39 Stat. 528.)

§ 10051e. (Act Aug. 21, 1916, c. 371, § 5.) Penalty for violation of regulations established by President.

Any person who commits any act or who carries on any business, trade, or occupation in the Canal Zone without complying with the rules and regulations established by the President for the levying, assessing, and collecting of taxes, or who violates any rules or regulations for the use of the public roads and highways, or who violates any rules and regulations touching the licensing, taxes, operation, and use of self-propelled vehicles, or who violates any of the police regulations authorized hereunder, shall be punished by fine not to exceed $25 or by imprisonment in jail not to exceed thirty days, or by both such fine and imprisonment, in the court's discretion. (39 Stat. 528.)

§ 10051f. (Act Aug. 21, 1916, c. 371, § 6.) Interest on deposit money orders issued in Canal Zone in lieu of postal savings certificates.

Deposit money orders issued in the Canal Zone in lieu of postal savings certificates in accordance with the rules and regulations heretofore established by the President, or that may hereafter be established by him, shall bear interest at a rate not exceeding two per centum per annum. (39 Stat. 528.)

Provisions for the money-order system are set forth ante, Title XLXI, Chapter 13, and provisions for the postal-savings system are set forth in chapter 13A of same Title.

§ 10051g. (Act Aug. 21, 1916, c. 371, § 7.) Disposition of interest received from money order funds deposited in banks.

The interest received from the Canal Zone money-order funds deposited in banks under Canal Zone regulations shall be available to pay the interest on deposit money orders authorized by the preceding section. Such interest shall also be available to pay any losses which are chargeable to the Canal Zone postal service. (39 Stat. 528.)

See note to preceding section.

§ 10051h. (Act Aug. 21, 1916, c. 371, § 8.) Fees of customs officer for certifying invoices, etc.

Whenever a customs officer of the Canal Zone shall certify an invoice, landing certificate, or other similar document, or shall register a marine note of protest, or shall perform any notarial services, he shall be authorized to collect a fee equivalent to the fee prescribed by the United States consular regulations for the same act or service when performed by consular officials. (39 Stat. 528.)

General provisions regulating fees of consular officers are set forth ante, Title XVIII, Chapter 2.

§ 10051i. (Act Aug. 21, 1916, c. 371, § 9.) Laws relating to seamen of vessels of United States applicable to vessels at Canal Zone.

The laws relating to seamen of vessels of the United States on foreign voyages shall apply to seamen of all vessels of the United States at the Panama Canal Zone, whether such vessels be registered or enrolled and licensed, and the powers in respect of such seamen of such vessels bestowed by law upon consular officers of the United States in foreign ports and upon shipping commissioners in ports of the United States are hereby bestowed upon the

shipping commissioner and deputy shipping commissioners on the Panama Canal Zone. (39 Stat. 529.)

General provisions governing merchant seamen are set forth ante, Title LIII.

§ 10051j. (Act Aug. 21, 1916, c. 371, § 10.) Regulations by President as to passage of persons through Canal Zone; penalty for violation of rules; penalty for injury or obstruction of Canal; murder.

The President is hereby authorized to make rules and regulations, and to alter or amend the same from time to time, touching the right of any person to enter or remain upon or pass over any part of the Canal Zone; for the detention of any person entering the Canal Zone in violation of such rules and regulations, and return of such person to the country whence he or she came, on the vessel bringing such person to the Canal Zone, or any other vessel belonging to the same owner or interest, and at the expense of such owner or interest; and in addition to the punishment prescribed by this section for violation of any such rules and regulations, the authorities of the Canal Zone may withhold the clearance of such vessel from any port in the Canal Zone until any fine imposed and the cost of maintenance of such person are paid. Any person violating any of such rules or regulations shall be guilty of a misdemeanor, and on conviction in the district court of the Canal Zone shall be punished by a fine not exceeding $500 or by imprisonment not exceeding a year, or both in the discretion of the court. It shall be unlawful for any person, by any means or in any way, to injure or obstruct or attempt to injure or obstruct, any part of the Panama Canal or the locks thereof or the approaches thereto. Any person violating this provision shall be guilty of a felony, and on conviction in the district court of the Canal Zone shall be punished by a fine not exceeding $10,000 or by imprisonment not exceeding twenty years, or both, in the discretion of the court. If the act shall cause the death of any person within a year and a day thereafter, the person so convicted shall be guilty of murder and shall be punished accordingly. (39 Stat. 529.)

This section superseded Act Aug. 24, 1912, c. 390, § 10, 37 Stat. 566, authorizing regulations of right to remain on Canal Zone, prescribing punishment for violation thereof, prohibiting injuries to the Canal or locks thereof.

§ 10051k. (Act Aug. 21, 1916, c. 371, § 11.) Repeal.

All laws, orders, or ordinances in conflict with this Act are hereby repealed. (39 Stat. 529.)

§ 10052. (Act June 25, 1910, c. 384, § 2.) Payment by Panama Railroad Company of annual subsidy under concession granted by Colombia, not to be required.

Hereafter payment by the Panama Railroad Company to the United States, in accordance with the treaty with Panama, of the annual subsidy of two hundred and fifty thousand dollars, as provided by the concession granted by the United States of Colombia, shall not be required. (36 Stat. 772.)

This was a proviso annexed to section 2 of the sundry civil appropriation act for the fiscal year 1911, cited above.

The transfer of vessels owned by the Panama railroad to the United States shipping board was authorized by Act Sept. 7, 1916, c. 451, § 6, ante, § 8146cc.

Notes of Decisions

Officers of railroad company as officers of the United States.—Officers of the railroad company are not officers of the United States; but they are bound to protect the interests of the United States to the same extent that officers of a corporation are bound to protect the interests of its stockholders. (1908) 27 Op. Atty. Gen. 19.

Effect of prior claim for annual subsidy.—See (1908) 27 Op. Atty. Gen. 19.

Covenants by and with railroad company.—See (1908) 27 Op. Atty. Gen. 19.

§ 10053. (Act March 4, 1911, c. 285, § 2.) Panama Railroad Company to carry no insurance, nor make further payment on notes given by it to the United States.

Hereafter the Panama Railroad Company shall carry no insurance to cover marine or fire losses, nor make any further payment on the principal or interest on notes heretofore given by it to the United States for moneys appropriated for its use. (36 Stat. 1451.)

This section was part of the sundry civil appropriation act for the fiscal year 1912, cited above.

A similar provision as to insurance was made by the sundry civil appropriation act for the preceding year, Act June 25, 1910, c. 384, § 2, 36 Stat. 772.

§ 10054. (Act March 4, 1911, c. 285, § 6.) Panama Railroad Company not to be required to give bond in contracts for services, etc., to Army, Navy, etc.; such contracts may be for less than one year; writing not required.

Hereafter the Panama Railroad Company shall not be required to give bond, either with or without surety, in contracts which it may make to furnish services, materials, or supplies to the Army, Navy, Marine Corps, or other departments of the Government, and such contracts may be made for periods less than one year, as may be agreed on, and formal contracts in writing shall not be required unless agreed on. (36 Stat. 1452.)

This section was part of the sundry civil appropriation act for the fiscal year 1912, cited above.

§ 10054a. (Act Aug. 1, 1914, c. 223, § 4.) Consolidation of functions in regard to funds of Canal Zone government and Panama Railroad operations, and to funds appropriated for Panama Canal, authorized.

The consolidation of the functions of receiving, disbursing, and accounting for the funds of the Canal Zone government and the Panama Railroad operations on the Isthmus with the functions of receiving, disbursing, and accounting for the funds appropriated for the Panama Canal shall be and is hereby authorized in so far as may be practicable: Provided, That separate accounts shall be kept of the transactions under each fund. (38 Stat. 679.)

This was section 4 of the sundry civil appropriation act for the fiscal year 1915, cited above.

§ 10054b. (Act Aug. 1, 1914, c. 223, § 5.) Accounting by collecting officers of canal; regulations.

The collecting officers of the Panama Canal shall render their accounts in such detail, and shall transmit with their accounts to the accounting officers of the Treasury charged with the settlement thereof all such papers, records, and copies relating to their transactions as collectors as shall be prescribed in regulations approved by the President, and, in his judgment, not incompatible with the methods of accounting prescribed in the so-called Dockery Act, approved July thirty-first, eighteen hundred and ninety-four. (38 Stat. 679.)

This was section 5 of the sundry civil appropriation act for the fiscal year 1915, cited above.

The sections of the Dockery Act of July 31, 1894, c. 174, mentioned in this section, are set forth, or referred to, ante, § 417.

Subsequent provisions for accounting were made by Act March 3, 1915, c. 75, § 3, post, § 10054c.

§ 10054c. (Act March 3, 1915, c. 75, § 3.) Accounting by collecting officers of canal; regulations to provide for examination of accounts and vouchers, etc., at Canal Zone; expenses of persons designated therefor.

In prescribing regulations under the provisions of section five of

the sundry civil Act of August first, nineteen hundred and fourteen, the President shall provide that in lieu of furnishing to the auditor individual detail collection vouchers, not provided for in said regulations, two competent persons, one from the office of the Auditor for the War Department, designated by the auditor, and one from the office of the Comptroller of the Treasury, designated by the comptroller, shall be sent semiannually, at such time as may be designated by the comptroller, to the Canal Zone to examine the accounts and vouchers and verify the submitted schedules of collections and report in triplicate to the Auditor for the War Department, the Comptroller of the Treasury, and the auditor of the Panama Canal; and such persons shall make such other examination into the accounts of the Panama Canal as may be directed by the comptroller, and for all such purposes they shall have access to all records and papers pertaining thereto. Such examination and inspection shall be made for the period covered by the persons designated as soon as practicable, and the report of such persons shall be promptly filed. Such persons shall be furnished their transportation going and returning, including meals, and be paid a per diem of $4 from the day of sailing from the United States until return thereto, both days inclusive, in lieu of subsistence on the Isthmus and all other expenses, out of such appropriation for the Panama Canal as may be designated by the governor. (38 Stat. 886.)

This was section 3 of the sundry civil appropriation act for the fiscal year 1916, cited above.

Act Aug. 1, 1914, c. 223, § 5, mentioned in this section, is set forth ante, § 10054b.

TITLE LXIV

RAILWAYS

Sec.
10055. Union Pacific Railroad.
10056. Connection of other roads.
10057. Railroads and telegraphs constructed from Missouri River to Pacific Ocean to be operated and used as one continuous line; refusal so to operate, or to afford to each road equal facilities as to rates, time, or transportation, punishable; damages for failure or refusal to comply with provisions of acts and actions for recovery thereof.
10058. Interstate communication.
10059. Compensation of directors, etc., appointed by the United States.
10060. Secretary of Treasury to withhold payments to certain railroads.
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10064. Settlement of claims for transportation services by certain railroads; credit on notes.
10065. Payment for transportation of property or troops over certain roads prohibited.
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10069. Circuit court to issue mandamus, etc.
10070. Protection of liens of United States; redemption of mortgages, etc.
10071. Investment of sinking-funds for security of indebtedness to United States.

§ 10055. (R. S. § 5256.) Union Pacific Railroad.

The books, records, correspondence, and all other documents of the Union Pacific Railroad Company, shall at all times be open to inspection by the Secretary of the Treasury, or such persons as he may delegate for that purpose. The laws of the United States providing for proceedings in bankruptcy shall not be held to apply to said corporation. No dividend shall hereafter be made by said company but from the actual net earnings thereof; and no new stock shall be issued or mortgages or pledges made on the property or future earnings of the company without leave of Congress, except for the purpose of funding and securing debt now existing, or the renewals thereof. No director or officer of said road shall hereafter be interested, directly or indirectly, in any contract therewith except for his lawful compensation as such officer. Any director or officer who shall pay or declare, or aid in paying or declaring, any dividend, or creating any mortgage or pledge prohibited by this act, shall be punished by imprisonment not exceeding two years, and by fine not exceeding five thousand dollars.

Act March 3, 1873, c. 226, § 4, 17 Stat. 509.

The provisions of Act March 3, 1873, c. 226, § 4, cited above, which were incorporated into this section of the Revised Statutes, were intended apparently for the protection of the rights and interests of the United States in the Union Pacific Railroad, pursuant to Act July 1, 1862, c. 120, 12 Stat. 489, as amended by Act July 2, 1864, c. 216, 13 Stat. 356, providing for the incorporation of the Union Pacific Railroad Company, etc.

Further provisions on this subject were contained in Act May 7, 1878, c. 96, 20 Stat. 58, providing for the ascertainment of net earnings and the establishment of a sinking fund to pay debts of the company and other railroad companies.

Other provisions punishing the illegal declaring or paying of dividends by officers of certain bond-aided railroads were made by Act May 7, 1878, c. 96, § 6, 20 Stat. 59.

Provisions relating to the construction and operation of telegraph lines by subsidized railroad and telegraph companies were made by Act Aug. 7, 1888, c. 772, post, §§ 10080–10086.

All railway companies which had received aid by grants of lands, rights of way, or otherwise, were required to carry the mails at prices to be fixed by Congress or the Postmaster-General, by R. S. § 4001, ante, § 7482.

Land-grant railroad companies were entitled to receive as compensation for carrying the mails only 80 per cent. of the compensation authorized to be paid other companies, by Act July 12, 1876, c. 179, § 13, ante, § 7485, and Act July 28, 1916, c. 261, § 1, ante, § 7482a.

Notes of Decisions

Enforcement of regulations. — The government, being the creator of the Union Pacific Railway Company, and a large contributor to its finances, and having a pecuniary interest in its successful management, has full supervisory power over it, and may make and enforce through the courts reasonable regulations not interfering with vested rights. U. S. v. Western Union Tel. Co. (C. C. 1892) 50 Fed. 28, decree reversed Union Pac. Ry. Co. v. U. S. (1894) 59 Fed. 813, 8 C. C. A. 282.

Equitable suits.—Construction of this act directing a suit in equity to be instituted in the name of the United States against the Union Pacific Railroad Company and others. U. S. v. Union Pac. R. Co. (C. C. 1873) Fed. Cas. No. 16,598.

Redress for fraudulent acts on the part of the managing officers of the Union Pacific Railroad Company cannot be obtained in a suit brought by the United States. Id.

§ 10056. (R. S. § 5257.) Connection of other roads.

Any railroad company now or hereafter incorporated under any law of the United States, or of any State, which has been or may be organized by an act of Congress, may connect its road with the Union Pacific Railroad, or any of its branches.

Act July 1, 1862, c. 120, § 15, 12 Stat. 496.

Notes of Decisions

Act construed.—The bridge constructed by the Union Pacific Railroad company over the Missouri between Omaha and Council Bluffs is a part of its road. Union P. R. R. Co. v. Hall (1875) 91 U. S. 343, 23 L. Ed. 428.

This act and the act of July 2, 1864 (13 Stat. 356), construed in the light of Act of May 7, 1878 (20 Stat. 56), and sundry decisions of the Supreme Court. (1895) 21 Op. Atty. Gen. 145.

State regulation.—This section does not place the right of way of the Union Pacific Railway beyond the reach of the power of eminent domain of the state of Kansas, nor exempt it from the operation of the laws of the state respecting the crossing and connecting of railroads, and the condemnation of property for these purposes. Union Pacific Ry. Co. v. Leavenworth, N. & S. Ry. Co. (C. C. 1887) 29 Fed. 728.

Sections 1310–1316, inclusive, of the Iowa Code, requiring railway companies connecting with the Union Pacific Railway to transfer their freight, passengers, and express matter at Council Bluffs, are in conflict with the acts of July 1, 1862, and June 15, 1866, as being a state regulation of commerce, and cannot, therefore, be enforced. Council Bluffs v. Kansas City, St. J. & C. B. R. Co. (1876) 45 Iowa, 338, 24 Am. Rep. 773.

Combinations in restraint of trade.—The acquisition by the Union Pacific Railroad Company, then operating a line from Missouri river points to Portland, and thence to San Francisco by steamship connection, of 46 per cent. of the outstanding capital stock of the Southern Pacific Company, with the intent and result, not only of securing the California connection at Ogden over the Central Pacific line, and thus effecting such a continuity of the Union Pacific and Central Pacific lines from the Missouri river to San Francisco, as was contemplated by the acts of July 1, 1862 (12 Stat. 489, c. 120), July 2, 1864 (13 Stat. 356, c. 216), and June 20, 1874 (18 Stat. 111, c. 331), but of obtaining the dominating control of the entire Southern Pacific system, consisting of lines by water and rail, together forming a transportation system from New York and other Atlantic ports to San Francisco and Portland and other Pacific coast points, with various branches and connections, besides a steamship line from San Francisco to Panama, and from San Francisco to the Orient, and a half interest in another line between the two latter points, which system was actively competing with the purchasing road for interstate business, large in volume, though small in comparison with the total traffic carried, creates, contrary to the act of July 2, 1890, a combination in restraint of interstate trade. U. S. v. Union Pacific R. Co. (1912) 33 Sup. Ct. 53, 226 U. S. 61, 57 L. Ed. 124.

Cited without definite application, Stuart v. Union Pac. R. Co. (1913) 33 Sup. Ct. 338, 227 U. S. 342, 57 L. Ed. 535.

§ 10057. (Act July 2, 1864, c. 216, § 15, as amended, Act June 20, 1874, c. 331.) Railroads and telegraphs constructed from Missouri River to Pacific Ocean to be operated and used as one continuous line; refusal so to operate, or to afford to each road equal facilities as to rates, time, or transportation, punishable; damages for failure or refusal to comply with provisions of acts and actions for recovery thereof.

The several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, as one continuous line; and, in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others, and it shall not be lawful for the proprietors of any line of telegraph, authorized by this act, or the act amended by this act to refuse, or fail to convey for all persons requiring the transmission of news and messages of like character, on pain of forfeiting to the person injured for each offence, the sum of one hundred dollars, and such other damage as he may have suffered on account of said refusal or failure, to be sued for and recovered in any court of the United States, or of any state or territory of competent jurisdiction.

And any officer or agent of the companies authorized to construct the aforesaid roads, or of any company engaged in operating either of said roads, who shall refuse to operate and use the road or telegraph under his control, or which he is engaged in operating for all purposes of communication, travel, and transportation, so far as the public and the Government are concerned, as one continuous line, or shall refuse, in such operation and use, to afford and secure to each of said roads equal advantages and facilities as to rates, time, or transportation, without any discrimination of any kind in favor of, or adverse to, the road or business of any or either of said companies, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one thousand dollars, and may be imprisoned not less than six months. In case of failure or refusal of the Union Pacific Railroad Company, or either of said branches, to comply with the requirements of this act and the acts to which this act is amendatory, the party injured or the company aggrieved may bring an action in the district or circuit court of the United States in the Territory, district, or circuit in which any portion of the road of the defendant may be situated, for damages on account of such failure or refusal; and, upon recovery, the plaintiff shall be entitled to judgment for treble the amount of all excess of freight and fares collected by the defendant, and for treble amount of damages sustained by the plaintiff by such failure or refusal; and for each and every violation of or failure to comply with the requirements of this act, a new cause of action shall arise; and in case of suit in any such Territory, district, or circuit, process may be served upon any agent of the defendant found in the Territory, district, or circuit in which such suit may be brought, and such service shall be by the court held to be good and sufficient; and it is hereby provided that for all the purposes of said act, and of the acts amendatory thereof, the railway of the Denver Pacific Railway and Telegraph Company shall be deemed and taken to be a part and extension of the road of the Kansas Pacific Railroad, to the point of junction thereof with the road of the Union Pacific Railroad Company at Cheyenne, as provided in the act of March

third, eighteen hundred and sixty-nine. (13 Stat. 362. 18 Stat. 111.)

This section was part of an act entitled as an act to amend Act July 1, 1862, c. 120, 12 Stat. 489, which was entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," and which incorporated the Union Pacific Railroad Company.

Said Act July 1, 1862, c. 120, also authorized the Leavenworth, Pawnee & Western Railroad Company, the Central Pacific Railroad Company, the Hannibal & St. Joseph Railroad, and the Pacific Railroad Company of Missouri to construct certain branches or portions of said railroad.

Both said acts were omitted from the Revised Statutes, probably because their provisions were regarded as temporary and executed, except a provision of said Act July 1, 1862, c. 120, § 15, which was incorporated into R. S. § 5257, ante, § 10056.

This section of said amendatory act of July 1, 1864, c. 216, as originally enacted, contained only the first paragraph thereof as set forth here, ending with the words "or of any State or Territory of competent jurisdiction."

The provisions of the second paragraph, beginning with the words "And any officer or agent of the companies," etc., were added by amendment by Act June 20, 1894, c. 331, last cited above.

The companies and the roads referred to in this section, as originally enacted, as "the several companies authorized to construct the aforesaid roads," and referred to also in the provisions added thereto by amendment, were the Union Pacific Railroad Company and the other companies mentioned above as authorized to construct portions of the railroad, and the roads so constructed by them.

See, also, notes to R. S. § 5260, post, § 10060.

Act March 3, 1869, c. 127, 15 Stat. 324, mentioned in the last of the provisions so added by amendment to the section, was also omitted from the Revised Statutes. It related to contracts by the Union Pacific Railroad Company with the Denver Pacific Railway & Telegraph Company for the construction of certain lines of roads.

Notes of Decisions

Construction.—On the face of the acts of 1862 and 1864, called the "Pacific Railroad Acts," the obligation of the Union Pacific Railroad Company and its branches to build and operate for the public a telegraph line along its right of way was an obligation which they could not abandon. Western Union Tel. Co. v. Union Pac. Ry. Co. (C. C. 1880) 3 Fed. 1; Id., 3 Fed. 721.

This act, being in express terms amendatory of Act July 1, 1862, c. 120, incorporating the Union Pacific Railroad Company, both these acts constitute in legal contemplation but one statute, and are to be read and construed together as such. (1873) 14 Op. Atty. Gen. 233.

As to combinations in restraint of trade, see note under the preceding section.

"Continuous railroad."—A provision in Act July 3, 1866, that the Union Pacific Railroad Company, Eastern Division, should be entitled only to the same amount of bonds as though it had connected its line with the main line on the 100th degree of longitude as required by law, is not a legislative determination that this act required such union. Stuart v. Union Pac. R. Co. (1913) 33 Sup. Ct. 338, 227 U. S. 342, 57 L. Ed. 535, affirming decree (1910) 178 Fed. 753, 103 C. C. A. 89.

Act July 2, 1864, c. 217, 13 Stat. 365, incorporated the Northern Pacific Railroad Company and empowered it to construct and maintain a continuous railroad, etc., between a point on Lake Superior and some point on Puget Sound. Held, that the Northern Pacific Railway Company, as successor of the original grantee, operated a "continuous railroad" within the meaning of the charter, where it operated at least one train each way daily from terminus to terminus directly through without change of cars or deviation from the main line, which train, with the accommodation afforded by others, furnished adequate service over the line, and it was not required to run all its through trains to the terminus of the road. State v. Northern Pac. Ry. Co. (1909) 102 P. 24, 53 Wash. 370.

Through tariff rates.—Prior to the passage of the Hepburn act (Act June 29, 1906, c. 3591, 34 Stat. 584), connecting railroads were free to adopt or refuse to adopt joint through tariff rates, and this freedom was not abridged, as between the Union Pacific Railroad Company and the Central Pacific Railroad Company, by either section 12 of Act July 1, 1862, c. 120, 12 Stat. 495, requiring the roads of such companies to be operated as one continuous line, so far as the public or the government are concerned, or the provision of this section which requires them to afford and secure to each equal advantages and facilities as to rates, time, and transportation without discrimination. (C. C. 1911) United States v. Union

Pac. R. Co., 188 Fed. 102, decree modified (1912) 33 S. Ct. 53, 226 U. S. 61, 57 L. Ed. 124.

State legislation.—The right of way of the Union Pacific Railway is not property of the federal government set apart for its own public use, so as to exempt it from the operation of a law of the state of Nebraska respecting the crossing and connecting of railroads, and the condemnation of property for those purposes. Union Pac. Ry. Co. v. Burlington & M. R. R. Co. (C. C. 1880) 3 Fed. 106.

Telegraph lines.—Under Act July 1, 1862, Act July 2, 1864, and Act May 7, 1878, where the Union Pacific Railway Company contracted and owned a telegraph line along its road as did the Western Union Telegraph Company, and by agreement the wires of the railroad company were operated and used by the telegraph company, the government could not recover sums paid it on account of government messages delivered to the telegraph company for transmission, on the ground that they in part passed over the wires of the railroad company, there being no evidence that any part of them were sent over such wires rather than over the wires of the telegraph company, nor any requirement in that regard. U. S. v. Western Union Telegraph Co. (1895) 16 Sup. Ct. 210, 211, 160 U. S. 53, 40 L. Ed. 337.

The United States Telegraph Company had power to assign and transfer to another telegraph company its right derived from this act to construct a telegraph line along the line of the Kansas Pacific Railroad. Western Union Tel. Co. v. Union Pac. Ry. Co. (C. C. 1880) 3 Fed. 423.

The papers submitted disclosing the fact that the line of telegraph operated by the Western Union Telegraph Company along the route of the Union Pacific Railroad and of the Central Pacific Railroad, from Omaha to San Francisco, is a different line from that originally built and equipped between the same termini by the Union Pacific Railroad Company and the Central Pacific Railroad Company, under Act July 1, 1862, c. 120. Held, that the line operated by the Western Union Telegraph Company is not subject to the provisions of that act and of its supplements, requiring one-half the compensation for services rendered the government over the telegraph lines established thereunder to be applied to the payment of the bonds issued by the United States in aid of the construction thereof, and that no portion of the compensation allowable for the transmission of government dispatches over the said line can be retained for payment of the bonds mentioned. (1873) 14 Op. Atty. Gen. 173.

§ 10058. (R. S. § 5258.) Interstate communication.

Every railroad company in the United States, whose road is operated by steam, its successors and assigns, is hereby authorized to carry upon and over its road, boats, bridges, and ferries, all passengers, troops, Government supplies, mails, freight, and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination. But this section shall not affect any stipulation between the Government of the United States and any railroad company for transportation or fares without compensation, nor impair or change the conditions imposed by the terms of any act granting lands to any such company to aid in the construction of its road, nor shall it be construed to authorize any railroad company to build any new road or connection with any other road without authority from the State in which such railroad or connection may be proposed. And Congress may at any time alter, amend, or repeal this section.

Act June 15, 1866, c. 124, §§ 1, 2, 14 Stat. 66.

Notes of Decisions

Right to engage in interstate commerce.—This section does not in any wise interfere with the enactment of laws by the states to promote the safety of passengers, while traveling, within their respective limits, from one state to another, in cars propelled by steam. New York, N. H. & H. R. Co. v. People of the State of New York (1897) 17 Sup. Ct. 418, 165 U. S. 628, 41 L. Ed. 853.

This section gives railroads the right to engage in interstate business, and to become jointly interested with roads in other states in interstate business originating on their lines; and a foreign railroad, contracting with a domestic railroad for the through shipment of cars, stands on the same footing as the domestic railroad, and the statute does not forbid the attachment of a car of the foreign railroad when in

the state and not in actual use. De Rochemont v. New York Cent. & H. R. R. (1909) 71 A. 868, 75 N. H. 158.

State regulation of commerce.—Any exercise of state authority, in whatever form manifested, which directly regulates interstate commerce, is repugnant to the commerce clause of the constitution. Adams Exp. Co. v. Kentucky (1909) 29 Sup. Ct. 633, 634, 214 U. S. 218, 53 L. Ed. 972.

This section was passed by congress under the commerce clause of the constitution, and authorizes continuous lines of railroads from one state to another, and thus secures interstate commerce against obstacles, even if attempted by state action, and does not deprive courts of admiralty of any jurisdiction which they otherwise had. The St. Louis (D. C. 1891) 48 Fed. 312, 313.

Sections 1310–1316, inclusive, of the Iowa Code, requiring railway companies connecting with the Union Pacific Railway to transfer their freight, passengers, and express matter at Council Bluffs, are in conflict with the act of July 1, 1862, and this act, as being a state regulation of commerce, and cannot, therefore, be enforced. Council Bluffs v. Kansas City, St. J. & C. B. R. Co. (1876) 45 Iowa, 338, 24 Am. Rep. 773.

State police regulation.—The state can do nothing which will directly burden interstate traffic. Illinois Cent. R. Co. v. Illinois (1896) 16 Sup. Ct. 1096, 163 U. S. 142, 41 L. Ed. 107.

This section does not in any wise interfere with the enactment of laws by the states to promote the safety of passengers, while traveling, within their respective limits, from one state to another, in cars propelled by steam. New York, N. H. & H. R. Co. v. New York (1897) 17 Sup. Ct. 418, 420, 165 U. S. 628, 41 L. Ed. 853.

This section, only giving authority to railroad companies to carry freight and property over their respective roads from one state to another, does not authorize a railroad company to carry into a state cattle known, or which by due diligence might be known, to be in such condition as to impart or communicate disease to the domestic cattle of such state. Missouri, K. & T. R. Co. v. Haber (1898) 18 Sup. Ct. 488, 497, 169 U. S. 613, 42 L. Ed. 878.

Rev. St. Ohio 1890, § 3320, requiring all railroads within the state to stop three regular passenger trains, if so many were run daily, at places containing over 3,000 inhabitants, was not inconsistent with this section, which was not intended to interfere with the state's authority to enact regulations for the public convenience, only incidentally affecting interstate commerce. Lake Shore & M. S. R. Co. v. Ohio (Ohio 1899) 19 Sup. Ct. 465, 173 U. S. 285, 43 L. Ed. 702.

Attachment and garnishment under state process.—Sums due to a foreign railway carrier from other carriers as the former's share of freight on interstate shipments may be garnished under the state laws, despite the provisions of the interstate commerce act and of this section. Davis v. Cleveland, C., C. & St. L. R. Co. (1910) 30 Sup. Ct. 463, 469, 217 U. S. 157, 54 L. Ed. 708, 27 L. R. A. (N. S.) 823, 18 Ann. Cas. 907.

Cars owned by a foreign railway company, which have temporarily come into the state in the course of interstate transportation, through the agency of other carriers, are subject to attachment under the state laws, despite the provisions of the interstate commerce act and of this section. Id.

The impounding of a car under a state statute and thereby delaying transportation of passengers in the car and on the train to which it is to be attached, and in disregard of their rights, is contrary to the policy of Congress, favoring continuous lines and continuous carriage in the transportation of interstate pasengers. Pullman Co. v. Linke (D. C. 1913) 203 Fed. 1017.

Where a railroad company of this state receives from a connecting railroad company of another state a railroad car loaded with freight, consigned from a point in another state to a point in this state, under a prevailing custom among railroads, and under a contract between the two roads at interest that, instead of unloading and reloading at the point of intersection outside of this state, the domestic company, upon payment for the use, should have the right to bring the foreign car loaded into this state and to the point of destination, there to be unloaded and afterwards reloaded with freight, and then returned, in the direction from which it came, to a point beyond the limits of this state, such car, while in this state, is not exempt from attachment sought to be executed by service of summons of garnishment for the collection of a debt alleged to be due by the owner, upon the ground that the impounding of the car is such an interference with interstate commerce as to be violative of this section and Const. U. S. art. 1, § 8, par. 3. Southern Flour & Grain Co. v. Northern Pac. Ry. Co. (1907) 56 S. E. 742, 127 Ga. 626, 9 L. R. A. (N. S.) 853.

The statute does not forbid the attachment of a car of a foreign railroad when in the state and not in actual use. De Rochement v. New York Cent. & H. R. R. (N. H. 1909) 71 Atl. 868.

Through routes and rates.—This section confers no power to compel a railroad company to make through routes and through rates with one connecting line because it has, by agreement, made them with another. Kentucky

& I. Bridge Co. v. Louisville & N. R. Co. (C. C. 1889) 37 Fed. 567, 2 L. R. A. 289, appeal dismissed (1893) 13 Sup. Ct. 1048, 149 U. S. 777, 37 L. Ed. 964.

Vehicles and vessels as instruments of interstate commerce.—Cars owned by a steam railroad company and delivered by it to other companies, loaded with freight, to be used in the transportation of such freight over their lines to points of destination in other states, and then returned within a reasonable time, either loaded, or empty, to the owner in the state where received, pursuant to agreements between the companies for the continuous carriage of interstate shipments of freight, as authorized by this section, and in conformity to the policy of the statutes regulating interstate commerce, are, until their return to the owner, instruments of interstate commerce, and are not subject to attachment under the laws of a state into which they may be carried by such other companies. Davis v. Cleveland, C., C. & St. L. R. Co. (C. C. 1906) 146 Fed. 403.

This section does not make a steam ferryboat owned by an interstate railway company, and used to carry its trains across the Mississippi river between two states, a part of the railway, so as to exclude admiralty jurisdiction over it, and the same may be libeled for wages. Hitchcock v. The St. Louis (D. C. 1891) 48 Fed. 312.

Construction.—See Dubuque & S. City R. Co. v. Richmond (1873) 86 U. S. (19 Wall.) 584, 22 L. Ed. 173, holding that the act of June 15, 1866, authorizing every railroad operated by steam to carry upon and over its road, bridges, etc., all passengers and property on their way from one state to another state, and to connect with roads of other states so as to form continuous lines of transportation; and the act of July 25, 1866, authorizing the construction of certain bridges over the Mississippi river, and making them free for the crossing of all trains of railroads terminating on either side of the river, for reasonable compensation, were designed to remove trammels upon transportation between different states, interposed by state enactments or by existing laws of congress, and were not intended to interfere with private contracts, and annul such as had been made on the basis of existing legislation and existing means of interstate communication.

This section and kindred legislation discloses a great public policy in favor of continuous laws. Union Pac. R. Co. v. Chicago, R. I. & P. R. Co. (1896) 16 Sup. Ct. 1173, 1183, 163 U. S. 564, 41 L. Ed. 265.

It has been the purpose of Congress, as shown by this and other statutes, constantly to promote and often to require the formation and operation of continuous lines of transportation. Union Pac. Ry. Co. v. Chicago, R. I. & P. R. Co. (1892) 51 Fed. 309, 323, 2 C. C. A. 174, affirmed (1896) 16 Sup. Ct. 1173, 163 U. S. 564, 41 L. Ed. 265.

State corporations accepting the provisions of the Pacific Railroad acts are subject to all the provisions thereof. W. U. Tel. Co. v. Union Pac. Ry. Co. (C. C. 1880) 3 Fed. 721.

Cited without definite application, Bowman v. Chicago & N. W. R. Co. (1888) 8 Sup. Ct. 689, 697, 1062, 125 U. S. 465, 31 L. Ed. 700; In re Debs (1895) 15 Sup. Ct. 900, 904, 158 U. S. 564, 39 L. Ed. 1092; Howard v. Illinois Cent. R. Co. (1908) 28 Sup. Ct. 141, 155, 207 U. S. 463, 52 L. Ed. 297 (dissenting opinion); Louisville & N. R. Co. v. Western Union Telegraph Co. (1913) 207 Fed. 1, 11, 124 C. C. A. 573; Little Rock & M. R. Co. v. St. Louis, I. M. & S. R. Co. (C. C. 1894) 59 Fed. 400, 406 (affirmed [1894] 63 Fed. 775, 11 C. C. A. 417, 26 L. R. A. 192); Danciger v. Stone (C. C. 1909) 187 Fed. 853; U. S. v. United States Express Co. (D. C. 1910) 180 Fed. 1006 (reversed [1911] 191 Fed. 673, 112 C. C. A. 219).

§ 10059. (R. S. § 5259.) Compensation of directors, etc., appointed by the United States.

Whenever, in any grant of land or other subsidies, made or hereafter to be made, to railroads or other corporations, the United States has reserved the right, or shall reserve it, to appoint directors, engineers, commissioners, or other agents to examine the roads, or act in conjunction with other officers of such company or companies, all the costs, charges, and pay of such directors, engineers, commissioners, or agents shall be paid by the respective companies. Such directors, engineers, commissioners, or agents shall be paid for such services the sum of ten dollars per day, for each and every day actually and necessarily employed, and ten cents per mile for each and every mile actually and necessarily traveled, in discharging the duties required of them, which per diem and mileage shall be in full compensation for such services. In case any company shall refuse or neglect to make such payments, no more patents for lands or other

subsidies shall be issued to such company until these requirements are complied with.

Act July 27, 1866, c. 278, § 21, 14 Stat. 299.

The printing and distribution of the reports of the Government directors of the Union Pacific Railway were provided for by the Printing and Binding Act of Jan. 12, 1895, c. 23, § 73, par. 40, ante, § 7085(40).

Cited without definite application, New Mexico ex rel. Caledonian Coal Co. v. Baker (1905) 25 Sup. Ct. 375, 376, 196 U. S. 432, 49 L. Ed. 540.

§ 10060. (R. S. § 5260.) Secretary of Treasury to withhold payments to certain railroads.

The Secretary of the Treasury is directed to withhold all payments to any railroad company and its assigns, on account of freights or transportation over their respective roads of any kind, to the amount of payments made by the United States for interest upon bonds of the United States issued to any such company, and which shall not have been re-imbursed, together with the five per centum of net earnings due and unapplied, as provided by law.

Act March 3, 1873, c. 226, § 2, 17 Stat. 508.

Act July 1, 1862, c. 120, 12 Stat. 489, incorporating the Union Pacific Railroad Company, by section 6 thereof, 12 Stat. 493, required that at least five per centum of the net earnings of its road should be annually applied to the payment of the bonds issued by the United States in aid of the construction thereof; and by subsequent sections of said act, the Leavenworth, Pawnee & Western Railroad Company, the Central Pacific Railroad Company, the Hannibal & Saint Joseph Railroad, and the Pacific Railroad Company of Missouri, were authorized to construct certain branches or portions of said road on the same terms and conditions as the Union Pacific Railroad Company. Said requirement as to the application of a percentage of the net earnings is referred to in the last words of this section "five per centum of net earnings" "as provided by law."

Provisions for the collection of said "five per centum of net earnings" required to be paid to the United States by said railroads were made by Act June 22, 1874, c. 414, post, § 10061.

Subsequent provisions of Act May 7, 1878, c. 96, 20 Stat. 58, amending said Act July 1, 1862, c. 120, and also Act July 2, 1864, c. 216, 13 Stat. 356, amendatory thereof, by making new provisions prescribing a mode of ascertaining said net earnings, and authorizing the retention of the entire amount due the Union Pacific Railroad Company and other railroads for services rendered for the Government, and the application of one-half thereof to the liquidation of interest paid and to be paid on bonds issued by the United States to said railroads, and the turning of the other half into a sinking fund provided for in said act, and otherwise providing for the enforcement of the rights of the United States against said railroad companies, are omitted, as temporary and executed.

Provisions relating to payment to railroad companies, aided by grants of land or by bonds, for transportation of property or troops of the United States, and for settlement of their accounts for such transportation, were made by subsequent acts, post, §§ 10062–10066.

Provisions relating to payment for transportation of Indian goods and supplies were made by Act April 30, 1908, c. 153, post, § 10067.

Notes of Decisions

Validity.—Section 4048, ante, requiring certain contracts for the transportation of goods for Indian tribes, etc., to be let to the lowest bidder after advertisement, does not supersede or repeal section 10065, post, or this section. (1884) 18 Op. Atty. Gen. 41.

Nature of right to withhold moneys.—The right of the government to withhold freight moneys earned in carrying the mails, etc., and apply them to the payment of the bonds loaned the companies to aid them in the construction of the roads, is not a condition attached to the franchise nor an obligation springing out of the land grants conferred upon the companies, but simply a specific mode of payment upon the mortgage created by statutes. Denver Pac. R. Co. v. U. S. (1876) 12 Ct. Cl. 237; Id. (1877) 13 Ct. Cl. 382.

The right of the government to withhold moneys due to the Pacific railroads for services rendered, and apply them upon the subsidy bonds loaned the roads (not yet due), rests, not upon any general principal of law, but upon the statute. Id.

The rights of the government and the obligations of the Pacific railroads concerning the repayment of moneys expended by the government in the payment of interest on the subsidy bonds loaned the roads must be deter-

mined, not by general principles of law or equity, but by the terms of the statutes which authorized the loan. The Union Pac. R. Co. v. U. S. (1880) 16 Ct. Cl. 353.

Where a road was not aided by the government, the government was not authorized by former Act May 7, 1878, c. 96, 20 Stat. 56, to withhold compensation. The rule for the construction of the act stated and the decisions relating to the Pacific railroad system reviewed. Central Pacific R. Co. v. U. S. (1886) 21 Ct. Cl. 180.

Extent of right.—Under this section the government is entitled to retain payment only for services rendered over that portion of the road which it had aided in the construction. U. S. v. Central Pac. R. Co. (1886) 6 Sup. Ct. 1038, 1041, 118 U. S. 235, 30 L. Ed. 173.

Under Act July 1, 1862, the government might recover, at law, of the Union Pacific and other railroad companies receiving United States bonds, 5 per cent. of the net income until the bonds and interest are paid. U. S. v. Kansas Pac. Ry. Co. (C. C. 1876) Fed. Cas. No. 15,505.

The decisions of the Supreme Court are conclusive that the government has no statutory right to withhold half of the earnings of those portions of the Pacific railroads for which no subsidy bonds were issued. The Union Pac. R. Co. v. U. S. (1880) 16 Ct. Cl. 353.

This section extends to the road of the same company over the bridge at Omaha; and when the circumstances exist which bring it into operation—viz. payment of interest by the government and failure to reimburse by the company—all compensation on account of freight and transportation over the bridge is to be withheld; but when those circumstances do not exist, the provision in the act of 1864, requiring a reservation of one-half compensation, becomes applicable to such service. (1873) 14 Op. Atty. Gen. 233.

Accordingly, one-half of the compensation for transportation performed for the government by said company over its bridge at Omaha should be withheld and applied to the payment of the bonds issued by the government to the company, except in the case provided for by this section, when all compensation for such service must be withheld. Id.

The Secretary of the Treasury has authority, under this section, to withhold payments for transportation services rendered by the Sioux City & Pacific Railroad Company to the United States over the Fremont, Elkhorn & Missouri Valley Railroad, a road leased by that company, in case of default on the part of the company to reimburse the government for interest paid upon the bonds of the United States issued thereto. (1874) 14 Op. Atty. Gen. 375.

Under this section all compensation due for transportation for the Quartermaster's Department performed over the Kansas Pacific Railroad (as well over that portion which was not as over that portion which was built with the aid of government bonds) should be withheld. (1880) 16 Op. Atty. Gen. 517.

"The expression 'is directed to withhold all payments' refers, in the first place, to the payments due to such companies at the time of the passage of the act, but, no doubt, includes also, equitably, all payments thereafter of like sort, the principles governing which shall not previously have been ascertained by the Court of Claims or, upon appeal, by the Supreme Court." (1883) 17 Op. Atty. Gen. 512.

In the settlement of the accounts of the Sioux City and Pacific Railroad Company, whose road was in part constructed with the aid of subsidy bonds issued under the acts of July 1, 1862 (12 Stat. 489), and July 2, 1864 (13 Stat. 356), for government transportation over the subsidized portion of its road, advised, that the direction in this section "to withhold all payments," etc., is now, November 12, 1886, no longer applicable thereto; that only one-half the amount of compensation due the company for such transportation should be withheld, to be applied as required by the act of July 2, 1864; and that the remaining one-half should be paid over to the company. (1886) 18 Op. Atty. Gen. 503.

Determination of net earnings.—In ascertaining the net earnings, expenses for improvement of the road, buildings, and equipments, whereby the capital stock was increased in value, were not to be deducted from the gross earnings. U. S. v. Central Pac. R. Co. (1891) 11 Sup. Ct. 285, 138 U. S. 84, 34 L. Ed. 895.

In determining what are the "net earnings" of the Pacific Railroads, the interest paid on the first mortgage bonds issued for the construction of the road cannot be deducted from the gross earnings as a part of the expense of operating the road. Union Pac. R. Co. v. U. S. (1877) 13 Ct. Cl. 401.

The expenditures of the Pacific railroads in regard to lands received from the government, but not connected with the business of the roads, cannot be deducted from the gross earnings in the ascertainment of the "net earnings." Id.

Interest on net earnings.—Interest cannot be recovered by the government on the "five per centum of the net earnings" of the Pacific railroads, which, by the terms of the statute, are to be "annually applied to the payment" of the bonds loaned to the com-

panies. Union Pac. R. Co. v. U. S. (1877) 13 Ct. Cl. 401.

Individual liability of stockholders.—As no one of the Pacific railroad acts contains any clause imposing upon the stockholders of a corporation receiving subsidy bonds personal responsibility for any debt due the United States from such corporation by reason of its failure to pay those bonds at maturity, and as they disclose an intention on the part of congress to grant national aid to the corporations named upon terms and conditions applicable alike to all of such corporations, it cannot be presumed that Congress intended that the stockholders of the California corporations which received such bonds should be individually liable under the corporation law of that state. U. S. v. Stanford (1896) 16 Sup. Ct. 576, 577, 161 U. S. 412, 40 L. Ed. 751.

Ascertainment of law applicable.—It is sufficient under this section and R. S. § 5261, post, § 10068, if, previous to the payment of claims for freight and transportation over the railroads of companies to which the United States have issued bonds, the law applicable thereto has been ascertained by a judgment of the Court of Claims, or, upon appeal, of the Supreme Court. Where the law is thus ascertained in one case, it may be acted upon in all similar cases without further litigation. (1883) 17 Op. Atty. Gen. 512.

Cited without definite application, Union Pacific R. R. Co. v. U. S. (1878) 99 U. S. 402, 427, 25 L. Ed. 274; Id. (1885) 6 Sup. Ct. 325, 116 U. S. 154, 29 L. Ed. 584; Union Pac. R. Co. v. Chicago, R. I. & P. R. Co. (1896) 16 Sup. Ct. 1173, 1188, 163 U. S. 564, 41 L. Ed. 265.

§ 10061. (Act June 22, 1874, c. 414.) Collection of percentage of net earnings due United States.

That the Secretary of the Treasury be, and hereby is, directed to require payment of the railroad-companies, their successors and assigns, or the successors or assigns of any or either of said companies, of all sums of money due or to become due, the United States for the five per centum of the net earnings provided for by the act entitled "An act to aid in the construction of a railroad and telegraph-line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes" approved July first, eighteen hundred and sixty-two, or by any other act or acts in relation to the companies therein named, or any other such company or companies, and in case either of said railroad-companies shall neglect or refuse to pay the same within sixty days after demand therefor made upon the treasurer of such railroad company, the Secretary of the Treasury shall certify that fact to the Attorney-General, who shall thereupon institute the necessary suits and proceedings to collect and otherwise obtain redress in respect of the same in the proper circuit courts of the United States, and prosecute the same, with all convenient dispatch to a final determination. (18 Stat. 200.)

This was an act entitled "An act providing for the collection of moneys due the United States from the Pacific Railroad Companies."

See notes to R. S. § 5260, ante, § 10060.

§ 10062. (Act March 3, 1879, c. 183.) Settlement of accounts for Army transportation services, etc.

For the proper adjustment of the accounts of the Union Pacific, Central Pacific, Kansas Pacific, Western Pacific, and Sioux City and Pacific Railroad Companies, respectively, for services which have been or may be hereafter performed for the government for transportation of the Army and transportation of the mails, the Secretary of the Treasury is hereby authorized to make such entries upon the books of the department as will carry to the credit of said companies the amounts so earned or to be earned by them during each fiscal year and withheld under the provisions of section fifty-two hundred and sixty of the Revised Statutes and of the act of Congress approved May seventh, eighteen hundred and seventy-eight: Provided, That this shall not authorize the expenditure of any money from the Treasury nor change the method now provided by law for the auditing of such claims against the government; Provided fur-

ther, That this paragraph shall not be so construed as to be a disposition of any moneys due or to become due to or from said companies respectively, or to, in any way, affect their rights or duties or the rights of the United States, under existing laws, it being only intended hereby to enable the proper accounting officers to state on the books of the Treasury the accounts between the government and said companies respectively. (20 Stat. 420.)

This was a provision of the deficiency appropriation act for the fiscal year 1879, etc., cited above.

The provisions of this paragraph were extended and made applicable to the the transportation of the Navy and Marine Corps, by a provision of Act March 8, 1897, c. 386, post, § 10063.

See notes to R. S. § 5260, ante, § 10060.

Notes of Decisions

Accounts to which act is applicable.—The methods adopted in settling accounts for transportation of the army under this act are not applicable to accounts for the transportation of enlisted men of the Navy and Marine Corps. (1896) 21 Op. Atty. Gen. 297.

An omission by Congress of some accounts from an act providing for the settlement of certain accounts for transportation shows that it was not the intention of congress to make that act apply to all accounts for transportation furnished under preceding acts. Id.

Transportation in freight cars.—The company ought not to be paid for the transportation of troops in box freight-cars, at passenger rates, but at such lower rates as are a suitable compensation for the inadequate accommodations furnished. (1869) 13 Op. Atty. Gen. 87.

§ 10063. (Act March 3, 1897, c. 386.) Settlement of accounts for Navy and Marine Corps transportation services, etc.

The provisions of the clause contained in the Act of Congress approved March third, eighteen hundred and seventy-nine, authorizing the Secretary of the Treasury to make such entries upon the books of the Department as will carry to the credit of certain railroad companies named in said Act amounts earned or to be earned by them during each fiscal year on account of transportation of the Army and transportation of the mails be, and the same are hereby, extended and made applicable to the transportation of the Navy and the Marine Corps. (29 Stat. 663.)

This was a provision of the naval appropriation act for the fiscal year 1898, cited above.

The provisions of Act March 3, 1879, c. 183, mentioned in this provision, are set forth ante, § 10062.

See notes to R. S. § 5260, ante, § 10060.

§ 10064. (Act March 3, 1901, c. 831, § 1.) Settlement of claims for transportation services by certain railroads; credit on notes.

The Secretary of the Treasury is hereby authorized and directed to make settlement of the claims growing out of Government transportation over non-bond-aided lines of the Southern Pacific Company and Central Pacific Railroad Company by crediting against the notes of the Central Pacific Railroad Company held in the Treasury of the United States interest on all of said judgment and allowed claims at four per centum per annum, as set forth in his letter to the chairman of the Committee on Appropriations of the Senate, dated May twelfth, nineteen hundred. (31 Stat. 1023.)

This was a provision of the deficiency appropriation act for the fiscal year 1901, cited above.

See notes to R. S. § 5260, ante, § 10060.

Cited without definite application,
In re Benson (C. C. 1904) 131 Fed. 968, 970.

§ 10065. (Act March 3, 1875, c. 133, § 1.) Payment for transportation of property or troops over certain roads prohibited.

No money shall hereafter be paid to any railroad company for the transportation of any property or troops of the United States

over any railroad which in whole or in part was constructed by the aid of a grant of public land on the condition that such railroad should be a public highway for the use of the Government of the United States free from toll or other charge, or upon any other conditions for the use of such road, for such transportation, nor shall any allowance be made for the transportation of officers of the Army over any such road when on duty and under orders as military officers of the United States. But nothing herein contained shall be construed as preventing any such railroad from bringing a suit in the Court of Claims for the charges for such transportation, and recovering for the same if found entitled thereto by virtue of the laws in force prior to the passage of this act; provided that the claim for such charges shall not have been barred by the statute of limitations at the time of bringing the suit, and either party shall have the right of appeal to the Supreme Court of the United States; and provided further, That the foregoing provision shall not apply for the current fiscal year, nor thereafter, to roads where the sole condition of transportation is that the company shall not charge the Government higher rates than they do individuals for like transportation, and when the Quartermaster-General shall be satisfied that this condition has been faithfully complied with. (18 Stat. 453.)

This was a provision of the Army appropriation act for the fiscal year 1876, cited above.

Provisions relating to payment for Army transportation by land-grant railroads were made by Act Aug. 29, 1916, c. 418, § 1, post, § 10066.

See notes to R. S. § 5260, ante, § 10060.

Notes of Decisions

Compensation for services.—The full local rate cannot be charged for transportation of property and troops of the United States over the nonfree-haul portion of a through shipment over a continuous line of railway, part of which, under Act July 25, 1866, § 5, is free-haul and the remaining part nonfree-haul under Act July 1, 1862. Southern Pac. Co. v. U. S. (1915) 35 Sup. Ct. 573, 237 U. S. 202, 59 L. Ed. 916, affirming judgment (1913) 48 Ct. Cl. 227.

A custom prior to the Acts of 1874 and 1875 (18 Stat. 74; 18 Stat. 453) of allowing land grant railroads 66 per cent. of their ordinary tariff rates does not furnish a rule for the measure of damages as to services subsequent to those statutes. Atchison, T. & S. F. R. Co. v. U. S. (1879) 15 Ct. Cl. 126.

The act took from the Quartermaster General the power to agree upon rates of transportation on land grant roads and conferred it upon the Court of Claims. Chicago, M. & St. P. Ry. Co. v. U. S. (1883) 18 Ct. Cl. 359.

The unconditional grant of lands by Congress to an Iowa corporation, which were assigned by authority of congress to the claimant corporation in Nebraska, does not bring the latter company within the terms of the act. Burlington & Mo. R. R. Co. in Nebraska v. U. S. (1883) 18 Ct. Cl. 618.

The National Guard of a state may become "troops of the United States," within the meaning of the Land Grant Act; but it is not the potentiality, but the actuality. of being in the service contemplated by Const. art. 1, § 10, which fixes their status as such "troops." Alabama Great Southern R. Co. v. U. S. (1914) 49 Ct. Cl. 522.

The meaning of the Land Grant Act is not to be restricted to the regular army, nor can it be extended to include the National Guard, when not actually in the service of the United States. Alabama Great Southern R. Co. v. U. S. (1914) 49 Ct. Cl. 522.

An army quartermaster may lawfully pay the accounts of land grant railroads for army transportation without previous action thereon by the accounting officers of the Treasury. (1889) 19 Op. Atty. Gen. 264.

Contracts prohibited.—The prohibition of the statute extends to lessees operating a land grant road, and a contract made since the statute by a quartermaster with lessees operating a land grant road, for the transportation of government freight over it, is absolutely void. Northern Pac. R. Co. v. U. S. (1879) 15 Ct. Cl. 428.

The provision of section 4048, ante, requiring contracts to be let to the lowest bidder after advertisement, does not supersede or repeal section 10060, ante, or this section. (1884) 18 Op. Atty. Gen. 41.

The prohibition alluded to applies to railroads whose land grants are conditioned for a preference in transportation, or for ordinary rates of transportation, or for average rates, etc., where such service is required by the government, as well as to railroads whose land grants contain a condition in favor of the government (like the one mention-

ed in said provision) for free transportation. But it is inapplicable to railroads in whose land grants no conditions for the use of said roads by the government appear. (1874) 14 Op. Atty. Gen. 663.

In the matter of a claim of the Burlington & Missouri River Railroad Company of Nebraska for military transportation, advised (after review of Act May 15, 1856, c. 28, sections 18, 19, and 20 of Act July 2, 1864, c. 216, section 6, Act July 1, 1862, c. 120, and joint resolution of April 10, 1869, which relate to the establishment of the road in Nebraska, and upon consideration of the provisions of the acts of June 16 and 22, 1874, and of this act, forbidding the payment of military transportation to a certain class of railroads), that payment be withheld from the company until its right thereto is judicially established. (1878) 15 Op. Atty. Gen. 459.

In March, 1877, the Northern Pacific Railroad Company entered into a contract with the Quartermaster's Department to transport army supplies, at a stated rate per hundred pounds, between certain points in the state of Minnesota, in performing which the company was obliged to transport the stores part of the way over a land grant railroad. In the contract was a stipulation that no deduction should be made from the rate stated "on account of land grants." Held, that the contract is within this act, and that the accounting officers of the Treasury have no authority to audit and settle a claim for transportation thereunder, but such claim is required to be settled by suit in the Court of Claims. (1878) 16 Op. Atty. Gen. 607.

The prohibition in this act is not limited to payments to the company owning the land grant road over which the transportation was performed. It extends to payments made to any railroad company for transportation over any land grant road of the sort specified, whether its own or another's. Id.

Contracts with common carriers other than railroads.—This act does not take away the authority of the accounting officers of the Treasury to audit and settle accounts for transportation arising under bona fide contracts made with common carriers other than railroad companies, in cases where such transportation has been partly performed over land grant roads. (1883) 16 Op. Atty. Gen. 607.

Manner of transporting flour.—The Union Pacific Railroad Company cannot require that flour, in order to be transported over its road for the United States, shall be packed in barrels, and refuse to transport it if packed in sacks. (1880) 16 Op. Atty. Gen. 581.

Whether the Kansas Pacific Railway Company can decline to transport over its road, for the United States, flour in sacks at ordinary freight rates, or require the same to be transported at the owner's risk when the government pays only the lowest rate therefor, considered. Id.

§ 10066. (Act Aug. 29, 1916, c. 418, § 1.) Payment for Army transportation services to certain railroads.

For the payment of Army transportation lawfully due such land-grant railroads as have not received aid in Government bonds (to be adjusted in accordance with the decisions of the Supreme Court in cases decided under such land-grant acts), but in no case shall more than fifty per centum of full amount of service be paid: Provided, That such compensation shall be computed upon the basis of the tariff or lower special rates for like transportation performed for the public at large and shall be accepted as in full for all demands for such service: Provided further, That in expending the money appropriated by this Act a railroad company which has not received aid in bonds of the United States, and which obtained a grant of public land to aid in the construction of its railroad on condition that such railroad should be a post route and military road, subject to the use of the United States for postal, military, naval, and other Government services, and also subject to such regulation as Congress may impose restricting the charge for such Government transportation, having claims against the United States for transportation of troops and munitions of war and military supplies and property over such aided railroads, shall be paid out of the moneys appropriated by the foregoing provision only on the basis of such rate for the transportation of such troops and munitions of war and military supplies and property as the Secretary of War shall deem just and reasonable under the foregoing provision, such rate not to exceed fifty per centum of the compensation for such Government transportation as shall at that time be charged to and

paid by private parties to any such company for like and similar transportation; and the amount so fixed to be paid shall be accepted as in full for all demands for such service: And provided further, That nothing in the preceding provisos shall be construed to prevent the accounting officers of the Government from making full payment to land-grant railroads for transportation of property or persons where the courts of the United States have held that such property or persons do not come within the scope of the deductions provided for in the land-grant Acts. (39 Stat. 633.)

These were provisions of section 1 of the Army appropriation act for the fiscal year 1917, cited above.

This section superseded a provision of the Army appropriation act for the fiscal year 1883. Act June 30, 1882, c. 254, § 1, 22 Stat. 120, which provided: "For the payment of Army transportation lawfully due such land-grant railroads as have not received aid in government bonds, to be adjusted by the proper accounting officers in accordance with the decision of the Supreme Court in cases decided under such land-grant acts, but in no case shall more than fifty per centum of the full amount of the service be paid, * * *: Provided, That such compensation shall be computed upon the basis of the tariff rates for like transportation performed for the public at large, and shall be accepted as in full for all demands for said services: And provided further, That any such land-grant roads as shall file with the Secretary of the Treasury their written acceptance of this provision shall hereafter be paid for like services as herein provided."

Similar provisions were made in prior Army appropriation acts, and were repeated in subsequent Army appropriation acts.

Notes of Decisions

Roads within purview of section.—Similar restrictions and conditions in Act Feb. 27, 1893 (27 Stat. 483), concerning freight rates to be charged the government by land grant roads, held to extend not only to the original land-aided company, but to any other company carrying government freight over such a roadway. Astoria & C. R. R. Co. v. U. S. (1906) 41 Ct. Cl. 284.

The payment of accounts of land grant railroads (i. e., such as have not received aid in government bonds) for army transportation, under the appropriation act of September 22, 1888 (25 Stat. 481), is not controlled by the proviso in this act and that of August 5, 1882 (22 Stat. 261), but is governed by the provisions of the act of 1888 alone; and under these provisions such accounts can be lawfully paid by a quartermaster without previous action thereon by the accounting officers of the treasury. (1889) 19 Op. Atty. Gen. 264.

§ 10067. (Act April 30, 1908, c. 153.) Payment for transportation of Indian goods and supplies.

Hereafter payment for transportation of Indian goods and supplies shall include all Indian transportation lawfully due such land-grant railroads as have not received aid in Government bonds (to be adjusted in accordance with the decisions of the Supreme Court in cases decided under such land-grant Acts), but in no case shall more than fifty per centum of full amount of service be paid to said land-grant roads: Provided, That such compensation shall be computed upon the basis of the tariff or lower special rates for like transportation performed for the public at large, and shall be accepted as in full for all demands for such service: Provided further, That hereafter in expending money appropriated for this purpose a railroad company which has not received aid in bonds of the United States, and which obtained a grant of public lands to aid in the construction of its railroad on condition that such railroad should be a post route and military road, subject to the use of the United States for postal, military, naval, and other Government services, and also subject to such regulations as Congress may impose, restricting the charge for such Government transportation, having claims against the United States for transportation of Indian goods and supplies over such aided railroads, shall be paid out of the moneys appropriated for such purpose only on the basis of such rate for the transportation of such Indian goods and supplies as the Secretary of the Interior shall deem just and rea-

sonable under the provisions set forth herein, such rate not to exceed fifty per centum of the compensation for such Government transportation as shall at that time be charged to and paid by private parties to any such company for like and similar transportation; and the amount so fixed to be paid shall be accepted as in full for all demands for such service. (35 Stat. 73.)

These were provisos annexed to an appropriation for goods and supplies for the Indian service in the Indian appropriation act for the fiscal year 1909, cited above.

§ 10068. (R. S. § 5261.) Companies may sue in Court of Claims. Any such company may bring suit in the Court of Claims to recover the price of such freight and transportation, and in such suit the right of such company to recover the same upon the law and the facts of the case shall be determined, and also the rights of the United States upon the merits of all the points presented by it in answer thereto by them; and either party to such suit may appeal to the Supreme Court; and both said courts shall give such cause or causes precedence of all other business.

Act March 3, 1873, c. 226, § 2, 17 Stat. 508.

The words at the beginning of this section, "Any such company," refer to the railroad companies from whom payments for freight and transportation were directed to be withheld by the preceding section of the Revised Statutes, R. S. § 5260, ante, § 10060. See notes to that section.

Notes of Decisions

Jurisdiction at law.—Under this section a jurisdiction at law and not in equity is conferred, and, on appeal to the supreme court of the United States, a motion that the court of claims be directed to send up all the evidence and interlocutory rulings, or to make specific findings upon incidental facts in addition to its general finding will be overruled. Union Pac. Ry. Co. v. U. S. (1885) 6 Sup. Ct. 325, 116 U. S. 154, 29 L. Ed. 584.

Ascertainment of law applicable.—It is sufficient under R. S. § 5260, ante, § 10060, and this section, if, previous to the payment of claims for freight and transportation over the railroads of companies to which the United States have issued bonds, the law applicable thereto has been ascertained by a judgment of the Court of Claims, or, upon appeal of the Supreme Court. (1883) 17 Op. Atty. Gen. 512.

Cited without definite application, Rider v. U. S. (1906) 149 Fed. 164, 165, 79 C. C. A. 112.

§ 10069. (R. S. § 5262.) Circuit court to issue mandamus, etc. The proper [circuit] court of the United States shall have jurisdiction to hear and determine all cases of mandamus to compel said Union Pacific Railroad Company to operate its road as required by law.

Act March 3, 1873, c. 226, § 4, 17 Stat. 509.

The word "circuit," inclosed in brackets in this section, was superseded by the abolition of the circuit courts and the transfer of their jurisdiction to the district courts, by Jud. Code, §§ 289–291, ante, §§ 1266–1268.

Notes of Decisions

Jurisdiction of courts.—Act March 3, 1875, confers original jurisdiction on the proper federal circuit court in cases of mandamus to compel the Union Pacific Railroad Company to operate its road according to law. U. S. v. Union Pac. R. Co. (C. C. 1873) Fed. Cas. No. 16,599.

A circuit court of the United States has power, by mandamus, to compel the Union Pacific Railroad Company to operate its road as required by law. Act March 3, 1873. Hall v. Union Pac. R. Co. (C. C. 1875) Fed. Cas. No. 5,950.

The circuit court of the district of Iowa has jurisdiction in such case, if any part of the road is in the district of Iowa; and under Act June 20, 1874, process may be served upon the president or general superintendent of the company found in the district. U. S. v. Union Pac. R. Co. (C. C. 1875) Fed. Cas. No. 16,600.

Who may institute proceedings.—Private persons may sue out a writ under this section. Union Pacific R. R. Co. v. Hall (1875) 91 U. S. 343, 355, 356, 23 L. Ed. 428.

Private persons, who suffer damage and inconvenience from the failure of the company to operate its road as required by law, may institute proceedings under this act, without the sanction of the attorney general. Hall v. Union Pac. R. Co. (C. C. 1875) Fed. Cas. No. 5,950.

Operation of road over bridges.—A mandamus will issue to compel the company to operate its road over the bridge over the Missouri river in the same manner in which the other portions of its road are operated. U. S. v. Union Pac. R. Co. (C. C. 1875) Fed. Cas. No. 16,601.

Cited without definite application, Rider v. U. S. (1906) 149 Fed. 164, 165, 79 C. C. A. 112.

§ 10070. (Act March 3, 1887, c. 345, § 4.) Protection of liens of United States; redemption of mortgages, etc.

Whenever, in the opinion of the President, it shall be deemed necessary to the protection of the interests and the preservation of the security of the United States in respect of its lien, mortgage, or other interest in any of the property of any or all of the several companies upon which a lien, mortgage, or other incumbrance paramount to the right, title, or interest of the United States for the same property, or any part of the same, may exist and be then lawfully liable to be enforced, the Secretary of the Treasury shall, under the direction of the President, redeem or otherwise clear off such paramount lien, mortgage, or other incumbrance by paying the sums lawfully due in respect thereof out of the Treasury; and the United States shall thereupon become and be subrogated to all rights and securities theretofore pertaining to the debt, mortgage, lien, or other incumbrance in respect of which such payment shall have been made. It shall be the duty of the Attorney-General, under the direction of the President, to take all such steps and proceedings, in the courts and otherwise, as shall be needful to redeem such lien, mortgage, or other incumbrance, and to protect and defend the rights and interests of the United States in respect of the matters in this section mentioned, and to take steps to foreclose any mortgages or liens of the United States on any such railroad property. (24 Stat. 491.)

This section and the section next following were part of Act March 3, 1887, c. 345, cited above, entitled "An act authorizing an investigation of the books, accounts, and methods of railroads which have received aid from the United States, and for other purposes."

The preceding sections of the act, sections 1–3 thereof, authorized the appointment of a commission to investigate the books, etc., of bond-aided railroads, and are omitted as temporary and executed.

Previous provisions for protection of liens of the United States on property of certain bond-aided railroad companies, and for enforcement of the rights of the United States against said companies, made by Act May 7, 1878, c. 96, §§ 9, 10, 20 Stat. 60, are omitted as temporary and executed.

Notes of Decisions

Investigation of expenditures.—The United States have no interest in expenditures of the Central Pacific Railroad Company under vouchers which have not been charged against the government in the accounts between them; and the Pacific Railway Commission, under this act has no power to investigate such expenditures against the will of the company and its officers. In re Pacific Ry. Commission (C. C. 1887) 32 Fed. 241.

§ 10071. (Act March 3, 1887, c. 345, § 5.) Investment of sinking-funds for security of indebtedness to United States.

The sinking-funds which are or may be held in the Treasury for the security of the indebtedness of either or all of said railroad companies may, in addition to the investments now authorized by law, be invested in any bonds of the United States heretofore issued for the benefit of either or all of said companies, or in any of the first-mortgage bonds of either of said companies which have been issued under the authority of any law of the United States and secured by mortgages of their roads and franchises, which by any law of the United States have been made prior and paramount to the mortgage, lien, or other security of the United States in respect

of its advances to either of said companies as provided by law. (24 Stat. 492.)

See notes to preceding section.

Previous provisions for a sinking fund for the payment of debts due from the Union Pacific Railroad Company and other companies, made by Act May 7, 1878, c. 96, 20 Stat. 58, are omitted as temporary and executed.

Notes of Decisions

How fund may be invested.—Money paid into the sinking funds of said companies, under said act, may be invested: (1) In United States bonds, as provided in act of May 7, 1878 (20 Stat. 56); (2) in any United States railroad subsidy bonds of any of the aided roads described in the act of July 1, 1862 (12 Stat. 489), and its supplements; and (3) in any of the first mortgage bonds of said companies, such as are described in this section. (1887) 18 Op. Atty. Gen. 598.

Reinvestment of funds.—This section does not, however, authorize a sale of the United States bonds in which the funds are already invested for the purpose of reinvestment in the first mortgage bonds of said companies. (1887) 18 Op. Atty. Gen. 598.

This section applies to moneys belonging to those funds which are uninvested, and such moneys may be invested as therein provided. Id.

The power conferred on the Secretary of the Treasury by this section to reinvest the "sinking funds" of the Union Pacific and other railroads referred to in that section extends as much to the United States bonds then held by him as part of the sinking fund under the "Thurman Act" as to any money paid in from time to time for the purposes of that sinking fund. (1890) 19 Op. Atty. Gen. 491.

The United States bonds now in such sinking fund may be sold and the proceeds thereof reinvested in the first-mortgage bonds of any of the railroad companies referred to in this act as having received aid from the government in bonds. Opinion of Attorney General Garland of March 31, 1887, 18 Op. Atty. Gen. 598, dissented from. Id.

TITLE LXV

TELEGRAPHS

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§ 10072. (R. S. § 5263.) Use of public domain, etc.

Any telegraph company now organized, or which may hereafter be organized, under the laws of any State, shall have the right to construct, maintain, and operate lines of telegraph through and over any portion of the public domain of the United States, over and along any of the military or post roads of the United States which have been or may hereafter be declared such by law, and over, under, or across the navigable streams or waters of the United States; but such lines of telegraph shall be so constructed and maintained as not to obstruct the navigation of such streams and waters, or interfere with the ordinary travel on such military or post roads.

Act July 24, 1866, c. 230, § 1, 14 Stat. 221.

Subsidized railroad and telegraph companies were required to construct and operate telegraph lines by Act Aug. 7, 1888, c. 772, § 1, post, § 10080.

Provisions regulating radiotelegraphs were made by Act Aug. 13, 1912, c. 287, post, §§ 10100–10109.

Provisions relating to the protection of submarine cables were made by Act Feb. 29, 1888, c. 17, post, §§ 10087–10099.

The preservation of the liens of the United States upon the property of telegraph lines constructed and operated by subsidized railroad and telegraph companies was provided for by Act Aug. 7, 1888, c. 772, § 4, post, § 10083.

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1. Statute as a regulation of interstate commerce.—This and the following sections in effect prohibit all state monopolies in this particular. It substantially declares in the interest of commerce and the convenient transmission of intelligence from place to place by the government and its citizens that the erection of telegraph lines shall, so far as state interference is concerned, be free to all who submit to the conditions imposed by congress, and that corporations organized under the laws of a state to construct and operate telegraph lines shall not be excluded by another from prosecuting their business within its jurisdiction, if they accept the terms proposed by the national government for this national privilege. To this extent they are a legitimate regulation of commercial intercourse among the states, and are appropriate legislation to carry into execution the powers of congress over the postal service. Pensacola Teleg. Co. v. Western U. Teleg. Co. (1877) 96 U. S. 1, 11, 24 L. Ed. 708.

Act July 24, 1866 (embodied in R. S. § 5263 et seq., post, § 10072 et seq.), relating to telegraphs, is a legitimate regulation of commercial intercourse among the states. Leloup v. Port of Mobile (1888) 8 Sup. Ct. 1380, 1382, 127 U. S. 640, 32 L. Ed. 311.

The act giving telegraph companies the right against arbitrary interference by the state to construct their lines over the military or post roads of the United States did not exceed powers of Congress under the commerce clause of the federal Constitution. Town of Essex v. New England Tel. Co. of Massachusetts (1915) 36 Sup. Ct. 102. See Pensacola Tel. Co. v. Western Union Tel. Co. (C. C. 1875) Fed. Cas. No. 10,960, affirmed in (1877) 96 U. S. 1, 24 L. Ed. 708, holding that a statute of a state was in conflict with Act July 24, 1866, and null and void.

A telegraph company which has accepted the provisions of the act becomes an agency of the federal government for the transaction of its postal business, and an instrumentality of interstate and foreign commerce. State v. Western Union Telegraph Co. (1911) 117 P. 93, 43 Mont. 445.

This act is a regulation of commerce, within the meaning of that clause of the United States constitution which declares that congress has power to "regulate commerce," etc., "among the several states," and supersedes state legislation upon the subject. Western Union Tel. Co. v. Atlantic & P. State Tel. Co. (1869) 5 Nev. 86; Id. 102.

Where a foreign telegraph company operates a system of lines extending throughout the several states, and has accepted the conditions and privileges conferred by this act, it is a corporation engaged in interstate commerce, within the federal constitution. Postal Tel. Cable Co. v. City of Richmond (1901) 37 S. E. 789, 99 Va. 102, 86 Am. St. Rep. 877.

2. Extent and character of right as federal question.—A federal court has jurisdiction of a suit by a telegraph company which has accepted the act to enjoin the threatened removal or destruction of its line by the local officers. Ohio Postal Telegraph Cable Co. v. Board of Com'rs of Sandusky County (C. C. 1905) 137 Fed. 947, judgment reversed Ganz v. Ohio Postal Telegraph Cable Co. (1905) 140 Fed. 692, 72 C. C. A. 186.

The question of the extent and character of the rights granted by the statute is exclusively a federal question on which the decisions of the federal Supreme Court are final. Western Union Telegraph Co. v. Hopkins (Cal. 1911) 116 P. 557.

3. Lines to which applicable.—The act was intended to apply to interior lines of telegraph—that is to say, those established between points within the United States—and not to exterior oceanic lines designed for communication with foreign lands. (1872) 14 Op. Atty. Gen. 63.

4. Telephone companies.—This section has no application to telephone companies, whose business is that of electrically transmitting articulate speech between different points. City of Richmond v. Southern Bell Telephone & Telegraph Co. (1899) 19 Sup. Ct. 778, 781, 174 U. S. 761, 43 L. Ed. 1162.

The statute does not give a telephone company filing its acceptance thereof the right to use the streets of a city for its lines without a grant of such right from the local authorities. Cumberland Telephone & Telegraph Co. v. City of Evansville (C. C. 1903) 127 Fed. 187, decree affirmed (1906) 143 Fed. 238, 74 C. C. A. 368.

A telephone company is not within the act. Sunset Telephone & Telegraph Co. v. City of Pomona (C. C. 1908) 164 Fed. 561, judgment reversed (1909) 172 Fed. 829, 97 C. C. A. 251, and decree reversed (1912) 32 Sup. Ct. 477, 224 U. S. 330, 56 L. Ed. 788.

Telephone companies are not within the provisions of title 65 of the Revised Statutes (this title), or entitled to avail themselves of the privileges thereby granted. (1887) 19 Op. Atty. Gen. 37.

5. Who may accept act.—The mere filing by an individual with the Postmaster General of an acceptance of the restrictions and obligations of the act and the acts amendatory thereto neither confers upon such person the benefits and privileges, nor subjects him to the burdens and restrictions of that act, because he is not a telegraph company organized under the laws of one of the states. (1903) 24 Op. Atty. Gen. 603.

The words "any telegraph company organized under the laws of any state" were used advisedly, and with a recognition that they did not include a "person" or an individual. Id.

6. Business authorized by statute.—Act June 8, 1872 (R. S. § 3964, ante, § 7456), declares that all letter carrier routes established in any city or town shall be post roads. Held, that this act of 1866 was strictly limited to the business of telegraph companies as such, and hence did not authorize a telegraph company accepting the act to use the streets of a city for the installation of a district telegraph system for the purpose of the collection and delivery of telegraph messages and the maintenance of a messenger system, fitted with call boxes for watchmen, fire, burglar, and police signals within the city. City of Toledo v. Western Union Tel. Co. (1901) 107 Fed. 10, 46 C. C. A. 111, 52 L. R. A. 730.

A company doing both a telegraph and telephone business cannot claim the benefit of the act as to the lines used in its telephone business. The fact that such lines may be used for the local delivery of interstate telegraphic messages does not make them an integral part of the telegraph lines, so as to bring them within the purview of the act. Sunset Telephone & Telegraph Co. v. City of Pomona (C. C. 1908) 164 Fed. 561, judgment reversed (1909) 172 Fed. 829, 97 C. C. A. 251, and decree reversed City of Pomona v. Sunset Telephone & Telegraph Co. (1912) 32 Sup. Ct. 477, 224 U. S. 330, 56 L. Ed. 788.

7. Priority of right.—A franchise to operate a telegraph line over any part of the United States domain, or any military or post road, acquired under the statute, when accompanied by occupancy thereunder, confers rights superior to those of a company subsequently constructing a line for transmitting electricity both for lighting purposes and for propelling machinery, and the latter line must be constructed so as not to interfere with the former. Western Union Tel. Co. v. Los Angeles Electric Co. (C. C. 1896) 76 Fed. 178.

8. Right of eminent domain.—Telegraph companies were not granted the right of eminent domain, or any right to enter upon and occupy the rights of way of railway companies without the latter's consent by the act, since such statute must be deemed but an exercise by Congress of its power to withdraw from state interference interstate commerce by telegraph. Western Union Tel. Co. v. Pennsylvania R. Co. (1904) 25 Sup. Ct. 133, 137, 195 U. S. 540, 49 L. Ed. 312, 1 Ann. Cas. 517, affirming decree (1903) 123 Fed. 33, 59 C. C. A. 113.

The act does not confer authority on telegraph companies to condemn right of way for their lines over private property. Western Union Tel. Co. v. Pennsylvania R. Co. (1903) 123 Fed. 33, 59 C. C. A. 113, affirming order (C. C. 1903) 120 Fed. 362, and reversing decree (C. C. 1903) 120 Fed. 981. Decree affirmed (1904) 25 Sup. Ct. 133, 195 U. S. 540, 49 L. Ed. 312, 1 Ann. Cas. 517, and judgment affirmed (1904) 25 Sup. Ct. 150, 195 U. S. 594, 49 L. Ed. 332, 1 Ann. Cas. 533.

This section authorizes no compulsory proceedings to obtain a right of way over private property for such lines, and condemnation of such right of way can only be made by virtue of some law of the state where the property is situated. Postal Tel. Cable Co. v. Cleveland, C., C. & St. L. Ry. Co. (C. C. 1899) 94 Fed. 234.

Under Rev. St. Idaho, §§ 5210, 5212, a telegraph company may maintain proceedings to condemn the right to construct and maintain its line upon the right of way of a railroad company,

where such use of the property will better subserve the public interests than the use made of it by the railroad company, and especially where the latter acquired most of its right of way by gift from the United States, subject to this section, and ante, § 7456. Postal Tel. Cable Co. of Idaho v. Oregon Short Line R. Co. (C. C. 1900) 104 Fed. 623, judgment affirmed Oregon Short Line R. Co. v. Postal Tel. Cable Co. of Idaho (1901) 111 Fed. 842, 49 C. C. A. 663.

Telegraph Act held not to vest telegraph companies with power of eminent domain, nor authorize them to construct their lines over private property, or a railroad right of way, without consent of the owner. Western Union Telegraph Co. v. Atlanta & W. P. R. Co. (D. C. 1915) 227 Fed. 465.

Condemnation of a part of a railroad's right of way by a telegraph company under state statutes, and the maintenance of the line under such circumstances as not materially to interfere with the activities of the railroad company, held not an interference with interstate commerce or an impairment of the efficiency of a post road of the United States under R. S. § 3964, ante, § 7456 or this section, authorizing the maintenance of such lines along post roads but without any provision for condemnation under the federal law. Western Union Telegraph Co. v. South & N. A. R. Co. (Ala. 1913) 62 So. 788.

Act July 24, 1866, does not deprive states of the right to legislate relative to condemnation of railroad rights of way for telegraph companies. Louisville & N. R. Co. v. Postal Telegraph-Cable Co. (1915) 85 S. E. 110, 143 Ga. 331.

The act is not such an assumption by Congress of all power over interstate telegraph lines as to prevent condemnation under state law by a telegraph company of an easement over the right of way of a railway company. Western Union Telegraph Co. of Illinois v. Louisville & N. R. Co. (Ill. 1915) 110 N. E. 583.

Under R. S. § 3964, ante, § 7456, and this section, and the statutes of the state giving to such companies the right to condemn land for right of way, a telegraph company incorporated in the state may acquire a right of way for its lines over and along the right of way of a railroad company, when such use will not materially interfere with the use for which the land was originally condemned by the railroad company. Postal Telegraph Cable Co. v. Chicago, I. & L. Ry. Co. (1903) 66 N. E. 919, 30 Ind. App. 654.

The act does not authorize such companies to appropriate private lands for their right of way. Phillips v. Postal Tel. Cable Co. (1902) 41 S. E. 1022, 130 N. C. 513, 89 Am. St. Rep. 868, judgment reversed on rehearing (1902) 42 S. E. 587, 131 N. C. 225.

9. Military roads, post roads, and highways.—This and the following sections do not extend only to such military roads and post roads as are on the public domain. Pensacola Teleg. Co. v. Western U. Teleg. Co. (1877) 96 U. S. 1, 11, 24 L. Ed. 708, affirming (C. C. 1875) Fed. Cas. No. 10,960.

Railways are not "highways" within the meaning of a provision in the charter of a telegraph company giving it the right to occupy with its telegraph lines any of the roads, highways, streets, and waters within the state. Western Union Telegraph Co. v. Pennsylvania R. Co. (1904) 25 Sup. Ct. 150, 151, 195 U. S. 594, 49 L. Ed. 332, 1 Ann. Cas. 517.

A railroad is a post road, and, accordingly this act is paramount over any agreement made by a railroad company securing to a telegraph company the sole use of its line of road for its wires. Western Union Tel. Co. v. Baltimore & O. Tel. Co. (C. C. 1884) 19 Fed. 660.

A telegraph company may erect a line on a railroad right of way granted by congress over public lands, that is declared to be a military and post road. Mercantile Trust Co. v. Atlantic & P. R. Co. (C. C. 1894) 63 Fed. 513.

"Post routes," within Act March 1, 1884, declaring all public roads and highways post routes, are the same as "post roads," within this statute. New England Telegraph Co. of Massachusetts v. Town of Essex (D. C. 1913) 206 Fed. 926.

Under R. S. § 3964, ante, § 7456, declaring that all letter carrier routes established in any city for the collection and delivery of mail shall be post roads, and Code Civ. Proc. Cal. § 1875, subd. 3, requiring the courts to take judicial notice of acts of the executive departments of the United States, the streets of a city kept up and maintained as such are letter carrier routes established in the city for the collection and delivery of mail, and are post roads; and a telegraph company maintaining telegraph lines on the terms imposed by this section, has such right to the streets of a city, constituting post roads, as are granted by the act, and such rights constitute a federal franchise. Western Union Telegraph Co. v. Hopkins (Cal. 1911) 116 P. 557.

The act extends to all military and post roads, whether on the public domain or on private property acquired by a railroad company by purchase or condemnation proceedings. Union Trust Co. of New York v. Atchison, T. & S. F. R. Co. (1895) 8 N. M. 327, 43 Pac. 701.

10. Grant of exclusive franchise by railroad company.—The agreement dated October 1, 1866, between the Union

Pacific Railway Company, Eastern Division, and the Western Union Telegraph Company, in effect giving to the latter company the exclusive control of all telegraphic business on the route of the railway company, was in violation of Act July 24, 1866, giving every telegraph company organized under state laws, and accepting its provisions, the right to erect its poles and wires upon the post roads of the United States. U. S. v. Union Pac. Ry. Co. (1895) 16 Sup. Ct. 190, 160 U. S. 1, 40 L. Ed. 319, reversing decree Union Pac. R. Co. v. U. S. (1894) 59 Fed. 813, 8 C. C. A. 282.

A railroad cannot grant to a telegraph company the sole right to construct a line over its right of way, so as to exclude other telegraph companies. Western Union Tel. Co. v. American Union Tel. Co. (C. C. 1879) Fed. Cas. No. 17,444.

A telegraph company having a grant from a railroad of such exclusive right to construct a line along the right of way is entitled to an injunction against actual interference with its line, but not against such interruption of its business as results from mere competition by other companies constructing rival lines along the same railroad. Id.

It is not competent for a railroad company to grant a telegraph company the exclusive right to establish lines of telegraph communication along its right of way; such contracts being in conflict with this section. Western Union Telegraph Co. v. Burlington & S. W. R. Co. (C. C. 1882) 11 Fed. 1, 3, 4.

The act in effect prohibits a railroad company from granting an exclusive franchise along its right of way to any single telegraph company. Union Trust Co. of New York v. Atchison, T. & S. F. R. Co. (1895) 8 N. M. 327, 43 Pac. 701.

11. Occupation without consent of railroad company.—This act and R. S. § 3964, ante, § 7456, making all railroads post roads,—do not give a telegraph company the right to occupy the right of way of a railroad with its line without its consent, or a contract with a prior owner which is binding upon it. Western Union Tel. Co. v. Ann Arbor R. Co. (1898) 90 Fed. 379, 33 C. C. A. 113, reversed (1900) 20 Sup. Ct. 867, 178 U. S. 239, 44 L. Ed. 1052; Northwestern Tel. Exch. Co. v. Chicago, M. & St. P. Ry. Co. (1899) 79 N. W. 315, 76 Minn. 334.

Railway rights of way are not made public property by charter provisions declaring the railways "public highways," so as to subject such rights of way to occupation by telegraph companies without the consent of the railway company, under the act. Western Union Tel. Co. v. Pennsylvania R. Co. (1904) 25 Sup. Ct. 133, 142, 195 U. S. 540, 49 L. Ed. 312, 1 Ann. Cas. 517, affirming decree (1903) 123 Fed. 33, 59 C. C. A. 113.

A telegraph company is not authorized to occupy a railroad right of way without consent of the railroad or binding contract with prior owner of such right of way by this section, and post, §§ 10077, 10079, or by R. S. § 3964, ante, § 7456, which makes all railroads post roads. Western Union Tel. Co. v. Ann Arbor R. Co. (1898) 90 Fed. 379, 386, 33 C. C. A. 113, reversed (1900) 20 Sup. Ct. 867, 178 U. S. 239, 44 L. Ed. 1052.

It is not authorized by acts establishing post roads, or by this act to establish lines over right of way of railroad company without making compensation. Atlantic & P. Tel. Co. v. Chicago, R. I. & P. R. Co. (C. C. 1874) Fed. Cas. No. 632.

This section does not give such companies the right to build their lines over the right of way of a railroad or other private property without the consent of the owner, or the condemnation of the right of way over such property in accordance with the laws of the state where situated. Postal Telegraph Cable Co. v. Southern Ry. Co. (C. C. 1898) 89 Fed. 190.

Where a telegraph company uses a post road under the permission given by congress in this section, it cannot displace private rights without the owner's consent. U. S. v. Boston Elevated Ry. Co. (C. C. 1910) 176 Fed. 963.

12. Damages and compensation for use of premises.—This section and R. S. § 3964, ante, § 7456, gave no unrestricted right to appropriate public property of a state or municipality, but, like any other franchise, it was to be exercised in subordination to public and private rights, and therefore was no ground of objection to the imposition by a municipal corporation of a reasonable charge for the use of its streets by the erection of telegraph poles. St. Louis v. Western Union Tel. Co. (1893) 13 Sup. Ct. 485, 488, 148 U. S. 92, 37 L. Ed. 380, reversing judgment (C. C. 1889) 39 Fed. 59.

The compensation which a telegraph company is required to pay for the right to construct and maintain its line upon the right of way of a railroad company is the amount of decrease in the value of the use of such right of way for railroad purposes which will result. Postal Tel. Cable Co. of Idaho v. Oregon Short Line R. Co. (C. C. 1900) 104 Fed. 623, judgment affirmed Oregon Short Line R. Co. v. Postal Tel. Cable Co. of Idaho (1901) 111 Fed. 842, 49 C. C. A. 663.

The act does not affect the right of a landowner to recover damages to which he is entitled for the additional burden upon the fee caused by the erection of telegraph poles upon a public highway which is a post road. Kester v. Western Union Tel. Co. (C. C. 1901) 108 Fed. 926.

A telegraph company, which has ac-

cepted the conditions imposed by this and the following sections, is entitled to construct its line over the right of way of a railroad which by R. S. § 3964, ante, § 7456, is declared to be a post road of the United States and to have the damages assessed in any court of competent jurisdiction, where such line may be so constructed as not to interfere with the operation of the railroad. Postal Tel. Cable Co. of Montana v. Oregon Short Line R. Co. (C. C. 1902) 114 Fed. 787.

Under the law of New Jersey, where the title of owners of land along a highway extends to the middle thereof, the easement for the highway does not include any grantable right by the public for the maintenance of a telegraph line thereon, nor does this section confer such right on telegraph companies accepting its provisions, and it can only be acquired by agreement with the owners of the fee. Western Union Telegraph Co. v. Polhemus (C. C. 1909) 167 Fed. 231, decree reversed (1910) 178 Fed. 904, 102 C. C. A. 105, 29 L. R. A. (N. S.) 465.

Under this section, authority granted telegraph companies to use post roads gives no right to use the soil, nor any right of eminent domain, and the company may be required to make reasonable compensation for the occupation of such roads. New England Telegraph Co. of Massachusetts v. Town of Essex (D. C. 1913) 206 Fed. 926.

The act, though preventing a city from absolutely prohibiting a telegraph company accepting the act from operating under the act, does not permit the company to appropriate to its exclusive use portions of highways without being subject to the charges on behalf of the state by way of compensation for such use, as the state has a property interest in its public highways which is not divested by a grant under the act. Western Union Telegraph Co. v. Hopkins (1911) 116 P. 557.

13. Grant of exclusive right by state.—A state law, so far as it conferred exclusive rights on a local telegraph company, held to conflict with this and the following sections, and to that extent to be inoperative as against a corporation of another state entitled to the privileges of the federal statutes. Pensacola Teleg. Co. v. Western U. Teleg. Co. (1877) 96 U. S. 1, 12, 24 L. Ed. 708.

A provision of a state statute, giving an exclusive right to a telegraph company to erect and use lines of telegraph within certain counties, held to be in conflict with the act. Pensacola Tel. Co. v. Western Union Tel. Co. (C. C. 1875) Fed. Cas. No. 10,960.

A telegraph company engaged in transmitting interstate, international, and government messages, which has accepted the terms proposed by the national government for the use of post roads, cannot be excluded by a state, or a town within a state. New England Telegraph Co. of Massachusetts v. Town of Essex (D. C. 1913) 206 Fed. 926.

R. S. § 3964, ante, § 7456, provides that all railroads or parts thereof are post roads. R. S. § 5266, post, § 10075, provides that telegrams between the several departments of the government and their agents in transmission over the lines of any telegraph company to which has been given the right of way, etc., of the public domain, shall have priority over other business at rates to be annually fixed by the Postmaster General. R. S. § 5268, post, § 10077, provides that, before any telegraph company shall exercise any of the powers conferred by law, it shall file its written acceptance with the Postmaster General. Held, in view of this section, that the right of telegraph companies accepting the restrictions and obligations upon them prescribed by Congress is solely in the acts of Congress, and no state can exclude such corporations from carrying on business within the state, on public lands, military or post roads or navigable rivers. Western Union Telegraph Co. v. Superior Court of Sacramento County (1911) 115 P. 1091, 15 Cal. App. 679, transfer of cause for rehearing denied 115 P. 1100, 15 Cal. App. 679.

Civ. Code Cal. § 536, empowering telegraph corporations to construct telegraph lines on any public highway, grants to a telegraph company, having a franchise under Act July 24, 1866, a franchise in addition to the franchise given by the federal act, and the state franchise includes the right to such exclusive occupation by a telegraph company of parts of the streets as is maintained for the purpose of its system. Western Union Telegraph Co. v. Hopkins (1911) 116 P. 557.

Where a valid state statute purports to grant to a telegraph company, having a franchise under this act, to construct and operate telegraph lines on military or post roads, the right to the exclusive possession of portions of its public highways without compensation, the exclusive occupation by the company of portions of public highways for the authorized purposes is an acceptance by it of the offered franchise. Id.

14. Municipal consent to construct line.—This act does not grant to telegraph companies the right to occupy with their poles and wires the streets of a city without the latter's consent. Sunset Telephone & Telegraph Co. v. City of Pomona (C. C. 1908) 164 Fed. 561, judgment reversed (1909) 172 Fed. 829, 97 C. C. A. 251, and decree reversed City of Pomona v. Sunset Telephone & Telegraph Co. (1912) 32 Sup. Ct. 477, 224 U. S. 330, 56 L. Ed. 788.

15. Removal or destruction of lines.—The Circuit Court of Appeals has jurisdiction to review the decree of the Circuit Court, dismissing a bill to restrain the city from removing old wires

of telephone and telegraph companies from the city streets, on the ground that the company's rights under Act July 24, 1866, were infringed, and that the city had given rise to a contract protected against impairment. Pomona v. Sunset Telephone & Telegraph Co. (1912) 32 Sup. Ct. 477, 478, 224 U. S. 330, 56 L. Ed. 788, reversing decree Sunset Telephone & Telegraph Co. v. Pomona (1909) 172 Fed. 829, 97 C. C. A. 251.

Where a telegraph company which had accepted the act of 1866, re-enacted in this section, and had maintained its line along a railroad right of way for many years, had been directed by the railroad company to remove its line in accordance with the contract under which it was constructed, and had brought suit to condemn a right of way along such railroad, and the maintenance of the line during the pendency of such condemnation proceedings would not result in material damage to the railroad company, but its destruction would result in irreparable damage to the telegraph company, an injunction against such destruction, pending the suit to condemn, should be granted. Western Union Tel. Co. v. Pennsylvania R. Co. (C. C. 1903) 120 Fed. 981, decree reversed (1903) 123 Fed. 33, 59 C. C. A. 113.

A telegraph company which has built its line on a public highway, which is a post road, with the consent of the local authorities having jurisdiction, and has filed its acceptance of the provisions of the act, cannot be required to remove such line without compensation; nor can it be removed by the authorities, because since its erection it has become an inconvenience to the public, by reason of the construction of a street railway which occupies a portion of the highway, also, by consent of the authorities. Ohio Postal Telegraph Cable Co. v. Board of Com'rs of Sandusky County (C. C. 1905) 137 Fed. 947, judgment reversed Ganz v. Ohio Postal Telegraph Cable Co. (1905) 140 Fed. 692, 72 C. C. A. 186.

16. State police regulation. — The privileges conferred by the act upon telegraph and telephone companies are to be enjoyed in subordination to the due exercise of the police power of the state where they operate their lines. City of Richmond v. Southern Bell Telephone & Telegraph Co. (1898) 85 Fed. 19, 28 C. C. A. 659, decree affirmed (1899) 19 Sup. Ct. 778, 174 U. S. 761, 43 L. Ed. 1162.

The right given to telegraph companies hereby to use post roads for their lines, on compliance with certain conditions, is permissive only, and the statute was not intended to interfere with the proper control and regulation of highways by the states, which have them in charge. Ganz v. Ohio Postal Telegraph Cable Co. (1905) 140 Fed. 692, 72 C. C. A. 186.

Laws N. Y. 1884, c. 534, and Laws N. Y. 1885, c. 499, requiring all electric wires in any city having a population of 500,000 or more to be placed under the surface of the streets is valid as a police regulation as to a telegraph company which has accepted the provisions of this act, the statute not infringing the power of congress to regulate commerce or the exemption of federal agencies from state control. Western Union Tel. Co. v. City of New York (C. C. 1889) 38 Fed. 552, 3 L. R. A. 449.

Under Act March 1, 1884 (23 Stat. 3), declaring all public highways and roads to be post roads of the United States, a person engaged in erecting a telegraph line along a public road for a company which has accepted the provisions of Act July 24, 1866, is acting under authority of an act of congress, and, if arrested by the state authorities for obstructing the highway merely because of the prosecution of such work, he will be released on habeas corpus. Ex parte Conway (C. C. 1891) 48 Fed. 77.

Telegraph companies using post roads under this section are subject to state police regulations. New England Tel. Co. of Massachusetts v. Town of Essex (D. C. 1913) 206 Fed. 926.

A telegraph company is not relieved from compliance with Act Leg. 1898, commonly known as the "Bush Act," requiring foreign corporations to comply with certain conditions for the privilege of exercising their fanchises within the state, because of its acceptance of the restrictions and obligations of the federal act, granting it, in consideration thereof, permission to construct and operate its lines over the public domain and along the military and post roads of the United States. State v. Western Union Telegraph Co. (1907) 90 P. 299, 75 Kan. 609.

This act, R. S. § 3964, ante, § 7456, and Act March 1, 1884, declaring all letter carrier routes and all public roads and highways to be post routes, do not give a telegraph company the right to maintain its wires above ground contrary to the laws of the state. American Rapid Telegraph Co. v. Hess (1891) 125 N. Y. 641, 26 N. E. 919, 21 Am. St. Rep. 764, 13 L. R. A. 454, affirming (1891) 58 Hun, 610, 12 N. Y. Supp. 536.

17. Municipal police regulation. — Rights of a telegraph company accepting the act to construct lines over post roads such as the streets of Richmond, Va., are subject to reasonable municipal regulations. Western Union Tel. Co. v. Richmond (1912) 32 Sup. Ct. 449, 450, 224 U. S. 160, 56 L. Ed. 710, affirming decree (C. C. 1909) 178 Fed. 310.

Municipal power to make reasonable regulations as to occupancy of city streets by telegraph company under

the act is not exceeded by an ordinance leaving to the determination of the city engineer and other officials the manner of regulation and the safety of the equipment. Id.

Possible invalidity of penalties prescribed by municipal ordinance for violation of its provisions as to occupancy of city streets by telegraph company does not defeat other provisions, where the penalties are separable from the rest of the ordinance. Id.

Telegraph company accepting provisions of Act July 24, 1866, is protected thereby from interference by a town which for 20 years acquiesced in the operation of its line, though the company was never granted formal permit, under Pub. St. Mass. 1882, c. 109, § 3. Town of Essex v. New England Tel. Co. of Massachusetts (1915) 36 Sup. Ct. 102.

Where the conditions, regulations, and restrictions imposed by a city council upon the maintenance and operation within the city of the lines of a telephone company enjoying the privileges conferred hereby, are such as to evince a desire to oppress and control, and perhaps defeat, the company's existence, they cannot be supported as a lawful exercise of the police power. City of Richmond v. Southern Bell Telephone & Telegraph Co. (1898) 85 Fed. 19, 28 C. C. A. 659, decree affirmed (1899) 19 Sup. Ct. 778, 174 U. S. 761, 43 L. Ed. 1162.

R. S. § 3964, ante, § 7456, declares that all letter carrier routes established in any city or town shall be post roads. Held, that an interstate telegraph company which had accepted the provisions of the act of 1866 was not entitled to erect and maintain its lines over the streets of a city without complying with the reasonable regulations of the city for the erection and maintenance of such lines, and without procuring a permit therefor from the city. City of Toledo v. Western Union Tel. Co. (1901) 107 Fed. 10, 46 C. C. A. 111, 52 L. R. A. 730.

The statute was not intended to interfere with the municipal control of highways. Ganz v. Ohio Postal Tel. Co. (1905) 140 Fed. 692, 72 C. C. A. 186.

The right given telegraph companies by this section to construct and maintain their lines over all post roads of the United States, is permissive only, and subject to all state or local legislation regulating its exercise; and such permission does not affect the right of a municipality, in the exercise of its police powers, to enact and enforce ordinances intended to promote the safety and convenience of the public in the use of its streets. Michigan Tel. Co. v. City of Charlotte (C. C. 1899) 93 Fed. 11.

A telegraph company, having accepted the act and its amendments, including Act March 1, 1884, relating to post roads, held entitled to use the streets and alleys of a city, subject only to the city's right to impose reasonable conditions in the exercise of police power. Mackay Telegraph & Cable Co. v. City of Texarkana, Ark. (D. C. 1912) 199 Fed. 347.

The act has not the effect of putting such companies beyond municipal control with respect to the use of the highways. American Telegraph & Telephone Co. v. Harborcreek Tp. (1903) 23 Pa. Super. Ct. 437.

18. Effect of municipal regulations.— Property of telegraph company accepting the provisions of this act is not taken without due process of law, by municipal ordinance requiring reservation upon the poles for positions for the city's wires under certain conditions. Western Union Tel. Co. v. Richmond (1912) 32 Sup. Ct. 449, 224 U. S. 160, 56 L. Ed. 710, affirming decree (C. C. 1909) 178 Fed. 310.

Limiting, by ordinance, privilege of telegraph company as to conduits to 15 years, and providing for imposition of conditions at that time or order for removal, is not an attempt to make telegraph company contract itself out of the benefit of the act. Id.

A telephone company protected by the act of congress is not restricted by its previous acceptance of the terms of a local ordinance subsequently revoked. City of Richmond v. Southern Bell Telephone & Telegraph Co. (1898) 85 Fed. 19, 28 C. C. A. 659, decree affirmed (1899) 19 Sup. Ct. 778, 174 U. S. 761, 43 L. Ed. 1162.

The right of a telegraph company granted by this act and Civ. Code Cal. § 536, authorizing telegraph corporations to construct telegraph lines on any public road, to use the streets of a city organized under Pol. Code Cal. § 4354 et seq., exists independently of any grant by the city, where the company had established its system in the streets prior to the incorporation of the city, and the city cannot add to its right in that behalf, and anything enjoyed by the company not covered by the act of Congress must be derived from Civ. Code Cal. § 536. Western Union Telegraph Co. v. Hopkins (1911) 116 P. 557.

19. State taxation. — A telegraph company, which accepts the provisions of R. S. tit. 65 (this title), is an instrument of foreign and interstate commerce and a government agent for the transmission of messages on public business, and a state law levying a tax on every message, so far as it applies to messages sent out of the state or those pertaining to government business, is unconstitutional. Telegraph Co. v. Texas (1881) 105 U. S. 460, 466, 26 L. Ed. 1067.

The grant of the United States to a telegraph company of the right to con-

struct and operate lines along any military or post roads of the United States, declared such by law, is not such a grant of a franchise as to exempt such a company from taxes or excises imposed by a state in which its lines are thus constructed and operated. Western Union Tel. Co. v. Massachusetts (1888) 8 Sup. Ct. 961, 125 U. S. 530, 31 L. Ed. 790.

A state statute which provides for the collection of taxes from foreign corporations, and which authorizes the court in certain cases to issue injunctions restraining such corporations from prosecuting any business until delinquent taxes are paid, is void as to the issuing of an injunction against a telegraph company whose lines in that state are mostly constructed and operated as United States postal roads by virtue of this section. Id.

A statute of the state which provides that the amount of a tax or excise imposed by the state on a telegraph company shall be determined by the ascertaining what proportion the number of miles of its lines in the state bears to the whole number operated by the company, and which taxes an equal portion of the assessable value of the company's stock, is not invalid on the ground that no deduction is made for the value of the property of the company subject to local taxation in other states. Id.

The act does not exempt a telegraph company from state taxation, when no part of its line in the state levying the tax is built over or along a military or post road. Ratterman v. Western Union Tel. Co. (1888) 8 Sup. Ct. 1127, 1131, 127 U. S. 411, 32 L. Ed. 229.

Where a telegraph company is doing the business of transmitting messages between different states, and has accepted and is acting under the telegraph law, no state within which it sees fit to establish an office can impose upon it a license tax, or require it to take out a license for the transaction of such business. Leloup v. Port of Mobile (1888) 8 Sup. Ct. 1380, 1382, 127 U. S. 640, 32 L. Ed. 311.

Telegraph companies cannot be taxed by the state authorities on interstate messages. Western Union Tel. Co. v. Seay (1889) 10 Sup. Ct. 161, 132 U. S. 472, 33 L. Ed. 409.

The fact that the Western Union Telegraph Company, a corporation organized under the laws of New York, acquired from the United States the right to construct and operate lines over any portion of the public domain, along any railway or post road, and across the navigable waters of the United States, does not prevent its being liable to taxation under Pub. St. Mass. c. 13, § 40, providing that every telegraph company owning a line in the state shall be taxed on such proportion of the whole value of its capital stock as the length of its line in the state bears to the whole length of its line everywhere, after deducting the value of any property owned by it subject to local taxation in the cities and towns of the state. Attorney General of Massachusetts v. Western Union Tel. Co. (1891) 11 Sup. Ct. 889, 141 U. S. 40, 35 L. Ed. 628, affirming judgment (C. C. 1887) 33 Fed. 129.

A state privilege tax of a certain amount per mile of wires operated within the state, imposed on all telegraph companies, in lieu of all other state and municipal taxes, and amounting to less than the ordinary ad valorem tax, is substantially a mere tax on property to which a foreign corporation operating within the state is subject, notwithstanding it is engaged in interstate commerce and has accepted the rights conferred by this section. Postal Telegraph Cable Co. v. Adams (1895) 15 Sup. Ct. 268, 271, 155 U. S. 688, 39 L. Ed. 311.

A state may tax telegraph property within its borders, though it is employed in interstate or foreign commerce. Western Union Telegraph Co. v. Taggart (1896) 16 Sup. Ct. 1054, 1063, 163 U. S. 1, 41 L. Ed. 49.

A state tax on the property within the state belonging to a foreign telegraph corporation, the value of which was determined by regarding it as a part of a system operated in other states, is not invalid because such corporation is engaged in interstate commerce, has accepted the provisions of this act, and was not created by such state or given any franchise by it. Western Union Tel. Co. v. Missouri (1903) 23 Sup. Ct. 730, 733, 190 U. S. 412, 47 L. Ed. 1116.

Act Ga. Dec. 16, 1902 (Laws 1902, p. 37), provides for the imposition of a franchise tax on all corporations, domestic and foreign, which exercise any special right or privilege within the state not allowed by law to natural persons. The state board of appraisers, in making an assessment thereunder of a franchise tax against a telegraph company doing an interstate business, and which had accepted the provisions of this act, expressly found that the company maintained and operated its lines in the state under the franchise given it by such act, and stated that "our finding is therefore based upon and includes the value of the franchise conferred by the act of congress." All tangible property of the company within the state was separately assessed and taxed under a different statute. Held, that the finding of the board was conclusive as to the basis on which the tax was assessed, and, since the assessment contained an element of unknown amount which was not taxable, the tax based thereon was illegal and void. Western Union Telegraph Co. v. Wright (1910) 185 Fed.

250, 107 C. C. A. 356, reversing decree (C. C. 1909) 166 Fed. 954; Id. (1910) 185 Fed. 260, 107 C. C. A. 366.

Whatever franchise or right a telegraph company acquires from the United States by its acceptance of the provisions of this act is exempt from taxation by a state. Id.

The fact that a corporation of one state derived its franchise from the United States under this act did not relieve the corporation from the burdens of taxation in another state in which it had property. Western Union Telegraph Co. v. Trapp (1911) 186 Fed. 114, 108 C. C. A. 226.

A telegraph company which has accepted the provisions of this act thereby becomes an agent of the federal government, and is entitled to maintain a suit in the federal courts to enjoin the collection of a state tax, though the amount in controversy is not sufficient to sustain the jurisdiction of such courts on the ground of diverse citizenship. Western Union Tel. Co. v. City Council of Charleston (C. C. 1893) 56 Fed. 419, decree affirmed (1894) 14 Sup. Ct. 1094, 153 U. S. 692, 38 L. Ed. 871.

A telegraph company by its acceptance of this act derives no rights therefrom which exempts it from taxation by a state other than that in which it is incorporated in the same manner in which other foreign corporations doing business in the state are taxed, and it is immaterial that the tax imposed is designated by the state statute as a franchise tax. Western Union Telegraph Co. v. Wright (C. C. 1908) 158 Fed. 1004.

Telegraph companies using post roads under this act held subject to the taxing power of the state, where the tax or methods of collecting the same are not such as to exclude the company from the state, or stop its business, and are not arbitrary or unreasonable. New England Telegraph Co. of Massachusetts v. Town of Essex (D. C. 1913) 206 Fed. 926.

The post roads act does not confer corporate rights or privileges on telegraph companies to carry on their business, nor prevent the imposition by the state of license taxes on their right to do local business. Postal Telegraph Co. v. City of Portland (D. C. 1915) 228 Fed. 254.

A telegraph company, by filing its acceptance of the act acquired national franchises, which no state could tax. City and County of San Francisco v. Western Union Tel. Co. (1892) 96 Cal. 40, 31 Pac. 10, 10 L. R. A. 301, distinguishing Western Union Telegraph Co. v. Attorney General (1887) 125 U. S. 530, 8 Sup. Ct. 961, 31 L. Ed. 790.

A federal franchise acquired by a corporation under a federal statute is not subject to state taxation. Western Union Telegraph Co. v. Los Angeles County (Cal. 1911) 116 P. 564.

The permissive grant from the United States to telegraph companies to use the military and post roads for the poles and wires of such companies does not prevent the state from taxing the real and personal property belonging to the companies in the state, or from imposing a license tax upon the right to do a local business within the state. Ferguson v. McDonald (1913) 63 So. 915, 66 Fla. 494.

A state tax on the gross receipts of a telegraph company from messages between points within and points outside of the state, and from messages between points in other states, which pass over lines partly within the state, is not in conflict with the interstate commerce clauses of the federal constitution, nor with this act. Western Union Tel. Co. v. Commonwealth (1885) 110 Pa. St. 405, 20 Atl. 720.

20. Municipal license taxation.—In view of section 7456, ante, and of this act a franchise cannot give an unrestricted right to appropriate public property of a state or city, but like any franchise it must be exercised in subordination to the public and private rights, so that it could not be interposed to prevent the imposition by a municipal city of a reasonable charge for using its streets by erecting telegraph poles. City of St. Louis v. Western Union Tel. Co. (1893) 13 Sup. Ct. 485, 488, 148 U. S. 92, 37 L. Ed. 380.

A license tax imposed by a city upon telegraph companies "for business done exclusively within the city, * * * and not including any business done to or from points without the state" or "for the United States," is not invalid as applied to a company partly engaged in transmitting interstate messages, and which has accepted the provisions of the act of July 24, 1866, and thereby become an agency of the United States. Postal Tel. Cable Co. v. City Council of Charleston (1893) 153 U. S. 692, 14 Sup. Ct. 1094, 38 L. Ed. 871, affirming (C. C. 1893) 56 Fed. 419.

An annual municipal charge for each pole and each mile of underground wire, which has been paid for many years without complaint, is not a denial of due process of law to a telegraph company occupying city streets under authority of this act. Western Union Tel. Co. v. Richmond (1912) 32 Sup. Ct. 449, 224 U. S. 160, 56 L. Ed. 710, affirming decree (C. C. 1909) 178 Fed. 310.

A telegraph company, which has accepted terms of this act, cannot be subjected to a city license tax for transmission of messages for the federal government. Williams v. City of Talladega (1912) 33 Sup. Ct. 116, 226 U. S. 404, 57 L. Ed. 275, reversing judgment (1909) 51 So. 330, 164 Ala. 633.

Acceptance by a telegraph company of the provisions of the act does not make it an instrumentality of the gov-

ernment so as to prevent a municipality from imposing a license tax on its right to do local business. Id.

A municipal ordinance imposing a license fee on a local telegraph business within the state, not excepting messages for the federal government forwarded by a company which has acepted the act, renders the whole tax invalid. Id.

The act does not confer on telegraph companies accepting its provisions any immunity from taxation of their property in the state, whether such property be tangible or intangible. Western Union Telegraph Co. v. City of Omaha (1905) 103 N. W. 84, 73 Neb. 527.

A federal franchise acquired by a corporation under a federal statute is not subject to municipal taxation. Western Union Tel. Co. v. Los Angeles County (1887) 116 Pa. 564.

The lines of plaintiff telegraph company, a foreign corporation which thereafter accepted the provisions of the act, are operated upon the public roads of defendant county as well as upon the streets and alleys of a city therein which had passed ordinances permitting it to operate in the city. Held that, while the tangible property of the corporation may be taxed upon a valuation based upon its use and earning power, and the right to do business may be included as an element in fixing the valuation, the franchise being one granted by the federal government, could not be taxed by itself; the city ordinances being a mere police regulation of the manner of erecting the poles, etc. Western Union Telegraph Co. v. Lakin (1909) 101 P. 1094, 53 Wash. 326.

21. **Obstruction of navigation.**—A vessel which, though touching bottom, forces her way by her own screw through the soft mud, is "navigating," and if, while so doing, her screw is fouled by, and breaks, a submarine cable, the burden is on the cable company to show that the cable was so constructed and maintained as "not to obstruct navigation," as required by this section, and this burden is not sustained when there is nothing to show the actual condition of the cable at the time, and it appears that it was originally laid near the end of an existing pier used by large ocean steamers, and over a mud bank, which they must necessarily plow through at certain states of the tide. Western Union Tel. Co. v. Inman & I. Steamship Co. (1894) 59 Fed. 365, 8 C. C. A. 152, affirming (D. C. 1890) 43 Fed. 85.

A telegraph company, whose submarine cables are laid in the soft mud or silt at the bottom of a navigable river, in such a manner as to interfere with vessels, which are accustomed to plow through the mud in their movements about the docks, thereby obstructs navigation, contrary to the provisions of this section, and is answerable for damages thereby caused to vessels. The City of Richmond, 43 Fed. 85, decree affirmed (1894) 59 Fed. 365, 8 C. C. A. 152.

Any unnecessary interference with the free movements of vessels is an obstruction to navigation within this section. Id.

22. **Jurisdiction of federal courts.**—Jurisdiction of federal court of a suit by New York telegraph company against Kentucky railway company to expropriate under a state statute a telegraph right of way over the right of way of a railroad is dependent on diverse citizenship, and pending judgment of court of appeals final, though there is an unexplained averment by a telegraph company that it had accepted provisions of this act. Louisville & N. R. Co. v. Western Union Tel. Co. (1915) 35 S. Ct. 598, 237 U. S. 300, 59 L. Ed. 965, dismissing appeal (1913) 203 Fed. 1022, 121 C. C. A. 664.

Cited without definite application, Postal Telegraph Cable Co. v. City Council of Charleston (1894) 14 Sup. Ct. 1094, 1095, 1097, 153 U. S. 692, 38 L. Ed. 871; U. S. v. Western Union Telegraph Co. (1895) 16 Sup. Ct. 210, 213, 160 U. S. 53, 40 L. Ed. 337; Fishback v. Same (1896) 16 Sup. Ct. 506, 507, 161 U. S. 96, 40 L. Ed. 630; Western Union Tel. Co. v. James (1896) 16 Sup. Ct. 934, 936, 162 U. S. 650, 40 L. Ed. 1105; Same v. Call Pub. Co. (1901) 21 Sup. Ct. 561, 181 U. S. 92, 45 L. Ed. 765; Ludwig v. Western Union Tel. Co. (1910) 30 Sup. Ct. 280, 216 U. S. 146, 54 L. Ed. 423; Western Union Telegraph Co. v. Pennsylvania Co. (1904) 129 Fed. 849, 64 C. C. A. 285, 68 L. R. A. 968; Wichita v. Old Colony Trust Co. (1904) 132 Fed. 641, 66 C. C. A. 19; Rider v. U. S. (1906) 149 Fed. 164, 165, 79 C. C. A. 112; Louisville & N. R. Co. v. Western Union Telegraph Co. (1913) 207 Fed. 1, 5, 11, 124 C. C. A. 573; U. S. v. Union Pac. Ry. Co. (C. C. 1891) 45 Fed. 221, 222; Mercantile Trust Co. v. Atlantic & P. R. Co. (C. C. 1894) 63 Fed. 910, 911; Postal Telegraph Cable Co. v. Southern Ry. Co. (C. C. 1898) 89 Fed. 190, 191; Sunset Telephone & Telegraph Co. v. City of Eureka (C. C. 1902) 172 Fed. 755; New Castle v. Postal Telegraph-Cable Co. (C. C. 1907) 152 Fed. 572; Georgia R. & Banking Co. v. Atlantic Postal Telegraph Co. (C. C. 1907) 152 Fed. 991; Western Union Tel. Co. v. Pennsylvania (C. C. 1903) 125 Fed. 67 (reversed [1904] 129 Fed. 849, 64 C. C. A. 285, 68 L. R. A. 968); Western Union Tel. Co. v. Kansas Pac. R. Co. (D. C. 1880) 4 Fed. 284, 289.

§ 10073. (R. S. § 5264.) Use of materials from public lands.

Any telegraph company organized under the laws of any State shall have the right to take and use from the public lands through which its lines of telegraph may pass, the necessary stone, timber, and other materials for its posts, piers, stations, and other needful uses in the construction, maintenance, and operation of its lines of telegraph, and may pre-empt and use such portion of the unoccupied public lands subject to pre-emption through which their lines of telegraph may be located as may be necessary for their stations, not exceeding forty acres for each station; but such stations shall not be within fifteen miles of each other.

Act July 24, 1866, c. 230, § 1, 14 Stat. 221.

Notes of Decisions

Appropriation of lands under water.—The provision of Const. art. 1, § 8, subd. 3, that congress shall have power to regulate foreign and interstate commerce, although such power extends to the regulation of navigation, does not affect the rights of the people of the state, as the ultimate owners of the soil under the waters of a navigable river below high-water mark, as far up the river as the tide ebbs and flows; and R. S. § 3964, ante, § 7456, making railroads post roads, and this section, do not operate as an appropriation, for the promotion of interstate or foreign commerce, of such lands under water, over which a railroad and telegraph are constructed. Rumsey v. New York & N. E. R. Co. (1892) 63 Hun, 200, 17 N. Y. Supp. 672.

Telephone companies.—See notes under § 10072, ante.

Cited without definite application, Western Union Tel. Co. v. Massachusetts (1888) 8 Sup. Ct. 961, 962, 125 U. S. 530, 31 L. Ed. 790; Ratterman v. Western Union Tel. Co. (1888) 8 Sup. Ct. 1127, 127 U. S. 411, 32 L. Ed. 229; Western Union Tel. Co. v. Seay (1889) 10 Sup. Ct. 161, 132 U. S. 472, 33 L. Ed. 409; Attorney General of Massachusetts v. Western Union Telegraph Co. (1891) 11 Sup. Ct. 889, 891, 141 U. S. 40, 35 L. Ed. 628; U. S. v. Same (1895) 16 Sup. Ct. 210, 213, 160 U. S. 53, 40 L. Ed. 337; Fishback v. Same (1896) 16 Sup. Ct. 506, 507, 161 U. S. 96, 40 L. Ed. 630; Western Union Tel. Co. v. James (1896) 16 Sup. Ct. 934, 936, 162 U. S. 650, 40 L. Ed. 1105; Same v. Missouri (1903) 23 Sup. Ct. 730, 731, 190 U. S. 412, 47 L. Ed. 1116; Ludwig v. Western Union Tel. Co. (1910) 30 Sup. Ct. 280, 282, 216 U. S. 146, 54 L. Ed. 423; Union Pac. Ry. Co. v. U. S. (1894) 59 Fed. 813, 824, 8 C. C. A. 282 (reversed [1895] 16 Sup. Ct. 190, 160 U. S. 1, 40 L. Ed. 319); Rider v. U. S. (1906) 149 Fed. 164, 165, 79 C. C. A. 112; Louisville & N. R. Co. v. Western Union Telegraph Co. (1913) 207 Fed. 1, 5, 11, 124 C. C. A. 573; U. S. v. Union Pac. R. Co. (C. C. 1891) 45 Fed. 221, 222; Western Union Telegraph Co. v. Palhemus (C. C. 1909) 167 Fed. 231 (reversed [1910] 178 Fed. 904, 102 C. C. A. 105, 29 L. R. A. [N. S.] 465); New England Telegraph Co. of Massachusetts v. Essex (D. C. 1913) 206 Fed. 926.

§ 10074. (R. S. § 5265.) These rights not transferable.

The rights and privileges granted under the provisions of the act of July twenty-four, eighteen hundred and sixty-six, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes," or under this Title, shall not be transferred by any company acting thereunder to any other corporation, association, or person.

Act July 24, 1866, c. 230, § 3, 14 Stat. 221.

Act July 24, 1866, c. 230, mentioned in this section, was the act cited above, and its provisions constituted the larger part of this Title of the Revised Statutes.

Notes of Decisions

Telephone companies.—See notes under § 10072, ante.

Cited without definite application, Western Union Tel. Co. v. Massachusetts (1888) 8 Sup. Ct. 961, 962, 125 U. S. 530, 31 L. Ed. 790; Ratterman v. Western Union Tel. Co. (1888) 8 Sup. Ct. 1127, 127 U. S. 411, 32 L. Ed. 229; Western Union Tel. Co. v. Seay (1889) 10 Sup. Ct. 161, 132 U. S. 472, 33 L. Ed. 409; Attorney General of Massachusetts v. Western Union Telegraph Co. (1891) 11 Sup. Ct. 889, 891, 141 U. S. 40, 35 L. Ed. 628; U. S. v. Same (1895) 16 Sup. Ct. 210, 213, 160 U. S. 53, 40 L. Ed. 337; Fishback v. Same (1896) 16 Sup. Ct. 506, 507, 161 U. S. 96, 40 L. Ed. 630;

Western Union Tel. Co. v. James (1896) 16 Sup. Ct. 934, 936, 162 U. S. 650, 40 L. Ed. 1105; Same v. Missouri (1903) 23 Sup. Ct. 730, 731, 190 U. S. 412, 47 L. Ed. 1116; Ludwig v. Western Union Tel. Co. (1910) 30 Sup. Ct. 280, 282, 216 U. S. 146, 54 L. Ed. 423; Union Pac. Ry. Co. v. U. S. (1894) 59 Fed. 813, 824, 8 C. C. A. 282 (reversed [1895] 16 Sup. Ct. 190, 160 U. S. 1, 40 L. Ed. 319); Rider v. U. S. (1906) 149 Fed. 164, 166, 79 C. C. A. 112; Louisville & N. R. Co. v. Western Union Telegraph Co. (1913) 207 Fed. 1, 5, 11, 124 C. C. A. 573; U. S. v. Union Pac. R. Co. (C. C. 1891) 45 Fed. 221, 222; Western Union Telegraph Co. v. Polhemus (C. C. 1909) 167 Fed. 231, reversed (1910) 178 Fed. 904, 102 C. C. A. 105, 29 L. R. A. (N. S.) 465.

§ 10075. (R. S. § 5266.) Government to have priority in transmission of messages.

Telegrams between the several Departments of the Government and their officers and agents, in their transmission over the lines of any telegraph company to which has been given the right of way, timber, or station lands from the public domain shall have priority over all other business, at such rates as the Postmaster-General shall annually fix. And no part of any appropriation for the several Departments of the Government shall be paid to any company which neglects or refuses to transmit such telegrams in accordance with the provisions of this section.

Act July 24, 1866, c. 230, § 2, 14 Stat. 221. Act June 8, 1872, c. 335, § 17, 17 Stat. 287. Act June 10, 1872, c. 415, § 1, 17 Stat. 366, 367.

The power of the Postmaster-General to fix rates as provided by this section was not affected or impaired in any way by the provisions of Act Aug. 7, 1888, c. 772, § 7, post, § 10086.

Notes of Decisions

Telephone companies.—See notes under § 10072, ante.

Power of state to prohibit business.—Under this section, sections 10072 and 10073, ante, and § 10077, post, the right of telegraph companies accepting the restrictions and obligations upon them prescribed by Congress is solely in the acts of Congress, and no state can exclude such corporations from carrying on business within the state, on public lands, military or post roads or navigable rivers. Western Union Telegraph Co. v. Superior Court of Sacramento County (1911) 115 P. 1091, 15 Cal. App. 679, transfer of cause for rehearing denied (1911) 115 P. 1100, 15 Cal. App. 679.

Rates for transmission.—Act 1862 (12 Stat. 489), granting land and bonds to defendant railway company, provided (section 6) that the company should construct and keep in repair a telegraph line, "and that the government should at all times have the preference in the use of the same, * * * at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service." Afterwards defendants entered into an agreement for the joint operation of their telegraph lines. The telegraph operators along the line acted as agents for both the railway and telegraph companies. Held, in view of this section, that where a government message, written on blanks of the telegraph company, was delivered to an operator for transmission, it was to be paid for at the rates fixed by the postmaster general for the entire distance, though it might have been transmitted part of the way by the railroad telegraph at commercial rates, if the sender had required it. U. S. v. Union Pac. Ry. Co. (C. C. 1891) 45 Fed. 221.

Telegraph messages between district attorneys and marshals, on official business, are entitled to be transmitted over telegraphic lines operating under the provisions of this act at the rates fixed by the Postmaster General pursuant to the second section of that act. (1873) 14 Op. Atty. Gen. 278.

The acceptance by the Western Union Telegraph Company of the rates established by the Postmaster General was not a waiver of the right of the company to change its local tariff rates over the telegraph line constructed along the Kansas Pacific Railroad between Lawrence and Denver. (1876) 15 Op. Atty. Gen. 579.

The Postmaster General has authority to fix the rates at which telegraphic communications between the several departments of the government and their officers and agents shall be carried over the line controlled by the Atlantic & Pacific Telegraph Company. (1879) 16 Op. Atty. Gen. 353.

Communications "between" departments.—The word "between," as used in this section, is to be taken distributively, as applying to official communications between one department of the government and another, between a department and its officers and agents, or the officers and agents

of another department, between officers and agents of the same department, and, finally, between officers and agents of one department and those of another. (1873) 14 Op. Atty. Gen. 278.

The only limitation applicable is that the telegraphing must be in cases where the rates are payable out of public moneys, or are to be accounted for to the government by the officer making the expenditure. Id.

Selection of route.—The option of selecting the route is with the government; and where no option is expressed thereby, the company is bound to send the dispatch over the cheaper route. (1876) 15 Op. Atty. Gen. 579.

In transmitting government dispatches from Leavenworth, Kan., to points in Colorado, the Western Union Telegraph Company has not the option to send them either by way of Denver (over the telegraph line constructed along the Kansas Pacific Railroad) or by way of Pueblo (over the telegraph line constructed along the Atchison, Topeka & Santa Fé Railroad). Id.

Messages received over connecting lines.—Telegraph companies which have accepted the rights and privileges conferred by the act must give priority to messages from officers and agents of the United States to the several departments, and to transmit them at the rates fixed by the Postmaster General, whether the messages are received from such officers and agents directly, or through other connecting telegraph lines. (1872) 14 Op. Atty. Gen. 123.

Cited without definite application, Western Union Tel. Co. v. Massachusetts (1888) 8 Sup. Ct. 961, 962, 125 U. S. 530, 31 L. Ed. 790; Ratterman v. Western Union Tel. Co. (1888) 8 Sup. Ct. 1127, 127 U. S. 411, 32 L. Ed. 229; Western Union Tel. Co. v. Seay (1889) 10 Sup. Ct. 161, 132 U. S. 472, 33 L. Ed. 409; Attorney General of Massachusetts v. Western Union Telegraph Co. (1891) 11 Sup. Ct. 889, 891, 141 U. S. 40, 35 L. Ed. 628; U. S. v. Same (1895) 16 Sup. Ct. 210, 213, 160 U. S. 53, 40 L. Ed. 337; Fishback v. Same (1896) 16 Sup. Ct. 506, 507, 161 U. S. 96, 40 L. Ed. 630; Western Union Tel. Co. v. James (1896) 16 Sup. Ct. 934, 936, 162 U. S. 650, 40 L. Ed. 1105; Same v. Missouri (1903) 23 Sup. Ct. 730, 731, 190 U. S. 412, 47 L. Ed. 1116; Ludwig v. Western Union Tel. Co. (1910) 30 Sup. Ct. 280, 282, 216 U. S. 146, 54 L. Ed. 423; Union Pac. Ry. Co. v. U. S. (1894) 59 Fed. 813, 824, 8 C. C. A. 282 (reversed [1895] 16 Sup. Ct. 190, 160 U. S. 1, 40 L. Ed. 319); Louisville & N. R. Co. v. Western Union Telegraph Co. (1913) 207 Fed. 1, 5, 11, 124 C. C. A. 573; Mercantile Trust Co. v. Atlantic & P. R. Co. (C. C. 1894) 63 Fed. 513, 519; Western Union Telegraph Co. v. Polhemus (C. C. 1909) 167 Fed. 231 (reversed [1910] 178 Fed. 904, 102 C. C. A. 105, 29 L. R. A. [N. S.] 465).

§ 10076. (R. S. § 5267.) Government entitled to purchase lines. The United States may, for postal, military, or other purposes, purchase all the telegraph lines, property, and effects of any or all companies acting under the provisions of the act of July twenty-fourth, eighteen hundred and sixty-six, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes," or under this Title, at an appraised value, to be ascertained by five competent, disinterested persons, two of whom shall be selected by the Postmaster-General of the United States, two by the company interested, and one by the four so previously selected.

Act July 24, 1866, c. 230, § 3, 14 Stat. 221.

The power of the United States to purchase telegraph lines as provided by this section was not affected or impaired in any way by the provisions of Act Aug. 7, 1888, c. 772, § 7, post, § 10086.

See note to R. S. § 5265, ante, § 10074.

Notes of Decisions

Telephone companies.—See notes under § 10072, ante.

Cited without definite application, Western Union Tel. Co. v. Massachusetts (1888) 8 Sup. Ct. 961, 962, 125 U. S. 530, 31 L. Ed. 790; Ratterman v. Western Union Tel. Co. (1888) 8 Sup. Ct. 1127, 127 U. S. 411, 32 L. Ed. 229; Western Union Tel. Co. v. Seay (1889) 10 Sup. Ct. 161, 132 U. S. 472, 33 L. Ed. 409; Attorney General of Massachusetts v. Western Union Telegraph Co. (1891) 11 Sup. Ct. 889, 891, 141 U. S. 40, 35 L. Ed. 628; U. S. v. Same (1895) 16 Sup. Ct. 210, 213, 160 U. S. 53, 40 L. Ed. 337; Fishback v. Same (1896) 16 Sup. Ct. 506, 507, 161 U. S. 96, 40 L. Ed. 630; Western Union Tel. Co. v. James (1896) 16 Sup. Ct. 934, 936, 162 U. S. 650, 40 L. Ed. 1105; Same v. Missouri (1903) 23 Sup. Ct. 730,

731, 190 U. S. 412, 47 L. Ed. 1116; Ludwig v. Western Union Tel. Co. (1910) 30 Sup. Ct. 280, 282, 216 U. S. 146, 54 L. Ed. 423; Union Pac. Ry. Co. v. U. S. (1894) 59 Fed. 813, 824, 8 C. C. A. 282 (reversed [1895] 16 Sup. Ct. 190, 160 U. S. 1, 40 L. Ed. 319); Rider v. U. S. (1906) 149 Fed. 164, 167, 79 C. C. A. 112; Louisville & N. R. Co. v. Western Union Telegraph Co. (1913) 207 Fed. 1, 5, 11, 124 C. C. A. 573; Attorney General v. Same (C. C. 1887) 33 Fed. 129 (modified [1888] 8 Sup. Ct. 961, 125 U. S. 530, 31 L. Ed. 790); U. S. v. Union Pac. R. Co. (C. C. 1891) 45 Fed. 221, 222; Mercantile Trust Co. v. Atlantic & P. R. Co. (C. C. 1894) 63 Fed. 513, 519; Western Union Telegraph Co. v. Polhemus (C. C. 1909) 167 Fed. 231, reversed (1910) 178 Fed. 904, 102 C. C. A. 105, 29 L. R. A. (N. S.) 465.

§ 10077. (R. S. § 5268.) Acceptance of obligation to be filed.

Before any telegraph company shall exercise any of the powers or privileges conferred by law such company shall file their written acceptance with the Postmaster-General of the restrictions and obligations required by law.

Act July 24, 1866, c. 230, § 4, 14 Stat. 222.

Any telegraph company which accepted the provisions of this Title of the Revised Statutes was entitled to connections with other telegraph lines owned and operated by subsidized railroad and telegraph companies, by Act Aug. 7, 1888, c. 772, § 2, post, § 10081.

Notes of Decisions

Telephone companies.—See notes under § 10072, ante.

Right of state to prohibit business.—See notes under § 10072, ante.

Occupation of railroad right of way.—See notes under § 10072, ante.

Necessity, form, and sufficiency of acceptance.—An allegation that a telegraph company has accepted in writing the provisions of the act is not sufficient to support a claim of the company to the benefit conferred by this section. Ratterman v. Western Union Tel. Co. (1888) 8 Sup. Ct. 1127, 1132, 127 U. S. 411, 32 L. Ed. 229.

A company chartered by the state of Oregon subsequently to this act constructed a telegraph line over public domain of the United States, within that state, but never filed a "written acceptance," as required by that act, and declines to comply with the provisions of that act as to rates for government telegrams. Advised, that the company, in respect of the erection of its telegraph on the public lands, is a trespasser, and that the United States (without special legislation) are entitled to all ordinary remedies for trespass given at law, as well as to all extraordinary remedies given in equity. (1876) 15 Op. Atty. Gen. 554.

Cited without definite application, Western Union Tel. Co. v. Massachusetts (1888) 8 Sup. Ct. 961, 962, 125 U. S. 530, 31 L. Ed. 790; Ratterman v. Western Union Tel. Co. (1888) 8 Sup. Ct. 1127, 127 U. S. 411, 32 L. Ed. 229; Western Union Tel. Co. v. Seay (1889) 10 Sup. Ct. 161, 132 U. S. 472, 33 L. Ed. 409; Attorney General of Massachusetts v. Western Union Telegraph Co. (1891) 11 Sup. Ct. 889, 891, 141 U. S. 40, 35 L. Ed. 628; Postal Telegraph Cable Co. v. City Council of Charleston (1894) 14 Sup. Ct. 1094, 153 U. S. 692, 38 L. Ed. 871; U. S. v. Western Union Telegraph Co. (1895) 16 Sup. Ct. 210, 213, 160 U. S. 53, 40 L. Ed. 337; Fishback v. Same (1896) 16 Sup. Ct. 506, 507, 161 U. S. 96, 40 L. Ed. 630; Western Union Tel. Co. v. James (1896) 16 Sup. Ct. 934, 936, 162 U. S. 650, 40 L. Ed. 1105; Same v. Missouri (1903) 23 Sup. Ct. 730, 731, 190 U. S. 412, 47 L. Ed. 1116; Ludwig v. Western Union Tel. Co. (1910) 30 Sup. Ct. 280, 282, 216 U. S. 146, 54 L. Ed. 423; Union Pac. Ry. Co. v. U. S. (1894) 59 Fed. 813, 824, 8 C. C. A. 282 (reversed [1895] 16 Sup. Ct. 190, 160 U. S. 1, 40 L. Ed. 319); Ganz v. Ohio Postal Telegraph Cable Co. (1905) 140 Fed. 692, 72 C. C. A. 186; Rider v. U. S. (1906) 149 Fed. 164, 167, 79 C. C. A. 112; Louisville & N. R. Co. v. Western Union Telegraph Co. (1913) 207 Fed. 1, 5, 11, 124 C. C. A. 573; Attorney General v. Same (C. C. 1887) 33 Fed. 129 (modified [1888] 8 Sup. Ct. 961, 125 U. S. 530, 31 L. Ed. 790); U. S. v. Union Pac. R. Co. (C. C. 1891) 45 Fed. 221, 222; Western Union Telegraph Co. v. Polhemus (C. C. 1909) 167 Fed. 231 (reversed [1910] 178 Fed. 904, 102 C. C. A. 105, 29 L. R. A. [N. S.] 465); New England Telegraph Co. of Massachusetts v. Essex (D. C. 1913) 206 Fed. 926; Ex parte Thaw (D. C. 1913) 209 Fed. 56, 57.

§ 10078. (Act June 23, 1879, c. 35, § 1.) Transmission of telegrams by railroads having telegraph lines.

Telegrams are authorized to be transmitted by railroad companies which may have telegraph lines, and which shall file their

written acceptance of the restrictions and obligations imposed on telegraph companies by title sixty-five of the Revised Statutes, for the government and for the general public, at rates to be fixed by the government, according to the provisions of title sixty-five of the Revised Statutes.

Act June 23, 1879, c. 35, § 1, 21 Stat. 31.
This was a provision of the Army appropriation act for the fiscal year 1880.

§ 10079. (R. S. § 5269, as amended, Act Feb. 27, 1877, c. 69, § 1.) Penalty for refusal to transmit dispatches.

Whenever any telegraph company, after having filed its written acceptance with the Postmaster-General of the restrictions and obligations required by the act approved July twenty-fourth, eighteen hundred and sixty-six, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes," or by this Title, shall, by its agents or employés, refuse or neglect to transmit any such telegraphic communications as are provided for by the aforesaid act, or by this Title, or by the provisions of section two hundred and twenty-one, Title "The Department of War," authorizing the Secretary of War to provide for taking meteorological observations at the military stations and other points of the interior of the continent, and for giving notice on the northern lakes and sea-board of the approach and force of storms, such telegraph company shall be liable to a penalty of not less than one hundred dollars and not more than one thousand dollars for each such refusal or neglect, to be recovered by an action or actions at law in any district court of the United States.

Act June 10, 1872, c. 415, § 1, 17 Stat. 367. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 252.
This section, as originally enacted, did not contain the words at the end thereof as set forth here, "to be recovered by an action or actions at law in any district court of the United States." Those words were added by amendment by Act Feb. 27, 1877, c. 69, § 1, last cited above.

Notes of Decisions

Occupation of railroad right of way. —See notes under § 10072, ante.

Cited without definite application, Western Union Tel. Co. v. Massachusetts (1888) 8 Sup. Ct. 961, 962, 125 U. S. 530, 31 L. Ed. 790; Ratterman v. Western Union Tel. Co. (1888) 8 Sup. Ct. 1127, 127 U. S. 411, 32 L. Ed. 229; Attorney General of Massachusetts v. Same (1891) 11 Sup. Ct. 889, 891, 141 U. S. 40, 35 L. Ed. 628; Fishback v. Same (1896) 16 Sup. Ct. 506, 507, 161 U. S. 96, 40 L. Ed. 630; Western Union Tel. Co. v. James (1896) 16 Sup. Ct. 934, 936, 162 U. S. 650, 40 L. Ed. 1105; Ludwig v. Western Union Tel. Co. (1910) 30 Sup. Ct. 280, 282, 216 U. S. 146, 54 L. Ed. 423; Rider v. U. S. (1906) 149 Fed. 164, 167, 79 C. C. A. 112; Louisville & N. R. Co. v. Western Union Telegraph Co. (1913) 207 Fed. 1, 5, 11, 124 C. C. A. 573; Attorney General v. Same (C. C. 1887) 33 Fed. 129 (modified [1888] 8 Sup. Ct. 961, 125 U. S. 530, 31 L. Ed. 790).

§ 10080. (Act Aug. 7, 1888, c. 772, § 1.) Subsidized railroad and telegraph companies required to construct and operate telegraph lines.

All railroad and telegraph companies to which the United States has granted any subsidy in lands or bonds or loan of credit for the construction of either railroad or telegraph lines, which, by the acts incorporating them, or by any act amendatory or supplementary thereto, are required to construct, maintain, or operate telegraph lines, and all companies engaged in operating said railroad or telegraph lines shall forthwith and henceforward, by and through their own respective corporate officers and employees, maintain, and operate, for railroad, Governmental, commercial, and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises

conferred upon them and obligations assumed by them under the acts making the grants as aforesaid. (25 Stat. 382.)

This section and the six sections next following were an act entitled as supplementary to Act July 1, 1862, c. 120, 12 Stat. 489, to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, etc., and also to Act July 2, 1864, c. 216, 13 Stat. 356, amendatory of said first-named act.

Notes of Decisions

Power to require performance.—Congress held to have full power as against the Union Pacific Railway Company to pass this act. U. S. v. Union Pac. R. Co. (1895) 16 Sup. Ct. 190, 203, 160 U. S. 1, 40 L. Ed. 319.

The fact that the enforcement of the act may result in injury to the pecuniary interest of the government in the railway company cannot affect the action of the judiciary department. Id.

Although the main purpose of the act is to compel railroad companies that have received government aid to exercise their telegraphic franchises directly by their own officers and employés, yet, in enforcing this requirement as against the Union Pacific Company, the government may properly proceed by a bill in equity instead of by mandamus, since the Western Union Telegraph Company, to which the Union Pacific has transferred its telegraphic franchises, has acquired property along the right of way, and its interests therein can only be properly defined and protected by the flexible procedure of a court of equity. U. S. v. Western Union Tel. Co. (C. C. 1892) 50 Fed. 28, decree reversed Union Pac. Ry. Co. v. U. S. (1894) 59 Fed. 813, 8 C. C. A. 282.

In a suit by a telegraph company to obtain specific performance of right of way contracts with certain railroads defendant was not entitled to object that the contracts were unenforceable because they contained certain provisions in violation of the act. Western Union Telegraph Co. v. Pittsburg, C., C. & St. L. Ry. Co. (C. C. 1905) 137 Fed. 435.

Railroad aid in construction and maintenance of telegraph line.—In view of this and the following section, a contract between the Northern Pacific Railroad Company and the Western Union Telegraph Company by which the telegraph company agreed to construct telegraph lines along the railroad's right of way, and grant to the railroad company the exclusive use of one of two wires erected, and the right to stretch additional wires, for which the railroad company agreed to pay one-third the cost of constructing the line, and to transport the property and employés of the telegraph company in constructing and maintaining the line free of charge, was not in violation of such sections. U. S. v. Northern Pac. R. Co. (C. C. 1903) 120 Fed. 546, decree reversed (1905) 134 Fed. 715, 67 C. C. A. 269.

Rate of compensation.—Where the government has the power to send telegraph messages either by a bond-aided railway's telegraph system or by an independent company system located over the bond-aided railway company's route, and delivers them to the independent company's system without requesting that they be forwarded over the bond-aided railway route, payment must be made at the rate prescribed by the Postmaster General. (1893) 20 Op. Atty. Gen. 581.

Cited without definite application, Western Union Tel. Co. v. Pennsylvania R. Co. (1904) 25 Sup. Ct. 133, 139, 195 U. S. 540, 49 L. Ed. 312, 1 Ann. Cas. 517; Northern Pac. Ry. Co. v. Pacific Coast Lumber Mfrs.' Ass'n (1908) 165 Fed. 1, 91 C. C. A. 39; U. S. v. Southern Pacific R. Co. (C. C. 1892) 49 Fed. 297, 298, affirmed (C. C. 1892) 49 Fed. 304.

§ 10081. (Act Aug. 7, 1888, c. 772, § 2.) Equal facilities to connecting lines; discrimination in rates prohibited.

Whenever any telegraph company which shall have accepted the provisions of title sixty-five of the Revised Statutes shall extend its line to any station or office of a telegraph line belonging to any one of said railroad or telegraph companies, referred to in the first section of this act, said telegraph company so extending its line shall have the right and said railroad or telegraph company shall allow the line of said telegraph company so extending its line to connect with the telegraph line of said railroad or telegraph company to which it is extended at the place where their lines may meet, for the prompt and convenient interchange of telegraph business between said companies; and such railroad and telegraph companies, referred to in the first section of this act, shall so operate their respective telegraph lines as to afford equal facilities to all, without discrimination in favor of or against any person, company, or cor-

poration whatever, and shall receive, deliver, and exchange business with connecting telegraph lines on equal terms, and affording equal facilities, and without discrimination for or against any one of such connecting lines; and such exchange of business shall be on terms just and equitable. (25 Stat. 383.)

Notes of Decisions

Designation of route.—The fact that the railroad company, in receiving telegraph messages for points beyond its lines, required the sender to designate the connecting telegraph company over whose line the message should be sent, and made a small additional charge for the words necessary to designate such line, which charge was in accordance with the uniform practice in like cases among telegraph companies, was not an arbitrary impost or discrimination prohibited by this section. U. S. v. Northern Pac. R. Co. (C. C. 1903) 120 Fed. 546, decree reversed (1905) 134 Fed. 715, 67 C. C. A. 269.

§ 10082. (Act Aug. 7, 1888, c. 772, § 3.) Powers of Interstate Commerce Commission.

If any such railroad or telegraph company referred to in the first section of this act, or company operating such railroad or telegraph line shall refuse or fail, in whole or in part, to maintain, and operate a telegraph line as provided in this act and acts to which this is supplementary, for the use of the Government or the public, for commercial and other purposes, without discrimination, or shall refuse or fail to make or continue such arrangements for the interchange of business with any connecting telegraph company, then any person, company, corporation, or connecting telegraph company may apply for relief to the Interstate Commerce Commission, whose duty it shall thereupon be, under such rules and regulations as said Commission may prescribe, to ascertain the facts, and determine and order what arrangement is proper to be made in the particular case, and the railroad or telegraph company concerned shall abide by and perform such order; and it shall be the duty of the Interstate Commerce Commission, when such determination and order are made, to notify the parties concerned, and, if necessary, enforce the same by writ of mandamus in the courts of the United States, in the name of the United States, at the relation of either of said Interstate Commerce Commissioners: Provided, That the said Commissioners may institute any inquiry, upon their own motion, in the same manner and to the same effect as though complaint had been made. (25 Stat. 383.)

Provisions relating to the powers and duties of the Interstate Commerce Commission are contained in Title LVI A, "Regulation of Interstate and Foreign Commerce," c. A, "Regulation of Transportation."

Notes of Decisions

Remedy before commission exclusive.—The obligation of the Pacific Railroad Companies to afford equal facilities to all connecting lines of telegraph is not enforceable by bill in equity, the remedy before interstate commerce commission being exclusive. Union Pac. Ry. Co. v. U. S. (1894) 59 Fed. 813, 8 C. C. A. 282, reversing decree U. S. v. Western Union Tel. Co. (C. C. 1892) 50 Fed. 28, decree reversed U. S. v. Union Pac. Ry. Co. (1895) 16 Sup. Ct. 190, 160 U. S. 1, 40 L. Ed. 319.

§ 10083. (Act Aug. 7, 1888, c. 772, § 4.) Interference with liens, etc., of United States; Attorney-General to prevent.

In order to secure and preserve to the United States the full value and benefit of its liens upon all the telegraph lines required to be constructed by and lawfully belonging to said railroad and telegraph companies referred to in the first section of this act, and to have the same possessed, used, and operated in conformity with the provisions of this act and of the several acts to which this act is supplementary, it is hereby made the duty of the Attorney-General of the United States, by proper proceedings, to

prevent any unlawful interference with the rights and equities of the United States under this act, and under the acts hereinbefore mentioned, and under all acts of Congress relating to such railroads and telegraph lines, and to have legally ascertained and finally adjudicated all alleged rights of all persons and corporations whatever claiming in any manner any control or interest of any kind in any telegraph lines or property, or exclusive rights of way upon the lands of said railroad companies, or any of them, and to have all contracts and provisions of contracts set aside and annulled which have been unlawfully and beyond their powers entered into by said railroad or telegraph companies, or any of them, with any other person, company, or corporation. (25 Stat. 383.)

Notes of Decisions

Relief in equity.—Although the main purpose of Act Aug. 7, 1888, is to compel railroad companies that have received government aid to exercise their telegraphic franchises directly by their own officers and employés, yet, in enforcing this requirement as against the Union Pacific Company, the government may properly proceed by a bill in equity instead of by mandamus, since the Western Union Telegraph Company, to which the Union Pacific has transferred its telegraphic franchises, has acquired property along the right of way, and its interests therein can only be properly defined and protected by the flexible procedure of a court of equity. U. S. v. Western Union Tel. Co. (C. C. 1892) 50 Fed. 28, decree reversed Union Pac. Ry. Co. v. U. S. (1894) 59 Fed. 813, 8 C. C. A. 282.

Joinder of legal and equitable matters.—The section did not authorize the joinder of legal and equitable matters in one proceeding. Union Pac. Ry. Co. v. U. S. (1894) 59 Fed. 813, 8 C. C. A. 282, reversing U. S. v. Western Union Tel. Co. (C. C. 1892) 50 Fed. 28.

§ 10084. (Act Aug. 7, 1888, c. 772, § 5.) Violation of act; punishment; action for damages.

Any officer or agent of said railroad or telegraph companies, or of any company operating the railroads and telegraph lines of said companies, who shall refuse or fail to operate the telegraph lines of said railroad or telegraph companies under his control, or which he is engaged in operating, in the manner directed in this act and by the acts to which it is supplementary, or who shall refuse or fail, in such operation and use, to afford and secure to the Government and the public equal facilities, or to secure to each of said connecting telegraph lines equal advantages and facilities in the interchange of business, as herein provided for, without any discrimination whatever for or adverse to the telegraph line of any or either of said connecting companies, or shall refuse to abide by, or perform and carry out within a reasonable time the order or orders of the Interstate Commerce Commission, shall in every such case of refusal or failure be guilty of a misdemeanor, and, on conviction thereof, shall in every such case be fined in a sum of not exceeding one thousand dollars, and may be imprisoned not less than six months; and in every such case of refusal or failure the party aggrieved may not only cause the officer or agent guilty thereof to be prosecuted under the provisions of this section, but may also bring an action for the damages sustained thereby against the company whose officer or agent may be guilty thereof, in the [circuit or] district court of the United States in any State or Territory in which any portion of the road or telegraph line of said company may be situated; and in case of suit process may be served upon any agent of the company found in such State or Territory, and such service shall be held by the court good and sufficient. (25 Stat. 384.)

See note to section 3 of this act, ante, § 10082.

The words "circuit or" inclosed in brackets in this section, were superseded by the abolition of the circuit courts and the transfer of their jurisdiction to the district courts, by Jud. Code, §§ 289–291, ante, §§ 1266–1268.

§ 10085. (Act Aug. 7, 1888, c. 772, § 6.) Contracts to be filed with Interstate Commerce Commission; reports; failure to make, penalty.

It shall be the duty of each and every one of the aforesaid railroad and telegraph companies, within sixty days from and after the passage of this act, to file with the Interstate Commerce Commission copies of all contracts and agreements of every description existing between it and every other person or corporation whatsoever in reference to the ownership, possession, maintenance, control, use, or operation of any telegraph lines, or property over or upon its rights of way, and also a report describing with sufficient certainty the telegraph lines and property belonging to it, and the manner in which the same are being then used and operated by it, and the telegraph lines and property upon its right of way in which any other person or corporation claims to have a title or interest, and setting forth the grounds of such claim, and the manner in which the same are being then used and operated; and it shall be the duty of each and every one of said railroad and telegraph companies annually hereafter to report to the Interstate Commerce Commission, with reasonable fullness and certainty, the nature, extent, value, and condition of the telegraph lines and property then belonging to it, the gross earnings, and all expenses of maintenance, use, and operation thereof, and its relation and business with all connecting telegraph companies during the preceding year, at such time and in such manner as may be required by a system of reports which said commission shall prescribe; and if any of said railroad or telegraph companies shall refuse or fail to make such reports or any report as may be called for by said Commission, or refuse to submit its books and records for inspection, such neglect or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than one thousand dollars nor more than five thousand dollars, to be recovered by the Attorney-General of the United States, in the name and for the use and benefit of the United States; and it shall be the duty of the Interstate Commerce Commission to inform the Attorney-General of all such cases of neglect or refusal, whose duty it shall be to proceed at once to judicially enforce the forfeitures hereinbefore provided. (25 Stat. 384.)

Notes of Decisions

Intrastate railroads.—A railroad company whose line is wholly within a single state, and which, although it carries freight destined to points beyond such state, never issues bills of lading to points beyond its own line, receives no freight on through bills of lading, and has no arrangement with other roads for a conventional division of charges, or for a common control or management, is not within the purview of the interstate commerce act or of this act. Interstate Commerce Commission v. Bellaire, Z. & C. Ry. Co. (C. C. 1897) 77 Fed. 942.

§ 10086. (Act Aug. 7, 1888, c. 772, § 7.) Reservation of power to alter, amend, or repeal act; power of United States to fix rates and purchase lines not affected.

Nothing in this act shall be construed to affect or impair the right of Congress, at any time hereafter, to alter, amend, or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment, or repeal as, in the opinion of Congress, justice or the public welfare may require; and nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in the United States, or any authority that the Postmaster-General now has under title sixty-five of the Revised Statutes to fix rates, or, of the Government, to purchase lines

as provided under said title, or to have its messages given precedence in transmission. (25 Stat. 385.)

SUBMARINE CABLES

The protection of submarine cables was made the subject of an international convention between the United States and Germany, Argentine Confederation, Austria-Hungary, Belgium, Brazil, Costa Rica, Denmark, Dominican Republic, Spain, United States of Colombia, France, Great Britain, Guatemala, Greece, Italy, Turkey, Netherlands, Persia, Portugal, Roumania, Russia, Salvador, Servia, Sweden and Norway, Uruguay, and the British Colonies. It was concluded March 14, 1884, ratified January 26, 1885, ratifications exchanged April 16, 1885, and proclaimed May 22, 1885. Its provisions were set forth in 24 Stat. 989–1000.

Act Feb. 29, 1888, c. 17, set forth below, provided for the enforcement of the provisions of said convention.

§ 10087. (Act Feb. 29, 1888, c. 17, § 1.) Willful injury, etc., punishable.

Any person who shall willfully and wrongfully break or injure, or to attempt to break or injure, or who shall in any manner procure, counsel, aid, abet, or be accessory to such breaking or injury, or attempt to break or injure, a submarine cable, in such manner as to interrupt or embarrass, in whole or in part, telegraphic communication, shall be guilty of a misdemeanor, and, on conviction thereof, shall be liable to imprisonment for a term not exceeding two years, or to a fine not exceeding five thousand dollars, or to both fine and imprisonment, at the discretion of the court. (25 Stat. 41.)

This section and the 12 sections next following were the Submarine Cable Act of 1888, entitled "An act to carry into effect the international convention of the fourteenth of March, eighteen hundred and eighty-four, for the protection of submarine cables."

Decisions Relating to Submarine Cables in General

Interisland cables in the Philippines.—The concessions secured from Spain by English telegraph companies in Cuba and the Philippines are not binding, as contracts, on the United States, Cuba, the Philippines, or other government replacing Spain; but as to the Philippine cables it does not follow from this fact that no obligation whatever exists. (1900) 23 Op. Atty. Gen. 195.

There is an equitable obligation on the part of the four islands connected by cables, and on the part of the archipelago as a whole, with regard to the concession for interisland cables in the Philippines, which concession provides for an annual subsidy. Id.

With regard to two other concessions for cables, from Bolinao to Manila and from Bolinao to Hongkong, which do not call for pecuniary subsidies, but for a monopoly during a certain number of years, the equitable obligation upon the islands concerned and upon the archipelago, though less obvious, exists. Id.

It is for congress to determine whether any such obligation exists on the part of the United States. Id.

In the absence of any urgent reason for executive action the whole matter of these equitable liabilities concerning the Philippine cables ought to be left to Congress or to the permanent Philippine government. Id.

Cuban cable concessions.—Owing to the temporary nature of the occupation of the island of Cuba by the United States, it is inexpedient to grant permission to the Commercial Cable Company to land a cable upon the soil of Cuba. (1899) 22 Op. Atty. Gen. 408.

The authorities of the United States have full power, in their discretion, to prevent by all necessary means the grounding of a cable in Cuba intended to connect that island with the United States or with any other country. (1899) 22 Op. Atty. Gen. 514.

The Secretary of War is justified in using force to remove or disrupt any such cable which may be laid in disregard of his instructions and against his will. Id.

The concessions secured from Spain by English telegraph companies in Cuba and the Philippines are not binding, as contracts, on the United States, Cuba, the Philippines, or other government replacing Spain; but as to the Philippine cables it does not follow from this fact that no obligation whatever exists. (1900) 23 Op. Atty. Gen. 195.

The foreign and purely temporary character of the occupation of Cuba by the United States makes it highly proper for the latter to leave the question of Cuba's equitable liability in regard to similar concessions to the permanent government of Cuba to determine. Id.

As a matter of power, it is within the legitimate function of the War Department to maintain a telegraph line

between Santiago and Habana, Cuba, and to transmit private messages over it, although the transaction of business of that nature may be in conflict with the vested rights of the International Ocean Telegraph Company. (1901) 23 Op. Atty. Gen. 425.

In the maintenance and operation of such line the military officers of the United States in Cuba are exercising a war power under a military occupation of territory wrested by arms from a belligerent. Id.

The question whether the business of the International Ocean Telegraph Company is thereby injuriously affected in contravention of its concession is one the authority to determine which is not vested in the Attorney General. Id.

Opinions of July 26 and 27, 1900 (23 Op. Atty. Gen. 182, 195), holding that the concessions granted by Spain to certain railway and telegraph companies in Cuba and the Philippine Islands are not binding as contracts on the United States, Cuba, and the Philippines, or other government replacing Spain, reaffirmed. (1901) 23 Op. Atty. Gen. 451.

Landing of foreign cables.—The executive permission to land a cable is subject to subsequent congressional action. (1898) 22 Op. Atty. Gen. 13.

The President has the power, in the absence of legislation by congress, to control the landing of foreign submarine cables on the shores of the United States. He may either prevent the landing, if the rights intrusted to his care so demand, or permit it on conditions which will protect the interests of this government and its citizens. Id.

No one has a right to land a foreign cable upon our shores and establish a physical connection between our territory and that of a foreign state without the consent of the government. Id.

If a landing has been effected without the consent or against the protest of this government, respect for its rights and compliance with its terms may be enforced by applying the prohibition to the operation of the line, unless the necessary conditions are accepted and observed. Id.

So far as the landing of a cable in the island of Cuba is concerned, the subject is under the control of the War Department, by reason of the fact that its occupation by the United States is of a military nature. (1899) 22 Op. Atty. Gen. 408.

The application of the Commercial Cable Company for leave to land its cable in the United States is within the jurisdiction and control of the Department of State, acting for the President. Id.

The grounding of a cable upon the soil of the United States, with the intention of connecting our territory with foreign territory by that means, is a matter which is under the sovereign control of the government, such control to be exercised by congress, provided it legislates upon the subject, and, in the absence of such legislation, to be regulated and controlled by the executive department of the government. Id.

The grounding of a cable upon the island of Cuba to connect it with a foreign country cannot be done and maintained in opposition to the law of the government which exercises sovereign power in the island. (1899) 22 Op. Atty. Gen. 514.

The authorities of the United States have full power, in their discretion, to prevent by all necessary means the grounding of a cable in Cuba intended to connect that island with the United States or with any other country. Id.

The Secretary of War is justified in using force to remove or disrupt any such cable which may be laid in disregard of his instructions and against his will. Id.

Damages for cutting cable.—There is no ground to support the claim for indemnity of the British Eastern Extension Australasia and China Telegraph Company for cutting the cable at Manila during the war with Spain. (1899) 22 Op. Atty. Gen. 315.

Property of a neutral permanently situated within the territory of an enemy is from its situation, liable to damage from the lawful operations of war, and no compensation is due for such damage. Id.

There is no objection to the submission to congress of the claim of the British Cuba Submarine Telegraph Company for damages by our vessels occurring during the hostilities with Spain. (1899) 22 Op. Atty. Gen. 654.

§ 10088. (Act Feb. 29, 1888, c. 17, § 2.) Negligent injury, etc., punishable.

Any person who by culpable negligence shall break or injure a submarine cable in such manner as to interrupt or embarrass, in whole or in part, telegraphic communication, shall be guilty of a misdemeanor, and, on conviction thereof, shall be liable to imprisonment for a term not exceeding three months, or to a fine not exceeding five hundred dollars, or to both fine and imprisonment, at the discretion of the court. (25 Stat. 41.)

§ 10089. (Act Feb. 29, 1888, c. 17, § 3.) Injury, etc., in efforts to save life.

The provisions of the foregoing sections shall not apply to a person who breaks or injures a cable in an effort to save the life or limb of himself or of any other person, or to save his own or any other vessel: Provided, That he takes reasonable precautions to avoid such breaking or injury. (25 Stat. 41.)

Notes of Decisions

Liability for cutting cable.—The anchor of a schooner became entangled in an ocean telegraph cable, and in order to release it the officers cut the cable. The schooner remained at the same place until the following morning. There was no reason why she could not have cut away the anchor when ready to proceed, having another anchor on board. There was testimony that the vessel was within anchorage grounds, and hence not guilty of negligence in becoming entangled, and the cable was lawfully laid and maintained where it was. Held, that in view of this section, and of article 7 of the treaty of 1884, which requires cable companies to reimburse vessel owners for anchors sacrificed to avoid injury to a cable, the officers must be held guilty either of willful injury to the cable, or culpable negligence, for which the vessel was liable. The William H. Bailey (D. C. 1900) 100 Fed. 115.

§ 10090. (Act Feb. 29, 1888, c. 17, § 4.) Vessels engaged in laying cable; signals; avoidance of buoys marking position of cable in course of construction.

The master of any vessel which, while engaged in laying or repairing submarine cables, shall fail to observe the rules concerning signals that have been or shall hereafter be adopted by the parties to the convention with a view to preventing collisions at sea; or the master of any vessel that, perceiving, or being able to perceive the said signals displayed upon a telegraph ship engaged in repairing a cable, shall not withdraw to or keep at distance of at least one nautical mile; or the master of any vessel that seeing or being able to see buoys intended to mark the position of a cable when being laid or when out of order or broken, shall not keep at a distance of at least a quarter of a nautical mile, shall be guilty of a misdemeanor, and on conviction thereof, shall be liable to imprisonment for a term not exceeding one month, or to a fine of not exceeding five hundred dollars. (25 Stat. 41.)

The International Rules for Preventing Collisions at Sea, adopted by Act Aug. 16, 1890, c. 802, are set forth ante, under Title XLVIII, "Regulation of Commerce and Navigation," c. 5, "Navigation," §§ 7834–7871.

§ 10091. (Act Feb. 29, 1888, c. 17, § 5.) Fishing vessels; duty to keep nets, etc., from cables.

The master of any fishing vessel who shall not keep his implements or nets at a distance of at least one nautical mile from a vessel engaged in laying or repairing a cable; or the master of any fishing vessel who shall not keep his implements or nets at a distance of at least a quarter of a nautical mile from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken, shall be guilty of a misdemeanor, and on conviction thereof, shall be liable to imprisonment for a term not exceeding ten days, or to a fine not exceeding two hundred and fifty dollars, or to both such fine and imprisonment, at the discretion of the court: Provided, however, That fishing vessels, on perceiving or being able to perceive the said signals displayed on a telegraph ship, shall be allowed such time as may be necessary to obey the notice thus given, not exceeding twenty-four hours, during which period no obstacle shall be placed in the way of their operations. (25 Stat. 42.)

§ 10092. (Act Feb. 29, 1888, c. 17, § 6.) Duties of commanders of war ships.

For the purpose of carrying into effect the convention, a person commanding a ship of war of the United States or of any foreign state for the time being bound by the convention, or a ship specially commissioned by the Government of the United States or by the Government of such foreign state, may exercise and perform the duties vested in and imposed on such officer by the convention. (25 Stat. 42.)

The powers conferred on commanders of vessels of war were contained in article X of the Convention, 24 Stat. 996. See note to following section.

§ 10093. (Act Feb. 29, 1888, c. 17, § 7.) Offending vessels to show nationality.

Any person having the custody of the papers necessary for the preparation of the statements provided for in article ten of the convention who shall refuse to exhibit them or shall violently resist persons having authority according to article ten of said convention to draw up statements of facts in the exercise of their functions, shall be guilty of a misdemeanor, and on conviction thereof shall be liable to imprisonment not exceeding two years, or to a fine not exceeding five thousand dollars, or to both fine and imprisonment, at the discretion of the court. (25 Stat. 42.)

Article X of the Convention, mentioned in this section, was as follows:

"Evidence of violations of this convention may be obtained by all methods of securing proof that are allowed by the laws of the country of the court before which a case has been brought. When the officers commanding the vessels of war or the vessels specially commissioned for that purpose, of one of the High Contracting Parties, shall have reason to believe that an infraction of the measures provided for by this Convention has been committed by a vessel other than a vessel of war, they may require the captain or master to exhibit the official documents furnishing evidence of the nationality of the said vessel. Summary mention of such exhibition shall at once be made on the documents exhibited. Reports may, moreover, be prepared by the said officers, whatever may be the nationality of the inculpated vessel. These reports shall be drawn up in the form and in the language in use in the country to which the officer drawing them up belongs; they may be used as evidence in the country in which they shall be invoked, and according to the laws of such country. The accused parties and the witnesses shall have the right to add or to cause to be added thereto, in their own language, any explanations that they may deem proper; these declarations shall be duly signed."

§ 10094. (Act Feb. 29, 1888, c. 17, § 8.) Penalties provided not to bar suits for damages.

The penalties provided in this act for the breaking or injury of a submarine cable shall not be a bar to a suit for damages on account of such breaking or injury. (25 Stat. 42.)

§ 10095. (Act Feb. 29, 1888, c. 17, § 9.) Master of offending vessel punishable.

When an offense against this act shall have been committed by means of a vessel, or of any boat belonging to a vessel, the master of such vessel shall, unless some other person is shown to have been in charge of and navigating such vessel or boat, be deemed to have been in charge of and navigating the same, and be liable to be punished accordingly. (25 Stat. 42.)

§ 10096. (Act Feb. 29, 1888, c. 17, § 10.) Definitions.

Unless the context of this act otherwise requires, the term "vessel" shall be taken to mean every description of vessel used in navigation, in whatever way it is propelled; the term "master" shall be taken to include every person having command or charge of a vessel; and the term "person" to include a body of persons, corporate or incorporate. The term "convention" shall be taken to mean the International Convention for the Protection of Submarine Cables, made at Paris on the fourteenth day of May, eighteen hundred and eighty-

four, and proclaimed by the President of the United States on the twenty-second day of May, eighteen hundred and eighty-five. (25 Stat. 42.)

§ 10097. (Act Feb. 29, 1888, c. 17, § 11.) Summary trials.

The provisions of the Revised Statutes, from section forty-three hundred to section forty-three hundred and five, inclusive, for the summary trial of offenses against the navigation laws of the United States, shall extend to the trial of offenses against the provisions of sections four and five of this act. (25 Stat. 42.)

R. S. §§ 4300–4305, mentioned in this section, are set forth ante, §§ 8045–8051.

§ 10098. (Act Feb. 29, 1888, c. 17, § 12.) Application of act.

The provisions of this act shall be held to apply only to cables to which the convention for the time being applies. (25 Stat. 42.)

§ 10099. (Act Feb. 29, 1888, c. 17, § 13.) Jurisdiction and venue of offenses.

The district courts of the United States shall have jurisdiction over all offenses against this act and of all suits of a civil nature arising thereunder, whether the infraction complained of shall have been committed within the territorial waters of the United States or outside of the said waters: Provided, That in case such infraction is committed outside of the territorial waters of the United States the vessel on board of which it has been committed is a vessel of the United States. From the decrees and judgments of the district courts in actions and suits arising under this act appeals and writs of error shall be allowed as now provided by law in other cases. Criminal actions and proceedings for a violation of the provisions of this act shall be commenced and prosecuted in the district court for the district within which the offense was committed, and when not committed within any judicial district, then in the district court for the district within which the offender may be found; and suits of a civil nature may be commenced in the district court for any district within which the defendant may be found and shall be served with process. (25 Stat. 42.)

RADIOTELEGRAPHS

Regulation of radiotelegraphs was made the subject of an international convention between the United States and the possessions thereof, and Germany and the German Protectorates, the Argentine Republic, Austria, Hungary, Bosnia-Herzegovina, Belgium, the Belgian Congo, Brazil, Bulgaria, Chile, Denmark, Egypt, Spain and the Spanish Colonies, France and Algeria, French West Africa, French Equatorial Africa, Indo-China, Madagascar, Tunis, Great Britain and the various British Colonies and Protectorates, the Union of South Africa, the Australian Federation, Canada, British India, New Zealand, Greece, Italy and the Italian Colonies, Japan and Chosen, Formosa, Japanese Sakhalin and the leased territory of Kwantung, Morocco, Monaco, Norway, the Netherlands, the Dutch Indies and the Colony of Curacao, Persia, Portugal and the Portuguese Colonies, Roumania, Russia and the Russian possessions and Protectorates, the Republic of San Marino, Siam, Sweden, Turkey, and Uruguay. This convention was concluded July 5, 1912, and proclaimed July 8, 1913. The provisions thereof were contained in 38 Stat. pt. 2, p. 50.

Act Aug. 13, 1912, c. 287, set forth below, provided for the enforcement of the provisions of said convention.

§ 10100. (Act Aug. 13, 1912, c. 287, § 1.) License for operation of radiotelegraph.

A person, company, or corporation within the jurisdiction of the United States shall not use or operate any apparatus for radio communication as a means of commercial intercourse among the several States, or with foreign nations, or upon any vessel of the United States engaged in interstate or foreign commerce, or for the transmission of radiograms or signals the effect of which extends beyond the jurisdiction of the State or Territory in which the same are made, or where interference would be caused thereby with the receipt of

messages or signals from beyond the jurisdiction of the said State or Territory, except under and in accordance with a license, revocable for cause, in that behalf granted by the Secretary of Commerce [and Labor] upon application therefor; but nothing in this Act shall be construed to apply to the transmission and exchange of radiograms or signals between points situated in the same State: Provided, That the effect thereof shall not extend beyond the jurisdiction of the said State or interfere with the reception of radiograms or signals from beyond said jurisdiction; and a license shall not be required for the transmission or exchange of radiograms or signals by or on behalf of the Government of the United States, but every Government station on land or sea shall have special call letters designated and published in the list of radio stations of the United States by the Department of Commerce [and Labor]. Any person, company, or corporation that shall use or operate any apparatus for radio communication in violation of this section, or knowingly aid or abet another person, company, or corporation in so doing, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, and the apparatus or device so unlawfully used and operated may be adjudged forfeited to the United States. (37 Stat. 302.)

This section and the nine sections next following were part of an act entitled "An act to regulate radio communications."

Section 11 of the act provided that it should take effect four months from and after its passage.

The words "and Labor," inclosed in brackets in this section, were superseded by the creation of the Department of Labor and the change of the designations of the Department of Commerce and Labor and the Secretary thereof, to the Department of Commerce and the Secretary of Commerce by Act March 4, 1913, c. 141, § 1, ante, § 932.

Notes of Decisions

License to foreign-owned companies.—The Secretary of Commerce and Labor has no authority to refuse to grant a license to a domestic corporation to operate apparatus for trans-Atlantic radio communication on the ground that the stock of the corporation is owned or controlled by foreigners. (1912) 29 Op. Atty. Gen. 579.

A corporation organized under the laws of the state of New York whose stock is owned by German interests cannot be denied such a license until, by reciprocal arrangement with Germany, American capital is guaranteed the right of investing in and controlling corporations organized under German laws to operate coast stations in Germany for trans-Atlantic radio communication. Id.

§ 10101. (Act Aug. 13, 1912, c. 287, § 2.) Form of license; persons entitled to.

Every such license shall be in such form as the Secretary of Commerce [and Labor] shall determine and shall contain the restrictions, pursuant to this Act, on and subject to which the license is granted; every such license shall be issued only to citizens of the United States or Porto Rico or to a company incorporated under the laws of some State or Territory or of the United States or Porto Rico, and shall specify the ownership and location of the station in which said apparatus shall be used and other particulars for its identification and to enable its range to be estimated; shall state the purpose of the station, and, in case of a station in actual operation at the date of passage of this Act, shall contain the statement that satisfactory proof has been furnished that it was actually operating on the above-mentioned date; shall state the wave length or the wave lengths authorized for use by the station for the prevention of interference and the hours for which the station is licensed for work; and shall not be construed to authorize the use of any apparatus for radio communication in any other station than that specified. Every such license shall be subject to the regulations contained herein and such regulations as may be established from time to time by authority of this

Act or subsequent Acts and treaties of the United States. Every such license shall provide that the President of the United States in time of war or public peril or disaster may cause the closing of any station for radio communication and the removal therefrom of all radio apparatus, or may authorize the use or control of any such station or apparatus by any department of the Government, upon just compensation to the owners. (37 Stat. 303.)

The words "and Labor," inclosed in brackets in this section and subsequent sections of this act, were superseded by the creation of the Department of Labor and the change of the names of the Department of Commerce and Labor and the Secretary thereof to the Department of Commerce and the Secretary of Commerce by Act March 4, 1913, c. 141, § 1, ante, § 932.

§ 10102. (Act Aug. 13, 1912, c. 287, § 3.) Operators, license or temporary permits; punishment for employment of unlicensed operators.

Every such apparatus shall at all times while in use and operation as aforesaid be in charge or under the supervision of a person or persons licensed for that purpose by the Secretary of Commerce [and Labor.] Every person so licensed who in the operation of any radio apparatus shall fail to observe and obey regulations contained in or made pursuant to this Act or subsequent Acts or treaties of the United States, or any one of them, or who shall fail to enforce obedience thereto by an unlicensed person while serving under his supervision, in addition to the punishments and penalties herein prescribed, may suffer the suspension of the said license for a period to be fixed by the Secretary of Commerce [and Labor] not exceeding one year. It shall be unlawful to employ any unlicensed person or for any unlicensed person to serve in charge or in supervision of the use and operation of such apparatus, and any person violating this provision shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than one hundred dollars or imprisonment for not more than two months, or both, in the discretion of the court, for each and every such offense: Provided, That in case of emergency the Secretary of Commerce [and Labor] may authorize a collector of customs to issue a temporary permit, in lieu of a license, to the operator on a vessel subject to the radio ship Act of June twenty-fourth, nineteen hundred and ten. (37 Stat. 303.)

See notes to preceding section.

§ 10103. (Act Aug. 13, 1912, c. 287, § 4.) Regulations; penalty for violations; temporary licenses for experiments, etc.; naval and military stations.

For the purpose of preventing or minimizing interference with communication between stations in which such apparatus is operated, to facilitate radio communication, and to further the prompt receipt of distress signals, said private and commercial stations shall be subject to the regulations of this section. These regulations shall be enforced by the Secretary of Commerce [and Labor] through the collectors of customs and other officers of the Government as other regulations herein provided for.

The Secretary of Commerce [and Labor] may, in his discretion, waive the provisions of any or all of these regulations when no interference of the character above mentioned can ensue.

The Secretary of Commerce [and Labor] may grant special temporary licenses to stations actually engaged in conducting experiments for the development of the science of radio communication, or the apparatus pertaining thereto, to carry on special tests, using any amount of power or any wave lengths, at such hours and under such conditions as will insure the least interference with the sending or receipt of commercial or Government radiograms, of distress signals and radiograms, or with the work of other stations.

In these regulations the naval and military stations shall be understood to be stations on land.

Regulations.

Normal Wave Length.

First. Every station shall be required to designate a certain definite wave length as the normal sending and receiving wave length of the station. This wave length shall not exceed six hundred meters or it shall exceed one thousand six hundred meters. Every coastal station open to general public service shall at all times be ready to receive messages of such wave lengths as are required by the Berlin convention. Every ship station, except as hereinafter provided, and every coast station open to general public service shall be prepared to use two sending wave lengths, one of three hundred meters and one of six hundred meters, as required by the international convention in force: Provided, That the Secretary of Commerce [and Labor] may, in his discretion, change the limit of wave length reservation made by regulations first and second to accord with any international agreement to which the United States is a party.

Other Wave Lengths.

Second. In addition to the normal sending wave length all stations, except as provided hereinafter in these regulations, may use other sending wave lengths: Provided, That they do not exceed six hundred meters or that they do exceed one thousand six hundred meters: Provided further, That the character of the waves emitted conforms to the requirements of regulations third and fourth following.

Use of a "Pure Wave."

Third. At all stations if the sending apparatus, to be referred to hereinafter as the "transmitter," is of such a character that the energy is radiated in two or more wave lengths, more or less sharply defined, as indicated by a sensitive wave meter, the energy in no one of the lesser waves shall exceed ten per centum of that in the greatest.

Use of a "Sharp Wave."

Fourth. At all stations the logarithmic decrement per complete oscillation in the wave trains emitted by the transmitter shall not exceed two-tenths, except when sending distress signals or signals and messages relating thereto.

Use of "Standard Distress Wave."

Fifth. Every station on shipboard shall be prepared to send distress calls on the normal wave length designated by the international convention in force, except on vessels of small tonnage unable to have plants insuring that wave length.

Signal of Distress.

Sixth. The distress call used shall be the international signal of distress . . . — — — . . .

Use of "Broad Interfering Wave" for Distress Signals.

Seventh. When sending distress signals, the transmitter of a station on shipboard may be tuned in such a manner as to create a maximum of interference with a maximum of radiation.

Distance Requirement for Distress Signals.

Eighth. Every station on shipboard, wherever practicable, shall be prepared to send distress signals of the character specified in regulations fifth and sixth with sufficient power to enable them to be received by day over sea a distance of one hundred nautical miles by a shipboard station equipped with apparatus for both sending and receiving equal in all essential particulars to that of the station first mentioned.

"Right of Way" for Distress Signals.

Ninth. All stations are required to give absolute priority to signals and radiograms relating to ships in distress; to cease all sending on hearing a distress signal; and, except when engaged in answering or aiding the ship in distress, to refrain from sending until all signals and radiograms relating thereto are completed.

Reduced Power for Ships Near a Government Station.

Tenth. No station on shipboard, when within fifteen nautical miles of a naval or military station, shall use a transformer input exceeding one kilowatt, nor, when within five nautical miles of such a station, a transformer input exceeding one-half kilowatt, except for sending signals of distress, or signals or radiograms relating thereto.

Intercommunication.

Eleventh. Each shore station open to general public service between the coast and vessels at sea shall be bound to exchange radiograms with any similar shore station and with any ship station without distinction of the radio systems adopted by such stations, respectively, and each station on shipboard shall be bound to exchange radiograms with any other station on shipboard without distinction of the radio systems adopted by each station, respectively.

It shall be the duty of each such shore station, during the hours it is in operation, to listen in at intervals of not less than fifteen minutes and for a period not less than two minutes, with the receiver tuned to receive messages of three hundred meter wave lengths.

Division of Time.

Twelfth. At important seaports and at all other places where naval or military and private or commercial shore stations operate in such close proximity that interference with the work of naval and military stations can not be avoided by the enforcement of the regulations contained in the foregoing regulations concerning wave lengths and character of signals emitted, such private or commercial shore stations as do interfere with the reception of signals by the naval and military stations concerned shall not use their transmitters during the first fifteen minutes of each hour, local standard time. The Secretary of Commerce [and Labor] may, on the recommendation of the department concerned, designate the station or stations which may be required to observe this division of time.

Government Stations to Observe Divisions of Time.

Thirteenth. The naval or military stations for which the above-mentioned division of time may be established shall transmit sig-

nals or radiograms only during the first fifteen minutes of each hour, local standard time, except in case of signals or radiograms relating to vessels in distress, as hereinbefore provided.

Use of Unnecessary Power.

Fourteenth. In all circumstances, except in case of signals or radiograms relating to vessels in distress, all stations shall use the minimum amount of energy necessary to carry out any communication desired.

General Restrictions on Private Stations.

Fifteenth. No private or commercial station not engaged in the transaction of bona fide commercial business by radio communication or in experimentation in connection with the development and manufacture of radio apparatus for commercial purposes shall use a transmitting wave length exceeding two hundred meters, or a transformer input exceeding one kilowatt, except by special authority of the Secretary of Commerce [and Labor] contained in the license of the station: Provided, That the owner or operator of a station of the character mentioned in this regulation shall not be liable for a violation of the requirements of the third or fourth regulations to the penalties of one hundred dollars or twenty-five dollars, respectively, provided in this section unless the person maintaining or operating such station shall have been notified in writing that the said transmitter has been found, upon tests conducted by the Government, to be so adjusted as to violate the said third and fourth regulations, and opportunity has been given to said owner or operator to adjust said transmitter in conformity with said regulations.

Special Restrictions in the Vicinities of Government Stations.

Sixteenth. No station of the character mentioned in regulation fifteenth situated within five nautical miles of a naval or military station shall use a transmitting wave length exceeding two hundred meters or a transformer input exceeding one-half kilowatt.

Ship Stations to Communicate with Nearest Shore Stations.

Seventeenth. In general, the shipboard stations shall transmit their radiograms to the nearest shore station. A sender on board a vessel shall, however, have the right to designate the shore station through which he desires to have his radiograms transmitted. If this can not be done, the wishes of the sender are to be complied with only if the transmission can be effected without interfering with the service of other stations.

Limitations for Future Installations in Vicinities of Government Stations.

Eighteenth. No station on shore not in actual operation at the date of the passage of this Act shall be licensed for the transaction of commercial business by radio communication within fifteen nautical miles of the following naval or military stations, to wit: Arlington, Virginia; Key West, Florida; San Juan, Porto Rico; North Head and Tatoosh Island, Washington; San Diego, California; and those established or which may be established in Alaska and in the Canal Zone; and the head of the department having control of such Government stations shall, so far as is consistent with the transaction of governmental business, arrange for the

transmission and receipt of commercial radiograms under the provisions of the Berlin convention of nineteen hundred and six and future international conventions or treaties to which the United States may be a party, at each of the stations above referred to, and shall fix the rates therefor, subject to control of such rates by Congress. At such stations and wherever and whenever shore stations open for general public business between the coast and vessels at sea under the provisions of the Berlin convention of nineteen hundred and six and future international conventions and treaties to which the United States may be a party shall not be so established as to insure a constant service day and night without interruption, and in all localities wherever or whenever such service shall not be maintained by a commercial shore station within one hundred nautical miles of a naval radio station, the Secretary of the Navy shall, so far as is consistent with the transaction of governmental business, open naval radio stations to the general public business described above, and shall fix rates for such service, subject to control of such rates by Congress. The receipts from such radiograms shall be covered into the Treasury as miscellaneous receipts.

Secrecy of Messages.

Nineteenth. No person or persons engaged in or having knowledge of the operation of any station or stations, shall divulge or publish the contents of any messages transmitted or received by such station, except to the person or persons to whom the same may be directed, or their authorized agent, or to another station employed to forward such message to its destination, unless legally required so to do by the court of competent jurisdiction or other competent authority. Any person guilty of divulging or publishing any message, except as herein provided, shall, on conviction thereof, be punishable by a fine of not more than two hundred and fifty dollars or imprisonment for a period of not exceeding three months, or both fine and imprisonment, in the discretion of the court.

Penalties.

For violation of any of these regulations, subject to which a license under sections one and two of this Act may be issued, the owner of the apparatus shall be liable to a penalty of one hundred dollars, which may be reduced or remitted by the Secretary of Commerce [and Labor], and for repeated violations of any of such regulations, the license may be revoked.

For violation of any of these regulations, except as provided in regulation nineteenth, subject to which a license under section three of this Act may be issued, the operator shall be subject to a penalty of twenty-five dollars, which may be reduced or remitted by the Secretary of Commerce [and Labor], and for repeated violations of any such regulations, the license shall be suspended or revoked. (37 Stat. 304.)

See notes to section 1 of this act, ante, § 10100.

The Berlin convention, mentioned in this section, was an international wireless telegraph convention which was signed at Berlin November 3, 1906, and proclaimed May 25, 1912. The provisions thereof regulated wireless telegraphy and were set forth in 37 Stat. 1565.

Notes of Decisions

Power to impose conditions upon operation.—The transmission of messages by wireless telegraphy is commerce, and the power of the United States to regulate commerce and to preserve the territorial integrity of this country does not depend upon the means employed, but upon the end attained. (1902) 24 Op. Atty. Gen. 100.

The United States have power, either

alone or in co-operation with other countries, to impose conditions upon the operation of any wireless telegraph system which conveys messages to or from the United States. (1902) 24 Op. Atty. Gen. 100.

§ 10104. (Act Aug. 13, 1912, c. 287, § 5.) Willful or malicious interference with radio communication; punishment for.

Every license granted under the provisions of this Act for the operation or use of apparatus for radio communication shall prescribe that the operator thereof shall not willfully or maliciously interfere with any other radio communication. Such interference shall be deemed a misdemeanor, and upon conviction thereof the owner or operator, or both, shall be punishable by a fine of not to exceed five hundred dollars or imprisonment for not to exceed one year, or both. (37 Stat. 308.)

§ 10105. (Act Aug. 13, 1912, c. 287, § 6.) Radio communication, defined.

The expression "radio communication" as used in this Act means any system of electrical communication by telegraphy or telephony without the aid of any wire connecting the points from and at which the radiograms, signals, or other communications are sent or received. (37 Stat. 308.)

§ 10106. (Act Aug. 13, 1912, c. 287, § 7.) Uttering or transmitting false or fraudulent signals, etc.; punishment for.

A person, company, or corporation within the jurisdiction of the United States shall not knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent distress signal or call or false or fraudulent signal, call, or other radiogram of any kind. The penalty for so uttering or transmitting a false or fraudulent distress signal or call shall be a fine of not more than two thousand five hundred dollars or imprisonment for not more than five years, or both, in the discretion of the court, for each and every such offense, and the penalty for so uttering or transmitting, or causing to be uttered or transmitted, any other false or fraudulent signal, call, or other radiogram shall be a fine of not more than one thousand dollars or imprisonment for not more than two years, or both, in the discretion of the court, for each and every such offense. (37 Stat. 308.)

§ 10107. (Act Aug. 13, 1912, c. 287, § 8.) Restriction of use on foreign ships.

A person, company, or corporation shall not use or operate any apparatus for radio communication on a foreign ship in territorial waters of the United States otherwise than in accordance with the provisions of sections four and seven of this Act and so much of section five as imposes a penalty for interference. Save as aforesaid, nothing in this Act shall apply to apparatus for radio communication on any foreign ship. (37 Stat. 308.)

The provisions of sections 4 and 7 of this act, mentioned in this section, are set forth, ante, §§ 10103, 10106.

§ 10108. (Act Aug. 13, 1912, c. 287, § 9.) Jurisdiction of offenses.

The trial of any offense under this Act shall be in the district in which it is committed, or if the offense is committed upon the high seas or out of the jurisdiction of any particular State or district the trial shall be in the district where the offender may be found or into which he shall be first brought. (37 Stat. 308.)

§ 10109. (Act Aug. 13, 1912, c. 287, § 10.) Inapplicability to the Philippine Islands.

This Act shall not apply to the Philippine Islands. (37 Stat. 308.)

TITLE LXVI

EXTRADITION

Sec.
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10129. (Repealed.)

§ 10110. (R. S. § 5270, as amended, Act June 6, 1900, c. 793.) Fugitives from the justice of a foreign country, or a country under the control of the United States.

Whenever there is a treaty or convention for extradition between the Government of the United States and any foreign government, any justice of the Supreme Court, circuit judge, district judge, commissioner, authorized so to do by any of the courts of the United States, or judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within the limits of any State, district, or Territory, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made: Provided, That whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who shall violate, or who has violated, the criminal laws in force therein, by the commission of any of the following offenses, namely: Murder and assault with intent to commit murder; counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money; counterfeiting certificates or coupons of public indebtedness, bank notes, or other instruments of public credit, and the utterance or circulation of the same; forgery or altering, and uttering what is forged or altered; embezzlement or criminal malversation of the public funds, committed by public officers,

employees, or depositaries; larceny or embezzlement of an amount not less than one hundred dollars in value; robbery; burglary, defined to be the breaking and entering by nighttime into the house of another person with intent to commit a felony therein; and the act of breaking and entering the house or building of another, whether in the day or night time, with the intent to commit a felony therein; the act of entering, or of breaking and entering the offices of the Government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance or other companies, with the intent to commit a felony therein; perjury or the subornation of perjury; rape; arson; piracy by the law of nations; murder, assault with intent to kill, and manslaughter, committed on the high seas, on board a ship owned by or in control of citizens or residents of such foreign country or territory and not under the flag of the United States, or of some other government; malicious destruction of or attempt to destroy railways, trams, vessels, bridges, dwellings, public edifices, or other buildings, when the act endangers human life, and who shall depart or flee, or who has departed or fled, from justice therein to the United States, any Territory thereof or to the District of Columbia, shall, when found therein, be liable to arrest and detention by the authorities of the United States, and on the written request or requisition of the military governor or other chief executive officer in control of such foreign country or territory shall be returned and surrendered as hereinafter provided to such authorities for trial under the laws in force in the place where such offense was committed. All the provisions of sections fifty-two hundred and seventy to fifty-two hundred and seventy-seven of this title, so far as applicable, shall govern proceedings authorized by this proviso: Provided further, That such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense charged: And provided further, That no return or surrender shall be made of any person charged with the commission of any offense of a political nature. If so held such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authorities shall secure to such a person a fair and impartial trial.

Act Aug. 12, 1848, c. 167, § 1, 9 Stat. 302. Act June 6, 1900, c. 793, 31 Stat. 656.

This section, as enacted in the Revised Statutes, contained only the provisions relating to fugitives from the justice of a foreign country, without the provisos annexed to the section as set forth here. Said three provisos, relating to persons violating the criminal laws in force in any foreign country or territory under control of the United States, were added by amendment by Act June 6, 1900, c. 793, last cited above.

R. S. §§ 5270–5277, mentioned in said first proviso, are this section and §§ 10111, 10118–10123.

R. S. §§ 5270–5277, as amended by Act Aug. 3, 1882, c. 378, post, §§ 10112–10116, were made to apply, so far as applicable, to the Philippine Islands by Act Feb. 6, 1905, c. 454, post, §§ 10124, 10125.

Fees and costs in extradition cases were to be paid out of the appropriation for the expense of the judiciary, and the Attorney-General was required to certify to the Secretary of State the amounts to be paid to the United States on account of such fees and costs by the foreign government requesting the extradition, and the Secretary of State was required to cause such amounts to be collected and transmitted to the Attorney-General for deposit in the Treasury, by a proviso of Act June 28, 1902, c. 1301, § 1, post, § 10117.

Provisions for the removal of offenders against the United States, arrested in any district other than that where the offense was committed, to the district where the offense was committed, were made in R. S. § 1014, ante, § 1674.

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1. Construction of statute.—The sections of the act of which this section is a part must be construed together to determine the requisites of a formal demand for the surrender of a fugitive, except a treaty, when later, controls where it is in irreconcilable conflict with the statute. Ex parte Charlton (C. C. 1911) 185 Fed. 880, judgment affirmed Charlton v. Kelly (1913) 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. (N. S.) 397.

2. Constitutionality of statute and proceedings.—The amendatory act was not unconstitutional because it did not secure to the accused, when surrendered to a foreign court for trial in its tribunals, all the rights, privileges, and immunities guaranteed by the constitution to persons charged with the commission in this country of crime against the United States, since such constitutional provisions have no relation to crimes committed without the jurisdiction of the United States against the laws of a foreign country, even though committed by a citizen of the United States. Neely v. Henkel (1901) 21 Sup. Ct. 302, 307, 180 U. S. 109, 45 L. Ed. 448.

Where an extradition treaty subsists with a foreign government under the constitution and law of the land, a surrender of an alleged fugitive in pursuance thereof is in accordance with the due process of law requirement of the constitution. Ex parte Charlton (C. C. 1911) 185 Fed. 880, judgment affirmed Charlton v. Kelly (1913) 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. (N. S.) 397.

Provisions of the sixth constitutional amendment for the protection of persons charged with crime held not applicable to proceedings for extradition to a foreign country. Ex parte La Mantia (D. C. 1913) 206 Fed. 330.

3. International extradition in general.—Good faith to the demanding foreign government requires the surrender of the accused in extradition proceedings if there is presented, even in somewhat untechnical form, such reasonable ground to suppose him guilty of crime as to make it proper that he should be tried. Glucksman v. Henkel (1911) 31 Sup. Ct. 704, 705, 221 U. S. 508, 55 L. Ed. 830.

The federal judiciary has no authority to assist in the execution of the penal laws of a foreign country by surrendering a fugitive from the justice of a foreign government, or to detain him in custody until a formal demand can be made of the executive. Piracy is no exception to this rule. Ex parte Dos Santos (C. C. 1835) Fed. Cas. No. 4,016.

No order of the president in relation to the prosecution of an extradited prisoner can legally restrict or enlarge the jurisdiction of the courts. U. S. v. Lawrence (C. C. 1876) Fed. Cas. No. 15,573.

Where a treaty of extradition does not state which department of the government shall execute its provisions, the judiciary will take jurisdiction. U. S. v. Robins (D. C. 1799) Fed. Cas. No. 16,175.

If a Spanish subject who has violated the territorial law of Florida shall be within the United States at the time of demand for him as a subject and fugitive from justice, he ought to be giv-

en up for trial and punishment, yet there is no law directing the mode of proceeding. (1797) 1 Op. Atty. Gen. 68.

The international extradition of fugitives from justice is a duty of comity, not of strict right. (1853) 6 Op. Atty. Gen. 85.

The mutual extradition of fugitives from justice is an object alike interesting to all governments. (1855) 7 Op. Atty. Gen. 537.

Emigrants and exiles for cause of political difference at home are entitled to asylum in this country, but not malefactors; on the contrary, the foreign government which reclaims its fugitive malefactors is serviceable to us by ridding us of the intrusive presence of crime. Hence, when reclamation of a fugitive from justice is made under treaty stipulation by any foreign government, it is the duty of the United States to aid in relieving the case of any technical difficulties which may be interposed to defeat the ends of public justice, the object to be accomplished being alike interesting to both governments, namely, the punishment of malefactors, who are the common enemies to all society. Id.

Attorneys of the United States in the several districts are not obliged by any act of congress to appear on the part of foreign governments claiming the extradition of fugitives, and if the minister or agent of an accusing foreign government needs legal advice, or desires to have a case presented to the judicial authorities through the medium of a professional lawyer, he may select whom he pleases for that purpose. (1860) 9 Op. Atty. Gen. 497.

It is the law and usage of nations to deliver up offenders charged with felony and other high crimes, and who have fled from the country in which the crimes were committed into a foreign and friendly jurisdiction. In re Washburn (N. Y. 1819) 3 Wheeler, Cr. Cas. 473.

4. Treaties—In general.—As to treaty offenses, see "extraditable offenses," post, this note.

The treaties of extradition to which the United States are parties do not guaranty a fugitive from the justice of one of the countries an asylum in the other. They only make provision that for certain crimes he shall be deprived of that asylum, and surrendered to justice, and they prescribe the mode in which this shall be done. Ker v. State of Illinois (1886) 7 Sup. Ct. 225, 119 U. S. 436, 30 L. Ed. 421.

Treaties of extradition are executory in their character and are to be regarded by the courts as acts of the legislature whenever they separate themselves without the aid of any legislative provision. Terlinden v. Ames (1902) 22 Sup. Ct. 484, 491, 184 U. S. 270, 46 L. Ed. 534.

There is no principle of international law by which citizens of a country are excepted from an extradition convention for surrender of "persons," where no such exception was made in the treaty. Charlton v. Kelly (1913) 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. (N. S.) 397, affirming decree Ex parte Charlton (C. C. 1911) 185 Fed. 880.

The construction of an extradition treaty, made by the constitution a part of the supreme law of the land, is for the courts, and they are not bound by the construction placed thereon by the executive or diplomatic branches of the government, or by the construction placed thereon by the foreign country with whom the treaty is made. Ex parte Charlton (C. C. 1911) 185 Fed. 880, judgment affirmed Charlton v. Kelly (1913) 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. (N. S.) 397.

Whether the government is bound, under a treaty, to deliver the fugitive, and whether he is within the description of persons named therein as subject to extradition, are questions for the political, not the judicial, department. In re Metzger (D. C. 1847) Fed. Cas. No. 9,511.

Where an extradition treaty uses general names, such as "murder," or "arson," in defining the classes of crimes for which extradition may be granted thereunder, such names are not necessarily confined to their meaning at common law, but the question whether a given offense comes within the treaty must be determined by the law as it exists in the two countries at the time the extradition is applied for. Cohn v. Jones (D. C. 1900) 100 Fed. 639.

In the construction and carrying out of extradition treaties the ordinary technicalities of criminal proceedings are applicable only to a limited extent, since an exact correspondence between the laws of the two countries cannot be expected, and the only purpose of extradition is to put the accused on trial under the laws of his own country. U. S. v. Greene (D. C. 1906) 146 Fed. 766.

The obligation of the government to institute extradition proceedings pursuant to a treaty with a foreign government continues until it can say that any further attempt is subversive of the protection which the government affords to all within its borders. Ex parte Schorer (D. C. 1912) 195 Fed. 334.

The term "public officers" or that of "public depositaries" in a treaty signifies officers or depositaries of the government only in some of its branches or degrees, and does not comprehend officers of a railroad company. (1856) 8 Op. Atty. Gen. 106.

An alleged criminal is subject to extradition, notwithstanding that he may have come to this country otherwise

than as an apparent fugitive on account of the particular crime; for the treaties apply, not only to persons seeking an asylum here professedly, but to such as may be found in the country. (1857) 8 Op. Atty. Gen. 306.

Statement of the subsisting treaties between the United States and foreign governments for the extradition of fugitives from justice. (1855) 8 Op. Atty. Gen. 519.

If one construction of a treaty assures a reasonable opportunity for each government to furnish the other the proofs necessary to justify the continued detention of suspected criminals, while another construction facilitates the escape of fugitives from justice and tends to impede the punishment of crime, the former is to be preferred in the absence of compelling words to the contrary. (1908) 27 Op. Atty. Gen. 4.

5. —— **Favored nation clause.**—Engagements of extradition, whether of fugitives from justice or from service, stand in each case on particular stipulations of treaty, and are not to be inferred from the "favored-nation" clause in treaties. (1853) 6 Op. Atty. Gen. 148.

6. —— **Formalities.**—Care is to be taken that an extradition treaty is not made an instrument for collecting debts, wreaking individual malice, or forcing the surrender of political offenders; but where the proceeding is taken in good faith, a technical noncompliance with some formality of criminal procedure should not stand in the way of the discharge of our obligations to other powers, provided no legal or constitutional rights of the accused are violated. Grin v. Shine (1902) 23 Sup. Ct. 98, 100, 187 U. S. 181, 47 L. Ed. 130.

Congress has power to waive formalities necessary for the extradition of criminals to a foreign country, and the provisions of treaties requiring other formalities than those prescribed by this section are deemed waived. Id.

7. —— **Extradition without treaty stipulation.**—One nation is under no well-defined obligation to deliver to another a fugitive from justice, in the absence of treaty stipulations therefor. U. S. v. Rauscher (1886) 7 Sup. Ct. 234, 238, 119 U. S. 407, 30 L. Ed. 425.

As to offenses not covered by an extradition treaty between two countries, they stand toward each other as though there were no treaty, and either may exercise its discretion as to the surrender of a fugitive on demand of the other. Greene v. U. S. (1907) 154 Fed. 401, 85 C. C. A. 251, affirming judgment U. S. v. Greene (D. C. 1906) 146 Fed. 803, writ of certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

The right of a foreign government to demand the surrender of a fugitive from justice does not exist except as granted by statutory provisions or treaty stipulation. Ex parte Dos Santos (C. C. 1835) Fed. Cas. No. 4,016; U. S. v. Davis (C. C. 1837) Fed. Cas. No. 14,932; In re De Giacomo (C. C. 1874) Fed. Cas. No. 3,747.

It is optional with the executive to surrender a fugitive from justice where there is no treaty or act of congress requiring it to be done. In re Sheazle (C. C. 1845) Fed. Cas. No. 12,734.

It is within the power of congress to provide by statute for the extradition of fugitives from the justice of a foreign country without any reciprocal treaty, but as a matter of international comity, and such power is not affected by the character of the criminal procedure in such country, or by the fact that the alleged offender against its laws may be a citizen of the United States. In re Neely (C. C. 1900) 103 Fed. 626, judgment affirmed Neely v. Henkel (1901) 21 Sup. Ct. 308, 180 U. S. 126, 45 L. Ed. 457.

In the absence of a treaty stipulation, there is no obligation, under the laws of nations, upon a sovereign state to surrender persons charged with crimes committed in another country, upon demand of the state whose laws they have violated; and where it is provided in an extradition treaty that "neither of the contracting parties shall be bound to deliver up its own citizens under the stipulations of this treaty," the United States will not surrender one of its citizens charged with a murder committed in one of the states of Mexico. Ex parte McCabe (D. C. 1891) 46 Fed. 363, 12 L. R. A. 589.

There is no law of Congress which authorizes the President to deliver up any one found in the United States who is charged with having committed a crime against a foreign nation; and we have no treaty stipulations with Portugal for the delivery of offenders. (1833) 2 Op. Atty. Gen. 559.

It is the settled policy of the United States not to make extradition, except in virtue of expressed stipulations to that effect. (1853) 6 Op. Atty. Gen. 85. Hence the United States ought not to ask for extradition in any case as an act of mere comity. Id.

The right of one government to demand and receive from another the custody of an offender, who has sought asylum upon its soil, depends upon the existence of treaty stipulations between them, and in all cases is derived from, and is measured and restricted by, the provisions, express or implied, of the treaty. Commonwealth v. Hawes (1878) 76 Ky. (13 Bush) 697, 26 Am. Rep. 242.

The United States government has never acknowledged the right of foreign nations to demand the surrender of fugitives from justice, independent

of treaty stipulations. In re Fetter (1852) 23 N. J. Law (3 Zab.) 311, 57 Am. Dec. 382.

8. —— **Surrender by state.**—As to power of state to surrender fugitive from justice to foreign country, see Holmes v. Jennison (1840) 14 Pet. 540, 561, 10 L. Ed. 579.

Extradition must be negotiated through the federal government, and not by a state, though the demand be for a crime committed against the law of the state. U. S. v. Rauscher (1886) 7 Sup. Ct. 234, 238, 119 U. S. 407, 30 L. Ed. 425.

No state can, without the consent of congress, enter into any agreement or compact, express or implied, to deliver up fugitives from justice from a foreign state who may be found within its limits. (1841) 3 Op. Atty. Gen. 661.

There being no extradition treaty between the United States and Belgium, a warrant by the governor of New York for surrender of a prisoner to the Belgium government on request of its minister is repugnant to the constitution of the United States inhibiting states from entering into agreements or compacts with foreign powers. In re Vogt (N. Y. 1870) 44 How. Prac. 171.

In Vermont it is held that the governor of the state is not authorized to surrender to the governor of the province of Canada, on the request of the latter, a person who has committed a crime in that province, and has escaped into that state, and that a warrant issued by such governor to detain and surrender such person did not authorize his arrest and imprisonment. Ex parte Holmes (1840) 12 Vt. 631.

9. —— **Belgium.**—Under the treaty of 1874 with Belgium, the date of the signing, and not the date of the ratification, is the time intended in the declaration that its provisions shall not apply to any crime committed prior to its date. In re Vandervelpen (C. C. 1877) Fed. Cas. No. 16,844.

10. —— **France.**—A person against whom a complaint has been made and accepted before a judge of instruction in France is a person accused, within the meaning of the extradition treaty. In re Metzger (D. C. 1847) Fed. Cas. No. 9,511.

The treaty with France regarding the surrender of fugitives from justice cannot be executed by the president of the United States, without an act of congress. In re Metzger (N. Y. 1847) 1 Parker, Cr. R. 108.

11. —— **German Empire.**—The treaty of extradition with Bavaria of 1853 was not abrogated by the operation of the constitution of the German empire, adopted in 1871. In re Thomas (C. C. 1874) Fed. Cas. No. 13,887.

12. —— **Great Britain.**—This act is not in conflict with the treaty with Great Britain of August 9, 1842, but is merely supplementary thereto. In re Kaine (C. C. 1852) Fed. Cas. No. 7,598.

The British extradition act of Aug. 9, 1870 (St. 33 & 34 Vict. c. 52), is not binding on the courts of the United States in respect to the construction of the treaty of 1842. U. S. v. Lawrence (C. C. 1876) Fed. Cas. No. 15,573.

The treaty of 1889 (26 Stat. 29) between Great Britain and the United States, which provides for extradition for certain acts of fraud, "made criminal by the laws of both countries," does not by such phrase limit the right of England to extradition by this country to persons charged with acts which are made criminal by the laws of the United States, but must be construed in the light of the well-understood fact that under our system of government the power of the federal government to legislate with respect to crimes is limited, while the power of the states to legislate with respect to other offenses is recognized; and when, by the law of England and by the law of the state in which a fugitive from English justice is found, the fraudulent acts with which he is charged are made criminal, he is fairly within the treaty. In re Wright (C. C. 1903) 123 Fed. 463, order affirmed Wright v. Henkel (1903) 23 Sup. Ct. 781, 190 U. S. 40, 47 L. Ed. 948.

The extradition treaty between Great Britain and the United States and this section do not vest a commissioner with power to issue a warrant upon which the accused may lawfully be arrested in another state and returned for examination before such commissioner. To authorize the extradition of a person under such treaty the charge must be one which would constitute an offense under the laws of the place where he is found, and the evidence such as would justify his apprehension and commitment for trial if the offense had been there committed; and, since the treaty recognizes the dual nature of our government, and the laws governing the offense may be either national or local, it is clearly contemplated that the hearing shall be within the state, district, or territory where the accused is found. In re Walshe (C. C. 1903) 125 Fed. 572, judgment affirmed Pettit v. Walshe (1904) 24 Sup. Ct. 657, 194 U. S. 205, 48 L. Ed. 938.

Article 27 of the treaty of 1794 with Great Britain applies to citizens of the United States who have committed the specified crimes within the jurisdiction of Great Britain, and have fled to this country. U. S. v. Robins (D. C. 1799) Fed. Cas. No. 16,175.

Article 27 of the treaty of 1794 with

Great Britain, which provides for the reciprocal extradition of fugitives charged with the crimes of murder and forgery, is not in contravention of the constitution of the United States, as violating the right of trial by jury. Id.

The treaty of 1842 with Great Britain is not only a contract between the government of Great Britain and the United States, but it is also the law of this land; and a person extradited under it cannot be detained or tried here for a crime unless enumerated therein and included in the warrant of extradition, and he may, if occasion require, invoke the treaty in any judicial proceeding as a protection against detention or trial. Ex parte Hibbs (D. C. 1886) 26 Fed. 421.

The treaty of 1889 between Great Britain and the United States, providing for the extradition of persons charged with offenses "committed within the jurisdiction of" either party, does not authorize the extradition of a person charged with the commission of an offense in a place or country which was not at the time within the jurisdiction of the country seeking the extradition, although it has since been brought within such jurisdiction. In re Taylor (D. C. 1902) 118 Fed. 196.

The territory of the South African Republic was not a part of the dominions of Great Britain, in an ordinary or unqualified sense, prior to the proclamation of Lord Roberts of 1900, making it a British colony, nor in such sense as to bring it within the purview of the extradition treaty of 1889 between Great Britain and the United States; and under that treaty Great Britain cannot require from the United States the extradition of a person for an offense alleged in the complaint to have been committed at Johannesburg prior to the date of such proclamation. Id.

The extradition treaty of 1890 (Act March 25, 1890, 26 Stat. 1509) between Great Britain and the United States was designed to enlarge the Ashburton treaty of 1842. U. S. v. Greene (D. C. 1906) 146 Fed. 766.

The provision in the treaty of 1795 between this country and Great Britain for the delivery of criminals charged with murder or forgery being not in force in 1819, the laws of nations applied to extraditions. In re Washburn (N. Y. 1819) 3 Wheeler, Cr. Cas. 473.

The treaty with Great Britain of August 9, 1842, or Act 1848, does not affect the authority of the federal courts in allowing and acting upon a habeas corpus to inquire into imprisonments thereunder. In re Kaine (1852) 10 N. Y. Leg. Obs. 257.

13. —— **Italy.** — Executive recognition of the obligation of the United States to surrender its own citizens under the extradition treaty with Italy of March 23, 1868, and the supplemental treaty of 1884, notwithstanding refusal of the Italian government to surrender fugitives of Italian nationality committing crimes in the United States, is a waiver of the breach, if any. Charlton v. Kelly (1913) 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. (N. S.) 397, affirming decree Ex parte Charlton (C. C. 1911) 185 Fed. 880.

Citizens of country of asylum are "persons," within the treaty of March 23, 1868, with Italy, in which the two countries agreed to deliver up all persons convicted or charged with any of the crimes specified, committed within the jurisdiction of one of the contracting parties. Id.

The treaty of March 23, 1868, between the United States and Italy, construed as covering the case of a crime committed before the treaty was made, is not open to the objection that it is a bill of attainder or an ex post facto law, within the meaning of Const. art. 1, § 9. In re De Giacomo (C. C. 1874) Fed. Cas. No. 3,747.

The court may not declare that the extradition treaty between the United States and Italy entered into in 1868 (15 Stat. 629) and amended in 1884 (24 Stat. 1001) is abrogated merely because Italy refuses to surrender its subjects, committing crimes in the United States and then fleeing to Italy, where the United States has dealt with the treaty as subsisting, and has honored the requisition of the Italian government for the surrender of its citizens, and the court may not go behind such acts and say that the treaty has been ended. Ex parte Charlton (C. C. 1911) 185 Fed. 880, judgment affirmed Charlton v. Kelly (1913) 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. (N. S.) 397.

The word "persons" in the extradition treaty between the United States and Italy, entered into in 1868 (15 Stat. 629) and amended in 1884 (24 Stat. 1001), providing for the surrender of persons charged with enumerated crimes, is sufficiently broad to embrace citizens and subjects of the contracting parties, and a citizen of the United States, who while in Italy commits an offense, and who then flees to the United States, is within the treaty and may be extradited thereunder, though Italy has always construed the word so as not to include its citizens and subjects. Id.

14. —— **Mexico.**—The forty days during which a prisoner may be detained under the terms of article X of the treaty of February 22, 1899 (31 Stat. 1825), with Mexico, "to await the production of the documents upon which the claim for extradition is founded," must be considered as meaning forty days prior to the production of the documents to the State Department in

the United States, or to the corresponding branch of the Mexican government; and if such documents are thus produced within the forty days, the suspected criminal has no absolute right or release under the treaty, but may be detained for a reasonable additional period to afford time for an investigation into his probable guilt or innocence. (1908) 27 Op. Atty. Gen. 4.

The funds of a private corporation are not "public moneys" within the meaning of the extradition treaty between Mexico and the United States, providing for extradition for the offense of embezzling public moneys. Blandford v. State (1881) 10 Tex. App. 627.

15. —— Russia.—The requirement of the extradition treaty with Russia for the production of a warrant of arrest, signed by a Russian magistrate, is waived by this section. Grin v. Shine (1902) 23 Sup. Ct. 98, 102, 187 U. S. 181, 47 L. Ed. 130.

16. Return procured illegally.—See note under § 10121, post.

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A crime subject to infamous punishment in Switzerland is an extraditable crime under the treaty with that country, although not subject to such punishment in this country. In re Farez (C. C. 1870) Fed. Cas. No. 4,645.

The crime is shown to be subject to infamous punishment in Switzerland by showing that it is punishable by imprisonment in the state prison, by the laws of the canton of Berne, in which it was committed. Id.

A subject of the king of Prussia, charged with having committed a crime in Belgium, is extraditable under the treaty with Prussia of June 16, 1852, as for a crime "committed within the jurisdiction" of Prussia, where such person is punishable for such crime in Prussia, where a prosecution therefor has been commenced. In re Stupp (C. C. 1873) Fed. Cas. No. 13,562.

The laws of France, and not those of the United States, form the basis for the inquiry whether an extraditable offense has been committed, under the treaty of November 9, 1843. In re Metzger (D. C. 1847) Fed. Cas. No. 9,511.

A charge of having committed, within the jurisdiction of a foreign country, the crime of vol qualifie, being one of the crimes enumerated and provided for in a treaty of extradition, held sufficient to sustain a commitment and warrant of extradition. In re Veremaitre (D. C. 1850) Fed. Cas. No. 16,-915.

The specific applications of the definitions of the crimes named in a treaty are determinable in particular cases by the jurisprudence and legislation of the particular places of arrest. Muller's Case (D. C. 1863) Fed. Cas. No. 9,-913.

The extradition of persons under the twenty-seventh article of the British treaty of 1794 is not authorized, unless the crime they are accused of was committed within the jurisdiction of Great Britain. (1798) 1 Op. Atty. Gen. 83.

Whether a British subject who has run away with a British vessel, and entered one of our ports in violation of our revenue laws, should be delivered to the officers of his government for trial, is doubtful as a question of international law, such a case not having been provided for by any statute or existing treaty. (1821) 1 Op. Atty. Gen. 510.

Where a citizen of Prussia, charged with the commission of a crime in Belgium, and with having thence afterward fled to the United States, was demanded by the German government for the purpose of trial and punishment, under the extradition treaty between the United States and Prussia of June 16, 1852, which provides for the delivery up of persons who, being charged with certain crimes "committed within the jurisdiction of either party," shall be found within the territories of the other, held that, although by the law of Prussia the accused might be justiciable in that country for the alleged offense irrespective of the locality of its commission, yet that under said treaty the locus delicti is material, and unless it be within the jurisdiction of the demanding party the provisions of the treaty do not apply, and that, accordingly, in the present case, as the place where the alleged crime was committed is manifestly not within the jurisdiction of Germany, the accused was not demandable under the treaty. (1873) 14 Op. Atty. Gen. 281.

18. —— Nontreaty offenses. — The existence of an extradition treaty between the United States and the Hawaiian Islands does not prohibit the surrender by either of a person charged with a crime not enumerated in the treaty. Ex parte Foss (1894) 102 Cal. 347, 36 Pac. 669, 41 Am. St. Rep. 182, 25 L. R. A. 593.

19. —— Breach of trust.—Extradition cannot be demanded of France by the United States in the case of a

breach of trust in the state of California, made grand larceny by the laws of that state. (1856) 7 Op. Atty. Gen. 643.

20. —— **Burglary.**—The treaty between the United States and France of February, 1845, provides for the extradition of fugitives from one government to the other for certain crimes, one of which is burglary. A New York statute provides for the punishment of burglary in the third degree. Held, that where an accused is indicted in New York for burglary in the third degree, his extradition cannot be procured under the treaty, since there is no crime of burglary in the third degree included in the treaty. In re Lagrave (N. Y. 1873) 45 How. Prac. 301.

21. —— **Embezzlement.**—The omission of the word "fraudulently" from a complaint in extradition proceedings charging embezzlement does not render such complaint defective, where it alleges that the accused "wrongfully, unlawfully, and feloniously" appropriated the property. Grin v. Shine (1902) 23 Sup. Ct. 98, 102, 187 U. S. 181, 47 L. Ed. 130.

A complaint in extradition proceedings does not insufficiently charge the crime of embezzlement, as defined in Pen. Code Cal. § 508, because it alleges that the money embezzled was intrusted to and received by the accused "in his capacity as clerk," instead of charging, in the language of that section, that such money came into his control or care "by virtue of his employment as such clerk." Id.

A sufficient showing that one accused, in extradition proceedings, of the crime of embezzlement, had the care and control of the property within the meaning of Pen. Code Cal. § 508, defining that crime, is made by a complaint which charges him with having converted to his own use the proceeds of a check after having cashed it at a bank to which he had taken it in accordance with his employer's instructions to draw the money and take it to a railroad station, to be forwarded to another city. Id.

Under Pen. Code Cuba, art. 401, which makes it a crime for a public employé to take public funds of which he has charge by virtue of his office, a public officer who, by falsely certifying the invoices in which certain coupons are inclosed, obtains possession of money paid out by the Spanish bank, which could not pass from the bank's possession to his own except as a consequence of his official act, is guilty of an extraditable offense. In re Cortes (C. C. 1890) 42 Fed. 47.

Where the extradition papers show that the party charged received checks for money due a municipality, and deposited them in bank to the credit of the corporation, but that he accounted for only a part thereof, this is sufficient proof of embezzlement to warrant delivering him up, and it is immaterial whether the amount unaccounted for, as testified to, was greater or less than the amount charged. In re Breen (C. C. 1896) 73 Fed. 458.

In proceedings for the extradition of defendant to Cuba to answer to a charge of embezzling public funds as a public officer, evidence that he was the head of the bureau of finance in the department of posts of the Island of Cuba, which bureau issued stamps to the postmasters of the island, and received the remittances therefor, and deposited the same in bank; that defendant personally received and receipted for such remittances, and directed the amount of each deposit, himself making up the packages therefor; and that during a considerable time the receipts, as shown by the books uniformly exceeded the deposits, —is sufficient to establish probable cause, and warrant the holding of the defendant for extradition. In re Neely (C. C. 1900) 103 Fed. 631, judgment affirmed Neely v. Henkel (1901) 21 Sup. Ct. 302, 180 U. S. 109, 45 L. Ed. 448.

Where defendant subscribed for one share of the stock of a French corporation, and agreed with the other subscribers to devote his entire time to the management of the corporation's affairs, and in consideration of his services receive 40 per cent. of the profits, he was a person "hired or salaried" by the corporation, within French extradition treaty, authorizing extradition for embezzlement by any person or persons, hired or salaried, to the detriment of their employers, etc. In re Balensi (C. C. 1903) 120 Fed. 864.

It being provided by a treaty under which extradition of a person on the charge of embezzlement is sought that the evidence of criminality must be shown according to the laws of the place where he is found, and the laws of Oregon not allowing one to be held for embezzlement where ownership of the property was in part in him, or he was a partner in the business from which the fund was derived, extradition will be denied, on testimony that he and others went "in together" in the business from which the money was derived, on an agreement that it should be carried on in the same name as before he was connected with it, and that he should have half the profits, though putting in no money, and though nothing was said about sharing losses none being contemplated. In re Frank (D. C. 1901) 107 Fed. 272.

The embezzlement of the funds of a savings bank established, maintained,

the United States, or to the corresponding branch of the Mexican government; and if such documents are thus produced within the forty days, the suspected criminal has no absolute right or release under the treaty, but may be detained for a reasonable additional period to afford time for an investigation into his probable guilt or innocence. (1908) 27 Op. Atty. Gen. 4.

The funds of a private corporation are not "public moneys" within the meaning of the extradition treaty between Mexico and the United States, providing for extradition for the offense of embezzling public moneys. Blandford v. State (1881) 10 Tex. App. 627.

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The embezzlement of the funds of a savings bank established, maintained,

and owned by a city in Germany, by a cashier who is a public official appointed by the city, is an embezzlement of public moneys, within the treaty of 1852 between Prussia and the other states of the Germanic Confederation and the United States. In re Reiner (D. C. 1903) 122 Fed. 109.

Under the extradition treaty with France, a public officer of the United States who embezzles moneys of the United States intrusted to his care, and flies from justice to the territory of France, is liable to be removed to this country for trial; such crime being here punishable with infamous punishment. (1867) 12 Op. Atty. Gen. 326.

22. —— **Forgery.**—Under this section a United States circuit court commissioner has jurisdiction to hear a complaint for forgery, made by a Mexican consul against a fugitive from that country, and, if he deems the evidence sufficient to sustain the charge, to commit the accused until a warrant for his surrender be issued, as forgery is one of the crimes enumerated in the extradition treaty with Mexico (12 Stat. 1199). Benson v. McMahon (1888) 8 Sup. Ct. 1240, 1241, 127 U. S. 457, 32 L. Ed. 234.

A violation of the law of the German Empire against crime such as forgery is an offense extraditable under the treaty of June 16, 1852, between the United States and Prussia, when such offense is committed in Prussia and such law is recognized and enforced in that kingdom as its law on that subject. Terlinden v. Ames (1902) 22 Sup. Ct. 484, 488, 184 U. S. 270, 46 L. Ed. 534.

False entries made in the usual books of account, or memoranda on slips directing such entries by others, made by an officer or employé of a bank for the purpose of concealing his embezzlements, do not constitute forgery, as defined and recognized by the courts of England; and where a person is held for extradition to England for forgery on such proofs only of acts committed in England, he should be discharged on habeas corpus. In re Tully (C. C. 1884) 20 Fed. 812.

Checks or drafts drawn by an agent, and signed with the name of the principal, and by the agent, "per procuration," are not forgeries, whether the agent has or has not authority to draw them, since in either case they are nothing different from what they purport to be. Id.

Falsification of written evidence against another is forgery at common law; and where, by the law of the place, a clerk's or paying teller's daily entries in the course of his duty, supplemented by his own oath, in the absence of his recollection on the subject, are admissible in evidence in his own discharge, in respect to moneys received by him, semble, that the falsification of such entries for the fraudulent purpose of concealing embezzlements should be deemed forgery. Id.

A printed theater ticket in the usual form, and stamped on its face with an inscription in the style of a seal setting out the name of the manager, in printed characters, is the subject of forgery at common law, and under the treaty of extradition between the United States and the republic of Mexico of December 11, 1861 (12 Stat. 1199), "printing" being "writing" in the legal sense of that term, and a signature by impression from a stamp being a valid signature. In re Benson (C. C. 1888) 34 Fed. 649.

The fact that a theater ticket expresses no consideration, and contains no promise to admit the holder to the performance for which the ticket is sold, does not render it void upon its face. It is, "if genuine, the foundation of a legal liability," and so the subject of forgery. Id.

The term "forgery," as used in the treaty, should have, so far as our government is concerned, its common-law definition, which includes forgery of commercial paper, though the crime of forgery, as known to the law of Austria-Hungary, comprehends the falsification of public obligations, and though the crime of forging commercial paper, charged against the prisoner, is there classified as "fraud by means of forgery." In re Adutt (C. C. 1893) 55 Fed. 376.

The crime of uttering forged papers is included in the common-law definition of forgery, and in the term "forgery" as used in the treaty between Austria-Hungary and the United States. Id.

The treaty of 1842, between the United States and Great Britain, which provided for the extradition of persons charged with forgery, allows the extradition from Canada of a fugitive who is charged with an act which was forgery by the laws of Great Britain in 1842. In re Cross (D. C. 1890) 43 Fed. 517.

Treaty with Bavaria Sept. 12, 1853, art. 1 (10 Stat. 1022), authorizing extradition of persons charged with forgery or utterance of forged papers, was applicable where it appeared that written instruments had been falsely uttered by accused for fraud and deceit, and that the instruments were of such a description that they might defraud or deceive if issued with such intent. Ex parte Zentner (D. C. 1910) 188 Fed. 344.

Evidence of the forging of checks on the communal chest of Breslau, in Prussia, is sufficient cause for the issue of a warrant for judicial inquiry with a view to the extradition of the

party, under the treaty between the United States and Prussia. (1854) 6 Op. Atty. Gen. 761.

Recommendation that authority be given to France to institute process of extradition for the crime of forgery, as against persons accused of defrauding the Northern Railroad Company. (1857) 8 Op. Atty. Gen. 307.

A complaint charged a fugitive with having committed forgery, stating the facts and circumstances, from all which it appeared that the crime was not forgery, nor any crime provided for in the treaty. Held, that a warrant ought not to have been granted by the commissioner. In re Heilbonn (N. Y. 1853) 1 Parker, Cr. R. 429.

23. —— **Fraud.**—A fugitive from the justice of Great Britain, charged with the commission of fraudulent acts as a corporate director, which are made criminal by the laws of that country and by the laws of the state of the United States in which the fugitive is found, is extraditable under the treaty with Great Britain of 1889, art. 1, including, among other extraditable crimes, fraud by a corporate director "made criminal by the laws of both countries." Wright v. Henkel (1903) 23 Sup. Ct. 781, 786, 190 U. S. 40, 47 L. Ed. 948, affirming order In re Wright (C. C. 1903) 123 Fed. 463.

The additional article proposed to the extradition treaty between the United States and France will be effectual for the mutual surrender of fraudulent bankrupts. (1868) 12 Op. Atty. Gen. 434.

24. —— **Homicide.**—A murder committed on board a British ship of war is committed within the jurisdiction of Great Britain, under the treaty of extradition. U. S. v. Cooper (C. C. 1800) Fed. Cas. No. 14,865; Same v. Robins (D. C. 1799) Fed. Cas. No. 16,175.

A person may be surrendered under the treaty of March 23, 1868, for murder committed in Italy before the treaty was made. In re De Giacomo (C. C. 1874) Fed. Cas. No. 3,747.

The lowest grade of inexcusable homicide is within the generic term "murder," as used in the treaty of 1842 with Great Britain, and the tribunal where the fugitive is found will not inquire into the grade of guilt. In re Palmer (D. C. 1873) Fed. Cas. No. 10,679.

Manslaughter is not an extraditable offense under the treaty with Great Britain of 1842, not being included in the term "murder." In re Kelley (D. C. 1874) Fed. Cas. No. 7,655.

The treaty between the United States and Salvador (article 3) defines murder as "comprehending the crimes designated in the penal codes of the contracting parties by the terms homicide, parricide, assassination, poisoning, and infanticide." The Penal Code of Salvador provides: "Art. 360. Murder is homicide committed with premeditation, and under one of the following circumstances: (1) With perfidy or breach of trust; (2) for a price or promise of reward; (3) by means of flood, fire, or poison. The crime of murder will be punished with the penalty of death. Homicide, Art. 361. He who kills another with premeditation, and without any of the circumstances enumerated in the preceding article, or under some one of said circumstances and without premeditation, will be punished with the penalty of imprisonment at hard labor. In any other case the penalty of imprisonment at hard labor shall be imposed on the offender." Held, that homicide, as defined in the Penal Code of Salvador (article 361), constitutes murder, as defined in such treaty. In re Ezeta (D. C. 1894) 62 Fed. 972.

25. —— **Larceny.**—Larceny is not included in the causes of extradition stipulated as between Great Britain and the United States. (1853) 6 Op. Atty. Gen. 85.

Constructive larceny, consisting of embezzlement of the money of a bank by one of its officers, is not among the causes of extradition provided for by treaty between Great Britain and the United States. (1854) 6 Op. Atty. Gen. 431.

26. —— **Piracy.**—Robbery on the lakes is piracy within the meaning of our extradition treaty with Great Britain; but inasmuch as the parties engaged in the outrages on Lake Erie were guilty of robbery and assault with intent to commit murder, the Secretary of State was advised, in view of the disputed question of piracy on the lakes, that their extradition should be demanded at the hands of the Canadian authorities for those offenses. (1864) 11 Op. Atty. Gen. 114.

27. —— **Poisoning.**—One accused of poisoning, resulting in death in Canada, may be extradited, though it appears that the poison, if administered at all, was given in this country. Sternaman v. Peck (1897) 83 Fed. 690, 28 C. C. A. 377.

28. —— **Robbery.**—The treaty between the United States and Salvador defines robbery as "the action of feloniously and forcibly taking from the person of another goods or money by violence, or putting him in fear." Held, that taking money or goods from the presence or view of the party robbed, by violence, or by putting him in fear, was robbery, within the meaning of such treaty. In re Ezeta (D. C. 1894) 62 Fed. 972.

29. —— **Theft.**—Theft is an extraditable crime within the laws of nations. In re Washburn (N. Y. 1819) 3 Wheeler, Cr. Cas. 473.

30. **Offenses within military jurisdiction.**—The overthrow of the Ezeta government by revolution, and the dissolu-

tion of its army, did not change the status of the question as to whether such offenses were within such military jurisdiction. In re Ezeta (D. C. 1894) 62 Fed. 972.

The killing of C. by President Ezeta and his officer, being within the jurisdiction of the military law of Salvador, is not subject to extradition. Id.

31. Political offenses.—Offenses held to be of a political character, and not subject to extradition. In re Ezeta (D. C. 1894) 62 Fed. 972.

32. State and federal courts.—Where a court of one of the states assumes to take, by habeas corpus, out of the hands of a marshal of the United States, a person held by him as a fugitive from crime, committed in a foreign country, and under reclamation by treaty, the United States may well, by counsel and direction, protect their marshal in the maintenance of the laws, and in discharge of public faith toward the reclaiming foreign government. (1853) 6 Op. Atty. Gen. 227.

Where a district judge of the United States at chambers committed a prisoner to await the mandate of the president for his extradition under a treaty, such action may be reviewed on habeas corpus by a state court. In re Metzger (N. Y. 1847) 1 Barb. 248.

Where a person is in custody of a United States marshal for the purpose of determining whether or not he should be extradited under the treaty between the United States and Great Britain, the state court has no jurisdiction to compel the production of the prisoner before it to enable it to review the proceedings of the federal tribunal. People v. Fiske (N. Y. 1873) 45 How. Prac. 294.

33. Commissioners—Appointment and jurisdiction.—While an executive order of surrender to a foreign government is a purely national act, to be performed by the Secretary of State by order of the President, Congress may vest authority in judicial magistrates to arrest and commit a fugitive from justice, preparatory to a surrender, and in this respect the functions of the judicial magistrate, under this act, are independent of the President's command. (Catron, McLean, Wayne, and Grier, JJ., in separate opinions.) In re Kaine (1852) 14 How. 103, 110, 14 L. Ed. 345.

The power to appoint extradition commissioners is conferred upon the courts by this section under the authority of Const. art. 2, § 2, par. 2, since such commissioners are not judges in the constitutional sense. Rice v. Ames (1901) 21 Sup. Ct. 406, 409, 180 U. S. 371, 45 L. Ed. 577.

A United States commissioner was not without jurisdiction over extradition proceedings because at the time the warrant of arrest was issued he had not been authorized to act in such proceedings, where the warrant was issued by a district judge and the commissioner did not assume to act until he was specially designated to act. Grin v. Shine (1902) 23 Sup. Ct. 98, 100, 187 U. S. 181, 47 L. Ed. 130.

The provision of this section that the accused shall be brought before the justice, judge, or commissioner who issued the warrant, is limited by the proviso of Act Aug. 18, 1894, c. 301, § 1, that the prisoner shall be taken before the nearest circuit court commissioner or nearest judicial officer for a hearing. Pettit v. Walshe (1904) 24 Sup. Ct. 657, 661, 194 U. S. 205, 48 L. Ed. 938.

The authority of the commissioner is sufficiently shown where it appears that he was authorized to issue warrants generally in cases of extradition, embracing the one covered by such warrant. In re Farez (C. C. 1870) Fed. Cas. No. 4,645.

The jurisdiction of a United States commissioner to examine and commit one who has committed crime in a foreign country, and certify the proceedings to the secretary of state, is not dependent on the fact that he issued the warrant of arrest. In re Grin (C. C. 1901) 112 Fed. 790, judgment affirmed Grin v. Shine (1902) 23 Sup. Ct. 98, 187 U. S. 181, 47 L. Ed. 130.

The committing magistrate has jurisdiction, and it is his duty, to determine whether the offense charged is political, and not subject to extradition. In re Ezeta (D. C. 1894) 62 Fed. 972.

A commissioner for the United States, appointed by the circuit court, is a magistrate within the meaning of the law and the treaty of Washington, and as such has power to apprehend, examine, and certify as to fugitives from justice. (1843) 4 Op. Atty. Gen. 201.

The commissioner's jurisdiction over the case ended after he certified the result of his finding to the Secretary of State and committed the prisoner to the proper jail. He was clearly without authority to order the prisoner transported out of the judicial district in which he was arrested. (1909) 27 Op. Atty. Gen. 128.

The United States marshal at New York was justified in refusing to receive and hold an extradition prisoner under a warrant issued by a United States commissioner at Warren, Pa., who had examined the prisoner and found that the evidence was sufficient to sustain the charge against him. Id.

34. Preliminaries, requisition, and mandate.—As to final mandate or warrant of extradition, see note under § 10118, post.

35. —— In general.—The issuing of a warrant abroad is not a necessary preliminary step. In re Farez (C. C. 1870) Fed. Cas. No. 4,645.

It is not a necessary preliminary to an investigation that a warrant of arrest should have been issued or pro-

ceedings had against the accused in the foreign jurisdiction. In re Thomas (C. C. 1874) Fed. Cas. No. 13,887.

In proceedings for the extradition of an alleged fugitive from justice by a foreign country under this section, it is not necessary to produce before the commissioner any warrant of arrest or other equivalent document issued by a foreign magistrate. Ex parte Schorer (D. C. 1912) 197 Fed. 67.

Any foreign government entitled by treaty to the extradition of a fugitive from justice may apply to the courts, in the first instance; but, if requested, the President will issue the previous authorization held to be necessary by a portion of the court in Kaine's case. (1853) 6 Op. Atty. Gen. 91.

The United States will not make demand for extradition of a person alleged to be a fugitive from the justice of one of the United States, and to have taken refuge in Great Britain, except on the exhibition of a judicial "warrant" duly issued, on sufficient proofs, by the local authority of the state in which the crime is alleged. (1854) 6 Op. Atty. Gen. 485.

Any competent magistrate may take jurisdiction of a question of international extradition voluntarily; that is, without the previous application of the foreign government, or issue of the preparatory letters permissive of the President. (1856) 8 Op. Atty. Gen. 240.

A clerical error in letters missive, authorizing a foreign government to institute proceedings of extradition in the United States, is of no account, such a document not being a judicial paper in any sense, but only a political commission or license. Id.

The extradition laws do not require the proceedings against a foreign criminal to be either carried on or approved by the attorney of the United States for the proper district. (1858) 9 Op. Atty. Gen. 246.

36. —— **Requisition or demand.**—No preliminary requisition from the demanding government is essential to the jurisdiction of a United States commissioner over extradition proceedings. Grin v. Shine (1902) 23 Sup. Ct. 98, 104, 187 U. S. 181, 47 L. Ed. 130.

The requirement in the supplemental extradition treaty of 1884 with Italy, following provisions for arrest upon the exhibition of a certificate from the Secretary of State, attesting that a requisition has been made, and for the remand of the accused to prison until a formal demand for extradition shall be made and supported by evidence, that if "the requisition, together with the documents above provided for," shall not be made within forty days from the date of arrest, the accused shall be set at liberty, cannot be deemed to mean that "formal demand" must be proved in the preliminary proceedings within forty days after arrest, in view of the provisions of this section. Charlton v. Kelly (1913) 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. (N. S.) 397.

Under the treaty with Great Britain of August 9, 1842, a demand must first be made directly upon the government for the surrender of a fugitive, and its authority obtained before a warrant of arrest can be issued. Ex parte Kaine (C. C. 1853) Fed. Cas. No. 7,597.

The initiative of proceedings for the extradition of an alleged criminal does not necessarily rest on a requisition by the foreign government, but may be commenced by the arrest of the person charged, under a warrant issued by a United States commissioner on complaint of a foreign consul. In re Adutt (C. C. 1893) 55 Fed. 376, following In re Kaine (1852) 14 How. 103, 14 L. Ed. 345, and Benson v. McMahon (1888) 8 Sup. Ct. 1240, 127 U. S. 457, 32 L. Ed. 234.

The better practice requires that the initiative of extradition proceedings shall be by the demanding government, though it seems to be considered unnecessary so long as the proceedings show as a matter of fact that they are sanctioned by the demanding government. Id.

The jurisdiction of the commissioner in international extradition proceedings should, it seems, be called into action only on the request of the executive. Id.

Where an extradition treaty, providing for the surrender of persons committing enumerated crimes, exists between the United States and a foreign government, a "request" by the foreign government for the surrender of a fugitive is a sufficient "demand" for the surrender. Ex parte Charlton (C. C. 1911) 185 Fed. 880, judgment affirmed Charlton v. Kelly (1913) 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. (N. S.) 397.

Where the certificate of the Secretary of State, attesting that a requisition has been made by a foreign government to secure the preliminary arrest of a person charged with crime, was exhibited to the committing magistrate between the time of the arrest of accused under a warrant issued on the complaint of a representative of the foreign country, and the final hearing, there was a sufficient compliance with this section and the treaty between the United States and Italy entered into in 1868 (15 Stat. 629) and amended in 1884 (24 Stat. 1001). Id.

Failure to produce a certified copy of a requisition from a foreign country before the commissioner in extradition proceedings was cured, where a properly certified copy of the requisition on file in the office of the Secretary of State was submitted to the court at the hearing of a writ of habeas corpus. In re Urzua (C. C. 1911) 188 Fed. 540.

The requisition for the extradition of a fugitive criminal under the treaty

with Great Britain of 1842, and this act was properly made through the executive of the United States. In re Heilbronn (D. C. 1854) Fed. Cas. No. 6,323.

A federal judge has authority to issue a warrant for the arrest of a fugitive under the treaty with Great Britain of 1842, and the statutes passed to aid in carrying it into effect, without a previous application having been made to the executive. Ex parte Ross (D. C. 1869) Fed. Cas. No. 12,069; In re Kelley (D. C. 1874) Fed. Cas. No. 7,655.

Under this section a certificate of the Secretary of State that application for the extradition of the person named has been made by the foreign government is not necessary to the issuance of such warrant, even where, as in case of Russia, the treaty provides for such certificate. In re Schlippenbach (D. C. 1908) 164 Fed. 783.

No prior demand by a foreign government is necessary before the arrest of a fugitive from the justice of such government in extradition proceedings. Ex parte Zentner (D. C. 1910) 188 Fed. 344.

A foreign country may institute proceedings for the extradition of an alleged fugitive from justice under this section, without any precedent demand or formalities, in the absence of treaty provisions requiring the same. Ex parte Schorer (D. C. 1912) 197 Fed. 67.

The executive is not authorized to deliver up to the king of Portugal the seamen confined in Boston, who are charged by the chargé d'affaires of His Majesty with piracy committed on the brig Triumph. (1833) 2 Op. Atty. Gen. 559.

A requisition for a fugitive is not necessary to a preliminary examination upon which the evidence of criminality is to be heard and considered, but with a view only to the surrender, after the ascertainment of the facts showing the party charged to be in a condition which justifies the apprehension and commitment for trial, according to the laws of the place where he or she shall be found. (1843) 4 Op. Atty. Gen. 201.

The mode provided for the surrender of persons accused of the crimes mentioned in the treaty with France is by requisitions made in the name of the respective parties, through the medium of their respective diplomatic agents. (1844) 4 Op. Atty. Gen. 330.

A mere notification by the local officer of a foreign government of the escape of an alleged criminal is not sufficient prima facie evidence of a case to justify the preliminary action of the President. (1854) 7 Op. Atty. Gen. 6.

All demands of international extradition must emanate from the supreme political authority of the demanding state. Id.

A foreign mandat d'arrêt, setting forth the offense of a fugitive from the justice of a foreign country within the terms of any treaty of extradition, such mandat coming through the proper political channel, is sufficient foundation for the issue of the President's warrant authorizing the institution of proceedings before the judicial authorities of the United States. (1855) 7 Op. Atty. Gen. 285.

There can be no actual extradition without proper requisition to that effect, addressed by the foreign government to the Secretary of State. (1856) 8 Op. Atty. Gen. 240.

Although extradition cannot be ordered by the President on mere judicial documents, but requires executive requisition, still it may be effected in the absence of any diplomatic minister of the demanding government, through other intermediate agencies, recognized by the law of nations. Id.

A governor has no power, under an international treaty, to make demand on a foreign government for the surrender of a fugitive. People v. Columbia County Sup'rs (1892) 134 N. Y. 1, 31 N. E. 322.

A fugitive from a foreign country cannot be arrested by a magistrate on the charge of a private person with having committed murder to give the executive of the United States an opportunity to deliver him up. Commonwealth v. Deacon (Pa. 1823) 10 Serg. & R. 125.

37. —— **Mandate.**—A preliminary mandate from the executive is not essential to jurisdiction in such proceedings, unless made obligatory by the treaty. In re Thomas (C. C. 1874) Fed. Cas. No. 13,887; In re Orpen (C. C. 1898) 86 Fed. 760; Castro v. De Uriarte (D. C. 1883) 16 Fed. 93.

A mandate, purporting to be issued by the government of the United States, and issued under the hand of the secretary of state and the seal of the department of state, is a sufficient mandate. In re Farez (C. C. 1869) Fed. Cas. No. 4,644.

Necessity of a mandate from the executive for the arrest of a fugitive from justice before the commissioner can entertain jurisdiction of proceedings. In re MacDonnell (C. C. 1873) Fed. Cas. No. 8,771.

A description in the mandate of the offense charged, in the terms of the treaty, is sufficient. Id.

The judicial department will presume from the mandate of the secretary of state that a warrant for the arrest of the alleged fugitive for the crime imputed to him was issued in Belgium. Ex parte Van Hoven (C. C. 1876) Fed. Cas. No. 16,859.

A statement of the offense with which the fugitive is charged in general terms, importing that it is an offense within the treaty, is all that is required in the mandate issued by the department of state in extradition proceedings. In re Grin (C. C. 1901) 112

Fed. 790, judgment affirmed Grin v. Shine (1902) 187 U. S. 181, 23 Sup. Ct. 98, 47 L. Ed. 130.

In the convention with Spain, the provision that it shall be competent for the demanding government to obtain a mandate or preliminary warrant, is permissive only, and not obligatory. The demanding government may, at its option, proceed under this section without a preliminary mandate, or may demand it under the provisions of the treaty. Castro v. De Uriarte (D. C. 1883) 16 Fed. 93.

Under the extradition treaty of 1842 between the United States and Great Britain, the sanction of the executive department of state is necessary, as an initiative step, for the surrender of an alleged fugitive, in order to give the commissioner jurisdiction; and where no mandate has issued, showing a requisition duly made upon the executive authority of this government, the extradition will not be granted. In re Herris (D. C. 1887) 32 Fed. 583.

38, 39. **Complaint — Necessity.**—Under the treaty of August, 1842, between the United States and Great Britain, and this act, the supreme court has power to issue warrants for the purpose of apprehending fugitives from justice, only on complaint made under oath, charging some person with having committed one of the crimes enumerated in the treaty; and, if the complaint be insufficient, there is no jurisdiction to issue the warrant. In re Heilbonn (N. Y. 1853) 1 Parker, Cr. R. 429.

40. —— **Requisites and sufficiency.**—That one count in a complaint forming the basis of extradition proceedings was upon information and belief did not affect other counts charging wholly different offenses and purporting to be made upon the personal knowledge of the affiant. Rice v. Ames (1901) 21 Sup. Ct. 406, 408, 180 U. S. 371, 45 L. Ed. 577.

The production of a certified copy of an order purporting to be signed and sealed by a Russian examining magistrate, which, though not in the form of a warrant of arrest as used in the United States, was evidently designed to secure the apprehension of the accused and his production before an examining magistrate, satisfies the requirement of the extradition treaty with Russia of June 5, 1893 (28 Stat. 1071), that applications for extradition shall be accompanied by an authenticated copy of the warrant of arrest, or of some other equivalent judicial document issued by a judge or magistrate duly authorized to do so. Grin v. Shine (1902) 23 Sup. Ct. 98, 102, 187 U. S. 181, 47 L. Ed. 130.

To give jurisdiction to a United States commissioner of a proceeding to extradite a fugitive from the justice of a foreign state, the record of proceedings before the foreign court, and the depositions of witnesses therein contained, upon which the extradition proceeding is based, need not be attached to the complaint, if they are in the custody and keeping of the one making the complaint, and the commissioner is possessed of the information which they contain, which is sufficient to satisfy him that the proceeding is based upon real grounds. Yordi v. Nolte (1909) 30 Sup. Ct. 90, 92, 215 U. S. 227, 54 L. Ed. 170, affirming order Ex parte Yordi (D. C. 1909) 166 Fed. 921.

The irregularity, if any, in making a complaint in extradition proceedings on information and belief, without attaching thereto the record of the foreign court which is the basis of the proceeding, is cured by the production at the hearing of such record, which is sufficient to justify the detention of the accused. Id.

Where the consul of Mexico when making a complaint charging petitioner, who was a fugitive from justice of that republic, with the offense of forgery on information and belief, had before him the record from Mexico and the depositions of witnesses therein contained, which were sufficient to show the commission of an offense, and such record and depositions were before the commissioner when he issued the warrant based on such complaint, the proceedings were not invalidated because the record and depositions were not attached to the complaint or referred to therein as the sources from which the consul obtained his information. Id.

Where a complaint charged accused with burglary and theft in breaking and entering a county house in the Dominion of Canada and carrying away a sum of money, it charged an extraditable crime, which was theft or stealing in Canada and larceny in the United States, and was not objectionable because entering a banking house was not burglary at common law. Powell v. U. S. (1913) 206 Fed. 400, 124 C. C. A. 282.

Where a complaint on which extradition proceedings are based intelligibly describes and identifies the offense, which is punishable by the laws of both countries and is included in the extradition treaty, it is not material that it is not described by the same name in the laws of both countries or at common law. Id.

The complaint must be as specific as in the case of an offense committed in the United States. In re Farez (C. C. 1869) Fed. Cas. No. 4,644.

The substance of the offense charged should be clearly set forth in the complaint praying for the issuing of the warrant. Id.

The complaint need not allege that a warrant was issued abroad against the offender. In re Farez (C. C. 1870) Fed. Cas. No. 4,645.

The complaint on which the warrant

is issued need not set forth the issuing of a mandate by the executive for the arrest of the fugitive. In re MacDonnell (C. C. 1873) Fed. Cas. No. 8,771.

A complaint on oath, made by the consul general of a foreign country before a commissioner in the district, on the strength of telegrams and depositions taken abroad, held sufficient to justify the court in remanding the prisoner for examination before the commissioner before whom the complaint was made, and who issued the warrant of arrest. Ex parte Van Hoven (C. C. 1876) Fed. Cas. No. 16,859.

It is not necessary that the attorney general, or any member of the executive department, of a foreign nation, should himself make the complaint on which the accused is arrested. Any person whom he authorizes, or whom he delegates, to act for that government, is a proper person to appear and file a complaint. In re Kelly (C. C. 1886) 26 Fed. 852.

A complaint filed before the United States commissioner for the extradition of an alleged fugitive from justice did not show that the proceedings were initiated by the foreign government, or that the party filing the same was acting otherwise than in his private capacity; but it appeared from the testimony that the complaining witness was acting under direct authority from the officials of the foreign government. Held, that it was sufficient. In re Herres (C. C. 1887) 33 Fed. 165.

The complaint, to give jurisdiction, need not have the precision of an indictment, but should set forth the substantial features of the offense, so that the court can see that the particular crime charged is one enumerated in the treaty. In re Adutt (C. C. 1893) 55 Fed. 376.

It is doubtful if it be essential that the complaint in extradition proceedings should show that it was preferred by the representative of the demanding foreign government, and it is enough probably if to the commissioner or to the executive acting on the proceedings before the commissioner it appears that the proceeding is in fact instituted and conducted by the demanding nation or its duly accredited representative. Id.

The accused in extradition proceedings, while in Russia, received money from his employer to deliver to a certain company. Instead, he appropriated the money to his own use, and fled to the state of California, where he was arrested, charged with embezzlement. Held, under Pen. Code Cal. §§ 503, 508, defining "embezzlement" as "the fraudulent appropriation of property by a person to whom it has been intrusted," or who received it "by virtue of his employment," the offense was properly designated in the charge. In re Grin (C. C. 1901) 112 Fed. 790, judgment affirmed Grin v. Shine (1902) 187 U. S. 181, 23 Sup. Ct. 98, 47 L. Ed. 130.

A complaint in extradition, charging accused with murder committed in Mexico, the demanding country, was sufficient to confer jurisdiction on the commissioner to issue a warrant of arrest, without charging the facts constituting the substance of the offense. Ex parte Dinehart (C. C. 1911) 188 Fed. 858.

A complaint in an extradition case should show upon its face that the commissioner issuing the warrant is duly empowered to act in cases of that description. Ex parte Lane (D. C. 1881) 6 Fed. 34.

A complaint charging an offense at common law is good, notwithstanding it concludes "against the form of the statute," etc. In such case no proof of the foreign statute is required. Id.

In an action brought by a person who had been arrested for the purpose of extradition, under the treaty with Spain, upon the complaint of the defendant, the Spanish consul, the complaint charged in the first count false imprisonment, upon the ground of defects in the affidavits submitted to the United States commissioner, upon whose order the arrest was made, and in the second count alleged a malicious prosecution, held, on demurrer, that as the commissioner had full jurisdiction of the subject-matter, the two counts were not necessarily "inconsistent," and therefore not on that ground improperly united in the complaint, under sections 484 and 488 of the New York Code of Procedure. Castro v. De Uriarte (D. C. 1882) 12 Fed. 250.

In extradition proceedings the complaint is sufficient from which it clearly appears that a treaty offense is meant to be charged. Where the form used in the complaint was that the accused "is charged," and the complaint contains other statements alleging a treaty offense, held sufficient. In re Roth (D. C. 1883) 15 Fed. 506.

A complaint made before a United States commissioner, upon which a warrant issues for the arrest and extradition of a fugitive from justice, is fatally defective if it does not show on its face that the person making it was an agent or representative of the foreign government. In re Herris (D. C. 1887) 32 Fed. 583.

A complaint in extradition proceedings for forgery, which sets forth the note alleged to be forged, its amount, date, and names of the parties, and the bank which discounted it is sufficient, in substance and form. In re Charleston (D. C. 1888) 34 Fed. 531.

Under this section a sufficient complaint on oath is essential to the jurisdiction, and a warrant issued without it is void. Ex parte McCabe (D. C. 1891) 46 Fed. 363, 12 L. R. A. 589.

A complaint, on oath by a duly-authorized officer of Canada, alleged that S. had been charged before a justice of

the peace of Canada with murder there committed, and a warrant issued for her arrest, the original warrant being attached to the complaint, and that the officer believed the charge as stated in the warrant to be true. Held sufficient to give the commissioner jurisdiction to issue a warrant for the arrest of S. Ex parte Sternaman (D. C. 1896) 77 Fed. 595, order affirmed Sternaman v. Peck (1897) 80 Fed. 883, 26 C. C. A. 214; application for reargument denied (1897) 83 Fed. 690, 28 C. C. A. 377.

If the complaint be sufficiently explicit to inform the accused of the precise nature of the charge, it is sufficient. Id.

Under article 10 of the extradition treaty with Great Britain of 1842, a complaint for the arrest and examination of an alleged offender is not required to set out the offense with the particularity of an indictment, but is sufficient if it conforms to the requirements of a preliminary complaint under the local law where the accused is found. In re Herskovitz (D. C. 1901) 136 Fed. 713.

An information in extradition proceedings charging accused with "assault with intent to kill and murder" sufficiently brings the offense within article 10 of the treaty with Great Britain, authorizing extradition of persons charged with "assault with intent to commit murder." U. S. v. Piaza (D. C. 1904) 133 Fed. 998.

41. —— **Variance.**—A variance in proceedings for the extradition to a foreign country of a person charged with forgery and uttering forged paper, in that the complaint speaks of bills of exchange, while the evidence shows the forged instruments to have been promissory notes, is not fatal, where the instruments are sufficiently identified. Glucksman v. Henkel (1911) 31 Sup. Ct. 704, 705, 221 U. S. 508, 55 L. Ed. 830.

The effect of a variance between the complaint and the evidence in proceedings for the extradition of a person to a foreign country is to be decided on general principles, irrespective of the law of the state where the proceedings are had. Id.

In proceedings to extradite petitioner for forgery alleged to have been committed in a foreign country, a variance between the complaint and the evidence as to the dates of the instruments alleged to have been forged was immaterial. Ex parte Zentner (D. C. 1910) 188 Fed. 344.

42. —— **Verification.**—A complaint on information and belief, made as the basis of extradition proceedings, which does not even set forth the sources of the affiant's information or the grounds of his belief, is insufficient, though the affiant describes himself as a government detective duly authorized to act as the agent of the government to prosecute such proceedings. Rice v. Ames (1901) 21 Sup. Ct. 406, 407, 180 U. S. 371, 45 L. Ed. 577.

A complaint in extradition proceedings, sworn to before a United States commissioner authorized to take affidavits, but not specially designated to act in extradition proceedings, is sufficient as a basis for the issuance of a warrant of arrest, as the requirement is simply that the complaint be under oath. Grin v. Shine (1902) 23 Sup. Ct. 98, 100, 187 U. S. 181, 47 L. Ed. 130.

No evidence is required in extradition proceedings that the consul of the foreign government who made the complaint had authority to do so, since all that is required is that the complaint be under oath, and any one can make the complaint. Id.

A complaint sworn to upon information and belief is sufficient in proceedings for the extradition of a person to a foreign country, where it is supported by the testimony of witnesses who are stated to have deposed, and who therefore must be presumed to have been sworn. Glucksman v. Henkel (1911) 31 Sup. Ct. 704, 706, 221 U. S. 508, 55 L. Ed. 830.

A complaint on which extradition proceedings were based held not fatally defective because made on information and belief, where it alleged that it was made on information communicated to the complainant by British Columbia officials at their request. Powell v. U. S. (1913) 206 Fed. 400, 124 C. C. A. 282.

The verification of a complaint by a foreign consul may be on information and belief. In re Farez (C. C. 1870) Fed. Cas. No. 4,645.

"Complaint on oath" for the arrest and commitment of a person for the purpose of extradition, under this section must be a complaint by some one authorized to represent the executive department of the foreign treaty power; and, if the complaint be made by a private individual, his authority to act in behalf of the foreign executive should be made to appear before the proceedings before the commissioner are closed, or the proceedings should be dismissed. In re Ferrelle (C. C. 1886) 28 Fed. 878.

Where the complaint states that complainant is the duly accredited official agent of the foreign government, it is not necessary that a complainant should swear positively in the jurat that he is consul. In re Adutt (C. C. 1893) 55 Fed. 376.

Where a complaint in extradition was based on the information and belief of the vice consul general of the demanding country, and stated that the sources of his information and the grounds of his belief that petitioner committed the crime of murder, and that a warrant had been issued in Mexico for his arrest, and a requisi-

tion accompanied by the warrant, and duly authenticated depositions in support thereof were about to be or had been made, was official correspondence that had passed between deponent and the department of foreign affairs of the United States of Mexico and official communications that had passed between the deponent and the Mexican government at Washington, the complaint was not defective in that it was based on information and belief, and did not sufficiently allege the sources of deponent's information and the grounds of the deponent's belief. Ex parte Dinehart (C. C. 1911) 188 Fed. 858.

If the person making the complaint has no personal knowledge of the facts, it should appear that he is a representative of the foreign government, acting in an official capacity, or he should produce an indictment against the party charged or depositions tending to show his guilt, or at least set forth with particularity the sources and details of his information, that it may appear that the arrest of the party is sought upon something more than a rumor or suspicion of his guilt. Ex parte Lane (D. C. 1881) 6 Fed. 34.

A complaint made simply upon information and belief is fatally defective, and gives the commissioner no jurisdiction. Id.

43. **Warrant — Issuance.** — The right to arrest covers the right to issue a warrant, and the practice of issuing warrants in such cases is covered by the general provisions of the statutes governing proceedings under treaties. In re Mineau (C. C. 1891) 45 Fed. 188, 189.

A commissioner appointed by a district court may examine and issue a warrant for commitment for an offense committed in a foreign country with which the United States has a treaty of extradition. In re Grin (C. C. 1901) 112 Fed. 790, judgment affirmed Grin v. Shine (1902) 23 Sup. Ct. 98, 187 U. S. 181, 47 L. Ed. 130.

This act confers on judges of the several state courts, and on the justices of the supreme and district courts, and on United States commissioners the power to issue warrants to apprehend fugitives from justice under treaties with foreign nations. In re Heilbonn (N. Y. 1853) 1 Parker, Cr. R. 429.

44. **—— Requisites and sufficiency.**— The authority of the commissioner to issue a warrant for the apprehension of a fugitive must appear upon the face of the warrant, or it is void. In re Farez (C. C. 1869) Fed. Cas. No. 4,644; Ex parte Lane (D. C. 1881) 6 Fed. 34.

Technically a warrant in extradition proceedings should be returnable before the officer issuing it; but where a district judge issued a warrant returnable before a commissioner authorized to act in extradition proceedings, in order to promote the dispatch of the business of the court, the objection could not be made available upon a writ of habeas corpus. Grin v. Shine (1902) 23 Sup. Ct. 98, 101, 187 U. S. 181, 47 L. Ed. 130.

Where the crime is forgery, the complaint on which the warrant is founded may charge more than one forgery. In re Henrich (C. C. 1867) Fed. Cas. No. 6,369.

Sufficiency of warrant to give jurisdiction to arrest and commit a fugitive from justice. Id.

The warrant for the arrest of an alleged fugitive may follow the words of the treaty in describing the offense charged. In re MacDonnell (C. C. 1873) Fed. Cas. No. 8,771.

It is not necessary to the validity of a warrant by a United States commissioner to arrest a person charged with an extraditable crime that it should appear affirmatively in the first instance that the proceedings are instituted at the request or by the authority of the foreign government. In re Mineau (C. C. 1891) 45 Fed. 188.

In a warrant of arrest in extradition proceedings the offense or accusation need be described in general terms only, such as are used in the statute or treaty. Castro v. De Uriarte (D. C. 1883) 16 Fed. 93.

A warrant of extradition allowed by the dominion government, under the tenth article of the treaty of 1842 with Great Britain, recited that the party was accused of the crime of forgery, and had been committed for extradition thereon, without saying what forgery. Held, that resort might be had to the proceedings before the committing magistrate, and his report, on which the warrant issued, to ascertain what and how many forgeries the extradition was intended to apply to or include. Ex parte Hibbs (D. C. 1886) 26 Fed. 421.

Where, upon the extradition of a person charged to be a fugitive from justice, under the treaty with Mexico, December 11, 1861 (12 Stat. 1199), a warrant for his arrest is issued by the "county judge and extradition agent," the function so performed is judicial, and not administrative, and is for the purpose of preliminary examination; and the warrant is not invalid because it fails to show his authority as an extradition agent, under article 4 of the treaty providing that within the frontier states and territories of each country the surrender may be made by the chief civil authority thereof, or by such chief civil or judicial authority of the districts or counties bordering on the frontier as may for this purpose be authorized by said chief civil authority of said frontier state or territory. Ex parte McCabe (D. C. 1891) 46 Fed. 363, 12 L. R. A. 589.

Where a complaint in proceedings to extradite accused for forgery set forth the offense with sufficient particularity to advise him of the offense wherewith he was charged, it was not defective for failure to set forth copies of the instrument alleged to have been forged; the particularity of an indictment not being required in such a complaint if a crime within the extradition treaty is substantially charged. Ex parte Zentner (D. C. 1910) 188 Fed. 344.

45. —— **Second warrant.** — Pending extradition proceedings, a second warrant, on a new complaint, for a distinct offense, may be issued. In re MacDonnell (C. C. 1873) Fed. Cas. No. 8,772.

Where the first warrant of arrest is of questionable regularity, and no order is entered upon the first complaint and warrant, the district judge has power under this section to issue a second warrant. In re Fergus (C. C. 1887) 30 Fed. 607.

46. —— **Commitment and warrant.**—The warrant remains in force, notwithstanding the commitment under it was set aside for errors in the examination before the commissioner. In re Farez (C. C. 1870) Fed. Cas. No. 4,645, 4,646.

47. **Arrest, authority to make on foreign vessel.**—On an application for extradition made on behalf of the British government, the arrest of a British subject who is seeking an asylum within the United States may be made upon a British vessel within our territory. In re Newman (C. C. 1897) 79 Fed. 622.

48. **Proceedings in general.**—Under the treaty with Great Britain of August, 1842, a person charged with piracy on board a British vessel on the high seas may be arrested and surrendered without any special act to carry the treaty into effect. In re Sheazle (C. C. 1845) Fed. Cas. No. 12,734.

A person charged with piracy on board a British vessel may be examined by a state magistrate, and ordered into custody, with a view to a future surrender. Id.

Proceedings for the arrest and commitment of a fugitive under the treaty with Great Britain of August 9, 1842, and the duties and powers of magistrates thereunder. In rè Kaine (C. C. 1852) Fed. Cas. No. 7,598.

Rules prescribed for the conduct of proceedings under extradition treaties. In re Henrich (C. C. 1867) Fed. Cas. No. 6,369.

The old doctrine, that proceedings for the extradition of an alien are to be conducted with extreme technicality, has been abandoned. The proceedings before the commissioner are not to be treated as if it were a trial before a petit jury. In re Breen (C. C. 1896) 73 Fed. 458.

That the name of the person sought to be extradited was spelled differently in the Russian papers, and in the papers written in the English language, was immaterial; the person may be held under an alias without knowledge of his true name. Ex parte Glucksman (C. C. 1911) 189 Fed. 1016.

In proceedings to extradite one accused of forgery, the papers which were forged being sufficiently described, it was immaterial that they were referred to as "notes" and "bills of exchange." Id.

Defendant, the consul general of Spain, was ordered by telegram from Havana to procure the extradition of plaintiff for forgery; the accused having just arrived from Havana, and it being feared he would depart for Canada. Held, that since the only reasonable and probable inference concerning the date of the forgery was that it was since the treaty of 1877, and it being conceded that there was no express malice, the consul had probable cause for assigning the date of the forgery as within the treaty period, and the verdict was, therefore, rightly directed in his favor. Castro v. De Uriarte (D. C. 1883) 16 Fed. 93.

The mode of procedure is to prefer a complaint to a judge or magistrate, setting out the offense charged on oath, whereupon the judge or magistrate may issue a warrant for the apprehension of the person accused, and if, on the hearing, the evidence be deemed sufficient to sustain the charge, the same should be certified to the executive authority, that a warrant may issue for the surrender. (1843) 4 Op. Atty. Gen. 201.

49. **Law governing proceedings.**—The preliminary examination of the accused must be conducted according to the mode of procedure which prevails in the state where the offender is found. In re Farez (C. C. 1870) Fed. Cas. No. 4,645.

The law of the state in force at the date of the commission of the offense, and at the time of the hearing under the application, will control. Muller's Case (D. C. 1863) Fed. Cas. No. 9,913.

The manner of the exercise of the power is derived exclusively from the constitution and laws of the United States. Ex parte Morgan (D. C. 1883) 20 Fed. 298.

50. **Scope of inquiry.**—Under this section it is the sole function of the judge before whom such proceedings are had to determine the question of probable cause on evidence which is competent under our laws, and it is not his province to enter on the question whether the accused, if surrendered, will be accorded a fair and impartial trial. In re Neely (C. C. 1900) 103 Fed. 631, judgment affirmed Neely v.

Henkel (1901) 21 Sup. Ct. 302, 180 U. S. 109, 45 L. Ed. 448.

Under this section an alleged fugitive may be arrested under a warrant issued by the committing magistrate on the complaint of a representative of the foreign country, and the committing magistrate can only determine whether a certificate from the Secretary of State, attesting that a requisition has been made by the foreign government, has been issued, whether the offense charged against accused is extraditable under any treaty, whether the person brought before him is the one accused of crime, and whether there is probable cause for holding accused for trial, and the evidence in that respect must be such as, according to the law of the state in which accused is apprehended, is sufficient to commit him for trial. Ex parte Charlton (C. C. 1911) 185 Fed. 880, judgment affirmed Charlton v. Kelly (1913) 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. (N. S.) 397.

The court cannot question the authority to make the application for extradition where it is sustained by complaint on oath. In re Dugan (D. C. 1874) Fed. Cas. No. 4,120.

The jurisdiction of a justice or judge, sitting as a committing magistrate, is in no way affected by, and he will not inquire into, the manner in which the persons charged came or were brought into the United States. In re Ezeta (D. C. 1894) 62 Fed. 964.

In proceedings under this section for the extradition of an alleged fugitive from justice of a foreign country charged with a crime specified in the treaty and the statute, the duty of the commissioner is limited to determining whether there is sufficient evidence to justify holding the accused for the crime charged as understood in this country by its description in the treaty and in our laws. Ex parte Schorer (D. C. 1912) 197 Fed. 67.

On the hearing of a warrant issued by a commissioner to arrest a fugitive from justice under a treaty, the judge may go behind the warrant of arrest to see whether a warrant of extradition should be issued. In re Heilbonn (N. Y. 1853) 1 Parker, Cr. R. 429.

In extradition between the United States and foreign countries, the sovereign power upon whom demand is made may exercise discretion as well as investigate the charge upon which the surrender is demanded. People v. Thaw (1915) 154 N. Y. S. 949, order affirmed In re Thaw (1915) 152 N. Y. S. 771, 167 App. Div. 104.

51. Adjournment of hearing.—The continuation of proceedings before an extradition commissioner for a longer period than an examining magistrate is authorized to continue a case under the state laws does not invalidate proceedings for extradition under the treaty with Great Britain, which provides that the extradition shall be carried out "in conformity with the laws regulating extradition for the time being in force in the surrendering states," as the laws contemplated therein are those of the United States, and not the laws of the particular state within which the proceedings are taken. Rice v. Ames (1901) 21 Sup. Ct. 406, 180 U. S. 371, 45 L. Ed. 577.

A commissioner may continue extradition proceedings for a longer period than an examining magistrate is authorized to continue a case under the state laws, notwithstanding a provision of the treaty of Great Britain that extradition shall be carried out in conformity with the laws regulating extradition in force for the time being in the surrendering states. Id.

The commissioner held justified in not adjourning the case to allow time for the prisoner to procure alleged evidence on his behalf from abroad. In re Farez (C. C. 1870) Fed. Cas. No. 4,645.

The commissioner may, in his discretion, grant reasonable adjournments, in the course of hearing the evidence, to enable testimony to be produced. In re MacDonnell (C. C. 1873) Fed. Cas. No. 8,771.

A refusal to grant an adjournment to enable the accused to procure depositions from England to show an alibi held to be a legitimate exercise of discretion. In re Wadge (C. C. 1883) 16 Fed. 332, affirming (D. C. 1883) 15 Fed. 864.

It is within the discretion of the commissioner to adjourn the hearing on motion of the sovereignty making the demand, and the prisoner is not entitled to be discharged on habeas corpus on the ground that the adjournment is unreasonably long, unless it appear that the commissioner has abused his discretion. In re Ludwig (C. C. 1887) 32 Fed. 774.

A United States commissioner is authorized in extradition proceedings to adjourn the proceedings on representations of the foreign government, deemed by him as reasonable grounds for adjournment. Ex parte Schorer (D. C. 1912) 195 Fed. 334.

52, 53. Evidence—Requisites and sufficiency.—The proof to warrant a commitment for extradition to a foreign country must be sufficient to authorize a conviction. Ex parte Kaine (C. C. 1853) Fed. Cas. No. 7,597; In re Metzger (D. C. 1847) Fed. Cas. No. 9,511.

Mexican public documents, consisting of memoranda, orders, and a deed from the commissioners of that government, respecting the appraisement and sale of property declared in said instruments to be in the hands of public officers charged with its custody, as having been confiscated by the commanding general from one described as a rebel, are insufficient evidence that the confiscation was made in due form of law. Sabari-

ego v. Maverick (1888) 8 Sup. Ct. 461, 470, 124 U. S. 261, 31 L. Ed. 430.

On examination before a commissioner of one charged with forgery, larceny, and embezzlement, the evidence showed that the accused, as bookkeeper for a firm, had access to its check books, and that three checks were missing therefrom, for which no corresponding memoranda were made on the stubs; that three checks were presented to a bank at which the firm kept a deposit by another bank, at which the accused kept a personal account; that this account showed a credit of three checks, which, upon the following day, were presented to and paid by the firm's bank; and that the accused had no authority to sign checks for the firm. Held, that this was sufficient evidence to justify the commissioner in committing the accused for extradition. Ex parte Bryant (1897) 17 Sup. Ct. 744, 745, 167 U. S. 104, 42 L. Ed. 94.

The evidence is sufficient to justify commitment in extradition proceedings on a charge of forgery of railway wheat certificates purporting to show the true weight of car loads of wheat shipped from the United States to Mexico, where the accused was a member of a firm of customs brokers which presented to the Mexican customs authorities certificates showing weights much less than the true weight; that the Mexican government was thereby defrauded of a large amount of import duties; that the accused was the principal, if not the only, beneficiary of the fraud; and that, instead of reparation or explanation, resort was had to flight. Elias v. Ramirez (1910) 30 Sup. Ct. 131, 135, 215 U. S. 398, 54 L. Ed. 253, reversing judgment Ex parte Ramirez (1907) 11 Ariz. 256, 90 P. 323.

A finding that the identity of the prisoner with the person whose extradition to a foreign country is sought is made out cannot be said to be erroneous where, in addition to a photograph under seal of the foreign magistrate, which represents the prisoner, there are other facts tending to establish such identity. Glucksman v. Henkel (1911) 31 Sup. Ct. 704, 705, 221 U. S. 508, 55 L. Ed. 830.

Under the treaty of 1852 of the United States with Prussia and the other states of Germanic Confederation for extradition of criminals, providing that they shall be delivered on such evidence of criminality as according to the laws of the place where the fugitive was found, would justify his apprehension and commitment for trial, it is not necessary, to justify extradition, to present evidence sufficient to sustain a conviction, evidence justifying a committing magistrate in holding accused by imprisonment or by bail to await subsequent proceedings being sufficient, and the provisions of New York Code that conviction cannot be had on the uncorroborated evidence of an accomplice having no application. Ex parte Glaser (1910) 176 Fed. 702, 100 C. C. A. 254.

Depositions for the extradition of an alleged fugitive from justice showed that a forgery had been committed by one H., and a witness testified that he had seen prisoner in Toronto, where the crime was charged to have been committed. When arrested, prisoner denied his name, pretending it was W., but later he swore to and signed an affidavit for change of venue as H. On habeas corpus, held that, if it appear that a crime has been committed, and that there is probable reason to believe that defendant is guilty of that crime, substantial justice requires that he should be put on trial. In re Herres (C. C. 1887) 33 Fed. 165.

Circumstantial evidence as to the manner of drawing checks and posting books by an employé held sufficient to justify the commissioner in committing him on a charge of forgery to await the action of the secretary of state. In re Bryant (C. C. 1897) 80 Fed. 282.

Where a complaint for the arrest of one charged with crime committed in a foreign country recites that the complainant is consul of such country, and that criminal proceedings have been instituted and a mandate issued from the state department of this government for the surrender of accused, and prays that the necessary proceedings may be had as directed in such mandate, and the official title of complainant is attached to his signature, it sufficiently appears that the proceeding is in behalf of such government, and evidence of special authority for such act should not be required. In re Grin (C. C. 1901) 112 Fed. 790, judgment affirmed Grin v. Shine (1902) 187 U. S. 181, 23 Sup. Ct. 98, 47 L. Ed. 130.

Article 1 of the extradition treaty of 1868 between the Kingdom of Italy and the United States (Act March 23, 1868, 15 Stat. 629), which provides for extradition from one country to the other of persons charged with crime in the demanding country, "provided that this shall be done only upon such evidence of criminality as according to the laws of the place where the fugitive or persons so charged shall be found would justify his or her apprehension and commitment for trial if the crime had been there committed," does not warrant the return to Italy of a person there charged with murder, where the only evidence presented of his connection with the offense is hearsay. Ex parte Fudera (C. C. 1908) 162 Fed. 591, appeal dismissed Government of Italy v. Asaro (1911) 31 Sup. Ct. 470, 219 U. S. 589, 55 L. Ed. 348.

Where, in extradition proceedings for murder, the evidence, though circumstantial, was so strong that, if produced before a committing magistrate in the state where petitioner was arrested and applied for habeas corpus, as proof

of an assassination committed there, it would have been the commissioner's duty to hold accused to await subsequent proceedings, it was sufficient to sustain an order for his return. In re Urzua (C. C. 1911) 188 Fed. 540.

Where, in extradition proceedings on a requisition from Mexico, depositions, properly authenticated, stated that sufficient evidence having been forthcoming to proceed against petitioner as the presumed slayer of R. in accordance with specific articles of the Code of Penal Procedure, that the order be issued from headquarters, signed, and affirmed, etc., and that on the same day with the above decree the order of arrest was issued in accordance with the provisions of the decree duly signed, there was sufficient proof of the issuance of a warrant of arrest to sustain the proceedings. Id.

In extradition proceedings it is sufficient that there is some evidence to warrant the commissioner in holding the accused person; proof sufficient to sustain a conviction on trial of an indictment is not required. Ex parte Glucksman (C. C. 1911) 189 Fed. 1016.

Evidence held to warrant the commissioner in holding a person as the guilty party in extradition proceedings. Id.

Sufficiency of evidence to justify the extradition of a prisoner charged with having forged an acceptance in England under the provisions of the treaty of August 9, 1842. U. S. v. Warr (D. C. 1845) Fed. Cas. No. 16,644.

Testimony of a vice consul that he had received official information from his government in respect to the crime and the fugitive, together with verified depositions in proceedings before a judge of instruction in France, with other evidence, held sufficient to justify detaining the fugitive for trial. In re Metzger (D. C. 1847) Fed. Cas. No. 9,511.

Documentary evidence of the prisoner having committed the offense charged held sufficient, both in form and substance, to warrant his commitment for extradition. In re Heilbronn (D. C. 1854) Fed. Cas. No. 6,323.

The evidence against accused may be in the form authorized in the country whence it comes, and, in substance, sufficient to warrant action in the country whose action is invoked. In re Dugan (D. C. 1874) Fed. Cas. No. 4,120.

Under the treaty with Great Britain, the latter is entitled to extradition on evidence of the offense sufficient to justify commitment here. The accused, though entitled to examine witnesses in his defense, is not entitled to a full trial here. In re Wadge (D. C. 1883) 15 Fed. 864.

The identity of the prisoner is sufficiently established when, on being brought before the commissioner, he admits that he is the person named in the complaint, and that he executed the note therein described, and alleged to be forged. In re Charleston (D. C. 1888) 34 Fed. 531.

Upon application for the extradition of prisoner as a fugitive from Germany, charged with murder, it was proved that prisoner was a near neighbor of deceased, knowing his financial condition; that deceased was, on the day prior to his disappearance, engaged in moving his property to prisoner's house, to leave it in his charge during an intended journey, and to prevent seizure by creditors; that he was last seen in the night at prisoner's house with him and his sons; that a servant sleeping in the house was awakened by sounds indicating the use of violence to, and the distress of, a human being; that there were opportunities for the removal of the body from the house to a forest, where, eight months after, it was found, bearing indubitable marks of death by violence, and that such death occurred about the date of disappearance; that property of deceased known to have been in prisoner's possession never was accounted for; that deceased had a considerable sum of money, which there was evidence to indicate was in prisoner's possession; and that, in a few days after deceased's disappearance, prisoner unexpectedly left for America, where he purchased a home, spending money, but not as much as he was supposed to have obtained from deceased, living frugally with his family, bearing a good reputation, but going under an assumed name, until his arrest. Held, that under the treaty with Germany of 1852, and statutes of the United States concerning extradition, the evidence was sufficient to hold the prisoner for delivery to the German authorities. In re Risch (D. C. 1888) 36 Fed. 546.

Under the treaty between the governments of the Germanic confederation and the United States, of 1852, providing for the extradition of criminals, which stipulates for the delivery of persons charged with crime upon such evidence of criminality as, according to the laws of the place where the fugitive is found, would justify his apprehension and commitment for trial, if the crime had there been committed, it is sufficient that a prima facie case be made, such as, in the absence of explanation, would justify conviction, on such evidence as, in case of trial and conviction thereon, would sustain the verdict. Id.

In the examination of persons found in California, charged with being fugitives from the justice of Salvador, the evidence of criminality must conform to, and be weighed and judged by, the laws of this country, and particularly the laws of California, and that the evidence of criminality which will justify holding the accused need be such only as ordinarily obtains at a preliminary examination, and amounts to probable cause, or such as would justify a cau-

tious man in believing the accused guilty. In re Ezeta (D. C. 1894) 62 Fed. 972.

In order to justify a commissioner in issuing a certificate to the executive authority for the surrender of the accused in extradition proceedings, it is sufficient if the accused is held on competent legal evidence, and if probable cause exists for believing him guilty of the offense charged. The evidence need not be conclusive, nor must the commissioner be absolutely convinced of the guilt of accused. United States v. Piaza (D. C. 1904) 133 Fed. 998.

To warrant the extradition of a person to Italy under section 7, art. 2, of the treaty of March 23, 1868, with that country (15 Stat. 630), which provides for the extradition of persons charged with "the embezzlement of public moneys committed within the jurisdiction of either party by public officers or depositors," where the accused was charged with having as treasurer of a hospital embezzled its funds, the proof must show that the hospital was a public institution, that the accused, as its treasurer, was a public officer or depositor, and that the money taken was public money. Ex parte Ronchi (D. C. 1908) 164 Fed. 288.

Evidence offered before a commissioner in extradition proceedings for forgery alleged to have been committed in a foreign country held sufficient to justify petitioner's return. Ex parte Zentner (D. C. 1910) 188 Fed. 344.

Where in proceedings to extradite petitioner for forgery, there was evidence that he raised two acceptances beyond the amounts, named in figures on them at the time they were given him, and then put them in circulation without the acceptor's knowledge or consent, such proof was sufficient evidence of a fraudulent intent for purposes of extradition. Id.

Evidence offered before an extradition commissioner to sustain charges of forgery and the utterance of forged bills of exchange in Bavaria by an alleged fugitive from justice reviewed in a habeas corpus proceeding, and held sufficient to authorize the commissioner to exercise his judgment thereon. Ex parte Schorer (D. C. 1912) 197 Fed. 67.

Evidence produced in extradition proceedings for the return of an alleged fugitive from justice to a foreign country considered, and the competent evidence held insufficient to identify the prisoner as the person charged. Ex parte La Mantia (D. C. 1913) 206 Fed. 330.

Where a person is charged with the commission of the crime of murder in Scotland, and apprehended in the United States, and examined before a commissioner, and by him certified to be probably guilty on the evidence adduced, held, that he should be delivered up to justice if the evidence upon which the application is founded be such as, according to the laws of the place where the fugitive shall be found, would justify his or her apprehension and commitment for trial if the crime had there been committed. (1843) 4 Op. Atty. Gen. 201.

The surrender will be made only when the fact of the commission of the crime shall be so established that, according to the laws of the country in which the fugitive, or the person so accused, shall be found, his or her apprehension and commitment for trial would be justified, if the crime had been there committed. (1844) 4 Op. Atty. Gen. 330.

In granting his mandate, at the request of a foreign government, for the purpose of commencing proceedings in extradition, the President does not need such evidence of the criminality of the party accused as would justify an order of extradition, but only prima facie evidence. (1853) 6 Op. Atty. Gen. 217.

To justify the commencement of process in extradition, it must appear that the criminal acts charged, as complicity with robbery, were committed within the territorial jurisdiction of the demanding government. (1856) 8 Op. Atty. Gen. 215.

In proceedings for extradition, where there was no legal evidence to prove the commission of the crime charged, the judge of a district court, sitting as a commissioner, has no jurisdiction to hold the alleged offender for extradition. Ex parte Ramirez (Ariz. 1907) 90 P. 323.

The evidence on which a person is committed as a fugitive from justice from a foreign state ought to be such as to justify committing him for trial if the crime had been committed here. In re Washburn (N. Y. 1819) 4 Johns. Ch. 106, 8 Am. Dec. 548, 3 Wheeler, Cr. Cas. 473.

On an application by a foreign government for the extradition of a fugitive from its justice, the warrant can be granted only where, by the laws of this state, the evidence of guilt is strong enough to justify an indictment against him. In re Calder (N. Y. 1853) 2 Edm. Sel. Cas. 374.

54. —— **Admissibility.**—Evidence of insanity is admissible, in proceedings before a United States commissioner for the extradition of one who is charged with an extraditable offense under the treaty of 1842 with Great Britain and this section, to explain what has been proved in support of the charge. (1879) 16 Op. Atty. Gen. 642.

55. **Examination of witnesses.**—Where the complaint is made upon information and belief only, the accused cannot claim the right to cross-examine the affiant before the prosecution gives evidence. In re Farez (C. C. 1870) Fed. Cas. No. 4,645.

The treaty with Great Britain does

not give accused the right to be confronted with the witnesses against him. In re Dugan (D. C. 1874) Fed. Cas. No. 4,120.

On the examination of a party before a United States commissioner in the state of Minnesota, in extradition proceedings under the treaty of 1842 with Great Britain, he has the right to examine witnesses in his own behalf. In re Kelley (D. C. 1885) 25 Fed. 268.

56. **Foreign accusation.**—While it is advisable in extradition proceedings that certified copies of the foreign complaint and warrant be attached to and made a part of the local complaint, it is sufficient if those documents, alleging positively the guilt of the accused, are presented to the commissioner with the complaint and depositions showing probable cause are produced at the hearing. Powell v. U. S. (1913) 206 Fed. 400, 124 C. C. A. 282.

The application for the surrender may be made by the British minister, and need not be founded upon a previous indictment or warrant. In re Sheazle (C. C. 1845) Fed. Cas. No. 12,734.

Where, in extradition proceedings, the accused is found and arrested in a state in which indictment is not required, it is not necessary to produce the indictment, though it appears by the record that one was found in the country in which the crime was committed. In re Grin (C. C. 1901) 112 Fed. 790, judgment affirmed Grin v. Shine (1902) 187 U. S. 181, 23 Sup. Ct. 98, 47 L. Ed. 130.

Among the documents contained in an application for extradition were two orders signed and sealed by the magistrate of a circuit court in Russia; one stating that he had investigated the preliminary examination in regard to the alleged embezzlement of the person sought to be extradited, and found certain facts, and ordered the arrest of the accused pursuant to statute. The second order, after reciting the same preliminary statement, found that he was arraigned pursuant to law for the crime for which he was to be brought up for examination, and ordered his arrest. Held to contain all the essentials of a warrant of arrest or other judicial document issued by a judge or magistrate, as required by treaty. Id.

An indictment, or its equivalent, in the foreign country, is not necessary to authorize extradition for a crime committed therein. Muller's Case (D. C. 1863) Fed. Cas. No. 9,913.

An indictment charging a conspiracy to defraud the United States between an officer and agent of the government and his codefendants, which sets out facts showing a corrupt agreement between the defendants and overt acts by means of which the purpose of such agreement was effected and the government defrauded, charges fraud by an agent and participation therein by the other defendants, within the meaning of clauses 4 and 10 of article 1 of the extradition treaty of 1890 (Act March 25, 1890, 26 Stat. 1509), between Great Britain and the United States, and is sufficient to warrant their extradition for trial thereunder. U. S. v. Greene (D. C. 1906) 146 Fed. 766.

On a trial for conspiracy to defraud the United States by presenting false claims where the defendants have been extradited under the extradition treaty of 1890 (Act March 25, 1890, 26 Stat. 1509) between Great Britain and the United States, the indictment must be construed not by one generic description alone, but after full consideration of all its clear and substantial averments. Id.

The treaty of the United States with Mexico provides for the surrender of persons "to justice * * * who being accused of the crimes enumerated," etc. Held, that such provision means that he is to be accused in due form of law; and hence it applies to one who is accused on information, as well as one charged by indictment, since an information is one of the forms prescribed by statute. State v. Rowe (1898) 73 N. W. 833, 104 Iowa, 323.

To entitle the French government to the delivery, by the United States, of a person as a fugitive from justice, under the treaty of 1843, it must appear that such person has been accused by some proceeding equivalent or similar to an indictment at common law. And it is not sufficient that he has been charged of a crime before a magistrate in France; he must be "mis en accusation." In re Metzger (N. Y. 1847) 1 Barb. 248, 1 Parker, Cr. R. 108.

57. **Defenses.**—On an application for extradition, the accused being found within the territory of the United States, the court, in passing upon his plea to the jurisdiction, will not enter upon an inquiry as to whether he came here voluntarily or against his will. In re Newman (C. C. 1897) 79 Fed. 622.

On extradition proceedings for the removal to a foreign country of an alleged fugitive from the justice thereof, evidence of the insanity of accused at the time of the commission of the offense is inadmissible. Ex parte Charlton (C. C. 1911) 185 Fed. 880, judgment affirmed Charlton v. Kelly (1913) 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. (N. S.) 397.

One accused of an attempt to murder in Salvador admitted that he twice shot at a person as charged, but claimed that he did so in defense of himself and another whom he was ordered by his superior military officers to protect. Held, that the accused should be held for extradition, his justification being matter of defense for the courts of Salvador. In re Ezeta (D. C. 1894) 62 Fed. 972.

The release of the accused by his superior officers, without being tried or

pardoned, construed as a privilege conferred on him by the executive authority equivalent to an order entered only by judicial authority in the United States, permitting him to go on his own recognizance, affords no legal objection to his arrest and trial on such charge; and the magistrate cannot consider the fact, if it exists, that the renewal of the prosecution is an effort by the present government of Salvador to secure the accused's person for the purpose of wreaking vengeance on him for the part he took against the revolutionists in the late war. Id.

Evidence of malice or an ulterior purpose on the part of the prosecuting witness at whose instance a criminal prosecution was instituted in a foreign country will not invalidate a commitment of the accused for extradition from this country. In re Herskovitz (D. C. 1901) 136 Fed. 713.

Where extradition proceedings for forgery were in the name of the German government under treaty with the United States, the attitude or motives of the persons alleged to have been defrauded were immaterial. Ex parte Zentner (D. C. 1910) 188 Fed. 344.

The primary resort of the defendant is to the courts. He may either apply to the federal courts for a writ of habeas corpus, or interpose the alleged irregularity of his arrest as a matter of defense on the trial of his case in the state court. (1901) 23 Op. Atty. Gen. 604.

58. Conviction in contumaciam.—For the purposes of extradition, one who, in his absence, has been convicted in contumaciam of a criminal offense in a foreign country, is to be regarded only as charged with, and not as convicted of, the offense. Ex parte Fudera (C. C. 1908) 162 Fed. 591, appeal dismissed Government of Italy v. Asaro (1911) 31 Sup. Ct. 470, 219 U. S. 589, 55 L. Ed. 348.

For the purposes of extradition under the treaty with Italy of March 23, 1868 (15 Stat. 629), a conviction of the alleged fugitive in contumaciam in his absence is to be treated only as a charge of crime. Ex parte La Mantia (D. C. 1913) 206 Fed. 330.

59. Certificate of commissioner.—Record on habeas corpus held to show no irregularity in correction of a certificate in extradition proceedings. Tiberg v. Warren (1911) 192 Fed. 458, 112 C. C. A. 596.

The commissioner has no power to amend the complaint or warrant, or to supply defects by his certificate, after the case is closed and a writ of certiorari is served upon him to produce the record of his proceedings. Ex parte Lane (D. C. 1881) 6 Fed. 34.

60. Final writ or warrant of extradition.—See note under § 10118, post.

61. Commitment.—Without legislative enactment or provision in the treaty, a district judge of the United States at chambers has no authority to commit a prisoner to await the mandate of the president for extradition under such treaty. In re Metzger (N. Y. 1847) 1 Barb. 248.

62. Imprisonment.—It is the duty of the United States to provide a place of imprisonment for persons detained for extradition at the instance of a foreign government. (1857) 8 Op. Atty. Gen. 396.

63. Admission to bail.—The denial of an application for bail in foreign extradition proceedings, supported by the affidavit of petitioner's physician that he was suffering from bronchitis and a severe chill which might develop into pneumonia, and that the confinement tended greatly to injure his health and to result in serious impairment, is not reversible error, although the refusal was put upon the ground of the want of power. Wright v. Henkel (1903) 23 Sup. Ct. 781, 786, 190 U. S. 40, 47 L. Ed. 948, affirming order In re Wright (C. C. 1903) 123 Fed. 463.

This section is inconsistent with the allowance of bail after committal. Id.

In the absence of legislation conferring it, circuit courts of the United States are without power to admit to bail persons arrested for extradition under a treaty with a foreign government. In re Wright (C. C. 1903) 123 Fed. 463, order affirmed Wright v. Henkel (1903) 23 Sup. Ct. 781, 190 U. S. 40, 47 L. Ed. 948.

In international extradition proceedings, the accused cannot be admitted to bail during a continuance of a hearing to obtain further testimony concerning his probable guilt, as neither Act Aug. 12, 1848 (9 Stat. 302), relating to extradition, nor the amendatory acts, provide for bail pending a hearing. In re Carrier (D. C. 1893) 57 Fed. 578.

A circuit court of the United States has power independently of statute to admit to bail in a case of foreign extradition pending examination, but such power should be exercised only under the most pressing circumstances. However, where the plaintiff in an action in New York involving his whole fortune was arrested on an extradition warrant from Canada the day before the trial of his case was to begin, at the instance of the adverse party, the hardship is such that the court is justified in enlarging him on bail until the trial of this case can be completed. In re Mitchell (D. C. 1909) 171 Fed. 289.

A person charged with a misdemeanor only in extradition proceedings is entitled to bail as a matter of absolute right, both under the state and federal laws, unless his enlargement on bail would be a menace to the community. Ex parte Thaw (D. C. 1913) 209 Fed. 954.

64. Foreign territory.—It is competent for congress by legislation to en-

force or give efficacy to the provisions of the treaty of Paris between the United States and Spain, by which the United States agreed to assume and discharge the obligations that might, under international law, result from the fact of its occupation of Cuba, for the protection of life and property there. Neely v. Henkel (1901) 21 Sup. Ct. 302, 180 U. S. 109, 45 L. Ed. 448, affirming judgment In re Neely (C. C. 1900) 103 Fed. 631; Neely v. Henkel (1901) 21 Sup. Ct. 308, 180 U. S. 126, 45 L. Ed. 457, affirming judgment In re Neely (C. C. 1900) 103 Fed. 626.

Cuba, while under a military government appointed by and representing the President of the United States in the work of assisting the inhabitants to establish a government of their own, was foreign territory within the amendatory proviso. Id.

Act June 6, 1900, amending the extradition laws by authorizing the extradition of persons charged with violation of the criminal laws of any foreign country or territory which, or any part of which, is occupied by or under the control of the United States, is not unconstitutional, as applied to Cuba, on the ground that under the constitution the United States cannot occupy or exercise control over the island, since its inhabitants are free and independent. The United States was in military occupation of the island as the territory of an enemy at the time it compelled Spain, as the result of the war, to relinquish her sovereignty over it, and may constitutionally continue such occupancy until the political branch of the government shall determine that it is no longer necessary. In re Neely (C. C. 1900) 103 Fed. 631, judgment affirmed Neely v. Henkel (1901) 21 Sup. Ct. 302, 180 U. S. 109, 45 L. Ed. 448.

Cuba, under the military governor, was a foreign country, so that one committing a crime on a vessel registered at a Cuban port was not subject to trial therefor in the courts of the United States. U. S. v. Assia (C. C. 1902) 118 Fed. 915.

65. —— **Occupancy by United States.**—Judicial notice may be taken that the island of Cuba was, at the date of the act of congress of June 6, 1900, and still is, occupied by, and under the control of, the United States. Neely v. Henkel (1901) 21 Sup. Ct. 302, 180 U. S. 109, 45 L. Ed. 448, affirming judgment In re Neely (C. C. 1900) 103 Fed. 631; Neely v. Henkel (1901) 21 Sup. Ct. 308, 180 U. S. 126, 45 L. Ed. 457, affirming judgment In re Neely (C. C. 1900) 103 Fed. 626.

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66. **Extradition to or from Porto Rico.**—See People v. Bingham (1907) 102 N. Y. S. 878, 117 App. Div. 411, order affirmed (1907) 81 N. E. 773, 189 N. Y. 124, and In re Kopel (1906) 148 Fed. 505; note under § 10126, post.

67. **Review of decision—In general.**—The sufficiency of the evidence on which the judge or commissioner acts on preliminary examination in extradition proceedings cannot be reviewed by any other tribunal, except as permitted by statute. Fong Yue Ting v. U. S. (1893) 13 Sup. Ct. 1016, 1022, 149 U. S. 698, 37 L. Ed. 905.

A commissioner's determination on competent evidence sufficient to call for the exercise of his judgment on the facts cannot be reviewed. Sternaman v. Peck (1897) 80 Fed. 883, 884, 26 C. C. A. 214.

Where the commissioner has jurisdiction, and has before him legal and competent evidence, his decision on its weight and effect is not subject to review. Ex parte Van Aernam (C. C. 1854) Fed. Cas. No. 16,824; In re Vandervelpen (C. C. 1877) Fed. Cas. No. 16,844; In re Wiegand (C. C. 1878) Fed. Cas. No. 17,618; In re Wahl (C. C. 1878) Fed. Cas. No. 17,041.

Where the commissioner acts on legal evidence the court will not reverse his judgment except for substantial error in law, or for such manifest error in fact as would warrant a court in granting a new trial for a verdict against evidence. In re Henrich (C. C. 1867) Fed. Cas. No. 6,369.

The decision of the commissioner as to the weight of the evidence is not reviewable. In re Krojanker (C. C. 1890) 44 Fed. 482, 483.

Under the Ashburton treaty between Great Britain and the United States, signed August 9, 1842, which provides (article 10) that a person can be surrendered for trial on extradition proceedings only "upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime had been there committed," and further provides for the examination into the charge by a judge or magistrate of such place, it is the duty of the authorities of the country upon which demand for extradition is made to determine in the final instance whether the facts set forth in the information or other papers charge the commission of an offense within the provisions of the treaty, and, in the absence of fraud practiced upon them, their decision cannot be questioned. Cohn v. Jones (D. C. 1900) 100 Fed. 639.

68. —— **Appeal.**—In a case of extradition of a fugitive from justice of a foreign country, the judge or magistrate acts under special authority conferred

by treaties and acts of congress, and as no appeal from his decision is given by the law under which he acts, no right of appeal, by either party, exists. (1863) 10 Op. Atty. Gen. 501.

69. —— **Certiorari.**—Extradition proceeding may be reviewed upon certiorari after a warrant of surrender has been issued by the President. In re MacDonnell (C. C. 1873) Fed. Cas. No. 8,772.

The writ of certiorari furnishes the court no wider range of determination, on the sufficiency of the facts shown to warrant a holding for extradition, than does the writ of habeas corpus.* In re Lincoln (D. C. 1915) 228 Fed. 70.

70. —— **Habeas corpus.**—The decision of a committing magistrate in foreign extradition proceedings cannot be reviewed on habeas corpus if he had jurisdiction of the subject-matter and of the accused, and the offense charged was within the treaty, and the evidence was sufficient to establish the criminality of accused for extradition purposes. McNamara v. Henkel (1913) 33 Sup. Ct. 146, 226 U. S. 520, 57 L. Ed. 330; Sternaman v. Peck (1897) 80 Fed. 883, 26 C. C. A. 214 (affirming order Ex parte Sternaman [D. C. 1896] 77 Fed. 595); In re Count De Toulouse Lautrec (1900) 102 Fed. 878, 43 C. C. A. 42; U. S. v. Williams (D. C. 1910) 175 Fed. 274; Ex parte Zentner (D. C. 1910) 188 Fed. 344. Such decision cannot be reviewed for error. In re Herskovitz (D. C. 1901) 136 Fed. 713. Nor for irregularity; nor can the court determine the credit or weight of the evidence on which the commissioner acted. In re Kaine (1852) 10 N. Y. Leg. Obs. 257. Or review the decision as to the fact of the criminality of the accused. In re Fowler (C. C. 1880) 4 Fed. 303.

The court can inquire only as to the jurisdiction of the commissioner over the subject-matter, and whether there was legal evidence before him. supporting the judgment. In re Adutt (C. C. 1893) 55 Fed. 376. It can consider the record of proceedings subsequent to the return to the writ, only as tending to establish the truth of the return, and hence, if the alien was being held under a warrant issued since the return day, no question as to the validity of that warrant can be considered. Ex parte Avakian (D. C. 1910) 188 Fed. 688.

One committed by a commissioner to await the action of the secretary of state cannot be released on habeas corpus if the commissioner had before him legal evidence on which to base his judgment, and it appears that he decided that defendant had committed one of the offenses charged, and that such offense was covered by the extradition treaty. In re Bryant (C. C. 1897) 80 Fed. 282.

In habeas corpus proceedings for the discharge of a prisoner held for extradition to a foreign country, the court is not bound to accept the statement of the complaint that the place where the alleged offense was committed was at the time of its commission within the territorial jurisdiction of such foreign country, but should determine that question for itself, being governed by the action of the legislative or executive branch of the government with respect to the political status of the place or country where the offense is laid, if any such action has been taken, and, if not, acting upon such information as it deems most trustworthy, to obtain which it may consult the treaties, statutes, or decisions of foreign countries. In re Taylor (D. C. 1902) 118 Fed. 196.

In habeas corpus proceedings to secure petitioner's release from arrest in extradition for alleged forgery committed in a foreign country, evidence that, by reason of business relations between petitioner and the persons claimed to have been defrauded, they were not entitled to claim that petitioner's act amounted to more than a breach of trust, was immaterial. Ex parte Zentner (D. C. 1910) 188 Fed. 344.

Whether the judiciary has authority, on habeas corpus, after the fugitive is under arrest, to prevent his extradition, if the president decides to make it, quære. In re Metzger (N. Y. 1847) 1 Edm. Sel. Cas. 399.

Where a person had been arrested as a fugitive from justice under a warrant issued by a commissioner appointed by the court of the United States, and was afterwards brought before a justice of the supreme court of this state on habeas corpus for the purpose of inquiry into the cause of his detention, it was proper for the justice to look behind the warrant for the purpose of ascertaining whether the complaint made was sufficient to give the commissioners jurisdiction. In re Heilbonn (N. Y. 1853) 1 Parker, Cr. R. 429.

A United States commissioner, while acting in proceedings under this act, is not exercising a part of the judicial power of the United States, and hence his acts are not subject to review by habeas corpus issued out of the Supreme Court. In re Kaine (1852) 14 How. 103, 120, 14 L. Ed. 345 (Curtis, J., in separate opinion).

Petitioner was extradited from Canada on a charge of perjury. He became a witness in his own behalf on the trial which resulted in a disagreement of the jury, after which he was again indicted on another charge of perjury alleged to have been committed in such trial. Of this he was convicted and appealed to the state Court of Appeals, pending which he applied to the federal Circuit Court for discharge on habeas corpus, challenging the jurisdiction of the state court to

try him for any other offense than that for which he was extradited until he had been either convicted and served his sentence, and had a reasonable time to return to Canada, or had been acquitted and had a like opportunity to depart the country. Held that, as such objection was available on petitioner's appeal and finally on a writ of error issued from the Supreme Court of the United States, it would not be determined by a federal Circuit Court on a writ of habeas corpus pending such appeal. Ex parte Collins (C. C. 1906) 149 Fed. 573.

Where persons, arrested on an application for their extradition, made under oath by the consul of a foreign state, are discharged on habeas corpus, an appeal is properly prosecuted by the consul on behalf of his government. Ornelas v. Ruiz (1896) 16 Sup. Ct. 689, 690, 161 U. S. 502, 40 L. Ed. 787.

71. **Second examination.**—Where a party accused of crime has been arrested, had an examination before a commissioner duly appointed, and been discharged by order of the executive on the ground that the evidence was not sufficient to justify his extradition for the crime charged, he may be again arrested for the same offense, and compelled to submit to a second examination, without the issuance of a second mandate by the executive. In re Kelly (C. C. 1886) 26 Fed. 852.

The application may be renewed after a discharge on a previous application in another state, where the case 1863) Fed. Cas. No. 9,913.
does not appear to have been fully investigated. Muller's Case (D. C.

Where a second extradition proceeding is instituted after the discharge of the fugitive on the ground of the insufficiency of the evidence, the United States commissioner need not, in advance of the issuance of a warrant for the arrest of the fugitive, consider the sufficiency of additional evidence. Ex parte Schorer (D. C. 1912) 195 Fed. 334.

A second arrest and examination of an alleged fugitive from the justice of a foreign country after his discharge under prior arrest and examination is permissible, where the discharge arose through default either by failure to comply with the rules of procedure or failure of evidence to hold the fugitive as one liable to extradition. Id.

On a party being arrested for extradition and brought before a magistrate, that magistrate examines the case judicially; and his decision is not subject to any direction on the part of the President. Hence the question of remanding the prisoner for further examination, and the time of remanding, are questions for the magistrate to determine. (1853) 6 Op. Atty. Gen. 91.

The alleged fugitive may be arrested a second time on a new complaint, either with or without a new warrant of the President. Id.

A discharge by a district judge of a person apprehended as a fugitive from justice does not preclude, in a proper case, his rearrest under the warrant of another judge, with a view to a reexamination of the case. (1863) 10 Op. Atty. Gen. 501.

72. **Subsequent to extradition.**—See note under § 10121, post.

73. **Prosecution for different offense.**—See notes under §§ 10118, 10121, post.

Cited without definite application, Oteiza v. Jacobus (1890) 10 Sup. Ct. 1031, 1033, 136 U. S. 330, 34 L. Ed. 464; U. S. v. Allred (1895) 15 Sup. Ct. 231, 233, 155 U. S. 591, 39 L. Ed. 273; Ex parte Bryant (1897) 17 Sup. Ct. 744, 167 U. S. 104, 42 L. Ed. 94; Downes v. Bidwell (1901) 21 Sup. Ct. 770, 825, 182 U. S. 244, 45 L. Ed. 1088, (dissenting opinion); In re Strauss (1905) 25 Sup. Ct. 535, 537, 197 U. S. 324, 49 L. Ed. 774; Rider v. U. S. (1906) 149 Fed. 164, 168, 79 C. C. A. 112; In re Miller (C. C. 1885) 23 Fed. 32; In re Kelly (C. C. 1886) 26 Fed. 852; In re McPhun (C. C. 1887) 30 Fed. 57, 58; In re Reinitz (C. C. 1889) 39 Fed. 204, 206; In re Newman (C. C. 1897) 79 Fed. 615, 616; U. S. v. Watts (D. C. 1882) 14 Fed. 130; In re Roth (D. C. 1883) 15 Fed. 506; Ex parte Hibbs (D. C. 1886) 26 Fed. 421; In re Charleston (D. C. 1888) 34 Fed. 531, 532; In re Manning (D. C. 1890) 44 Fed. 275, 276; U. S. v. Hom Hing (D. C. 1892) 48 Fed. 635, 639; Ex parte Reed (D. C. 1908) 158 Fed. 891; In re Mitchell (D. C. 1909) 171 Fed. 289; Howe v. U. S. (1908) 43 Ct. Cl. 175.

§ 10111. (R. S. § 5271.) Evidence on the hearing.

In every case of complaint, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any foreign country may have been granted, certified under the hand of the person issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended, if they are authenticated in such manner as would entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party escaped. The certificate of the principal diplomatic or consular officer

of the United States resident in such foreign country shall be proof that any paper or other document so offered is authenticated in the manner required by this section.

Act Aug. 12, 1848, c. 167, § 2, 9 Stat. 302. Act June 22, 1860, c. 184, 12 Stat. 84.

This section was amended by Act June 19, 1876, c. 133, 19 Stat. 59, so as to read as follows:

"In every case of complaint and of a hearing upon the return of the warrant of arrest, any depositions, warrants, or other papers offered in evidence, shall be admitted and received for the purpose of such hearing if they shall be properly and legally authenticated so as to entitle them to be received as evidence of the criminality of the person so apprehended, by the tribunals of the foreign country from which the accused party shall have escaped, and copies of any such depositions, warrants or other papers, shall, if authenticated according to the law of such foreign country, be in like manner received as evidence; and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any such deposition, warrant or other paper, or copy thereof, is authenticated in the manner required by this section."

Said amendatory act, however, was repealed by Act Aug. 3, 1882, c. 378, § 6, and so much of this section as originally enacted as was inconsistent with said act was also repealed thereby.

Notes of Decisions

Documentary evidence—In general.—As to requisites and sufficiency of evidence, see notes to § 10110, ante, "Evidence."

Forged papers produced to and deposed to by witnesses giving depositions abroad, where the charge is forgery, need not be produced here before the commissioner. In re Farez (C. C. 1870) Fed. Cas. No. 4,645.

This section, as amended in 1876 provides for two classes of documentary evidence: First, original depositions, original warrants, and original "other papers;" second, copies of "any such depositions, warrants, or other papers." In re Fowler (C. C. 1880) 4 Fed. 303.

— **Admissibility.**—The depositions authorized by this section to be used upon the hearing may also be admitted for the purpose of vesting jurisdiction in the commissioner to issue the warrant. Rice v. Ames (1901) 21 Sup. Ct. 406, 408, 180 U. S. 371, 45 L. Ed. 577.

To render papers admissible in evidence under Act June 22, 1860, it is not necessary that they should be papers on which a warrant of arrest was issued abroad. In re Farez (C. C. 1870) Fed. Cas. No. 4,645.

Admissibility of copies of depositions taken abroad in extradition proceedings. In re MacDonnell (C. C. 1873) Fed. Cas. No. 8,772.

The statutes in relation to documentary evidence from abroad in extradition cases examined. In re Stupp (C. C. 1875) Fed. Cas. No. 13,563.

Upon the hearing, copies of depositions and of warrants and other papers certified under the hand of the person issuing them, and attested upon the oath of the party producing them to be true copies, are admissible. Ex parte Ross (D. C. 1869) Fed. Cas. No. 12,069.

The testimony of accused is not admissible in a case of extradition, tried by a federal judge, though sitting in a state where such evidence would be received. In re Dugan (D. C. 1874) Fed. Cas. No. 4,120.

Authentication of documents—In general.—Documents which are so authenticated that the tribunals of the country where the offense was committed would receive them are admissible in support of the charge. In re Henrich (C. C. 1867) Fed. Cas. No. 6,369; Muller's Case (D. C. 1863) Fed. Cas. No. 9,913.

The proper form of such authentication considered. In re Henrich (C. C. 1867) Fed. Cas. No. 6,369.

There is nothing in the statute which made the certificate of the United States diplomatic or consular officers the only competent proof that either the originals or the copies were authenticated in the manner required by the statute. In re Fowler (C. C. 1880) 4 Fed. 303.

— **Certificate.**—What is a sufficient certificate of authentication of papers under Act 1860. In re Farez (C. C. 1870) Fed. Cas. No. 4,645.

A certificate, under this section, should show upon its face that the officer who made it is the principal diplomatic or consular officer of the United States, resident in the country making the demand of extradition, and should declare that the documents to which it is attached are legally authenticated, according to the laws of the country from which the fugitive escaped, so as to entitle them to be received as evidence for similar purposes by the tribunals of that country. (1863) 10 Op. Atty. Gen. 501.

— **Copies.**—Copies must be copies of original documents, which originals would be entitled to be received in the

tribunals of the foreign country as evidence of the criminality of the person in respect to the offense charged against him as committed there, if the inquiry as to his criminality in respect of said offense were being had in such foreign tribunals; and such copies must be "authenticated according to the law of such foreign country"—that is, authenticated as true copies of such originals, the authentication being made according to the law of the foreign country. In re Fowler (C. C. 1880) 4 Fed. 303.

There is nothing in the statute which necessarily excluded the authentication of the copies by oral proof, or excluded oral proof as to what the law of the foreign country was as to such authentication, or oral proof that such oral authentication was according to the law of the foreign country. Id.

—— **Original papers.**—The requirement that copies of warrants for extradition shall be certified under the hand of the person issuing it is sufficiently met by the production of the original official warrant without proof of the authority of the officer issuing it. In re Kaine (1852) 14 How. 103, 116, 14 L. Ed. 345 (Catron, J., in separate opinion).

The originals must be documents which would be entitled to be received in the tribunals of the foreign country as evidence of the criminality of the person, in respect to the offense charged against him as committed there, if the inquiry as to his criminality in respect to such offense were being had in such foreign tribunals; and such originals must be authenticated in such a proper and legal manner as would entitle them to be received as such evidence in such foreign tribunals. In re Fowler (C. C. 1880) 4 Fed. 303.

The original papers may be authenticated by oral proof. Id.

Repeal of statute.—Act Aug. 12, 1848, c. 167, § 2, giving effect to treaty stipulations with foreign governments for the extradition of offenders, is repealed by Act June 22, 1860, c. 184. (1863) 10 Op. Atty. Gen. 501.

Cited without definite application, U. S. v. Allred (1895) 15 Sup. Ct. 231, 233, 155 U. S. 591, 39 L. Ed. 273; Ornelas v. Ruiz (1896) 16 Sup. Ct. 689, 690, 161 U. S. 502, 40 L. Ed. 787; In re Strauss (1905) 25 Sup. Ct. 535, 537, 197 U. S. 324, 49 L. Ed. 774; Ex parte Charlton (C. C. 1911) 185 Fed. 880 (affirmed [1913] 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. [N. S.] 397); In re Wadge (D. C. 1883) 15 Fed. 864 (affirmed [C. C. 1883] 16 Fed. 332); U. S. v. Hom Hing (D. C. 1892) 48 Fed. 635, 639.

§ 10112. (Act Aug. 3, 1882, c. 378, § 1.) Place and character of the hearing.

All hearings in cases of extradition under treaty stipulation or convention shall be held on land, publicly, and in a room or office easily accessible to the public. (22 Stat. 215.)

This section and the four sections next following were part of an act entitled "An act regulating fees and the practice in extradition cases."

Section 6 of the act repealed Act June 19, 1876, c. 133, 19 Stat. 59, which amended R. S. § 5271, and also repealed so much of R. S. § 5271, as was inconsistent with the provisions of this act.

See note to R. S. § 5271, ante.

Cited without definite application, New York v. Compagnie Générale Transatlantique (1882) 2 Sup. Ct. 87, 90, 107 U. S. 59, 27 L. Ed. 383.

§ 10113. (Act Aug. 3, 1882, c. 378, § 2.) Fees of commissioners.

The following shall be the fees paid to commissioners in cases of extradition under treaty stipulation or convention between the Government of the United States and any foreign government, and no other fees or compensation shall be allowed to or received by them:

For administering an oath, ten cents.

For taking an acknowledgment, twenty-five cents.

For taking and certifying depositions to file, twenty cents for each folio.

For each copy of the same furnished to a party on request, ten cents for each folio.

For issuing any warrant or writ, and for any other service, the same compensation as is allowed clerks for like services.

For issuing any warrant under the tenth article of the treaty of August ninth, eighteen hundred and forty-two, between the United States and the Queen of the United Kingdom of Great Britain and

Ireland, against any person charged with any crime or offense as set forth in said article, two dollars.

For issuing any warrant under the provision of the convention for the surrender of criminals, between the United States and the King of the French concluded at Washington November ninth, eighteen hundred and forty-three, two dollars.

For hearing and deciding upon the case of any person charged with any crime or offense, and arrested under the provisions of any treaty or convention, five dollars a day for the time necessarily employed. (22 Stat. 215.)

This section prescribed for extradition proceedings the fees fixed by R. S. § 847, without change, except that R. S. § 847, fixed the per diem allowance for hearing and deciding upon the case of any person charged with any crime in cases under the treaty with Great Britain and the convention with France, while this section fixed the per diem allowance for hearing and deciding upon the case of any person charged with crime and arrested "under the provisions of any treaty or convention." This section may be regarded as superseded by Act May 28, 1896, c. 252, § 21, ante, § 1451, which provided that each commissioner "shall be entitled to the following named fees, and none other," and which, as to compensation in extradition cases, re-enacted the provisions contained in R. S. § 847, and not those of this section.

The fees of clerks for issuing warrants, etc., were fixed by R. S. § 828, ante, § 1383.

Notes of Decisions

Fees under treaty.—Under the extradition treaty with Prussia a commissioner or marshal may lawfully demand such fees as are usual for analogous services rendered to the United States. (1860) 9 Op. Atty. Gen. 497.

Cited without definite application, New York v. Compagnie Générale Transatlantique (1882) 2 Sup. Ct. 87, 90, 107 U. S. 59, 27 L. Ed. 383.

§ 10114. (Act Aug. 3, 1882, c. 378, § 3.) Witnesses for indigent defendants.

On the hearing of any case under a claim of extradition by any foreign government, upon affidavit being filed by the person charged setting forth that there are witnesses whose evidence is material to his defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the judge or commissioner before whom such claim for extradition is heard may order that such witnesses be subpœnaed; and in such cases the costs incurred by the process, and the fees of witnesses, shall be paid in the same manner that similar fees are paid in the case of witnesses subpœnaed in behalf of the United States. (22 Stat. 215.)

The fees of witnesses were fixed by R. S. § 848, ante, § 1452, and the manner of paying witnesses was prescribed by R. S. § 855, ante, § 1461.

Notes of Decisions

Trial.—This section does not authorize a "trial" different from the preliminary hearing which was given under the former statute. In re Wadge (D. C. 1883) 15 Fed. 864.

Evidence of insanity.—The right to introduce evidence of the insanity of accused in proceedings for extradition under treaty with Italy of March 23, 1868, of a fugitive from justice, was not given by this section, so as to authorize a departure from the first article of the treaty, requiring a surrender on evidence of criminality which according to laws of the place where the fugitive was found would justify his arrest if the crime had been there committed. Charlton v. Kelly (1913) 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. (N. S.) 397, affirming judgment Ex parte Charlton (C. C. 1911) 185 Fed. 880.

§ 10115. (Act Aug. 3, 1882, c. 378, § 4.) Payment of fees and costs.

All witness fees and costs of every nature in cases of extradition, including the fees of the commissioner, shall be certified by the judge or commissioner before whom the hearing shall take

place to the Secretary of State of the United States, who is hereby authorized to allow the payment thereof out of the appropriation to defray the expenses of the judiciary; and the Secretary of State shall cause the amount of said fees and costs so allowed to be reimbursed to the Government of the United States by the foreign government by whom the proceedings for extradition may have been instituted. (22 Stat. 216.)

Provisions for the payment of fees and costs in extradition cases were contained in Act June 28, 1902, c. 1301, § 1, post, § 10117.

Notes of Decisions

Fees allowable.—The commissioner is not entitled to the higher fees allowed by this act, but only to the fees prescribed by the general statute. Howe v. U. S. (1906) 42 Ct. Cl. 35.

The fees allowed to commissioners set forth. Howe v. U. S. (1908) 43 Ct. Cl. 175.

§ 10116. (Act Aug. 3, 1882, c. 378, § 5.) Evidence on the hearing. In all cases where any depositions, warrants, or other papers or copies thereof shall be offered in evidence upon the hearing of any extradition case under Title sixty-six of the Revised Statutes of the United States, such depositions, warrants, and other papers, or the copies thereof, shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any deposition, warrant or other paper or copies thereof, so offered, are authenticated in the manner required by this act. (22 Stat. 216.)

See notes to R. S. § 5271, ante, § 10111, and to section 1 of this act, ante, § 10112.

Notes of Decisions

Construction and application.—This section applies only to papers offered by the prosecution to establish criminality and not to papers offered on the part of the accused. Oteiza v. Jacobus (1890) 10 Sup. Ct. 1031, 1033, 136 U. S. 330, 34 L. Ed. 464.

This section restores in substance the provisions of the act of June 22, 1860, as respects the mode of authentication of documentary evidence in extradition proceedings and supersedes also the provisions on that subject of R. S. § 5271, ante, § 10111. In re Behrendt (C. C. 1884) 22 Fed. 699.

Depositions not sworn to.—Depositions authenticated as required by this section are properly admitted, though some of them are not sworn to. Ex parte Glaser (1910) 176 Fed. 702, 100 C. C. A. 254.

Under this section depositions need not be sworn to. Ex parte La Mantia (D. C. 1913) 206 Fed. 330.

Originals and copies.—Under this act both depositions and copies thereof require the same kind of authentication to entitle them to be received in evidence in proof of criminality; and, whether the original or a copy is offered, it is not admissible under this act unless it would be receivable in the foreign country in proof of criminality. In re McPhun (C. C. 1887) 30 Fed. 57.

It is not necessary, otherwise than by the certificate of the consul, to prove that the law of the foreign country would allow copies of depositions taken before a magistrate to be received as proof of criminality. In re Charleston (D. C. 1888) 34 Fed. 531.

Under this section copies of depositions certified by an American consul as therein required are admissible in extradition proceedings before a commissioner, and need not be attested by oath, as previously required by Rev. St. § 5271 (U. S. Comp. St. 1901, p. 3593). Ex parte Schorer (D. C. 1912) 197 Fed. 67.

Necessary papers.—Under this section it is not necessary that an indictment accompany the complaint in order to establish the criminality of the accused. Grin v. Shine (1902) 23 Sup. Ct. 98, 103, 187 U. S. 181, 47 L. Ed. 130.

It need not appear that the depositions or documentary evidence would be competent evidence on the trial of accused in the foreign tribunal, if they are sufficient to authorize his arrest. In re Wadge (C. C. 1883) 16 Fed. 332.

Translation of papers.—Where certain depositions attached to extradition

papers were in the German language, and the translator testified before the commissioner that he had dictated the translation to a typewriter, that he had examined and compared it as written out, and that the translation was correct, there being no claim by petitioner that the translation was in any respect inaccurate, it was no objection to the translation that the typewriter did not also testify with reference thereto. Ex parte Zentner (D. C. 1910) 188 Fed. 344.

In an application by the government of Mexico to a United States commissioner for the extradition of a fugitive under the treaty of December 11, 1861 (12 Stat. 1200), with that country, the commissioner should decline to proceed with the inquiry until a translation of the papers containing the charges are produced before him; but in such a case he should so advise that government and make a liberal allowance of time for the production of such translation before returning the papers. (1896) 21 Op. Atty. Gen. 428.

While the treaty does not in terms provide for such translation, yet the proceedings thereunder must accord with the rules and forms of the tribunals of that jurisdiction to which recourse is had; and inasmuch as the commissioner is the sole judge of the weight and sufficiency of the evidence upon which extradition is sought, it follows that such evidence must be presented in a language that is intelligible to him. Id.

Authentication.—Unsworn statements certified by the United States ambassador and the chargé d'affaires to be authenticated properly and legally so as to be received for similar purposes by tribunals of the country from which the accused has fled are, by the express terms of this section admissible in evidence in extradition proceedings. Elias v. Ramirez (1910) 30 Sup. Ct. 131, 135, 215 U. S. 398, 54 L. Ed. 253.

In extradition proceedings under section 5, Act Aug. 3, 1882, the certificate is not the exclusive source of authentication, but may be assisted by other evidence. In re Wadge (C. C. 1883) 16 Fed. 332.

Depositions for extradition having been authenticated by the vice consul of the United States, held, that the vice consul was the principal diplomatic consular officer, and authorized to authenticate such papers. In re Herres (C. C. 1887) 33 Fed. 165.

Where the documentary evidence submitted on the hearing of an application for extradition is not accompanied by a certificate of the principal diplomatic officer of the United States resident in the requiring country, stating clearly that it is legally authenticated so as to entitle it to be received in support of the same criminal charge in the tribunals of that country, as required by this act, oral proof that the authentication is proper may be given before the commissioner by an expert; and one who has served as a judge and practiced law for 32 years in the requiring country is an expert for such purpose. In re Benson (C. C. 1888) 34 Fed. 649.

Technical objections to documents in extradition proceedings as to matters of form are not entitled to favorable consideration by the courts, and if the certificates, signatures, etc., are in substantial conformity to the requirements of the statute, and give reasonable assurance of authenticity, it is sufficient. In re Neely (C. C. 1900) 103 Fed. 626, judgment affirmed Neely v. Henkel (1901) 21 Sup. Ct. 308, 180 U. S. 126, 45 L. Ed. 457.

The authentication of documents in extradition proceedings, which would be received "in similar proceedings" in the demanding country, when aided by oral proof of handwriting, and by proof showing the purpose for which they are issued, is sufficient. In re Wadge (D. C. 1883) 15 Fed. 864.

—— **Certificate.** — A certificate that the depositions and other documents offered in evidence in an extradition case are legally authenticated, so as to entitle them to be received "as evidence" for similar purposes in the demanding country, which follows the language of the statute, except that the words "as evidence" are added, is sufficient. Grin v. Shine (1902) 23 Sup. Ct. 98, 103, 187 U. S. 181, 47 L. Ed. 130.

Where the evidence of criminality consisted of affidavits, appearing to be taken in a criminal court upon a charge of forgery, authenticated by the royal judge of Prussia to be valid evidence according to the laws existing in Prussia, held equivalent to a statement that such documents were valid evidence there of the crime of forgery charged. In re Behrendt (C. C. 1884) 22 Fed. 699.

The certificate of the principal diplomatic officer of the United States, in the language of the statute, certifying to the signatures to documentary evidence taken for the purposes of extradition, is sufficient, and cures defects in the other certificates, if there be any. Id.

The consul's certificate, if conformable to the act of congress, is absolute proof that the papers certified are receivable in proof of criminality abroad, whether they are originals or copies. If this certificate is not conformable to the act of congress, the papers, whether originals or copies, may still be received upon proof of the fact that by the foreign law the papers presented would be competent evidence in proof of the criminality of the accused in the country from which he escaped. In re McPhun (C. C. 1887) 30 Fed. 57.

The relator being arrested in New York upon a charge of forgery commit-

ted at Calcutta, British India, the only proofs of criminality submitted were copies of depositions taken before the criminal magistrate at Calcutta, attested by his clerk and the seal of his court. The consul's certificate stated that the depositions were so authenticated as "to enable them to be used in evidence, and as proof that the originals were duly received in evidence of the criminality of the accused." Held insufficient, under the act of congress; and, no other proof being made that copies so attested could be received in evidence as proof of criminality within the British dominions, the copies of depositions were improperly received. Id.

The certificate is sufficient where it follows the words of the statute. In re Krojanker (C. C. 1890) 44 Fed. 482.

The certificate of the American ambassador to Great Britain that the papers containing the evidence in relation to the commission of the crime by the person held for extradition "are properly and legally authenticated, so as to entitle them to be received in evidence for similar purposes by the tribunals of Great Britain," is in proper form, and the documents are to be received as competent evidence. In re Breen (C. C. 1896) 73 Fed. 458.

Where the certificate is signed by the chargé d'affaires ad interim, the court will take judicial notice that such chargé was, at the time such certificate was given, the principal diplomatic officer of the country where it was given. In re Orpen (C. C. 1898) 86 Fed. 760.

Documentary proofs being in German, and describing proceedings in Switzerland as for "Unterschlagung," which may mean embezzlement ("soustraction"), or only abuse of trust ("d'abus de confiance"), the latter not being a treaty offense, and the certificate to the authentication of the document stating, in French, that they were for a proceeding "d'abus de confiance," held, that the error in the certificate, if it was such, was immaterial, and that it was to be presumed that the requisition for the accused was for a trial upon the treaty offense. In re Roth (D. C. 1883) 15 Fed. 506.

Papers purporting to be depositions, and duly certified, are admissible, though the recitals contained in the introductory part thereof show that they are mere statements, and not depositions. In re Ezeta (D. C. 1894) 62 Fed. 972.

Review — Habeas corpus. — Whether the depositions and other documents offered under this section sufficiently establish the criminality of the accused for the purpose of extradition cannot be reviewed upon habeas corpus. Grin v. Shine (1902) 23 Sup. Ct. 98, 103, 187 U. S. 181, 47 L. Ed. 130.

See, also, note under § 10110, ante.

§ 10117. (Act June 28, 1902, c. 1301, § 1.) Fees and costs in extradition cases, how paid; duties of Attorney-General and Secretary of State.

From and after June thirtieth, nineteen hundred and three, all the fees and costs in extradition cases shall be paid out of the appropriations to defray the expenses of the judiciary, and the Attorney-General shall certify to the Secretary of State the amounts to be paid to the United States on account of said fees and costs in extradition cases by the foreign government requesting the extradition, and the Secretary of State shall cause said amounts to be collected and transmitted to the Attorney-General for deposit in the Treasury of the United States. (32 Stat. 475.)

This was a proviso annexed to an appropriation for salaries, etc., of marshals in the sundry civil appropriation act for the fiscal year 1903, cited above.

Other provisions for the payment of fees and costs were made by Act Aug. 3, 1882, c. 378, § 4, ante, § 10115.

Notes of Decisions

Nation responsible for costs. — By treaty between the United States and Great Britain, the expense attending the proceedings in extradition is to be borne by the government making the reclamation. (1855) 7 Op. Atty. Gen. 396.

But where, in consequence of conflict between the judicial authorities of the United States and those of a state, the latter aiming to prevent the extradition, the United States intervenes to maintain its own dignity in the premises, the special expenses of such intervention should be defrayed by the United States. Id.

The ordinary expenses, including fees of counsel, attending the process of international extradition, are to be defrayed by the demanding government. (1855) 7 Op. Atty. Gen. 612.

By the extradition treaty between the United States and Prussia, the expenses of the apprehension and delivery of a fugitive must be defrayed by the party who makes the requisition and receives the fugitive. (1860) 9 Op. Atty. Gen. 497.

In article 10 of the treaty between the United States and Great Britain of August 9, 1842 (8 Stat. 576), providing that on extradition the expense of apprehension and delivery shall be borne by the "party who makes the requisition, and receives the fugitive," the word "party" refers to the contracting parties to the treaty, and has no reference to any question which may arise between the government which receives the fugitive and its officers or citizens. People v. Board of Sup'rs (1890) 56 Hun, 17, 8 N. Y. Supp. 752.

State laws.—Pen. Code N. Y. § 51, forbidding an officer to ask or receive any fee or compensation for expenses incurred in procuring from the government a demand on the executive authority of a state or territory or of a foreign government, does not apply to international extradition proceedings. Ellis v. Jacob (1897) 45 N. Y. S. 177, 17 App. Div. 471.

The word "state," as used in Cr. Code Pa. March 31, 1860 (P. L. 427) § 1, providing for the allowance of expenses of extradition, which shall be paid out of the treasury of the county where the offense is charged to have been committed, refers to states of the Union; and no extradition expenses can be collected from a county for a fugitive transported into said county from Canada. Goldfon v. Allegheny County (1900) 14 Pa. Super. 75.

§ 10118. (R. S. § 5272.) Surrender of the fugitive.

It shall be lawful for the Secretary of State, under his hand and seal of office, to order the person so committed to be delivered to such person as shall be authorized, in the name and on behalf of such foreign government, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly; and it shall be lawful for the person so authorized to hold such person in custody, and to take him to the territory of such foreign government, pursuant to such treaty. If the person so accused shall escape out of any custody to which he shall be committed, or to which he shall be delivered, it shall be lawful to retake such person in the same manner as any person accused of any crime against the laws in force in that part of the United States to which he shall so escape, may be retaken on an escape.

Act Aug. 12, 1848, c. 167, § 3, 9 Stat. 302.

Allowing prisoners to escape was punishable by R. S. §§ 5409, 5410, incorporated into the Criminal Code in sections 138, 139, thereof, post, §§ 10308, 10309, and repealed by section 341 thereof, post, § 10515.

Notes of Decisions

Review by secretary of state.—The secretary of state has power under this section to review the proceedings in an extradition case certified to him, and this power extends to the review of every question therein presented. (1881) 17 Op. Atty. Gen. 184.

Final writ or warrant of extradition.—The order to surrender may be signed by the secretary of state, and be issued from the state department. In re Sheazle (C. C. 1845) Fed. Cas. No. 12,734.

The warrant on a requisition from the government of Belgium under the treaty of May 1, 1874, art. 6, is sufficient if issued from the state department under its official seal. Ex parte Van Hoven (C. C. 1876) Fed. Cas. No. 16,858.

Where a judge had ordered a warrant of extradition to issue, the secretary of state, upon a review of the case, refused to issue the warrant, and the accused was discharged. In re Palmer (D. C. 1873) Fed. Cas. No. 10,679.

According to the practice of the Executive Department, the President is not considered as authorized, in the absence of any express provision by treaty, to order the delivering up of fugitives from justice. (1841) 3 Op. Atty. Gen. 661.

The executive will not issue his warrant for the surrender of fugitives under the tenth article of the treaty of Washington, except in cases where the preliminary proceedings have been had and properly certified to him. (1843) 4 Op. Atty. Gen. 240.

When a commissioner of the United States has made return according to law, as to an alleged fugitive from justice, that he is lawfully subject to extradition, it is the duty of the Secretary of State to order the final writ of extradition, notwithstanding any contradictory proceedings of the courts of a state. (1854) 6 Op. Atty. Gen. 270.

Where a marshal of the United States has in custody a fugitive from foreign justice, under warrant of extradition from the proper authorities of the United States, and a state court undertakes to usurp jurisdiction of the case, it is the duty of the marshal, disregarding any process of the state court, to take the party to the ex-

terior line of such state, and there deliver him to the agent of the foreign government. (1854) 6 Op. Atty. Gen. 290.

In a case of the extradition of a fugitive from justice, the act of congress does not require or authorize the issuing of any warrant by the state department until the facts of the case are judicially ascertained and certified. (1859) 9 Op. Atty. Gen. 379.

A warrant of extradition, issued under this section, is not a warrant of arrest. (1866) 12 Op. Atty. Gen. 75.

Prosecution for different offense.—As to prosecution of person surrendered to the United States, see notes to § 10121, post.

So long as the prisoner is tried upon the facts which appeared in evidence before the commissioner who committed him for extradition, and upon one of the charges for which he was surrendered, it is immaterial whether he is indicted on all of such charges. Ex parte Bryant (1897) 17 Sup. Ct. 744, 745, 167 U. S. 104, 42 L. Ed. 94.

The meaning of the words "ought to be punished," from Extradition Treaty July 12, 1889, art. 3 (26 Stat. 1508) with Great Britain is inadequate to overcome the positive provisions of this section. Johnson v. Browne (1907) 27 Sup. Ct. 539, 540, 205 U. S. 309, 51 L. Ed. 816, 10 Ann. Cas. 636.

An alleged agreement before extradition that the prisoner should not be tried for any other offense until he had opportunity to return to the country from which he was extradited does not affect the jurisdiction of the court to try him on a different charge. U. S. v. Lawrence (C. C. 1876) Fed. Cas. No. 15,573.

Where an extradited prisoner who is out on bail is arrested on a different charge than that for which he was extradited, the court, in granting a writ of habeas corpus, and giving him opportunity to return to the place from which he was brought, will not extend the protection until a reasonable time after the proceedings then pending are ended, but will only give him a present opportunity to return. In re Fitton (C. C. 1891) 45 Fed. 471.

One extradited from England for assault with intent to murder cannot be convicted of assault with intent to do great bodily harm. People v. Hannan (Sup. 1894) 9 Misc. Rep. 600, 30 N. Y. Supp. 370; Same v. Stout (1894) 81 Hun, 336, 30 N. Y. Supp. 898, judgment affirmed (1895) 144 N. Y. 699, 39 N. E. 858.

Personal effects of prisoner.—Under the usages which govern extraditions, property found upon the person of a criminal at the time of his arrest, if obtained by the commission of the criminal act of which he is charged, or if material as evidence to prove such act, is generally surrendered with the person at the time of the extradition. (1901) 23 Op. Atty. Gen. 535.

The money taken from the person of C. W. F. Neely at the time of his arrest in this country for offenses committed in Cuba, not having been turned over to the authorities of that island at the time of his extradition, may be delivered to the Secretary of War and by him to the military governor of Cuba, with the understanding that it is to be retained by the latter pending a judicial determination of its true ownership. Id.

If the request of the court of instruction of Havana for this money is to be understood as an assertion of title to it, it cannot safely be surrendered in the absence of a formal adjudication in a civil proceeding to which Neely was a party, and as to which he had his day in court. Id.

Preliminaries, requisition, and mandate.—See note under § 10110, ante.

Commissioners—Appointment and jurisdiction.—See In re Kaine (1852) 14 How. 103, 110, 14 L. Ed. 345; note under § 10110, ante.

Review—Habeas corpus.—See note under § 10110, ante.

Cited without definite application, Ornelas v. Ruiz (1896) 16 Sup. Ct. 689, 161 U. S. 502, 40 L. Ed. 787; In re Strauss (1905) 25 Sup. Ct. 535, 537, 197 U. S. 324, 49 L. Ed. 774; In re Reinitz (C. C. 1889) 39 Fed. 204, 206; Ex parte Charlton (C. C. 1911) 185 Fed. 880 (affirmed Charlton v. Kelly [1913] 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. [N. S.] 397); Ex parte McCabe (D. C. 1891) 46 Fed. 363, 377, 12 L. R. A. 589.

§ 10119. (R. S. § 5273.) Time allowed for extradition.

Whenever any person who is committed under this Title or any treaty, to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States, it shall be lawful for any judge of the United States, or of any State, upon ap-

plication made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of State, to order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

Act Aug. 12, 1848, c. 167, § 4, 9 Stat. 303.

Notes of Decisions

Time fixed by treaty.—Under the treaty of February 22, 1899 (31 Stat. 1825), between Mexico and the United States, providing that on proper notification through the diplomatic channel either country shall cause the arrest of any alleged fugitive criminal from the other, and "keep him in safe custody for such time as may be practicable, not exceeding forty days, to await the production of the documents upon which the claim for extradition is founded," the prescribed 40 days is the limit of time during which a prisoner so arrested may be detained, unless the documents have been produced. Ex parte Reed (D. C. 1908) 158 Fed. 891.

Discharge of prisoner.—Under this section one who has been arrested as a fugitive from justice from a foreign country, and detained for more than two months in jail without trial, is entitled to be discharged, though at the time of the application an officer from the country asking extradition is on his way to remove the prisoner, where, with reasonable diligence, the officer might have been present before the application was made, and no sufficient cause is shown why he has been delayed. In re Dawson (C. C. 1900) 101 Fed. 253.

It is the duty of the civil magistrate to commit fugitives from justice from a foreign state to give the foreign government an opportunity to demand them, and our own in time to deliver him; and, if no such application be made and recognized within reasonable time, the prisoner will be discharged on habeas corpus. In re Washburn (N. Y. 1819) 4 Johns. Ch. 106, 3 Wheeler, Cr. Cas. 473, 8 Am. Dec. 548.

Cited without definite application, Ornelas v. Ruiz (1896) 16 Sup. Ct. 689, 161 U. S. 502, 40 L. Ed. 787; Wright v. Henkel (1903) 23 Sup. Ct. 781, 786, 190 U. S. 40, 47 L. Ed. 948; Pettit v. Walshe (1904) 24 Sup. Ct. 657, 659, 194 U. S. 205, 48 L. Ed. 938; In re Strauss (1905) 25 Sup. Ct. 535, 537, 197 U. S. 324, 49 L. Ed. 774; Charlton v. Kelly (1913) 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. (N. S.) 397; In re Bryant (C. C. 1897) 80 Fed. 282, 283 (affirmed [1897] 17 Sup. Ct. 744, 167 U. S. 104, 42 L. Ed. 94); Ex parte Charlton (C. C. 1911) 185 Fed. 880 (affirmed [1913] 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. [N. S.] 397); People v. Hannan (Sup. 1894) 9 Misc. Rep. 600, 30 N. Y. Supp. 370; Same v. Stout (1894) 81 Hun, 336, 30 N. Y. Supp. 898 (judgment affirmed [1895] 144 N. Y. 699, 39 N. E. 858).

§ 10120. (R. S. § 5274.) Continuance of provisions limited.

The provisions of this Title relating to the surrender of persons who have committed crimes in foreign countries shall continue in force during the existence of any treaty of extradition with any foreign government, and no longer.

Act Aug. 12, 1848, c. 167, § 5, 9 Stat. 303.

Cited without definite application, Ornelas v. Ruiz (1896) 16 Sup. Ct. 689, 161 U. S. 502, 40 L. Ed. 787; In re Strauss (1905) 25 Sup. Ct. 535, 537, 197 U. S. 224, 49 L. Ed. 774; Ex parte Charlton (C. C. 1911) 185 Fed. 880 (affirmed [1913] 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. [N. S.] 397).

§ 10121. (R. S. § 5275.) Protection of the accused.

Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any crime of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safe-keeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the crimes or offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such crimes or offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces

of the United States, or of the militia thereof, as may be necessary for the safe-keeping and protection of the accused.

Act March 3, 1869, c. 141, § 1, 15 Stat. 337.

Notes of Decisions

Right to asylum.—A fugitive from justice has no right to an asylum, except as provided for by treaty. Collins v. O'Neil (1909) 29 Sup. Ct. 573, 576, 214 U. S. 113, 53 L. Ed. 933.

Person opposing extradition.—Although, under the extradition treaty of 1890 between Great Britain and the United States and the laws of Canada, a person whose extradition is sought by the United States from the Dominion of Canada has the right to oppose his extradition by legal proceedings, he is nevertheless, during the pendency of such proceedings, a person fleeing from justice, within the meaning of section 1709. U. S. v. Greene (D. C. 1906) 146 Fed. 803, judgment affirmed Greene v. U. S. (1907) 154 Fed. 401, 85 C. C. A. 251, and writ of certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

Subsequent to extradition.—That an indictment on the strength of which the defendant was extradited is defective, and held bad on demurrer, does not prevent the state from prosecuting him. In re Rowe (1896) 77 Fed. 161, 23 C. C. A. 103.

The question whether or not a fugitive shall be surrendered by a country in which he has sought asylum must of necessity be decided by the government of such country, and its decision, approved by its courts, that the offense charged is within the terms of an extradition treaty between that country and the one making the demand, is final, and the question cannot be again raised in the courts of the latter country after extradition. Greene v. U. S. (1907) 154 Fed. 401, 85 C. C. A. 251, affirming judgment U. S. v. Greene (D. C. 1906) 146 Fed. 803, and writ of certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

Persons surrendered by Canada to the United States, under sections 4 and 10 of article 1 of the extradition treaty of 1890 between Great Britain and the United States, to be tried for the crime of "participation in fraud by an agent or trustee," were tried for such crime where the indictment charged them with conspiracy with a disbursing officer of the government to defraud the United States by presenting false and fraudulent claims to such officer and by his allowance and payment of the same from public money in his hands, the acts and transactions charged and proved before the extradition commissioner and under the indictment being the same. Id.

Where a demand for the surrender of a fugitive has been acceded to either under the obligation of a treaty or as a matter of comity, the accused is triable in the courts of the country to which he is returned on the charge upon which he was surrendered. Id.

It is not a good plea to an indictment for bribery that defendant was brought into the jurisdiction of the court under an extradition treaty on a charge of forgery. U. S. v. Caldwell (C. C. 1871) Fed. Cas. No. 14,707.

In the tribunals of his own country, the surrendered fugitive cannot question the good faith of the extradition proceedings. In re Miller (C. C. 1885) 23 Fed. 32.

A fugitive from justice, extradited and convicted for the crime for which the warrant of extradition shows he was surrendered, cannot defeat execution of sentence by setting up irregularities in the action of the foreign court which granted the warrant. Hall v. Patterson (C. C. 1891) 45 Fed. 352.

Acosta, having been returned from Mexico to the state of Florida under extradition proceedings, to be punished for a crime committed within that state, was convicted and sentenced to imprisonment. Upon his release he was arrested for another crime without having an opportunity of returning to Mexico. Demand having been made upon the state department by the Mexican government for his release, and it not appearing that the prisoner has made an attempt to invoke his right to return to Mexico, held, that any action by the department of state at this time to secure his release would be premature. (1901) 23 Op. Atty. Gen. 604.

He may either apply to the federal courts for a writ of habeas corpus, or interpose the alleged irregularity of his arrest as a matter of defense on the trial of his case in the state court. Id.

The question whether, in case any rights the prisoner may possess are denied in the state courts, the federal government is powerless or free from obligation to interfere in that which may then be a matter of international obligation, is not decided. Id.

A person brought within the jurisdiction of the state court under extradition proceedings cannot raise the objection that the offense with which he was charged in the extradition proceedings was not within the treaty between our own and the government from whose territory he was taken, or that the latter government was deceived or defrauded. The question of good faith is for the two governments. Adriance v. Lagrave (1874) 59 N. Y. 110, 17 Am. Rep. 317, reversing order Bacharach v. Same (1874) 1 Hun, 689, 4 Thomp. & C. 215.

Prosecution for different offense.—Prosecution of person surrendered by the United States, see note under § 10118, ante.

An extradited person can only be tried for an extraditable offense, and only for the offense for which he is extradited. U. S. v. Rauscher (1886) 7 Sup. Ct. 234, 238, 119 U. S. 407, 30 L. Ed. 425; Ex parte Coy (D. C. 1887) 32 Fed. 911; People v. Gray (1884) 66 Cal. 271, 5 Pac. 240; Commonwealth v. Hawes (1878) 76 Ky. (13 Bush) 697, 26 Am. Rep. 242; Bacharach v. Lagrave (N. Y. 1874) 47 How. Prac. 385.

Where an extradited person committed perjury on the trial of the offense for which he was extradited, and the trial resulted in disagreement, he could be prosecuted for the perjury before final conclusion of the trial of the offense for which he was extradited. Collins v. O'Neil (1909) 29 Sup. Ct. 573, 576, 214 U. S. 113, 53 L. Ed. 933.

The finding of a new indictment, to remedy a technical defect in a former one, does not charge another or different offense, so as to prevent the trial, on the good indictment, of a defendant who has been extradited from a foreign country on the defective one. In re Rowe (1896) 77 Fed. 161, 23 C. C. A. 103.

One extradited as an accomplice held not exempt from trial as a principal, the distinction between principals and accessories having been abrogated by the laws of the state. Id.

Extradition proceedings do not, by their nature, secure immunity from prosecution for other offenses than that for which the prisoner was surrendered. U. S. v. Lawrence (C. C. 1876) Fed. Cas. No. 15,573.

In the absence of express treaty stipulations to the contrary, one extradited may be held by the receiving government on account of a prior conviction and sentence for a nonextraditable crime. In re Miller (C. C. 1885) 23 Fed. 32.

Under the treaty with the Swiss confederation it is immaterial what prior charges have been made in Switzerland against the accused, if the complaint here presented charge a treaty offense; and, if the commission of the offense be duly established before the commissioner, he cannot be discharged on habeas corpus, though it should appear that a proceeding for a different and less offense, not included in the treaty, had been previously taken against him in Switzerland. In re Roth (D. C. 1883) 15 Fed. 506.

The information upon which extradition papers were based charged the defendant with the burning of a "house" owned by a person named, and "occupied and inhabited" by persons named for specified business purposes. The indictment found against the defendant after his extradition, and upon which he was tried, charged him with the burning of a "store building" owned and occupied by the same persons, and for the same purposes, as specified in the information. Held, that the word "house," as used in the information, could not be considered as meaning a dwelling house, but must be construed in connection with the other averments, which clearly showed it to be a store building, and that, therefore, there was no variance between the charge upon which the defendant was extradited, and the one for which he was tried. Cohn v. Jones (D. C. 1900) 100 Fed. 639.

A trial court should refuse to try the extradited prisoner for any offense except the charges mentioned in the warrant of extradition, and should discharge him from custody after he has been acquitted on trial for the offenses for which he was extradited. But if, after being so discharged, he comes voluntarily within the jurisdiction of our laws, or can be reached through the extradition clause of the federal constitution, or through the comity of a foreign government, he may be tried under the other indictments against him for embezzlement, etc. Commonwealth v. Hawes (1878) 76 Ky. (13 Bush) 697, 26 Am. Rep. 242.

Where, though extradition proceedings were brought against defendant in a foreign country, he was arrested on board an American ship, while voluntarily returning to the United States, he is not entitled to claim immunity from prosecution under an indictemnt other than that which was the basis of the extradition proceedings. Ward v. State (1899) 52 S. W. 996, 102 Tenn. 724.

—— **Persons extradited from Great Britain.**—Immunity under treaty of 1842, see U. S. v. Lawrence (C. C. 1876) Fed. Cas. No. 15,573; U. S. v. Watts (D. C. 1882) 14 Fed. 130; Ex parte Hibbs (D. C. 1886) 26 Fed. 421; (1875) 15 Op. Atty. Gen. 501; Commonwealth v. Hawes (1878) 76 Ky. (13 Bush) 697, 26 Am. Rep. 242.

Under article 3 of the extradition convention of 1880 between the United States and Great Britain, providing that no person surrendered shall be triable for any offense prior to his extradition, other than that for which he was surrendered, without opportunity of returning to the country surrendering him, construed in connection with this section, one surrendered by Canada could not be arrested and held for a different offense committed prior to his extradition, until the charge on which he was surrendered had been finally disposed of, although after being admitted to bail he returned to Canada, as until final discharge he was in the custody of the authorities or of his bail. Cosgrove v. Winney (1899) 19 Sup. Ct. 598, 174 U. S. 64, 43 L. Ed. 897.

Absolute identity of statutes in Great

Britain and the United States defining the offense of fraud by a corporate director is not necessary to make such offense "criminal by the laws of both countries," within the meaning of the provisions of article 1 of the treaty with Great Britain of 1889 (26 Stat. 1508), defining extraditable crimes. It is sufficient if the essential character of the transaction is the same and is made criminal by both statutes. Wright v. Henkel (1903) 23 Sup. Ct. 781, 785, 190 U. S. 40, 47 L. Ed. 948, affirming order In re Wright (C. C. 1903) 123 Fed. 463.

The omission of the words, "or be punished," from the provision of article 3 of Extradition Treaty July 12, 1889 (26 Stat. 1508) with Great Britain, that no person extradited "shall be triable or be tried" for any crime or offense committed prior to his extradition other than the offense for which he was surrendered until he shall have had an opportunity of returning to the country from which he was surrendered, does not justify the imprisonment, upon a former conviction for another and different offense, of a person extradited from Canada for an offense against the United States, until he has had an opportunity to return to Canada—especially where extradition has been refused for the other offense—since this omission is inadequate to overcome the positive provisions and the otherwise manifest scope and object of the treaty, and the earlier Ashburton treaty of 1842 (8 Stat. 572-576), which are to limit imprisonment as well as the trial to the crime for which extradition has been demanded and granted. Johnson v. Browne (1907) 27 Sup. Ct. 539, 540, 205 U. S. 309, 51 L. Ed. 816, 10 Ann. Cas. 636, affirming order Ex parte Browne (C. C. 1906) 148 Fed. 68.

Immunity from trial for an offense committed by a person after his extradition until he has been afforded an opportunity to return to the country whence he was extradited was not given by the provisions of the treaties with Great Britain of Aug. 9, 1842 (8 Stat. 576), and July 12, 1889 (26 Stat. 1508), or this section, under which such immunity as to prior offenses only is secured. Collins v. O'Neil (1909) 29 Sup. Ct. 573, 575, 214 U. S. 113, 53 L. Ed. 933, affirming judgments Ex parte Collins (1907) 90 Pac. 827, 151 Cal. 340, 129 Am. St. Rep. 122, and (1907) 91 Pac. 397, 151 Cal. 341, 129 Am. St. Rep. 122.

Extradited person has no right to have trial of the offense for which he was extradited before he can be tried for an offense subsequently committed, by treaties with Great Britain of Aug. 9, 1842, and July 12, 1889, or this section. Collins v. Johnston (1915) 35 Sup. Ct. 649, 237 U. S. 502, 59 L. Ed. 1071. Immunity from trial for an offense committed after extradition, before opportunity to return to the country whence he was extradited, was not given by treaties with Great Britain of Aug. 9, 1842, and July 12, 1889, or by this section. Id.

A person extradited from Canada to the United States under the Treaty of 1889 for trial on a pending indictment cannot be seized by officers of the United States on his arrival in this country and imprisoned in execution of a prior judgment against him on a different charge. Ex parte Browne (C. C. 1906) 148 Fed. 68, order affirmed Johnson v. Browne (1907) 27 Sup. Ct. 539, 205 U. S. 309, 51 L. Ed. 816, 10 Ann. Cas. 636.

Under article 3 of the treaty of extradition of 1890 (26 Stat. 1509) between the United States and Great Britain a person who, under the provisions of that treaty, is extradited for an offense and upon trial is acquitted cannot be again arrested and tried upon some other charge until he first shall have had an opportunity of returning to the country from which he was surrendered. (1901) 23 Op. Atty. Gen. 431. Underwood, an American citizen, having been extradited from Canada in 1897 on a charge of murder committed in Texas, was tried and acquitted and immediately rearrested on two charges of robbery committed prior to his extradition, was tried, found guilty, and sentenced to sixteen years' imprisonment in the penitentiary of Texas. Upon demand of the British government for his release, held, that the prisoner, being an American citizen, and having taken no legal steps to invoke the provisions of that treaty, no international obligation exists on the part of the United States to secure, on demand of the British government, the release of Underwood, regardless of any action which he might take on his own behalf to secure his release on habeas corpus. Id. The question involved is a legal one and respects the legal rights of the prisoner under the extradition treaty; his remedy, therefore, is a legal one, and, under the circumstances of this case, there are no steps which may appropriately be taken by the executive in order to fulfill the obligations of that treaty. Id.

One extradited from Canada is not immune from trial for another offense committed after his extradition, and before given opportunity to return to Canada, and that though the Canadian officials might have refused to surrender him without receiving the assurance referred to in the Canadian act as, by surrendering him without such assurance, the rights of the United States and the state were limited only by the treaty. Ex parte Collins (Cal. 1907) 90 P. 827.

Where defendant was extradited from Canada for setting fire to and

burning a certain brick "house," occupied and inhabited as a retail shoe store, and was indicted for setting fire to and burning a certain store "building" then and there occupied as a store, the objection that the crimes charged in the information and in the indictment were not the same was without merit. State v. Spiegel (1900) 88 N. W. 722, 111 Iowa, 701.

One extradited from England for assault with intent to murder cannot be convicted of assault with intent to do great bodily harm. People v. Hannan (Sup. 1894) 9 Misc. Rep. 600, 30 N. Y. Supp. 370; Same v. Stout (1894) 81 Hun, 336, 30 N. Y. Supp. 898, judgment affirmed (1895) 144 N. Y. 699, 39 N. E. 858.

A person extradited from Great Britain, and serving a term of imprisonment for the crime in question, cannot be put on trial for another crime for which he might have been extradited until the lapse of a reasonable time from the expiration of the term of sentence. State v. Vanderpool (1883) 39 Ohio St. 273, 48 Am. Rep. 431.

—— Persons extradited from Mexico.—Acosta, having been returned from Mexico to the state of Florida under extradition proceedings, to be punished for a crime committed within that state, was convicted and sentenced to imprisonment. Upon his release he was arrested for another crime without having an opportunity of returning to Mexico. Demand having been made upon the state department by the Mexican government for his release, and it not appearing that the prisoner has made an attempt to invoke his right to return to Mexico, held, that any action by the department of state at this time to secure his release would be premature. (1901) 23 Op. Atty. Gen. 604.

A person was extradited to Texas from Mexico on a requisition charging him with theft, but prior to his extradition he was indicted in Texas for embezzlement of private funds, which is an offense not enumerated in the extradition treaty between the United States and Mexico. Held, that he could not be prosecuted for such offense, since it was not the one for which he was extradited. Blandford v. State (1881) 10 Tex. App. 627.

Where petitioner was extradited from Mexico under an indictment charging an extraditable offense, and thereafter the indictment was quashed in the demanding state, petitioner was not entitled to a reasonable time to return to Mexico before being called on to answer a new indictment charging the same facts. Ex parte Fischl (Tex. Cr. App. 1907) 100 S. W. 773.

—— Waiver of immunity.—A person illegally tried for another crime than that for which he was extradited cannot waive his privilege of exemption under the provisions of the extradition treaty. Ex parte Coy (D. C. 1887) 32 Fed. 911.

Where an indicted person, who has escaped to Canada, and against whom an extradition warrant has been issued, returns to this country voluntarily, under an agreement that he shall only be tried for the offense for which he has been indicted, and he is thereupon tried and convicted, the objection that the crime for which he was tried was not an extraditable offense must be raised at the trial and taken to the supreme court on appeal or certiorari in order to be available. In re Cross (D. C. 1890) 43 Fed. 517.

One extradited from a foreign country to answer a particular offense, and rearrested on a different charge, from which he is immune, does not waive such immunity by giving bail to the second arrest. Bacharach v. Lagrave (N. Y. 1874) 47 How. Prac. 385.

Arrest on civil process.—The implied limitation in extradition treaties, that the person extradited shall not be arrested for any offense except that for which he was extradited until the lapse of a reasonable time after the termination of the extradition proceedings, to enable him to return to the country from which he was brought, and the provisions of this section apply to a subsequent arrest in a civil action, as well as to an arrest for crime. In re Reinitz (C. C. 1889) 39 Fed. 204, 4 L. R. A. 236.

While parties participating in having a person brought by extradition proceedings within the jurisdiction of the state court in bad faith for the purpose of having him arrested on civil process may not receive an advantage from their wrongful acts, the rule does not apply to persons not concerned therein. Adriance v. Lagrave (1874) 59 N. Y. 110, 17 Am. Rep. 317, reversing order Bacharach v. Same (1874) 1 Hun, 689, 4 Thomp. & C. 215.

An extradited person brought within the jurisdiction of the courts of the state for any act, criminal or civil, committed prior to the extradition, may be retained by arrest under the civil process. Id.

Defendant, a judgment debtor, was extradited from England, and the officer who conveyed her to America obtained possession of certain personal property belonging to her. While en route the judgment creditor obtained an order requiring the officer to answer as to what property of defendant he had in his possession, and after reaching America, and while she was still in custody, orders appointing a receiver of her property, and requiring the officer to deliver it to the receiver, were made, all which orders she moved to set aside, on the ground that jurisdiction was obtained by fraudulent use of the extradition law. Held that, conceding that the arrest was caused by the judgment creditor, in the absence of proof that she was wrongfully ar-

rested, or of bad faith in the institution of the extradition proceedings, the motions should be overruled. Martin v. Woodhall (1889) 56 N. Y. Super. Ct. (24 Jones & S.) 439, 4 N. Y. Supp. 539.

An Austrian subject, who is arrested in New Jersey, on a warrant obtained by the Austrian consul from a United States commissioner, for embezzlement, and is brought to New York, given a hearing, and discharged, can be arrested in a civil action by another person against him for conversion. Woez v. Herrman (Sup. 1889) 8 N. Y. Supp. 667, 23 Abb. N. C. 77.

Where one has been brought into the state, by extradition proceedings under the federal constitution and act of congress, to answer a criminal charge, he cannot be compelled to respond to civil process served on him in an action begun by the party who secured his extradition, before he has had an opportunity to answer the charge against him, and a reasonable time in which to leave the state. Compton v. Wilder (1878) 6 Ohio Dec. 630, 7 Am. Law Rec. 212.

Rights of prisoner returned illegally.—Where a prisoner has been kidnapped in a foreign country and brought by force within the jurisdiction of the state whose law he has violated, with no reference to the extradition treaty, though one existed, or any proceeding or attempt to proceed under the treaty, the supreme court can give no relief, for treaties of extradition do not guaranty a fugitive from justice from one country and asylum in another. Ker v. Illinois (1886) 7 Sup. Ct. 225, 228, 119 U. S. 436, 30 L. Ed. 421.

Where a person claimed to have committed an offense in the United States was taken in a foreign country by force by private persons, and brought to the United States and to the state where the alleged offense was committed, and there arrested upon a valid warrant, he cannot be discharged from such custody on habeas corpus. Although there was an extradition treaty between the United States and the country from which the prisoner was taken, he cannot be said to have been protected by such treaty, and it is not competent for the court to inquire on such application into the circumstances under which he was taken from the jurisdiction of the foreign country. Ex parte Ker (C. C. 1883) 18 Fed. 167.

For the wrong or injury done to him, not under the authority of any government, state or national, or of Peru, he had a remedy against the wrongdoers before any competent court, which, if he were entitled thereto, would award him damages for the injury. Being within the jurisdiction of a court competent to try him for the offenses charged against him, and taken under its process, although brought there without authority of law, by private persons, his arrest could not be considered unlawful. If protected by the extradition treaty between the United States and Peru, he can set it up in the criminal cases referred to, or he can apply to the supreme court of the United States, and in either way thus obtain the opinion of that court upon his right to immunity under the treaty. Id.

Defendant, a citizen of the United States, while living in a foreign country, under a treaty between the United States and that country, was surrendered to a police agent, and brought to California, on request of the governor, by the foreign government; the United States government having declined to make the request, there being no extradition treaty with the foreign government. Held, that the California court, having jurisdiction of the offense with which defendant was charged, had jurisdiction to try him on his being brought before it, even if the act of the governor in obtaining his return was illegal. People v. Pratt (1889) 78 Cal. 345, 20 Pac. 731.

The principle that an extradited fugitive from justice can be tried only for the crimes named in the treaty between the extradition countries does not apply where the prisoner was forcibly taken from the foreign country, and not under an extradition warrant. Ker v. People (1884) 110 Ill. 627.

It is no ground for discharging a person from arrest that before the finding of the indictment, and after the issuing of a warrant for his arrest, the prisoner was forcibly brought from Canada to the state line, and there delivered to such officer in arrest under the warrant. People v. Rowe (N. Y. 1858) 4 Parker, Cr. R. 253.

A motion to dismiss the indictment on the ground that accused was brought into the state from Mexico without a proper warrant of extradition, supported by no proof except his sworn conclusion that the sheriff did not have "legal" and necessary extradition papers, warrant, and authority, is properly denied. Lawshe v. State (Tex. Cr. App. 1909) 121 S. W. 865.

One who, after committing a crime, escapes into Canada, and is brought back against his will and without the assent of the Canadian authorities, may nevertheless be tried and punished for the offense committed. State v. Brewster (1835) 7 Vt. 118.

Cited without definite application, Ornelas v. Ruiz (1896) 16 Sup. Ct. 689, 161 U. S. 502, 40 L. Ed. 787; In re Strauss (1905) 25 Sup. Ct. 535, 537, 197 U. S. 324, 49 L. Ed. 774; In re Baruch (C. C. 1890) 41 Fed. 472, 474; Ex parte Charlton (C. C. 1911) 185 Fed. 880 (affirmed Charlton v. Kelly [1913] 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. [N. S.] 397); Ex parte Collins (D. C. 1906) 151 Fed. 358.

§ 10122. (R. S. § 5276.) Powers of agent receiving offenders delivered by a foreign government.

Any person duly appointed as agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person accused of crime committed within the jurisdiction of the United States, and to convey him to the place of his trial, shall have all the powers of a marshal of the United States, in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safe-keeping.

Act March 3, 1869, c. 141, § 2, 15 Stat. 338.

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Compensation.—A United States marshal, appointed an agent, in pursuance of this section, to bring back a fugitive criminal from a foreign country, is entitled to receive compensation for this service out of the fund appropriated "for bringing home fugitive criminals," where the amount of the compensation is fixed by regulation before his appointment; otherwise, he is entitled to be paid his expenses only. (1888) 19 Op. Atty. Gen. 121.

Cited without definite application, Ornelas v. Ruiz (1896) 16 Sup. Ct. 689, 161 U. S. 502, 40 L. Ed. 787; In re Strauss (1905) 25 Sup. Ct. 535, 537, 197 U. S. 324, 49 L. Ed. 774; Ex parte Charlton (C. C. 1911) 185 Fed. 880 (affirmed Charlton v. Kelly [1913] 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. [N. S.] 397).

§ 10123. (R. S. § 5277.) Penalty for opposing agent, etc.

Every person who knowingly and willfully obstructs, resists, or opposes such agent in the execution of his duties, or who rescues or attempts to rescue such prisoner, whether in the custody of the agent or of any officer or person to whom his custody has lawfully been committed, shall be punishable by a fine of not more than one thousand dollars, and by imprisonment for not more than one year.

Act March 3, 1869, c. 141, § 3, 15 Stat. 338.

Cited without definite application, Ornelas v. Ruiz (1896) 16 Sup. Ct. 689, 161 U. S. 502, 40 L. Ed. 787; In re Strauss (1905) 25 Sup. Ct. 535, 537, 197 U. S. 324, 49 L. Ed. 774; Ex parte Charlton (C. C. 1911) 185 Fed. 880 (affirmed Charlton v. Kelly [1913] 33 Sup. Ct. 945, 229 U. S. 447, 57 L. Ed. 1274, 46 L. R. A. [N. S.] 397).

§ 10124. (Act Feb. 6, 1905, c. 454, § 1.) Delivery of fugitives from justice, as between foreign country and Philippine Islands.

The provisions of sections fifty-two hundred and seventy, fifty-two hundred and seventy-one, fifty-two hundred and seventy-two, fifty-two hundred and seventy-three, fifty-two hundred and seventy-four, fifty-two hundred and seventy-five, fifty-two hundred and seventy-six, and fifty-two hundred and seventy-seven of the Revised Statutes (as amended by the Act approved August third, eighteen hundred and eighty-two), so far as applicable, shall apply to the Philippine Islands for the arrest and removal therefrom of any fugitives from justice charged with the commission within the jurisdiction of any foreign government of any of the crimes provided for by treaty between the United States and such foreign nation, and for the delivery by a foreign government of any person accused of crime committed within the jurisdiction of the Philippine Islands. Such fugitive from justice of a foreign country may, upon warrant duly issued by any judge or magistrate of the Philippine Islands, and agreeably to the usual mode of process against offenders therein, be arrested and brought before such judge or magistrate, who shall proceed in the matter in accordance with the provisions of the Revised Statutes hereby made applicable to the Philippine Islands: Provided, That for the purposes of this section the order or warrant for delivery of a person committed for extradition prescribed by section fifty-two hundred and seventy-two of the Revised Statutes shall be issued by the governor of

the Philippine Islands under his hand and seal of office, and not by the Secretary of State. (33 Stat. 698.)

This section and the section next following were an act entitled "An act to extend certain provisions of the Revised Statutes of the United States to the Philippine Islands."

R. S. §§ 5270–5277, and Act Aug. 3, 1882, c. 378, mentioned in this section, are set forth ante, §§ 10110–10123.

Cited without definite application, American R. Co. v. Didricksen (1913) 33 Sup. Ct. 224, 227 U. S. 145, 57 L. Ed. 456.

§ 10125. (Act Feb. 6, 1905, c. 454, § 2.) Allowing prisoners to escape punishable.

The provisions of sections fifty-four hundred and nine and fifty-four hundred and ten of the Revised Statutes are hereby made applicable to proceedings in extradition from the Philippine Islands, either to the United States under an Act entitled "An Act to provide for the removal of persons accused of crime to and from the Philippine Islands for trial," approved February ninth, nineteen hundred and three, or to foreign countries under the provisions of this Act. (33 Stat. 698.)

See notes to section 1 of this act, ante, § 10124.

R. S. §§ 5409, 5410, mentioned in this section making punishable any marshal, deputy marshal, etc., who, having in his custody any prisoner by virtue of process issued under the laws of the United States, voluntarily suffers such prisoner to escape, were incorporated into the Criminal Code in sections 138, 139, thereof, post, §§ 10308, 10309, and were repealed by section 341 thereof, post, § 10515.

Act Feb. 9, 1903, c. 529, § 2, also mentioned in this section, is set forth post, § 10128.

§ 10126. (R. S. § 5278.) Fugitives from justice of a State or Territory.

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.

Act Feb. 12, 1793, c. 7, § 1, 1 Stat. 302.

This section and R. S. § 5279, post, § 10127, were made to apply, so far as applicable, to the Philippine Islands, by Act Feb. 9, 1903, c. 529, § 2, post, § 10128.

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1. Construction and operation of statute in general.—This section is summary in effect, and must be strictly complied with. Ex parte Morgan (D. C. 1883) 20 Fed. 298.

The provisions of the constitution on the subject of interstate extradition, together with the act of congress on the subject, are a part of the supreme law of the land, and therefore a part of the law of each state. Id.

2. —— "State or territory."—The Cherokee Nation is neither a state nor territory. It has an autonomy, but it does not come within the meaning of either a state or territory, but is a part of what is called "Indian country." Ex parte Morgan (D. C. 1883) 20 Fed. 298.

The several tribes or nations belong to the republic, though they are neither a state nor territory. Id.

3. —— Federal decisions.—State courts are bound by the construction of the extradition laws adopted by the United States Supreme Court. Ex parte Letcher (1904) 79 P. 65, 145 Cal. 563; Ex parte Willard (Neb. 1913) 140 N. W. 170; Ex parte Owen (Okl. Cr. App. 1913) 136 P. 197; Worth v. Wheatley (1915) 108 N. E. 958, 183 Ind. 598.

4. Constitutional basis and validity.—Interstate extradition of a fugitive from justice does not involve any question of state comity, but is governed by the federal constitution. Ex parte Morgan (D. C. 1883) 20 Fed. 298; Commonwealth v. Johnston (1892) 12 Pa. Co. Ct. R. 263.

This section enforces Const. art. 4, § 2, and is valid. Robb v. Connolly (1884) 4 Sup. Ct. 544, 549, 111 U. S. 624, 28 L. Ed. 542; Lascelles v. Georgia (1893) 13 Sup. Ct. 687, 688, 148 U. S. 537, 37 L. Ed. 549; In re Roberts (D. C. 1885) 24 Fed. 132 (affirmed [1885] 6 Sup. Ct. 291, 116 U. S. 80, 29 L. Ed. 544).

The provision is constitutional and with the exception of the part which confers authority on state magistrates is free from reasonable doubt or difficulty. Prigg v. Pennsylvania (1842) 16 Pet. 539, 617, 618, 10 L. Ed. 1060.

There is no express grant to Congress of legislative power to execute article 4, § 2, cl. 2, of the Constitution, and it is not in its nature self-executing; but a contemporaneous construction contained in the act of 1793, ever since continued in force, and now embodied in this and the following section, has established the validity of its legislation upon this subject. Roberts v. Reilly (1885) 6 Sup. Ct. 291, 299, 116 U. S. 80, 29 L. Ed. 544.

The constitutional provision on the subject of interstate extradition and the act of Congress relating thereto are part of the supreme law of the land and of every state. It is in the nature of a treaty between the states to which the executive of each is bound to give effect. Commonwealth v. Hare (1908) 36 Pa. Super. Ct. 125.

The provision of the United States Constitution requiring the surrender of fugitives from justice is in the nature of a treaty stipulation between the states, equally binding on each state and its officers. Ex parte Coleman (1908) 113 S. W. 17, 53 Tex. Cr. R. 93.

See, also, note under Const. U. S. art. 4, § 2, cl. 2.

5. Interstate extradition in general.—A man may be indicted in a case in which he cannot be extradited. Ex parte Hoffstot (C. C. 1910) 180 Fed. 240, order affirmed Hofstot v. Flood (1910) 31 Sup. Ct. 222, 218 U. S. 665, 54 L. Ed. 1201.

The four requisites of a valid commitment for trial in another state are a

charge of crime therein, a demand from its governor, an indictment found or affidavit certified by the governor, and the presence of the prisoner in the state when the crime was committed. Ex parte McKean (D. C. 1878) Fed. Cas. No. 8,848.

The constitutional power of interstate extradition does not extend to the return of a person fleeing from guardianship custody based upon a decree or finding of insanity, idiocy, or infantile irresponsibility, or from process in the nature of civil process invoked for parental and protective purposes. Ex parte Thaw (D. C. 1914) 214 Fed. 423, order reversed Drew v. Thaw (1914) 35 Sup. Ct. 137, 235 U. S. 432, 59 L. Ed. 302.

A "person," to be subject to extradition, must be a responsible person. Id.

Where a person charged with offenses against separate states is apprehended in one, and the governor of such state honors a requisition by the governor of the other, and surrenders the person, it is a waiver of jurisdiction of the asylum state. Hess v. Grimes (1897) 48 P. 596, 5 Kan. App. 763.

Courts should refuse in cases that are entirely free from doubt to allow any use to be made of extradition proceedings whereby good faith would be plainly violated, and the measures necessary to bring the accused within their jurisdiction would be perverted. In re Cannon (1882) 11 N. W. 280, 47 Mich. 481.

Mere transition from territorial to state government is insufficient of itself to abolish a crime committed by relator against the territorial law, or to preclude the state from obtaining his return to answer therefor by extradition proceedings; but, to prevent such return, it must appear that the offense no longer exists in the state. Ex parte McCarty (Tex. Cr. App. 1909) 119 S. W. 682.

6. —— **What law governs.**—A person can be extradited only in accordance with the laws and Constitution of the United States. In re Robb (C. C. 1884) 19 Fed. 26; Ex parte Morgan (D. C. 1883) 20 Fed. 298; In re Kopel (D. C. 1906) 148 Fed. 505; Malcolmson v. Scott (1885) 23 N. W. 166, 56 Mich. 459; Ex parte Owen (Okl. Cr. App. 1913) 136 P. 197.

As it rests in the discretion of the President in what cases he will exercise his military authority to constrain those composing the army to surrender themselves to the civil authority of the states, it would seem proper to adopt by analogy the principle of the Constitution relative to the surrender of fugitives by the governors of the states, applying the details of this act. (1825) 2 Op. Atty. Gen. 11.

An affidavit in accordance with the criminal procedure of a foreign state is a sufficient charge of an offense against the laws of that state to warrant extradition. Goodale v. Splain (1914) 42 App. D. C. 235.

The principles governing international extradition have no application to cases of extradition between states. Knox v. State (1905) 73 N. E. 255, 164 Ind. 226, 108 Am. St. Rep. 291.

The right of the United States to legislate in regard to fugitives from justice is not exclusive; and therefore, notwithstanding the act of congress, a fugitive from one state may be arrested in another, on a warrant issued by a judicial officer in the latter, and committed to await a requisition. Commonwealth v. Wilson (Pa. 1851) 1 Phila. 80, 7 Leg. Int. 146.

In proceedings against a fugitive from justice charged with the crime of larceny committed in another state, it is not necessary to proceed under the United States extradition laws, but the state where the prisoner is found will, as a police regulation for the protection of its own citizens, permit the pursuer to file an information within its jurisdiction, and have a warrant issued and the party arrested and committed, in order to await a requisition from the governor of the state from which the prisoner fled. Id.

The laws of a state cannot control the definition of a fugitive from justice within this section. Ex parte Bergman (Tex. Cr. App. 1910) 130 S. W. 174.

7. **Fugitive from justice—Who are fugitives.**—A person who commits a crime in one state and departs therefrom and is found in another is a "fugitive from justice." Appleyard v. Massachusetts (1906) 27 Sup. Ct. 122, 203 U. S. 222, 51 L. Ed. 161, 7 Ann. Cas. 1073; Hughes v. Pflanz (1905) 138 Fed. 980, 71 C. C. A. 234; Ex parte Duddy (1914) 107 N. E. 364, 219 Mass. 548; In re Voorhees (1867) 32 N. J. Law (3 Vroom) 141; People v. Pinkerton (N. Y. 1879) 17 Hun, 199; Johnson v. Ammons (1879) 6 Ohio Dec. 747, 7 Am. Law Rec. 662; Ex parte Williams (Okl. Cr. App. 1913) 136 P. 597; Commonwealth v. Hare (1908) 36 Pa. Super. Ct. 125; Ex parte Coleman (1908) 113 S. W. 17, 53 Tex. Cr. R. 93; Ex parte McDaniel (Tex. Cr. App. 1915) 173 S. W. 1018; Ryan v. Rogers (Wyo. 1913) 132 P. 95. Without reference to his purpose in going. Roberts v. Reilly (1885) 6 Sup. Ct. 291, 116 U. S. 80, 29 L. Ed. 544 (affirming judgment In re Roberts [D. C. 1885] 24 Fed. 132); Appleyard v. Massachusetts (1906) 27 Sup. Ct. 122, 203 U. S. 222, 51 L. Ed. 161, 7 Ann. Cas. 1073; In re White (1893) 55 Fed. 54, 5 C. C. A. 29; Ex parte Hoffstot (C. C. 1910) 180 Fed. 240 (order affirmed Hofstot v. Flood [1910] 31 Sup. Ct. 222, 218 U. S. 665, 54 L. Ed. 1201); Ex parte Brown (D. C. 1886) 28 Fed. 653; In re Bloch (D. C. 1898) 87 Fed. 981; State v. Richter

(1887) 37 Minn. 436, 35 N. W. 9; Commonwealth v. Hare (1906) 36 Pa. Super. Ct. 125. Or the manner of his leaving. Taylor v. Wise (Iowa, 1910) 126 N. W. 1126.

It is not necessary that he should have left after indictment found, or for the purpose of avoiding a prosecution anticipated or begun. Roberts v. Reilly (1885) 6 Sup. Ct. 291, 300, 116 U. S. 80, 29 L. Ed. 544; Ex parte Brown (D. C. 1886) 28 Fed. 653; Depoilly v. Palmer (1906) 28 App. D. C. 324; Ex parte Dickson (1902) 69 S. W. 943, 4 Ind. T. 481; Ex parte Galbreath (1913) 139 N. W. 1050, 24 N. D. 582. Nor is it necessary that the fleeing shall have been secret or sudden, or from apprehension of the enforcement of process, or that there shall have been a consciousness of having committed the crime. Johnson v. Ammons (Ohio D. C. 1878) 4 Wkly. Law Bul. 189.

One who does, within the state, an overt act which is, and is intended to be, a material step towards accomplishing a crime, and then absents himself from the state, and does the rest elsewhere, becomes a fugitive from justice for extradition purposes when the crime is complete, if not before. Strassheim v. Daily (1911) 31 Sup. Ct. 558, 221 U. S. 280, 55 L. Ed. 735; State v. Gerber (Minn. 1910) 126 N. W. 482.

One who goes into a state, commits a crime, and then returns home, is as much a fugitive from justice, as if he had committed the crime in the state of which he was a resident, and had then fled to another state. In re Roberts (D. C. 1885) 24 Fed. 132 (judgment affirmed Roberts v. Reilly [1885] 116 U. S. 80, 6 Sup. Ct. 291, 29 L. Ed. 544); In re Keller (D. C. 1888) 36 Fed. 681; Hess v. Grimes (1897) 48 P. 596, 5 Kan. App. 763; In re Kingsbury (1870) 106 Mass. 223; In re Sultan (1894) 115 N. C. 57, 20 S. E. 375, 44 Am. St. Rep. 433, 28 L. R. A. 294; Johnson v. Ammons (1879) 6 Ohio Dec. 747, 7 Am. Law Rec. 662; Simmons v. Commonwealth (Pa. 1813) 5 Bin. 617; Ex parte Swearingen (1880) 13 S. C. 74.

One who comes into a state on business for a single day, eight days after the alleged commission of a crime therein, and months before an indictment is found against him for such offense, does not, by his departure from the state after the conclusion of his business, become a "fugitive from justice" within the meaning of this section. Hyatt v. New York ex rel. Corkran (1903) 23 Sup. Ct. 456, 462, 188 U. S. 691, 47 L. Ed. 657, affirming judgment People ex rel. Corkran v. Hyatt (1902) 64 N. E. 825, 172 N. Y. 176, 60 L. R. A. 774, 92 Am. St. Rep. 706, which reverses order (1902) 76 N. Y. Supp. 1026, 72 App. Div. 629.

A person indicted the second time for the same offense is none the less a fugitive from justice because, after the dismissal of the first indictment, on which he was originally extradited, he left the state with the knowledge of, or without objection by, the state authorities. Bassing v. Cady (1908) 28 Sup. Ct. 392, 208 U. S. 386, 52 L. Ed. 540, 13 Ann. Cas. 905.

One who sets in motion the agencies for the commission of a crime, but departs from the state before the offense is consummated, is a "fugitive from justice," within the meaning of the statutes relating to extradition. In re Cook (C. C. 1892) 49 Fed. 833, judgment affirmed Cook v. Hart (1892) 13 Sup. Ct. 40, 146 U. S. 183, 36 L. Ed. 934.

Where a person starts a bank, in which he is an officer, and the business of which is under his control, and afterwards goes to another state, and allows the bank, while to his knowledge in an insolvent condition, to receive a deposit, in violation of the law of the state, he is guilty of the offense, though not in the state at the time of the deposit or afterwards, and is a fugitive from the justice of that state, within the acts of congress relating to interstate extradition. Id.

To constitute one a fugitive from justice to warrant his extradition from another state, he must have committed some criminal act when within the state, although the crime may not have been complete until other acts were done after he left the state. Ex parte Graham (D. C. 1914) 216 Fed. 813.

A prisoner allowed to go outside a New York reformatory on parole, as allowed by statute of that state, on his promise to obey the directions contained in the parole, which, among other things, directed that he go to Michigan, who, instead of doing so, comes to Connecticut, is a "fugitive from justice." Drinkall v. Spiegel (1896) 36 A. 830, 68 Conn. 441, 36 L. R. A. 486.

The charge in an indictment for keeping a gaming table for gambling in Maryland, that the accused kept and managed a house for gambling, implies a crime of a continuous nature, and if he did so, in violation of the law of that state, going between it and the District of Columbia both before and after the date alleged in the indictment, proof by the state in the extradition proceedings that he was personally present each time a game was exhibited therein would not be essential to constitute him a fugitive from justice. Hayes v. Palmer (1903) 21 App. D. C. 450.

Agent coming to this state without objection from his principal, and thereafter charged by the principal with embezzlement in the state whence he

came, held a "fugitive from justice" who might be extradited. Leonard v. Zweifel (Iowa, 1915) 151 N. W. 1054.

Where a husband and wife in Pennsylvania agree to separate, he to pay her a monthly sum for her support and that of a minor child, and prior to any default he left the state, he was not a fugitive from justice from Pennsylvania, based on a criminal charge for failure to maintain his wife and child in Pennsylvania. Ex parte Kuhns (1913) 137 P. 83, 36 Nev. 487.

One sought to be extradited for wife abandonment in the state wherein he was married, held not to be a fugitive from justice within the law of extradition. Ex parte Roberson (1915) 149 P. 182, 38 Nev. 326, L. R. A. 1915E, 691.

One convicted of an offense against a state, who, before the expiration of that sentence was delivered to the federal authorities to serve out a prior sentence, would at the end of that sentence be a fugitive from justice under the United States constitution, and could be taken by the state under this section. People v. Benham (Sup. 1911) 128 N. Y. S. 610, 71 Misc. Rep. 345.

Where a paroled prisoner goes into another state, and his parol is revoked, he is a "fugitive from justice" within the extradition laws. Ex parte Williams (Okl. Cr. App. 1913) 136 P. 597.

A fugitive from justice does not embrace one who, while in one state and remaining there, commits acts which result in a crime by the laws of another state. Commonwealth v. Trach (1887) 3 Pa. Co. Ct. R. 65.

Where one sought to be extradited for an offense involving fraud left the state where it was alleged to have been committed, not only with the knowledge, but at the special request, of the parties alleged to have been defrauded, he is not a fugitive from justice, within the meaning of the federal constitution and the extradition act. In re Tod (1900) 81 N. W. 637, 12 S. D. 386, 47 L. R. A. 566, 76 Am. St. Rep. 616.

Convicted prisoners in the custody of an officer, en route to the penitentiary, are not fugitives from justice in another state through which it was necessary to take them. In re Maney (1899) 55 P. 930, 20 Wash. 509, 72 Am. St. Rep. 130.

8. —— **Necessity of presence in and flight from demanding state.**—The provisions of the constitution (article 4, § 2) and this section are confined to persons who are actually and not merely constructively present in the demanding state when they committed the act charged against them. Hyatt v. New York ex rel. Corkran (1903) 23 Sup. Ct. 456, 459, 188 U. S. 691, 47 L. Ed. 657; Ex parte Hoffstot (C. C. 1910) 180 Fed. 240 (order affirmed Hofstot v. Flood [1910] 31 Sup. Ct. 222, 218 U. S. 665, 54 L. Ed. 1201); In re Mohr (1883) 73 Ala. 503, 49 Am. Rep. 63; Degant v. Michael (1850) 2 Ind. (2 Cart.) 396; Ex parte Roberson (Nev. 1915) 149 P. 182, L. R. A. 1915E, 691; In re Mitchell (1885) 4 N. Y. Cr. R. 596; People v. Baker (1911) 127 N. Y. S. 382, 142 App. Div. 598, 25 N. Y. Cr. R. 498; State v. Hall (1894) 115 N. C. 811, 20 S. E. 729, 44 Am. St. Rep. 501, 28 L. R. A. 289; Nolze v. Wilcox (Com. Pl. 1878) 4 Ohio Dec. 125, 3 Wkly. Law Bul. 192 (affirmed Wilcox v. Nolze [1878] 34 Ohio St. 520).

A state executive has no authority to cause the arrest and surrender of a citizen, unless it appears that the alleged crime was committed in the state making the demand. Ex parte Smith (C. C. 1843) Fed. Cas. No. 12,968.

To warrant extradition, a crime must not only have been committed, but the accused must be a fugitive from the state whose governor requires his requisition. In re Mohr (1884) 73 Ala. 503, 18 Cent. Law J. 252.

One may be a principal in a crime committed in another state, and yet never there, and so not a fugitive from justice therefrom, necessary under this section, for interstate extradition. Ex parte Shoemaker (1914) 144 P. 985, 25 Cal. App. 551.

A citizen and resident of Iowa, who is charged with having been constructively guilty of an offense in another state, upon which a requisition is based, but who never in fact has fled therefrom, is not a fugitive from justice. Jones v. Leonard (1878) 50 Iowa, 106, 32 Am. Rep. 116.

Where the person demanded was substantially charged with a crime against the laws of the demanding state, by indictments certified as authenticated by the governor of the state, but it was shown that the prisoner was not within the bounds of the state at the time he wrongfully received the money which he was charged with, and had not been within the state since that time, he was not a fugitive from justice, and consequently not subject to extradition. Ex parte Knowles (1894) 16 Ky. Law Rep. 263.

To warrant the surrender or detention of a fugitive, it must appear that the crime with which he stands charged was committed within the state from which he is alleged to be a fugitive. In re Fetter (1852) 23 N. J. Law (3 Zab.) 311, 57 Am. Dec. 382.

9. —— **Evidence.**—Proof that defendant committed a crime in Ohio, and when sought to be subjected to the criminal process of that state he was found in New York, was sufficient to establish that he was a fugitive from

justice. In re Strauss (1903) 126 Fed. 327, 63 C. C. A. 99.

Where petitioner on a certain date contracted the marriage which the indictment charges was bigamous, and after the filing of the indictment and the issuance of the warrant for his arrest by state court having jurisdiction of the crime was not within its jurisdiction, but was found in another state, there was a prima facie showing that he was a fugitive from justice. In re Bruce (C. C. 1904) 132 Fed. 390, affirmed (1905) 136 Fed. 1022, 69 C. C. A. 342.

Where there was specific evidence that petitioner, a resident of New York, participated there in a conspiracy to bribe members of the city council of Pittsburg to select certain banks in Pittsburg, of one of which petitioner was president, as city depositories, and there was substantial evidence from which a jury would be justified in drawing an inference that petitioner was in Pittsburg on a day when some act or acts in furtherance of the conspiracy were performed, there was sufficient proof that he was a fugitive from justice to justify his extradition to Pennsylvania. Ex parte Hoffstot (C. C. 1910) 180 Fed. 240, judgment affirmed Hofstot v. Flood (1910) 31 Sup. Ct. 222, 218 U. S. 665, 54 L. Ed. 1201.

In an application for habeas corpus to secure petitioner's release from custody under an extradition requisition, evidence held sufficient to justify a finding that petitioner was a fugitive from the demanding state. Ex parte Dickson (1902) 69 S. W. 943, 4 Ind. T. 481.

Requisition from governor of another state held accompanied by sufficient evidence that the person whose delivery was demanded was a fugitive from justice, within Rev. Laws Mass. c. 217, § 11. Ex parte Duddy (1914) 107 N. E. 364, 219 Mass. 548.

Where there was evidence that accused, charged with conspiracy, committed on or about a designated date in Texas, had been in Texas a few days before the designated date, and he admitted making the drafts by means of which the conspiracy was committed, and receiving money from a coconspirator therefor, there was sufficient proof that he was a fugitive from justice to justify his extradition to Texas. People v. Baker (1911) 127 N. Y. S. 382, 142 App. Div. 598, 25 N. Y. Cr. R. 498.

10. Extradition to or from Porto Rico.—Porto Rico is a territory, within this section. New York ex rel. Kopel v. Bingham (1909) 29 Sup. Ct. 190, 191, 211 U. S. 468, 53 L. Ed. 286, affirming order (1907) 81 N. E. 773, 189 N. Y. 124.

Extradition from a state or territory of the United States to Porto Rico is not authorized by R. S. § 5270, as amended in 1900 (ante, § 10110), nor is Porto Rico a "territory" of the United States, within the meaning of this section; but said section is extended to Porto Rico by section 14 of the organic act of April 12, 1900 (31 Stat. 80, c. 191), which provides that "the statutory laws of the United States not locally inapplicable shall have the same force and effect in Porto Rico as in the United States"; and by virtue of such provision, and of that of section 17, giving the governor of Porto Rico all the powers of governors of the territories of the United States that are not locally inapplicable, such governor has the power to issue a requisition for the return of a fugitive criminal by a state as fully as the governor of a territory would have. In re Kopel (D. C. 1906) 148 Fed. 505.

The extradition of one fleeing from the island of Porto Rico to the state of New York was governed by this section and Code Cr. Proc. § 827. People v. Bingham (1907) 102 N. Y. S. 878, 117 App. Div. 411, order affirmed (1907) 81 N. E. 773, 189 N. Y. 124.

11. Indictment.—Upon a demand for the surrender, under this section, of a fugitive from justice from one of the states found in a territory, it may not be objected that the indictment is not framed according to the technical rules of criminal pleading, if it conforms substantially to the laws of the demanding state. Ex parte Reggel (1885) 5 Sup. Ct. 1148, 1151, 114 U. S. 642, 29 L. Ed. 250.

Where the indictment sufficiently charges an offense against the laws of the demanding state, an objection not apparent on the face of it, but which can only arise at the trial on the evidence, will not affect the validity of the extradition proceedings. Roberts v. Reilly (1885) 6 Sup. Ct. 291, 116 U. S. 80, 29 L. Ed. 544, affirming judgment In re Roberts (D. C. 1885) 24 Fed. 132.

Indictment held sufficient. Pierce v. Creecy (1908) 28 Sup. Ct. 714, 210 U. S. 387, 52 L. Ed. 1113.

An indictment by a New York grand jury that accused, an insane criminal, conspired to escape to the obstruction of justice, and did escape, sufficiently charges a crime for the purpose of interstate extradition, in view of Penal Law N. Y. §§ 580, 583. Drew v. Thaw (1914) 35 Sup. Ct. 137, 235 U. S. 432, 59 L. Ed. 302, reversing order Ex parte Thaw (D. C. 1914) 214 Fed. 423.

An information is not an equivalent of an indictment within this section. Ex parte Hart (1894) 63 Fed. 249, 11 C. C. A. 165, 28 L. R. A. 801, reversing (C. C. 1894) 59 Fed. 894.

The indictment had in mind upon the enactment of this section was "a written accusation of one or more persons of a crime or misdemeanor preferred to and presented upon oath by a grand jury." Id.

The indictment is sufficient if it conforms to the law of the state where the offense was committed. Webb v.

York (1897) 79 Fed. 616, 25 C. C. A. 133.

On habeas corpus to release one held under a requisition from another state, the indictment accompanying the requisition will not be held void merely because of some technical defect, if the offense is substantially alleged. Id.

Extradition proceedings need not be based on an indictment, but may be based on a verified complaint or affidavit. In re Strauss (1903) 126 Fed. 327, 63 C. C. A. 99.

An indictment, in order to constitute a sufficient charge of crime to warrant interstate extradition, need show no more than that the accused is substantially charged with crime. Ex parte Graham (D. C. 1914) 216 Fed. 813.

In extradition proceedings it is immaterial that the indictment found against the accused in the demanding state does not show indorsement as a true bill over the signature of the foreman of the grand jury; especially where the proceedings against the petitioner in that state, as shown by the record accompanying the requisition, appear to be in accordance with the statutory practice of that state, judicial notice of which may be taken here. Hayes v. Palmer (1903) 21 App. D. C. 450.

The indictment on which an extradition proceeding is founded is not to be judged by any technical standard, and is sufficient if it shows that the fugitive has been, however inartificially, charged with a crime against the laws of the state from which he has fled. Wheeler v. Palmer (1914) 42 App. D. C. 395.

An indictment charging an offense in the language of a statute of the state in which it was returned is sufficient to warrant extradition, where such an indictment is declared sufficient both by the courts and by a statute of that state. Id.

Indictment charging neglect to support a child held not so faulty in substance, as to prevent the execution of the writ. Ex parte Lewis (Nev. 1911) 115 P. 729.

Where an alleged fugitive from justice is arrested in extradition proceedings and the accompanying indictment charges an offense within the period of limitations, it is immaterial that the copy of the indictment under which he was first arrested contained a clerical error so as to charge a crime barred by limitations. Ex parte Kuhns (1913) 137 P. 83, 36 Nev. 487.

An indictment alleging that defendant, intending to cheat and defraud the prosecutors held sufficient to show an offense, so as to warrant the extradition of defendant. People v. Police Com'r of City of New York (1905) 91 N. Y. S. 760, 100 App. Div. 483.

The sufficiency of an indictment to charge a crime justifying extradition is determined solely by the courts of the demanding state. People v. Baker (1911) 127 N. Y. S. 382, 142 App. Div. 598, 25 N. Y. Cr. R. 498.

An indictment against a person sought to be extradited, duly certified, was conclusive in the absence of fraud, and justified a warrant of arrest by the governor of this state. People ex rel. Marshall v. Moore (1915) 153 N. Y. S. 10, 167 App. Div. 479.

The indictment contemplated by this section is one found in the due course of procedure in the demanding state. Id.

Indictment for stealing held sufficient under the statutes of Massachusetts, though it would not be sufficient in New York. Id.

Where indictment against person sought to be extradited is certified by the governor, it need not show where the crime took place, or that accused was within the demanding state. Id.

It is no ground for discharging a fugitive from justice on habeas corpus that the indictment, after charging embezzlement, by way of conclusion in the same count also avers that "so" the defendant committed larceny. Ex parte Sheldon (1878) 34 Ohio St. 319.

If a felony is substantially charged in an indictment, the fact that it may be inartificially drafted, or that there is some technical defect of form, will not defeat extradition. Jackson v. Archibald (1896) 5 O. C. D. 533, 12 Ohio Cir. Ct. R. 155.

Where extradition proceedings were instituted by Alabama to prosecute petitioner for an alleged homicide committed in that state, under the laws of which it was not essential that the indictment should charge either the time or venue of the offense, an indictment omitting such elements was not objectionable for that reason in the extradition proceedings. Ex parte Coleman (1908) 113 S. W. 17, 53 Tex. Cr. R. 93.

Facts set forth in indictment held to constitute the offense of obtaining money by false pretenses, and that G., having been arrested upon a warrant issued by the governor of this state, in compliance with a requisition duly made by the governor of Illinois, and having been surrendered to the agent of that state, to be transported thither, was not entitled to be discharged from the latter's custody upon habeas corpus. In re Greenough (1858) 31 Vt. 279.

An indictment charging that accused unlawfully, fraudulently, and feloniously obtained money and property from E. in Cook county, Ill., by means of the "confidence game," contrary to the statute and against the peace and dignity of the people of the state of Illinois, sufficiently charged accused with an extraditable crime against the laws of that state. Ryan v. Rogers (Wyo. 1913) 132 P. 95.

12. Affidavit made before magistrate—In general.—A verified complaint or affidavit charging a person with an in-

famous crime is sufficient to confer jurisdiction on the governor of the state to which the defendant has fled. In re Strauss (1903) 126 Fed. 327, 63 C. C. A. 99.

The production of a copy of the original affidavit, certified by the governor of the state from which the fugitive fled as authentic, is sufficient. Kurtz v. State (1886) 22 Fla. 36.

In requisition proceedings it is sufficient if the copy of the affidavit duly certified by the governor of the demanding state is produced and delivered by him, with the demand, to the governor of the state in which the accused is found. Johnston v. Vanamringe (Ind. 1840) 5 Blackf. 311.

13. —— **Magistrate.**—An affidavit before a notary who, under Civ. Code Ga. 1895, § 4052, is ex officio a justice, is sufficient where the governor of Georgia has based his requisition on such affidavit, and a warrant has been issued thereon by the governor of the state on whom the demand for arrest and extradition was made. Compton v. Alabama (1909) 29 Sup. Ct. 605, 607, 214 U. S. 1, 53 L. Ed. 885, 16 Ann. Cas. 1098.

An affidavit, laying the venue as "State of W., Municipal Court, City and County of M.," and certified as "sworn to before me, J. M., Clerk of the Municipal Court," complies with the act of congress providing that an affidavit upon which a requisition may be granted shall be sworn to before "a magistrate." In re Keller (D. C. 1888) 36 Fed. 681.

An assistant police magistrate is a magistrate, within this section. Kurtz v. State (1886) 22 Fla. 36.

A notary public is not a "magistrate" within Act Feb. 12, 1793, c. 7, 1 Stat. 302, providing that a copy of an indictment found or an affidavit made before a magistrate must accompany the application in extradition proceedings. Ex parte Owen (Okl. Cr. App. 1913) 136 P. 197.

An affidavit made in Nebraska before a county judge, who is a magistrate, charging relator with a criminal offense, is a sufficient compliance with the act of congress requiring an indictment by a grand jury or an affidavit before a magistrate as a condition precedent to the arrest of a fugitive from justice on a requisition from a governor of another state, though relator was subsequently placed under bond to answer before the district court of such state. Ex parte Martin (Tex. Cr. App. 1901) 65 S. W. 910.

Where the record in extradition proceedings disclosed an affidavit of the county attorney executed before a magistrate, it was immaterial that the original affidavit by complainant was executed before a notary instead of a magistrate, as required by this section. Ex parte Faihtinger (Tex. Cr. App. 1914) 163 S. W. 441.

14. —— **Affidavit or complaint.**—A complaint, duly sworn, may form the basis of an extradition proceeding, where it is a proper method of charging crime in the state where committed. Morrison v. Dwyer (Iowa, 1909) 121 N. W. 1064.

The warrant of rendition for an arrest and surrender of a fugitive from justice to another state is not void because reciting that the person demanded was charged by complaint with a crime, instead of by affidavit, where it appears from the return that the complaint was verified, and was in form and legal effect an affidavit, made before a magistrate, charging such person with the crime. State v. Curtiss (Minn. 1910) 126 N. W. 719. But see State v. Richardson (1885) 34 Minn. 110, 24 N. W. 354, holding that the term "complaint" is not equivalent to "affidavit," within the meaning of this act of congress relating to extradition proceedings.

An extradition warrant, reciting that the accused is charged "by complaint" with forgery, is based on an affidavit, a complaint being equivalent thereto. Ex parte White (1898) 46 S. W. 639, 39 Tex. Cr. R. 497; Ex parte Cheatham (1906) 95 S. W. 1077, 50 Tex. Cr. R. 51.

15. —— **Requisites.**—If the affidavit on which the requisition and warrant are founded do not distinctly show that the prisoner committed any crime in the state making the requisition, or that he fled therefrom, he must be discharged. Ex parte Smith (C. C. 1843) Fed. Cas. No. 12,968.

The affidavit, when this form of evidence is adopted, must be explicit and certain, so that if it were laid before a magistrate it would justify him in committing the accused to answer the charge. Ex parte Morgan (D. C. 1883) 20 Fed. 298.

While the naming of the person in extradition papers is accompanied by the presumption of his mental responsibility if nothing further appears, the description of the person and the crime may involve something which overthrows such presumption. Ex parte Thaw (D. C. 1914) 214 Fed. 423, order reversed Drew v. Thaw (1914) 35 Sup. Ct. 137. Uncertainty appearing upon the face of extradition papers in respect to the material element of mental condition and criminal responsibility is as fatal to the idea of the constitutional right of extradition as would be uncertainty as to a physical fact which is a necessary element of the crime sought to be described. Id.

The affidavit on which a requisition for the extradition of a fugitive is issued need not charge the crime with all the exactness necessary to be observed in an indictment, it being sufficient if the crime be distinctly set

forth. In re Manchester (1855) 5 Cal. 237.

To authorize the issuing of a warrant for the arrest of a person as a fugitive from justice from another state the complaint must show, either by direct averment, or by stating facts constituting a crime at common law, that such person has been guilty of some crime against the laws of that state. So held where the complaint alleged that the person had "feloniously" by certain false pretenses, obtained a large sum of money from complainant in Burlington, Iowa, "against the peace and dignity of the state of Iowa"; the crime not being known to the common law, and there being no sufficient allegation that it was a crime under the laws of that state. State v. Swope (1880) 72 Mo. 399.

To hold a fugitive from justice, on the ground that the money taken by him in committing a robbery was brought into the state where it is sought to hold him, there must be a complaint charging him with this offense substantially in the language of the statute of that state. Ex parte Lorraine (1881) 16 Nev. 63.

Under 2 Ballinger's Ann. Codes & St. Wash. § 7017, declaring that, when any person shall be found within the state charged with an offense committed in another state, any court or magistrate may on complaint issue a warrant for his arrest, etc., the complaint on which the warrant is issued must show that accused has been legally charged with crime in the demanding state. State v. White (1905) 82 P. 907, 40 Wash. 560, 2 L. R. A. (N. S.) 563.

It is not necessary that an affidavit attached to extradition papers to identify accused should allege all the facts or elements of the crime charged. Ryan v. Rogers (Wyo. 1913) 132 P. 95.

16. —— **Sufficiency.**—The affidavit accompanying the requisition will not be held void on habeas corpus merely because of some technical defect, if the offense is substantially alleged. Webb v. York (1897) 79 Fed. 616, 25 C. C. A. 133.

The affidavit is sufficient if it conforms to the law of the state where the offense was committed. Id.

Where an Ohio statute provided that any person who obtains of another anything of value by any false pretense, with intent to defraud, shall be guilty of an offense which, if the value of the property be $35 or more, is punishable by imprisonment, an affidavit charging that accused, on a particular day, in M. county, Ohio, unlawfully and falsely pretended to a certain watch company, with intent to defraud it, that he was the owner of a dry goods store in Y., Ohio, which statement was false and known so to be by accused, and by means of such false statement accused obtained from the company jewelry worth $400, sufficiently stated an offense, under the Ohio laws, to sustain extradition proceedings. In re Strauss (1903) 126 Fed. 327, 63 C. C. A. 99.

Where a charge of crime made against a person in affidavits filed before a magistrate or a court has culminated in a conviction, the record of such conviction is sufficient evidence in proceedings for his extradition from another state, and the question as to the sufficiency of the affidavits becomes immaterial. Hughes v. Pflanz (1905) 138 Fed. 980, 71 C. C. A. 234.

A complaint held to sufficiently charge an offense of breaking and robbing mining property within Carter's Ann. Pen. Code Alaska, § 75, to sustain extradition proceedings. Tiberg v. Warren (1911) 192 Fed. 458, 112 C. C. A. 596.

An allegation in an affidavit to obtain a requisition for the extradition of a criminal that the one charged committed the crime and then fled sufficiently states that the prisoner is a fugitive from justice. In re Manchester (1855) 5 Cal. 237.

An affidavit accompanying a requisition, which merely states that affiant "has reason to believe and does believe" that petitioner embezzled or fraudulently converted to his own use the property mentioned, is insufficient for the governor's warrant of arrest as a fugitive from justice, in that it is not positive in its charge. Ex parte Spears (1891) 88 Cal. 640, 26 Pac. 608, 22 Am. St. Rep. 341.

An affidavit for extradition held to warrant extradition for false pretenses under the statute of a foreign state. Goodale v. Splain (1914) 42 App. D. C. 235.

Allegation, in affidavit in support of requisition for return of person charged with crime, that such person was a fugitive from justice, held not a mere conclusion of law. Ex parte Duddy (1914) 107 N. E. 364, 219 Mass. 548.

In interstate extradition proceedings the affidavit accompanying the requisition is sufficient if it substantially charges the commission of a crime against the laws of the state from whose justice the accused is alleged to have fled. State v. Goss (1896) 68 N. W. 1089, 66 Minn. 291.

An affidavit charging the commission of a crime, headed "In Justice Court of S. Township, in the County of S., State of C.," following which was the title of the cause, sufficiently showed the venue of the affidavit and of the offense charged, and was not defective in that it also stated the title of the cause, though when sworn to no such cause was pending. State v. Bates (1907) 112 N. W. 260, 101 Minn. 303.

Defendant was convicted of selling and delivering a forged check, with intent to have the same passed, he hav-

ing been arrested in and brought back from another state by requisition based upon an affidavit charging that he feloniously forged a certain check, setting it out in full, with intent to cheat and defraud, and that he had the same in possession, and did feloniously sell, exchange, utter, pass, and deliver it, for a valuable consideration knowing the same to be forged, with intent to pass the same. Held, that the affidavit was sufficient to give the court jurisdiction of defendant's person. State v. Patterson (Mo. Sup. 1892) 20 S. W. 9.

Cr. Code Neb. § 330, relating to the extradition of criminals between states and territories, contemplates that the charge of the crime against the person to be arrested and delivered up must be made in the state where the offense was committed and must be to some court, magistrate, or officer, in the form of an indictment, complaint, or other accusation known to the laws of such state or territory, and be pending; and a complaint made before a magistrate in this state which fails to allege that such charge is pending against the accused in the state where it is alleged the offense was committed will not confer jurisdiction on such magistrate. Smith v. State (1887) 21 Neb. 552, 32 N. W. 594; Forbes v. Hicks (1889) 27 Neb. 111, 42 N. W. 898.

To enable a magistrate to arrest and examine an alleged fugitive from justice from another state, it must be shown to him, by a complaint in writing, on oath, that a crime has been committed in the foreign state, that the accused has been charged in such state with the commission of such crime, and that he has fled from such state, and is found here, and these facts must be distinctly alleged. It is not sufficient that they may be inferred from what is stated. In re Heyward (1848) 3 N. Y. Super. Ct. (1 Sandf.) 701.

An affidavit that A. B. has been charged in Pennsylvania, on the oath of C. D., with felony, viz. with cheating and defrauding C. D. and others, residents of that state, and that he is a fugitive from justice from that state, is insufficient to authorize the arrest of A. B. in New York under the fugitives from justice act. The affidavit does not distinctly show that the alleged crime was committed in Pennsylvania, or that A. B. fled from that state. Id.

The affidavit accompanying a requisition from the governor of one state to the governor of another for the surrender of a fugitive from justice, charging merely that the fugitive, by conspiracy with others, and by false pretenses and devices, had defrauded a person of his property—the false pretenses or the means by which the fraud was effected not being set out—is not sufficient to authorize the issuing of the executive warrant of surrender. People v. Brady (1874) 56 N. Y. 182.

An affidavit for a requisition, made by the governor of Colorado, alleged that accused obtained from prosecutor two title deeds purporting to convey lands in Kansas; that she promised to take the deeds to the recorder in the county where the lands described in the deeds were situated, and there record the same, for which purpose the deeds were delivered to her; that she did not record them, but converted them to her own use, to wit, that she left Colorado within a few days after obtaining the deeds for the state of Kansas and there obtained other conveyances to the property and transferred the title to other persons, etc. Held, that the offense stated in the affidavit was committed in Kansas, and was not within the jurisdiction of the courts of Colorado, and hence the affidavit was insufficient to sustain the requisition. Ex parte Cheatham (1906) 95 S. W. 1077, 50 Tex. Cr. R. 51.

17. —— **Verification.**—The affidavit is not sufficient if founded on belief or information. Ex parte Morgan (D. C. 1883) 20 Fed. 298; Ex parte Owen (Okl. Cr. App. 1913) 136 P. 197; Ex parte Rowland (1895) 35 Tex. Cr. R. 108, 31 S. W. 651; Ex parte Cheatham (1906) 95 S. W. 1077, 50 Tex. Cr. R. 51.

An information sworn to by a prosecuting attorney, on which the court orders the arrest of the accused, may be sufficient as an affidavit for his extradition. Ex parte Hart (C. C. 1894) 59 Fed. 894.

An affidavit, charging the crime directly and positively, held not vitiated by the conclusion, "as said deponent verily believes." In re Keller (D. C. 1888) 36 Fed. 681.

A complaint, charging a crime sworn to by the county attorney as true without qualification, is a sufficient affidavit as the basis of an extradition proceeding, as against the objection that the complaint was necessarily on information and belief. Morrison v. Dwyer (Iowa, 1909) 121 N. W. 1064.

An affidavit made before an officer in another state, charging relator on information and belief with a felony committed in that state, without stating the grounds of affiant's belief or the sources of his information, was insufficient to sustain a warrant for relator's arrest in New York in extradition proceedings. People v. Warden of City Prison of Brooklyn (Sup. 1908) 112 N. Y. S. 492, 60 Misc. Rep. 525.

Where a Pennsylvania affidavit charging relator with a felony was fatally defective, because made on information and belief, without stating the sources of affiant's information or the grounds of his belief, an affidavit in New York for relator's arrest there in extradition proceedings, also on information and belief, was insufficient

to sustain the warrant, where it stated the Pennsylvania affidavit as the only source of affiant's information and ground of his belief. Id.

Information or affidavit on which requisition was based, when considered as a whole, held not based on information and belief, and hence to be sufficient. Ex parte Brown (Tex. Cr. App. 1915) 178 S. W. 366.

An indictment or an information, which under oath charges in direct and positive terms that the crime has been committed, and is sufficient to authorize the issuance of a warrant by the magistrate before whom the charge was made, is sufficient to authorize delivery over of the prisoner, though, where it is permitted in the state in which the warrant of arrest is issued to charge a crime in an information upon information and belief, then that information must be supported by the affidavit or sworn statement of some one who is cognizant of the facts; and hence an information filed in Wyoming, which under the Wyoming constitution, providing that no warrant shall issue but upon probable cause supported by an affidavit, does not constitute probable cause, for the issuing of a warrant for the arrest of the accused because verified only on information and belief is insufficient to authorize extradition. Mark v. Browning (Utah, 1911) 115 P. 275.

18. Information.—An information is not an equivalent of an indictment within this section. Ex parte Hart (1894) 63 Fed. 249, 11 C. C. A. 165, 28 L. R. A. 801, reversing (C. C. 1894) 59 Fed. 894.

Where a governor's warrant empowers a sheriff to receive defendant from the authorities of another state, and convey him hither to be dealt with according to law, it is not necessary that the information charge precisely the same offense named in the original warrant of arrest, so long as it is based on the same transaction. People v. Stockwell (1904) 97 N. W. 765, 135 Mich. 341, 10 Detroit Leg. N. 805.

An information charged accused with "the commission of a criminal offense against the laws of Dakota, which, if committed in Nebraska, would by the law thereof be a crime," and that "he was now a fugitive from said territory." Held, that it was void for not charging a definite offense. Smith v. State (1887) 21 Neb. 552, 32 N. W. 594.

Under Const. art. 4, § 2, and this section, a person charged by an information alone and who has not been convicted cannot be extradited. Ex parte Bergman (Tex. Cr. App. 1910) 130 S. W. 174. But see Morrison v. Dwyer (Iowa, 1909) 121 N. W. 1064, and People v. Stockwell (1904) 97 N. W. 765, 135 Mich. 341, 10 Detroit Leg. N. 805, holding that an information is sufficient basis for extradition, and In re Hooper (1881) 52 Wis. 699, 58 N. W. 741, holding that a demand from the governor of Kansas for a fugitive, accompanied by a copy of an "information" charging him with having committed a crime, is a sufficient compliance with this section.

19. Necessity of producing copy.—A copy of the indictment or an affidavit made before some magistrate charging the crime must be presented with the demand for extradition. Compton v. Alabama (1909) 29 Sup. Ct. 605, 607, 214 U. S. 1, 53 L. Ed. 885, 16 Ann. Cas. 1098 (affirming judgment [1907] 44 South. 685, 152 Ala. 68); In re Jackson (D. C. 1878) Fed. Cas. No. 7,125; In re Knowlton (Colo. 1883) 5 Cr. Law Mag. 250; Ross v. Crofutt (Conn. 1911) 80 A. 90, 84 Conn. 370; Ex parte Pfitzer (1867) 28 Ind. 450; State v. Richardson (1885) 34 Minn. 110, 24 N. W. 334; Ex parte Owen (Okl. Cr. App. 1913) 136 P. 197; Commonwealth v. Superintendent of County Prison (1907) 33 Pa. Super. Ct. 594; Thorp v. Metzger (1913) 137 P. 330, 77 Wash. 62. CONTRA, In re Leary (D. C. 1879) Fed. Cas. No. 8,162. See, also, In re Heyward (1848) 3 N. Y. Super. Ct. (1 Sandf.) 701.

The mere recital in requisition papers that an indictment, duly authenticated, is annexed, is of no avail, there being no indictment attached. Ex parte Hart (1894) 63 Fed. 249, 11 C. C. A. 165, 28 L. R. A. 801, reversing judgment (C. C. 1894) 59 Fed. 894.

The representations of the executive of the demanding state are of no effect unless supported by a duly authenticated copy of an indictment found or an affidavit made. Ex parte Morgan (D. C. 1883) 20 Fed. 298.

A requisition from the governor of another state to the governor of New York for the arrest of an accused person is not of itself sufficient authority for such arrest. Nor is the affidavit of an attorney communicating information received by telegraph sufficient. An authenticated copy of the charge or indictment should be presented. In re Rutter (N. Y. 1869) 7 Abb. Prac. (N. S.) 67.

The prisoner will be discharged by the court in extradition proceedings, where the requisition is defective in several particulars, as where it does not contain a duly authenticated copy of the indictment or affidavit, and the court, on review of the evidence, is not satisfied that the extradition is not sought to bring the fugitive into the jurisdiction for the purpose of dealing with him summarily and unlawfully. In re Hampton (Com. Pl. 1895) 1 Ohio N. P. 181.

A certified copy of an information, on which accused had been convicted of a misdemeanor, held not a certified copy of an "affidavit or indictment," within the congressional act governing extradition, and hence was insufficient

to authorize the granting of the application. Ex parte Lewis (Tex. Cr. App. 1914) 170 S. W. 1098.

20. Criminal charge—Charged with crime.—One convicted and sentenced for a crime, and whose term of sentence has not expired, is "charged" with the crime. Drinkall v. Spiegel (1896) 36 A. 830, 68 Conn. 441, 36 L. R. A. 486; In re Hope (Ex. Ch. 1889) 10 N. Y. Supp. 28, 7 N. Y. Cr. R. 406; Ex parte Bergman (Tex. Cr. App. 1910) 130 S. W. 174.

A person against whom a complaint for a felony has been filed before a committing magistrate, who can only charge or hold for trial before another tribunal, is "charged" with the crime within the meaning of Const. art. 4, § 2, subd. 2, and of this section. In re Strauss (1905) 25 Sup. Ct. 535, 537, 197 U. S. 324, 49 L. Ed. 774.

The term "charged with crime," as used in this section, seems to have been used in its broad sense, and to include all persons accused of crime. It would be a very narrow and technical construction to hold that after accusation and before conviction a person could be extradited, while after conviction, which establishes the charge conclusively, he could escape extradition. The object of this section is to prevent the escape of persons charged with crime, whether convicted or unconvicted, and to secure their return and punishment, if guilty. Taking the broad definition of "charged with crime" as including the responsibility for crime, the charge would not cease or be merged in the conviction, but would stand until the judgment was satisfied. It would include every person accused until he should be acquitted or until the judgment inflicted should be satisfied. Hughes v. Pflanz (1905) 138 Fed. 980, 983, 71 C. C. A. 234.

There is nothing, either in this section or in Rev. St. Ind. 1876, p. 420, upon the subject of fugitives from justice, which requires that a warrant shall be issued for the fugitive upon the charge against him before his return can be demanded from the state or territory to which he may have fled. It is the indictment or affidavit, and not the issuing of a warrant, which constitutes the charge against a fugitive upon which his return can be required. Tullis v. Fleming (1879) 69 Ind. 15.

A fugitive from justice is "charged" with a crime, within the extradition law, only when he is charged lawfully by a person who has knowledge of its commission, or is possessed of information, which he states under oath, leading a reasonable and fair mind to infer its commission. People v. Warden of City Prison of Brooklyn (Sup. 1908) 112 N. Y. S. 492, 60 Misc. Rep. 525.

21. —— Necessity of charge.—The governor of California has no authority to surrender a fugitive who has committed a crime in another state unless judicial proceedings have been commenced against him for the crime in the state in which it was committed. Ex parte White (1875) 49 Cal. 434.

One cannot be extradited between states of the Union except for offenses that are strictly criminal, and with which he has been legally charged as a fugitive from justice. In re Cannon (1882) 11 N. W. 280, 47 Mich. 481.

To give a state the right to demand of another state the surrender of a fugitive from justice, there must be a charge of crime made in the regular course of judicial proceedings against the fugitive in the state demanding his surrender. People v. Brady (1874) 56 N. Y. 182.

Under the express provisions of Code Cr. Proc. N. Y. § 827, an alleged fugitive from justice from another state cannot be apprehended in New York, unless he is legally charged with a crime. People v. Warden of City Prison of Brooklyn (Sup. 1908) 112 N. Y. S. 492, 60 Misc. Rep. 525.

22. —— Sufficiency.—All courts, both English and American, hold to rules of strictness in respect to the description of the crime in extradition papers, and to rules of strict construction upon questions of intendment in respect to what is shown on the face of the papers. Ex parte Thaw (D. C. 1914) 214 Fed. 423, order reversed Drew v. Thaw (1914) 35 S. Ct. 137, 235 U. S. 432, 59 L. Ed. 302.

The substantial charge of a crime denounced by the statute of a foreign state is sufficient to warrant extradition. Goodale v. Splain (1914) 42 App. D. C. 235.

In extradition proceedings, allegations that accused in a specified county and state on a day named obtained a specified sum of money from one named person as agent of another by false pretenses by drawing and delivering to such person a check for that amount on a bank at a specified place, and procured such person as such agent to cash the check by falsely representing that he was financially responsible, and had funds in or credit with the bank, and that the check would be honored, and that such person was deceived thereby, sufficiently charges the offense of obtaining money on false pretenses. Taylor v. Wise (Iowa, 1910) 126 N. W. 1126.

See, also, sections 11, 15, 16, and 18, ante, this note.

23. —— Proof.—On proceedings for extradition, the fact that an indictment was found in the state to which the person is sought to be extradited is prima facie evidence that the act charged was a crime by the law of that state. In re Van Sciever (1894) 42 Neb. 772, 60 N. W. 1037, 47 Am. St. Rep. 730.

24. Extraditable crimes. — "Crime" means any offense indictable by the

laws of the state demanding their surrender, and is not confined to common-law crimes. State of Kentucky v. Dennison (1860) 65 U. S. (24 How.) 66, 16 L. Ed. 717; In re Burke (D. C. 1879) Fed. Cas. No. 2,158; In re Brown (1873) 112 Mass. 409, 17 Am. Rep. 114; In re Hughes (1867) 61 N. C. (Phil.) 57.

This section embraces every offense known to the laws of the demanding state, including misdemeanors. Ex parte Reggel (1885) 5 Sup. Ct. 1148, 1151, 114 U. S. 642, 29 L. Ed. 250.

One S., who had been engaged with G. in the insurance business, in Tennessee, was found, on a settlement of their accounts, to be indebted to G., in about the sum of $1,300, for various sums advanced to him and his family by G., and expenses paid by G. for his account. After bringing the business to an end, and making some efforts to raise money for its further prosecution, S. returned, with his family, to his home in Virginia. G. assigned his claim against S. to one C., who caused a civil suit to be brought upon it in Virginia against S. He also endeavored, by persuasions and threats, to induce S. to return to Tennessee, for what purpose did not appear. S. having refused to return, C. procured from the governor of Tennessee, upon affidavits, a requisition for S., as a fugitive from justice, alleging that he was guilty of "fraudulent appropriation of money," and caused S. to be arrested thereunder in Virginia, for removal to Tennessee. Held, that no crime had been committed or was charged, that the requisition was improvidently issued, and S. should be discharged on habeas corpus. Ex parte Slauson (C. C. 1896) 73 Fed. 666.

Acts made criminal by the law of the demanding state, passed subsequent to the adoption of the constitution and the passage of this section, are extraditable crimes. In re Leary (D. C. 1879) Fed. Cas. No. 8,162.

A misdemeanor punishable by a fine not exceeding $5,000 is within the meaning of the word "crime." Morton v. Skinner (1874) 48 Ind. 123.

It is not necessary, in order to warrant the surrender or detention of a fugitive from justice, that the crime with which he stands charged should constitute an offense at the common law. In re Fetter (1852) 23 N. J. Law (3 Zab.) 311, 57 Am. Dec. 382.

The clause of the United States constitution providing for the delivery of a person charged, etc., "with treason," etc., "or other crime," "who shall flee from justice," etc., imposes an absolute duty to surrender any person charged with an offense made a crime by the laws of the state making the demand, although not a crime by said laws when the constitution was framed. In re Voorhees (1867) 32 N. J. Law (3 Vroom) 141.

An offense made indictable by statute is extraditable. In re Clark (N. Y. 1832) 9 Wend. 212.

Under the statutes allowing extradition in all cases of crime, a fugitive from justice may be arrested where he committed an act which is a crime according to the law of the state from which he is alleged to be a fugitive. In re Hayward (N. Y. 1848) 1 Code Rep. 45.

The constitution and federal and state statutes regulating extradition apply only to persons charged with felony or other crime. People v. Warden of City Prison of Brooklyn (Sup. 1908) 112 N. Y. S. 492, 60 Misc. Rep. 525.

The governor may demand the extradition of a fugitive who is guilty of a misdemeanor. State v. Hudson (Com. Pl. 1893) 2 Ohio N. P. 1.

The words "treason, felony, or other crime" embrace every act forbidden and made punishable by the law of the demanding state, and the grade of the crime is immaterial. Commonwealth v. Johnston (1892) 12 Pa. Co. Ct. R. 263.

Each state has the power, unless forbidden by the constitution of the United States, to declare what shall be offenses against her laws, and persons residing in such state are subject to her laws. The words "treason, felony and other crimes" include every offense against the laws of the demanding state without exception as to the nature of the crime. A state may make the desertion of a wife a crime, and a husband guilty of such an act and becoming a fugitive from justice may be arrested in the state to which he has fled, by proper extradition proceedings. Commonwealth v. Hare (1908) 36 Pa. Super. Ct. 125.

Where a defendant, after conviction in a sister state, fled from the justice of that state, the mere fact that in the judgment of conviction there was imposed a pecuniary fine and sentence to jail did not show that he was not guilty of a felony within Const. art. 4, § 2, and the federal statutes relating to extradition, there being nothing to show that under the law of the sister state accused might not have been imprisoned in the penitentiary. Ex parte Bergman (Tex. Cr. App. 1910) 130 S. W. 174.

The provisions of Const. art. 4, § 2, and of this act, apply to one who has been indicted for obtaining money or property under false pretenses in a state which has by statute made that offense a crime. In re Greenough (1858) 31 Vt. 279.

25. Certificate of authentication—In general.—The presumption is that one authenticating an indictment, made a

part of requisition papers, as governor of the demanding state, was so acting at the time. Kemper v. Metzger (Ind. 1907) 81 N. E. 663.

Under the statute requiring that the governor certify the authenticity of the complaint on which he demands extradition, without specifying how the governor is to be satisfied that it is authentic, the question of its authenticity is for his own determination, and his certificate to the fact alone is required. Morrison v. Dwyer (Iowa, 1909) 121 N. W. 1064.

Where in extradition proceedings the governor of the demanding state certifies that it satisfactorily appears by an annexed complaint in the form of an affidavit filed in and issued out of a certain justice's court that the defendant stands charged with the commission of a crime, and such affidavit purports to be sworn to before such justice of the peace, it will be implied from the executive authentication that the justice certifying to the jurat of the affidavit was such magistrate as he is therein represented to be. State v. Bates (1907) 112 N. W. 260, 101 Minn. 303.

The purpose of requiring a certificate of authentication of the affidavit charging a crime, attached to a requisition for extradition of a fugitive from justice, is to prevent the governor of the state upon whom the demand is made from being imposed upon by spurious charges of crime, and to advise him of the genuineness of the copy of the indictment or affidavit. State v. Curtiss (Minn. 1910), 126 N. W. 719.

26. —— **Necessity.**—The copy of the indictment or affidavit must be certified as authentic by the chief executive of the state or territory from which the person has fled. Ex parte Morgan (D. C. 1883) 20 Fed. 298; State v. Richardson (1885) 34 Minn. 115, 24 N. W. 354; In re Soloman (N. Y. 1866) 1 Abb. Prac. (N. S.) 347; In re Hampton (1895) 2 Ohio S. & C. P. Dec. 579; Commonwealth v. Superintendent of County Prison (1907) 33 Pa. Super. Ct. 594; Thorp v. Metzger (1913) 137 Pac. 330, 77 Wash. 62.

A governor should not deliver up one on extradition where there is no evidence that the requirement of the act of congress that the affidavit shall be produced and authenticated by the governor demanding the extradition has been complied with. Ex parte Powell (1884) 20 Fla. 806.

27. —— **Sufficiency and requisites.**—Affidavits filed with the governor, requesting him to make a requisition, though made a part of the requisition papers, are not sufficient where the governor only certifies to the authenticity of an information, and makes his demand on this. Ex parte Hart (1894) 63 Fed. 249, 11 C. C. A. 165, 28 L. R. A. 801, reversing (C. C. 1894) 59 Fed. 894.

In an extradition warrant, a recital that the requisition is accompanied by a copy of the indictment, certified by the governor of the demanding state to be "in due form," is a sufficient compliance with this section. Ex parte Dawson (1897) 83 Fed. 306, 28 C. C. A. 354, certiorari denied Dawson v. Rushin (1898) 18 Sup. Ct. 941, 170 U. S. 705, 42 L. Ed. 1218.

Where affidavits in extradition proceedings were authenticated by the governor of the demanding state, they were sufficiently authenticated and the authority of the officer verifying the affidavits could not be called in question. Chung Kin Tow v. Flynn (1914) 218 Fed. 64, 133 C. C. A. 666.

The papers accompanying a requisition for extradition need not be exemplified as prescribed by the federal statute for authentication of public acts and judicial proceedings in the several states; the statute on that subject not being applicable. State v. Currie (Ala. App. 1911) 56 So. 736.

Where the requisition for the extradition of a fugitive from justice certifies that the affidavit on which it was issued was duly authenticated according to the laws of the state, it is sufficient to prove its genuineness. In re Manchester (1855) 5 Cal. 237.

Where the papers and information accompanying a requisition for a fugitive from justice are authenticated by the signature of the prosecuting attorney and by affidavit, it is sufficient. Hackney v. Welsh (1886) 107 Ind. 253, 8 N. E. 141, 57 Am. Rep. 101.

It is not necessary for the governor who issues a requisition for a fugitive from justice to certify that the information and other papers accompanying the requisition are genuine; it is sufficient to certify that they are duly authenticated. Id.

A requisition for extradition set forth that "it appears by the annexed papers, which I certify to be authentic and duly authenticated, that D. stands charged with the crime of murder in the first degree," etc. A paper purporting to be an indictment charging D. with being an accessory before the fact was annexed. The paper was indorsed on the back as a true bill, but it was not stated whether it was an indictment or a copy. Held, that the authentication of the purported indictment was sufficient to make the requisition valid. Ex parte Dickson (1902) 69 S. W. 943, 4 Ind. T. 481.

Under this section a certification of copies of the complaint by the governor demanding extradition is sufficient. Morrison v. Dwyer (Iowa, 1909) 121 N. W. 1064.

Extradition proceedings are sufficiently authenticated where the record

of the prosecution is certified by the justice before whom it is pending, the county clerk certifies to the justice's official character, and the attorney general certifies that the application for requisition is in due form under the laws of that state, and that by such papers and records accused stands charged with a specified offense. Taylor v. Wise (Iowa, 1910) 126 N. W. 1126.

The certificate of the governor of another state, in demanding the surrender of a fugitive from justice, that a copy, produced with the demand, of a complaint made on oath to a person styled a "trial justice" in said state, charging the fugitive with a crime, is authentic, sufficiently authenticates the capacity of the person as a magistrate authorized to receive the complaint, within both this section and Gen. St. Mass. c. 177, § 1. In re Kingsbury (1870) 106 Mass. 223.

Under this section, where, on demand of the fugitive, the requisition certifies that all papers returned are true and correct copies, and one of them contains a criminal accusation indorsed as "an indictment," signed by a foreman as "a true bill," such authentication is sufficient. State v. Justus (1901) 87 N. W. 770, 84 Minn. 237, 55 L. R. A. 325.

A certificate, accompanying requisition papers, by the governor of the demanding state that "it satisfactorily appears by the annexed complaint in the form of an affidavit and warrant of arrest, also affidavits of persons named [which I certify are authentic and duly authenticated in accordance with the laws of the state], that defendant stood charged with a crime," was a sufficient authentication of the copy of the affidavit charging the crime, and was not subject to the objection that it related only to the affidavits of the persons named. State v. Bates (1907) 112 N. W. 260, 101 Minn. 303.

The certificate of authentication of an affidavit charging a crime, attached to a requisition for extradition of a fugitive from justice, need not be in any particular form; but it is sufficient if it show that a copy of an indictment or affidavit annexed to the requisition is authentic, and a certificate as follows: "It appears from the annexed papers, duly authenticated according to the laws of this state"—is sufficient. State v. Curtiss (Minn. 1910) 126 N. W. 719.

A certificate of the executive that the justice before whom the affidavit was sworn to was such officer, and that his attestation is in due form, is sufficient. In re Soloman (N. Y. 1866) 1 Abb. Prac. (N. S.) 347.

The certificate of authentication to a requisition for a fugitive from justice provided for in this section need not be in any particular form; and, where the language employed by the demanding governor shows the copy of an indictment annexed thereto to be authentic, it is sufficient. Ex parte Sheldon (1878) 34 Ohio St. 319.

When a copy of the indictment accompanying a requisition upon the governor of Texas for one claimed to be fugitive from justice is certified as authentic by the governor who makes the requisition, no further authentication is needed under this section; and the absence of a seal to the certificate of the clerk of the court in which the indictment purports to have been found, or of a file mark on the indictment, will not be noticed on habeas corpus. Hibler v. State (1875) 43 Tex. 197.

28. **Requisition—In general.**—Change of governors does not affect a requisition already issued for the extradition of a criminal. In re Knowlton (Colo. 1883) 5 Cr. Law Mag. 250.

A requisition of the governor of another state, accompanied by a copy of an affidavit charging petitioner with the commission of a certain act, and by a certificate of such governor that such act constitutes a crime under the law of that state, makes a prima facie showing authorizing petitioner's arrest. Tullis v. Fleming (1879) 69 Ind. 15.

Under this section, where the constitution of the demanding state authorizes the lieutenant governor to act in case of the disability of the governor, and on disability of the lieutenant governor the president pro tem, of the senate shall act as governor, and the duty of the chief executive is supplied by either of such substitutes, it is not improper to designate in a requisition such substitute as "acting governor," in which case the attestation by the secretary of state under the state seal as "by the governor" requires full faith and credit. State v. Justus (1901) 87 N. W. 770, 84 Minn. 237, 55 L. R. A. 325.

Requisitions for alleged fugitive are issued under the laws of the United States. Commonwealth v. Hare (1908) 36 Pa. Super. Ct. 125.

Where the party arrested under an extradition warrant was the identical person named and charged by an indictment of the demanding state in extradition proceedings, the requisition was not invalidated by the fact of the possibly unauthorized insertion of an alias name to describe him. Ryan v. Rogers (Wyo. 1913) 132 P. 95.

29. —— **Necessity.** — The fugitive must be demanded as such by the executive of the state from which he fled. Commonwealth v. Superintendent of County Prison (1907) 33 Pa. Super. Ct. 594; Thorp v. Metzger (1913) 137 Pac. 330, 77 Wash. 62.

Proceedings in interstate rendition can only be set in motion by the executive of one state on demand of the ex-

ecutive of another. In re Adutt (C. C. 1893) 55 Fed. 376, 379.

A fugitive from justice from one state cannot be arrested by private persons in the state into which he has fled, and returned to the authorities of the state where the crime was committed, but he can only be delivered up upon the formal requisition of the governor of the state in compliance with the constitutional provision. Botts v. Williams (1857) 56 Ky. (17 B. Mon.) 687.

30. —— Requisites and sufficiency.— It must appear to the governor, before he can lawfully comply with a demand for requisition, that the person demanded is substantially charged with a crime against the demanding state, by an indictment or an affidavit, etc., and that he is a fugitive from the justice of that state. Hyatt v. New York ex rel. Corkran (1903) 23 Sup. Ct. 456, 458, 188 U. S. 691, 47 L. Ed. 657.

An extradition requisition reciting that the accused was charged by indictment with a specified crime and had become a fugitive from the justice of that state, accompanied by a certified copy of the indictment, makes a prima facie case against the accused as an alleged fugitive from justice, and, in the absence of proof to the contrary, authorizes the executive of the surrendering state to issue his warrant for the arrest and delivery of the alleged criminal. Marbles v. Creecy (1909) 30 Sup. Ct. 32, 33, 215 U. S. 63, 54 L. Ed. 92.

This section held not to require a governor, in making requisition for a fugitive, to certify to certain matters. Tiberg v. Warren (1911) 192 Fed. 458, 112 C. C. A. 596.

Though a requisition for extradition does not show on its face that it was based on an original proceeding had in the proper court, it is sufficient where it refers to papers annexed to it, and certified to be correct, which do show that fact. In re White (C. C. 1891) 45 Fed. 237.

The charge must be substantially set forth in the papers filed. Ex parte Slauson (C. C. 1896) 73 Fed. 666, 667.

The essential requisites of requisition papers in cases for interstate extradition considered. Ex parte Thaw (D. C. 1914) 214 Fed. 423, order reversed Drew v. Thaw (1914) 35 S. Ct. 137.

Sufficiency of requisition papers for interstate extradition considered. Id.

Under this section the requisition of the governor of a sister state on the governor of Alabama for the arrest and extradition of a fugitive, together with a copy of an indictment charging the fugitive with an offense in the demanding state, and certified by the governor of the demanding state as authentic, is sufficient to require the governor of Alabama, if satisfied that the alleged criminal is a fugitive from justice of the demanding state, to honor the requisition and issue a warrant authorizing the arrest of the fugitive. Law v. State (Ala. App. 1911) 56 So. 79.

The requisition in extradition need not set out an authenticated copy of the law which the alleged fugitive is charged with having violated. State v. Currie (Ala. 1911) 56 So. 735.

The brief description of the crime for which a person is sought to be extradited, contained in the requisition, may be regarded in the extradition proceedings as supplemented by the descriptions of the crime contained in the indictment and a bench warrant issued thereon, when the latter are made parts of the requisition. Hayes v. Palmer (1903) 21 App. D. C. 450.

The technical sufficiency of the indictment of a person who is sought to be extradited is a matter for the determination of the proper court of the demanding state, and the fact that the requisition recites that he "stands charged with the crime of gambling," and nothing more, does not constitute a fatal defect or omission, where "gaming" and "gambling," which mean substantially the same thing, are used as convertible terms in the indictment, made a part of the requisition. Id.

Mere recitals in the demanding governor's requisition are not sufficient, of themselves, to authorize the arrest and surrender of the alleged fugitive. Hartman v. Aveline (1878) 63 Ind. 344, 30 Am. Rep. 217.

Where interlineations appeared on some of the certificates and papers annexed to the requisition, but there was no evidence that they were made after its execution, it would be presumed that they were made before or contemporaneously with its execution. Worth v. Wheatley (Ind. 1915) 108 N. E. 958.

It is not necessary that the sworn evidence required by Gen. St. Mass. c. 177, § 1, to accompany the demand of the governor of another state for the surrender of a fugitive from justice, shall be annexed to the demand. In re Kingsbury (1870) 106 Mass. 223.

When requisition papers for extradition clearly show the county in which it is alleged the crime was committed and the proceedings begun, and the governor of this state has ordered the return of the defendant, the fact that the request for extradition names a different county will not require the court, on habeas corpus, to discharge the prisoner. Ex parte Willard (Neb. 1913) 140 N. W. 170.

In an extradition proceeding it must appear on the face of the papers that the prisoner was in the demanding state when the offense charged was committed. In re Ryan (Sup. 1895) 15 Misc. Rep. 303, 36 N. Y. Supp. 888.

A requisition is not defeated by the absence of an affidavit that the prisoner is a fugitive from justice. Ex parte Swearingen (1880) 13 S. C. 74.

A requisition made upon the governor

of Texas by the governor of a sister state for the arrest of one claimed as a "fugitive from justice" is sufficient authority for the issuance of an order by the governor of Texas for an arrest. Hibler v. State (1875) 43 Tex. 197.

Where a requisition had attached a complaint certified to be authentic by the governor, and it charged the elements of an offense under Rev. Laws Okl. 1910, § 2755, it was not necessary that the requisition should define the offense with the particularity required in an indictment. Ex parte Faihtinger (Tex. Cr. App. 1914) 163 S. W. 441.

Where a governor's requisition is correct, both in form and substance, the mere fact that the seal of the state is not attached thereto will not justify the discharge of the prisoner. In re Baker (1899) 57 P. 827, 21 Wash. 259.

31. Executive authority—Territories and District of Columbia.—Under this section the governor of a state has no power to honor the requisition from the chief of the Cherokee Nation by issuing a warrant for the arrest of a person to be delivered to the agent of the Cherokee Nation. Ex parte Morgan (D. C. 1883) 20 Fed. 298, 302.

The executive of a territory has the same rights and duties as the governor of a state. Ex parte Krause (D. C. 1915) 228 Fed. 547.

The chief justice of the supreme court of the District of Columbia is charged with the same duties in extradition proceedings as are imposed on the governors of the several states. Hayes v. Palmer (1903) 21 App. D. C. 450.

Under Const. art. 4, § 3, congress had power to pass Act Cong. May 2, 1890, § 41 (Ind. T. Ann. St. 1899, p. 13, § 41). Id.

Act Cong. May 2, 1890, § 41 (Ind. T. Ann. St. 1899, p. 13, § 41), provides that the judge of the United States court in the Indian Territory shall have the same power to extradite persons who have taken refuge in the Indian Territory, charged with crimes in the states or other territories of the United States, that may now be exercised by the governor of Arkansas in that state. At the time this act was passed there was but one judicial district in the Indian Territory, but later three judicial districts were established. Held, that the judge of one of these districts has the same power with respect to extradition as was originally conferred on the single judge. Ex parte Dickson (1902) 69 S. W. 943, 4 Ind. T. 481.

Under Pierce's Code Wash. § 2035 (Ballinger's Ann. Codes & St. § 7016), providing that when a demand is made upon the governor of the state by the executive of any state or territory, in any case authorized by the constitution and laws of the United States, for the delivery over of any person charged with crime, the governor shall, if satisfied that the demand is conformable to law and ought to be complied with, issue his warrant, etc., the governor has authority to surrender a fugitive from justice upon the demand of the governor of the district of Alaska, made pursuant to section 393, Act March 3, 1899 (30 Stat. 1328, c. 429), expressly conferring upon the governor of that district power to make such demand. Gillis v. Leekley (1905) 80 P. 300, 38 Wash. 156.

32. —— Duty of executive.—The obligation of a state to deliver a fugitive from justice on demand of the state from which he fled arises when the fugitive is charged with crime within the state demanding the surrender. People v. Brady (1874) 56 N. Y. 182.

When prescribed conditions are fulfilled, it becomes the duty of the executive of the state, to which a person has fled, to arrest him and deliver him to the agent of the demanding state. People ex rel. Marshall v. Moore (1915) 153 N. Y. S. 10, 167 App. Div. 479. His duty then becomes merely ministerial. Ex parte Thompson (N. J. Ch. 1915) 96 A. 102.

That part of the law of congress providing that demand can be made by the governor of a territory is binding on the governors of states and to be observed by them. Ex parte Morgan (D. C. 1883) 20 Fed. 298.

It is the duty of an executive of a state, where a fugitive from justice is found, to have him arrested and delivered to the agent of the executive of another state demanding him to be taken to that state. Ex parte Walters (Miss. 1914) 64 So. 2.

Under this section and Code Cr. Proc. Tex. 1895, art. 1051, providing that a person charged in any other state or territory of the United States with treason, felony, or other crime, who shall flee from justice and be found in this state, shall, on demand of the executive authority of the state or territory from which he fled, be delivered up to be removed to the state or territory having jurisdiction of the crime, where a requisition shows that an affidavit against the person demanded has been lodged in the demanding state, and that a demand is made by the governor of that state, stating that the affidavit is authentic, the governor of this state must issue his executive warrant for such person. Ex parte Denning (Tex. Cr. App. 1907) 100 S. W. 401.

Whenever a requisition comes to the governor of South Carolina from the governor of a sister state for the surrender of any person found in the former state, and the requisition shows upon its face that all the requirements of this section have been complied with, the governor of South Carolina should recognize the statement of facts made therein as true, and surrender the person demanded to the agent of the state making the demand. Ex parte Swearingen (1880) 13 S. C. 74.

Where an alleged fugitive from jus-

tice is demanded under this section, and a copy of the indictment against the accused or an affidavit charging him with the crime against the laws properly authenticated and made before a magistrate of the demanding state, it is the duty of the executive of the state where the fugitive is found to cause him to be arrested and returned. Ryan v. Rogers (Wyo. 1913) 132 P. 95.

The duty of the governor to issue the warrant of arrest is absolute, whenever the requisition is presented in due form, with the necessary accompanying papers. Kentucky v. Dennison (1860) 24 How. 66, 106, 16 L. Ed. 717; In re Opinion of Justices to Governor and Council (1909) 89 N. E. 174, 201 Mass. 609; Commonwealth v. Hare (1908) 36 Pa. Super. Ct. 125; Ex parte Coleman (1908) 113 S. W. 17, 53 Tex. Cr. R. 93. But see Taylor v. Taintor (1872) 16 Wall. 366, 371, 21 L. Ed. 287, holding that the duty to surrender a fugitive is not absolute and unqualified, but depends on circumstances; if the laws of the state have been put in force against the fugitive, and he is imprisoned there, the demands of those laws may first be satisfied; the duty of obedience to a requisition then arises, and not before. However, the word "duty" in this section means the moral obligation of the state to perform the compact in the constitution, when congress had by this section regulated the mode in which the duty was to be performed. Congress cannot coerce a state official, as such, to perform any duty if he refuses. Kentucky v. Dennison (1860) 24 How. 66, 107, 16 L. Ed. 717. The governor cannot, through the judiciary or other department of the federal government, be compelled to deliver up a fugitive. Id. Mandamus will not lie to compel him to deliver up a fugitive. Id.

The duty enjoined by this statute is several, and not joint, and every governor acts severally and independently for himself. There can be no joint demand, and no joint neglect or refusal. In the event of refusal, the state making the demand must submit. There is no alternative. Taylor v. Taintor (1872) 16 Wall. 366, 374, 21 L. Ed. 287.

A governor acts in his official character, and represents the sovereignty of the state in giving efficacy to the constitution and the law of Congress. If he refuse, there is no means of compulsion; but if he act, and the fugitive is surrendered, the state whence he is removed can no longer require his appearance before her tribunals, and all obligations taken to secure that result lose their binding effect. Id.

A charge of crime, flight, discovery, and a formal demand for return are all that are necessary to create the obligation of the state to which a fugitive fled to deliver him. Ex parte Flack (1913) 129 P. 541, 88 Kan. 616.

When a requisition for extradition is made on the governor, he must determine whether the person demanded is substantially charged with a crime against the laws of the state from whose justice he has fled, and whether he is a fugitive from justice of that state. Ex parte Willard (Neb. 1913) 140 N. W. 170.

The obligation of the executive of a state to deliver up a fugitive from justice on demand of the executive of another state only arises when the fugitive is legally charged with a crime committed within the state demanding his surrender. In re Waterman (Nev. 1907) 89 P. 291.

The duty of examining extradition papers, passing on their validity, and issuing his warrant devolves on the governor personally, and the power cannot be delegated. In re Tod (1900) 81 N. W. 637, 12 S. D. 386, 47 L. R. A. 566, 76 Am. St. Rep. 616.

The governor of the state of Tennessee on demand of the governor of Alabama surrendered the accused, who had been previously arrested for murder in the state of Tennessee, and who was on bail at the time of the demand. Held that it was not the imperative duty of the governor of Tennessee to have surrendered him until he was legally discharged from the operation of the laws of Tennessee. State v. Allen (1840) 21 Tenn. (2 Humph.) 258.

33. Proceedings—In general. — The questions before the governor are whether the person demanded has been substantially charged with a crime and whether he is a fugitive from justice; the first being a question of law, and the latter a question of fact, which he must decide upon such evidence as is satisfactory to him. Munsey v. Clough (1905) 25 Sup. Ct. 282, 284, 196 U. S. 364, 49 L. Ed. 515.

As to regularity of procedure on extradition for statutory crime, see In re Burke (D. C. 1879) Fed. Cas. No. 2,158.

The act of congress provides for a method that is summary in its effect, and must therefore be strictly complied with. Ex parte Morgan (D. C. 1883) 20 Fed. 298.

The governor of a state in acting on an application for extradition is bound to follow the procedure specified by this section. Ross v. Crofutt (1911) 80 A. 90, 84 Conn. 370.

Requisition for the delivery of a fugitive from justice held not rendered void because agent of demanding state delayed nearly four months in presenting it to governor of Indiana, nor because the prosecuting witness employed and paid agent's attorneys. Worth v. Wheatley (Ind. 1915) 108 N. E. 958.

In proceedings under the extradition act, it is no objection that the papers are copies of those presented to the governor, and not the originals. In re Van Vleck (Ohio Com. Pl. 1878) 3 Wkly. Law Bul. 763.

On an appeal from an order of extra-

dition, the jurisdiction of the appellate court is confined to an examination of the regularity and legality of the proceedings brought up by the certiorari, and cannot be extended to an examination of the evidence adduced at the hearing, or to the rulings of the judge on questions of evidence. In re Thatcher (1901) 18 Pa. Super. Ct. 538.

34. —— **Notice and hearing.**—Where the requisition is in proper form, the governor cannot determine whether the charge is true. Johnston v. Riley (1853) 13 Ga. 97; People v. Brady (1874) 56 N. Y. 182; People v. Pinkerton (N. Y. 1879) 17 Hun, 199; In re Van Vleck (Ohio Com. Pl. 1878) 3 Wkly. Law Bul. 763; Commonwealth v. Hare (1908) 36 Pa. Super. Ct. 125.

The person demanded in interstate extradition proceedings has no right to a hearing before the governor on the question whether he has been substantially charged with a crime and whether he is a fugitive from justice. Munsey v. Clough (1905) 25 Sup. Ct. 282, 284, 196 U. S. 364, 49 L. Ed. 515, affirming judgment State v. Clough (1902) 53 Atl. 1086, 71 N. H. 594, 67 L. R. A. 946, and (1903) 55 Atl. 554, 72 N. H. 178, 67 L. R. A. 946.

The executive of the surrendering state may act upon the requisition papers in the absence of the accused, and without previous notice to him. Marbles v. Creecy (1909) 30 Sup. Ct. 32, 33, 215 U. S. 63, 54 L. Ed. 92.

The governor of an asylum state, on whom requisition is made for the surrender of an alleged fugitive from justice, is not required to hear the prisoner before ordering his removal. Ex parte Chung Kin Tow (D. C. 1914) 218 Fed. 185.

In extradition proceedings between the states under this section, no hearing before the executive to whom the requisition is addressed and no notice to the person charged with crime is necessary, though the executive should be satisfied, before issuing a warrant, that there is probable cause to believe that when it is alleged the crime was committed the person demanded was within the state from which the requisition proceeds. Farrell v. Hawley (1905) 61 A. 502, 78 Conn. 150, 112 Am. St. Rep. 98.

The hearing of an application for extradition before the governor of the state to whom the application is made is only to consider whether the person demanded has been substantially charged with a crime against the laws of the demanding state by an indictment, information, or affidavit properly certified, and whether he is a fugitive from justice of that state. Ross v. Crofutt (1911) 80 A. 90, 84 Conn. 370.

The governor, on the hearing of a requisition of the governor of a sister state for the surrender of a fugitive from justice, need not try the question of the guilt of the fugitive, nor hear evidence, except so far as necessary to determine whether he is a fugitive from justice, and the identity of the fugitive may be inquired into, and whether the venue of the crime charged is properly laid within the demanding state may also be inquired into; but where the substance of the act charged in the indictment was committed by the alleged fugitive while in the demanding state, and the indictment on its face fairly charges the violation of the statutes of such state, the governor may find that the alleged fugitive from justice is such, and issue a warrant of extradition. Harris v. Magee (Iowa, 1911) 129 N. W. 742.

The governor on requisition for extradition does not and ought not attempt to pass upon guilt of the accused except so far as is necessary to determine that an extraditable offense has been regularly charged. Leonard v. Zweifel (Iowa, 1915) 151 N. W. 1054.

The governor, on whom requisition is made, need not hear the accused or receive evidence in his behalf before ordering his transportation to the demanding state. Ex parte Thompson (N. J. Ch. 1915) 96 A. 102.

A governor who is asked to return to another state a fugitive from justice cannot pass upon the validity of the indictment. People v. Byrnes (N. Y. 1884) 33 Hun, 98.

This act gave the governor of the state on whom the requisition is made no discretion to inquire into any question further than the identity of the fugitive and the regularity of the requisition papers, and hence any attempt by state law to clothe him with greater jurisdiction would conflict therewith. Ex parte Van Vleck (1878) 6 Ohio Dec. 636, 7 Am. Law Rec. 275.

The relations between the states, as created by the general government, render their status and intercourse different in most material respects, civilly and politically, from that subsisting between separate and independent nations. Under the constitutional provision that every person who is "charged" with an offense in any state and shall flee to another state shall be delivered up, it is not necessary, as under the comity of nations, to examine into the facts alleged against him, constituting the crime. This is not one of the fundamental "privileges and immunities of citizens of the several states," guaranteed to "citizens of each state." Ham v. State (1878) 4 Tex. App. 645.

35. —— **Presumptions and proof.**—In extradition proceedings, the fact that no copy of the laws of the demanding state, showing what constituted the crime charged, was submitted to the governor before the issue of his warrant for the fugitive, is not a valid objection on habeas corpus to the validity of the proceedings. Roberts v. Reilly (1885) 6 Sup. Ct. 291, 116 U. S. 80, 29 L. Ed. 544, affirming

judgment In re Roberts (D. C. 1885) 24 Fed. 132.

Independent proof, apart from the requisition papers, that the accused was a fugitive from justice, need not be demanded by the governor of the surrendering state before issuing his warrant of arrest in extradition proceedings. Pettibone v. Nichols (1906) 27 Sup. Ct. 111, 203 U. S. 192, 51 L. Ed. 148, 7 Ann. Cas. 1047; Moyer v. Same (1906) 27 Sup. Ct. 121, 203 U. S. 221, 51 L. Ed. 160.

A prima facie case must be made out by competent evidence showing that the person charged with crime is a fugitive from the state by whose executive he is demanded, before the warrant of arrest can issue. In re Jackson (D. C. 1878) Fed. Cas. No. 7,125.

A warrant issued by the governor of a state for the apprehension of a fugitive from another state recited that the demand of the governor of the latter state was accompanied by the necessary complaint, information, affidavits, and warrants, showing that the person demanded stood charged with the crime as represented by the demanding governor; that he had fled from justice, and taken refuge in the former state; and that said papers were certified by the demanding governor to be authentic. Held, that the warrant sufficiently appeared to have been issued on proper evidence. Ex parte Lewis (1889) 79 Cal. 95, 21 Pac. 553.

Under Gen. St. Conn. 1902, § 1566, providing that when a requisition for extradition is made on the governor he may require any prosecuting officer to investigate the ground for it and report, and that if the governor finds that the demand is conformable to law, and ought to be complied with, he shall issue his warrant, etc., the governor may act on any proof satisfactory to him and having a reasonable tendency to show a fleeing from justice. Farrell v. Hawley (1905) 61 A. 502, 78 Conn. 150, 112 Am. St. Rep. 98.

While the executive of a state, to which a criminal has fled, may require proof that the accused is a fugitive from justice, his determination of that fact may be based upon the requisition and accompanying papers or independent inquiry. Ex parte Walters (Miss. 1914) 64 So. 2.

Whether a defendant is a fugitive from justice, and therefore subject to extradition authorized by this section, is a question for the determination of the executive authority of the state where the demand is made, and his determination is presumably correct. Katyuga v. Cosgrove (1901) 50 A. 679, 67 N. J. Law, 213.

It is a condition precedent to the obligation of a state to surrender a fugitive from justice upon demand of another state that the executive of the state upon which the demand is made shall be apprised of the facts upon which his duty to surrender the fugitive depends. People v. Brady (1874) 56 N. Y. 182.

The issuance of a commitment under Code Cr. Proc. N. Y. § 830, to authorize the arrest of one as alleged fugitive under the warrant of the governor is sufficiently justified, if it appears from the papers to the satisfaction of the magistrate that he is charged in some other state with crime and has fled from justice, and the proof need not show that his return to the demanding state is justified. People v. Flynn (1907) 105 N. Y. S. 368, 54 Misc. Rep. 7.

On requisition from governor of another state, held, that certified copy of statutes of such state was not required to be presented to the governor of this state. People ex rel. Marshall v. Moore (1915) 153 N. Y. S. 10, 167 App. Div. 479.

In requisition proceedings identity of name is not, in the first instance, to be taken as identity of person, till rebutted by sufficient proof. Ex parte Ackerman (Pa. 1879) 3 Del. Co. R. 406.

When extradition papers are regular on their face, every intendment is to be indulged in favor of their validity, and the burden is on the prisoner to show that the statutes have not been complied with. Ex parte Massee (1913) 79 S. E. 97, 95 S. C. 315, 46 L. R. A. (N. S.) 781.

It is presumed that the acts charged in an indictment found in a sister state, under which the extradition of fugitives from justice is sought, are sufficient to constitute a crime under its laws. In re Renshaw (1904) 99 N. W. 83, 18 S. D. 32, 112 Am. St. Rep. 778.

A statement of the governor of a demanding state, in his requisition for the return of a prisoner, that he is a fugitive from justice, and a similar statement in the proclamation of the governor of the state honoring the requisition, makes a prima facie case that such is the fact. Ex parte Faihtinger (Tex. Cr. App. 1914) 163 S. W. 441.

Under Pierce's Code Wash. § 2035 (Ballinger's Ann. Codes & St. § 7016), making it the duty of the prosecuting attorney or other prosecuting officer to investigate the grounds of a demand for extradition before the issuing of a rendition warrant, the governor is not required to have these officers make such investigation before issuing the warrant, as he acts under the constitution and laws of the United States. Gillis v. Leekley (1905) 80 P. 300, 38 Wash. 156.

The executive of a state on whom a requisition for the return of a fugitive is made may decline to honor the same, unless competent proof is made to him

that accused is substantially charged with a crime against the laws of the demanding state, and is a fugitive from justice. Ryan v. Rogers (Wyo. 1913) 132 P. 95.

Whether an alleged criminal demanded in extradition proceedings is a fugitive from justice may be determined by the executive of the state on whom the demand is made, either by proper requisition papers or by proof aliunde. Id.

36. —— **Governor's finding.**—The finding of the governor that the person demanded in an extradition requisition should be surrendered is not necessarily final, but may be pronounced by the courts insufficient to support arrest on conclusive proof that the person demanded was not within the demanding state at the time the crime was alleged to have been committed, and that there was no sufficient evidence to the contrary before the governor. Farrell v. Hawley (1905) 61 A. 502, 78 Conn. 150, 112 Am. St. Rep. 98.

A determination of the governor of a state on whom a demand for extradition is made that the person demanded is a fugitive from justice is sufficient to justify the apprehension and removal of the prisoner until the presumption in favor of such finding is overcome by contrary proof. Katyuga v. Cosgrove (Sup. 1901) 50 A. 679, 67 N. J. Law, 213.

37. **Mandate.**—The fact that a mandate issued by the governor in pursuance of a requisition from the governor of another state did not in express terms order the arrest of the prisoner, but only directed his delivery to the agent of the other state, does not render such mandate insufficient. Ex parte Swearingen (1880) 13 S. C. 74.

In extradition proceedings under this section, the mandate of the governor, directing the delivery of the accused to the agent of the state, demanding his rendition, need not recite that the governor of the latter state either produced or caused to be produced a copy of an indictment, or an affidavit before a magistrate, showing that accused has been charged with having committed the crime. Ex parte Moscato (1895) 44 S. C. 335, 22 S. E. 308.

It is not necessary for the governor of a state, in granting a requisition for the return of a fugitive from justice, to describe the offense with the particularity of an indictment. Ex parte Faihtinger (Tex. Cr. App. 1914) 163 S. W. 441.

38. **Person already in custody.**—Where a party has been arrested both under criminal process as a fugitive from justice from another state and in a civil suit, the rights of the plaintiff in such suit must give way to the interest of the people, and the fugitive be surrendered to the authorities of such other state. Ex parte Rosenblat (1876) 51 Cal. 285.

The appellant committed a felony in Michigan, and fled to Indiana, where he committed another felony, for which he was indicted, arrested, and imprisoned. While he was in prison a requisition from the governor of Michigan was delivered to the governor of Indiana, who issued his warrant. After this warrant was issued, the appellant escaped, and fled to Ohio; whereupon a requisition was obtained, and, on a warrant issued by the governor of Ohio, the appellant was brought back to the prison from which he had escaped, and after a time the prosecutor entered a nolle prosequi. Held, that the appellant was rightfully surrendered to the agents of the state of Michigan. Hackney v. Welsh (1886) 107 Ind. 253, 8 N. E. 141, 57 Am. Rep. 101.

The governor, otherwise than by exercising his pardoning power, has no power by virtue of the federal constitution, or otherwise, to grant an extradition demand issued by the governor of another state for the return of a fugitive from the justice of that state lawfully held in a penal institution of Massachusetts under an unexpired sentence imposed for violation of its laws. In re Opinion of Justices to Governor and Council (1909) 89 N. E. 174, 201 Mass. 609.

The provisions of the constitution and laws of the United States on the subject of the extradition of fugitives from justice contemplate the case of a fugitive at large only, so far as immediate delivery is required. If the requisition finds the fugitive already imprisoned on civil or criminal process of the state to which he has fled, he cannot be discharged in order to be delivered up on the requisition. In such a case the requisition should be left with the sheriff, whose duty it will be to give such notice to the authorities of the foreign state as will enable them to take him in charge on his release from custody. In re Troutman (1854) 24 N. J. Law (4 Zab.) 634.

A person imprisoned in one state by virtue of its laws cannot be extradited and taken to another state before the justice of the former has been satisfied. In re Briscoe (N. Y. 1876) 51 How. Prac. 422.

Under 3 Rev. St. N. Y. p. 878, § 56, providing that a person in custody by virtue of civil process can be discharged on habeas corpus only for causes specified, a person in custody under an order of arrest in a civil action is not entitled to be discharged on habeas corpus proceedings on the ground that he is wanted for extradition to another state, even though the governor of New York has, on requisition of the governor of such other state, directed him to be delivered up. Id.

Petitioner was in jail for a criminal offense. The day before the expiration of his sentence, on the requisition of the

governor of another state, a warrant was issued for his apprehension. The next day, and after the expiration of his sentence, he was apprehended, but the keeper refused to surrender him, because on the previous day the prisoner had been entered on the jail book as arrested on a civil writ, and committed for want of bail. Having given a bail bond, petitioner claimed a discharge on the ground that extradition proceedings could not be had against him while under arrest on civil process. Held, that the mere entry of a commitment on the jail book did not constitute an arrest, and petitioner was properly held under the executive warrant. In re Harriott (1892) 18 R. I. 12, 25 Atl. 349.

A fugitive from justice, who, pending extradition, commits an offense against the laws of the state of asylum, and is in custody for such offense, must answer for such offense before surrender to the state demanding extradition. Ex parte Hobbs (1893) 32 Tex. Cr. R. 312, 22 S. W. 1035, 40 Am. St. Rep. 782.

39. **Defense to removal.**—The mere suggestion that the alleged fugitive from the justice of another state, because of his race and color, will not receive a fair and impartial trial, and will not be adequately protected against violence while in custody, does not require the executive of the state in which he may be found to refuse to surrender him on demand made in conformity with the federal constitution and laws, nor furnish a ground for his release on habeas corpus. Marbles v. Creecy (1909) 30 Sup. Ct. 32, 33, 215 U. S. 63, 54 L. Ed. 92. In determining the judicial question whether a fugitive from justice has been lawfully demanded from the asylum state, in a proceeding for his discharge on habeas corpus, the court cannot take into consideration the question whether or not he will be accorded a fair trial in the demanding state. U. S. v. Cooke (1913) 209 Fed. 607, 126 C. C. A. 429.

Where, on a proceeding in extradition, the proof shows that the forms of law have been used for illegal and ulterior purposes, and that such proceeding has been instituted not to prosecute the prisoner for his crime according to law, but to deliver him at a convenient place to kill him in the exercise of individual vengeance, such proceeding being violative of the constitution relating to the extradition of fugitives from justice, the judge is not required to aid in so remanding him, but must protect such prisoner from such unlawful death. In re Hampton (1895) 2 Ohio S. & C. P. Dec. 579.

The motive inducing departure from demanding state of a person accused of having successfully conspired to escape from a hospital for insane criminals is immaterial in an interstate extradition proceeding if the conspiracy charged constituted a crime. Drew v. Thaw (1914) 35 Sup. Ct. 137, 235 U. S. 432, 59 L. Ed. 302, reversing order Ex parte Thaw (D. C. 1914) 214 Fed. 423.

Dismissal of criminal proceedings in the justice court had to detain accused until proper warrant for his extradition could be obtained was no defense to his removal on requisition. Tiberg v. Warren (1911) 192 Fed. 458, 112 C. C. A. 596.

Evidence on behalf of the accused in extradition proceedings that he had been in the demanding state several times after his indictment there, and that no effort had been made to arrest him, is immaterial. Hayes v. Palmer (1903) 21 App. D. C. 450.

The fact that the alleged offender had given bond in bail trover in a suit against him for the recovery of the goods involved in the criminal charge constituted no legal reason for his release, and evidence thereof was inadmissible. Barranger v. Baum (1898) 30 S. E. 524, 103 Ga. 465, 68 Am. St. Rep. 113.

The fact that the sheriff in charge of the jail in which the appellant, a fugitive from justice, who had committed felonies in two states, was confined, knew that there was to be no trial of the indictment found against the appellant in his state, but that the appellant was detained there merely until he could be given up to the agents of the other state upon an extradition warrant, would not prejudice the right of the state obtaining the warrant to have the appellant delivered to it. Hackney v. Welsh (1886) 107 Ind. 253, 8 N. E. 141, 57 Am. Rep. 101.

It is no defense to a warrant of extradition that the prisoner has been convicted of a crime in the state, but has been bailed during his appeal, and that he cannot be extradited until he has served his sentence, or until he has been finally acquitted, as the governor of the state may waive the right of the state to punish the prisoner for a crime committed in the state. People v. Hagan (Sup. 1901) 69 N. Y. S. 475, 34 Misc. Rep. 85, 15 N. Y. Cr. R. 346.

Trial and acquittal of an extradited insane criminal constitutes no evidence of lack of good faith on the part of the state in obtaining the indictment or instituting extradition proceedings. People v. Thaw (Sup. 1915) 154 N. Y. S. 949, order affirmed In re Thaw (1915) 152 N. Y. S. 771, 167 App. Div. 104.

That a divorce proceeding is pending between the parties and that plaintiff has been unable to obtain personal service on defendant, will not prevent his extradition on the charge of abandonment, where the complaining wit-

ness alleges that the application is not to secure opportunity to serve him with civil process. Ex parte Bruchman (N. D. 1914) 148 N. W. 1052.

The fact that a citizen of this state originated the prosecution in another state for a crime there committed constituted no objection to the arrest and delivery in this state of a person committing the crime, upon the requisition of the governor of the state in which the crime was committed. Ex parte Swearingen (1880) 13 S. C. 74.

Where extradition proceedings were based on a sufficient affidavit, it was not material that, after arrest of accused in the state to which he fled, the sheriff having him in charge was furnished with an objectionable indictment by the authorities of the demanding state. Ex parte Coleman (1908) 113 S. W. 17, 53 Tex. Cr. R. 93.

40. Warrant—Issuance.—A fugitive from justice from another state may be arrested under a warrant issued to a local officer by a local magistrate. State v. Loper (1842) Ga. Dec. 33, pt. 2; Rea v. Smith (Ohio, 1856) 2 Handy, 193.

State governors, in issuing warrants for the arrest and surrender of an alleged fugitive, act under the authority of the United States laws, although the state may have legislated on the subject. Ex parte Smith (C. C. 1843) Fed. Cas. No. 12,968.

A warrant for the arrest of a fugitive from justice under this act is properly issued by the governor alone, without the consent of the council. Commonwealth v. Hall (1857) 75 Mass. (9 Gray) 262, 69 Am. Dec. 285.

A justice of the peace cannot issue a warrant to apprehend a criminal for an offense committed in another state. People v. Wright (N. Y. 1804) 2 Caines, 213.

Warrants for alleged fugitives are issued under the laws of the United States. Commonwealth v. Hare (1908) 36 Pa. Super. Ct. 125.

The governor of a state in which a fugitive from justice had found asylum, and who, upon the request of the governor of the state in which the offense was committed, had issued a warrant for the arrest of the fugitive, may, without a second request from the demanding state, order the rearrest, by an alias warrant, of the fugitive, upon notification that he had escaped from the officer of the demanding state while in transit to such state, and had returned to the asylum state. Ex parte Hobbs (1893) 32 Tex. Cr. R. 312, 22 S. W. 1035, 40 Am. St. Rep. 782.

41. —— Necessity.—No one has authority, without process legally issued in this state, to arrest a person charged with a crime in another state, and fleeing here for refuge. State v. Shelton (1878) 79 N. C. 605.

42. —— Requisites.—It is not necessary that the executive warrant in extradition proceedings should be accompanied by certified copies of the affidavit or indictment, or that such affidavit or indictment be set out in the warrant. Nichols v. Cornelius (1856) 7 Ind. 611; Robinson v. Flanders (1867) 29 Ind. 10; Ex parte Cheatham (1906) 95 S. W. 1077, 50 Tex. Cr. R. 51.

A warrant for the arrest and return of a fugitive from justice must recite or set forth the evidence necessary to authorize the state executive to issue it, and unless it does it is illegal and void. In re Doo Woon (D. C. 1883) 18 Fed. 898.

A warrant for the rendition of a fugitive from justice is defective when it omits to state that the person to be arrested has fled from justice and that he is found in this state, but the prisoner will not be discharged on habeas corpus when the return furnished a copy of the requisition and the original affidavit by which these facts are supplied. In re Romaine (1863) 23 Cal. 585.

Proceedings for the arrest and detention of fugitives from justice in California are required to be similar to those against persons charged with crimes committed in the state, and the warrant must specify the offense alleged to have been committed by the accused. Ex parte Cubreth (1875) 49 Cal. 436.

This section does not require that the Governor shall make it appear in his warrant that a crime has been regularly and sufficiently charged against the person demanded by the laws of the demanding state. Kemper v. Metzger (Ind. 1907) 81 N. E. 663.

Warrants issued by the governor for the apprehension of fugitives from justice are required to be under the great seal of the state, and the impression of the seal being unintelligible makes void the warrant. Vallad v. Sheriff of St. Louis County (1828) 2 Mo. 26.

The warrant issued by the governor need not show that the offense alleged in the indictment is contrary to the statute or common law of the state where it was committed. Commonwealth v. Superintendent of County Prison (1907) 33 Pa. Super. Ct. 594.

A warrant issued by the governor of Texas for the apprehension of a fugitive from justice from another state should show on its face that it was issued on a requisition from the governor of such other state, accompanied by an indictment found or an affidavit made charging the alleged fugitive with having committed the crime. Ex parte Thornton (1853) 9 Tex. 635.

An extradition warrant need not show that the crime with which the fugitives are charged in the indictment recited in the demand is a crime by the law of the demanding state. Ex parte Stanley (1888) 25 Tex. App. 372, 8 S. W. 645, 8 Am. St. Rep. 440.

A warrant issued by the state executive for the apprehension and extradition of fugitives from justice need only recite, without setting out in full, the affidavit on which it is based. Id.

It is not necessary that the executive warrant in extradition proceedings recite that the affidavit or indictment from the demanding state was presented to the governor of Texas by any legal authority from such demanding state. Ex parte Cheatham (1906) 95 S. W. 1077, 50 Tex. Cr. R. 51.

43. —— **Sufficiency.**—A governor's warrant for the removal of an alleged fugitive is sufficient, until the presumption of its legality is overcome by proof in a legal proceeding to review his action. Reed v. U. S. (1915) 224 Fed. 378, 140 C. C. A. 64.

Where a warrant issued on requisition stated that the prisoner was accused of obtaining money under false pretenses, it did not sufficiently describe the crime. People v. Shea (Ill. 1895) 27 Chi. Leg. N. 214.

Where the governor's warrant issued on a requisition did not sufficiently describe the crime, but in connection therewith the affidavit and warrant of the demanding state on which the governor issued the warrant were filed, and these papers fully set out the offense, the warrant will be upheld. Id.

A warrant held to sufficiently show the agent's authority to arrest the fugitive without producing any authority from the governor of the demanding state. Nichols v. Cornelius (1856) 7 Ind. 611.

Under the act of congress making it the duty of the executive authority of a state or territory to arrest and secure till notice, etc., a fugitive from justice from another state, a general warrant from the governor is good, though not directed to any named officer. Robinson v. Flanders (1867) 29 Ind. 10.

Recital in governor's extradition warrant that it was executed "in accordance with * * * an act of the general assembly approved February 27, 1897" (Acts Ind. 1897, c. 38), was superfluous, so that error in recital by reason of authority having been embodied in a later enactment was immaterial. Worth v. Wheatley (Ind. 1915) 108 N. E. 958.

A warrant for the extradition of a person charged with crime held sufficient. State ex rel. Burnett v. Flournoy (1915) 67 So. 929, 136 La. 852.

An extradition warrant, reciting that the demand is accompanied by a copy of a complaint certified as authentic, presents a prima facie case of authority of a justice of the peace to act as magistrate in the demanding state. Id.

A warrant, issued by the governor of this commonwealth authorizing the agent of another state to "take and receive into custody" a fugitive from justice authorizes him to arrest such fugitive, and is not repugnant to the constitution and laws of this state or of the United States. Commonwealth v. Hall (1857) 75 Mass. (9 Gray) 262, 69 Am. Dec. 285.

A warrant issued by the governor, under Gen. St. Mass. c. 177, § 3, for the surrender of a fugitive from the justice of another state, which recites generally the requisition for the surrender, and that it is conformable to law and ought to be complied with, is sufficient, without a further recital of the facts on which it is founded. In re Kingsbury (1870) 106 Mass. 223.

A statement, in the warrant, that the fugitive is "charged with the crime of selling and furnishing intoxicating liquors contrary to the laws of Vermont, and represented to be a fugitive from the justice of said state of Vermont," shows that he has been charged with a crime against the laws of that state, and is a sufficient allegation to that effect. In re Brown (1873) 112 Mass. 409, 17 Am. Rep. 114.

A governor's warrant empowering a sheriff to receive defendant from the authorities of another state and convey him hither to be dealt with according to law is sufficient to authorize defendant's production in the court of trial. People v. Stockwell (1904) 97 N. W. 765, 10 Detroit Leg. N. 805, 135 Mich. 341.

The executive warrant for the surrender of a fugitive from justice on requisition of the governor of another state recited that such fugitive "stood charged by complaint" with the crime specified, but did not show that he was so charged by indictment or affidavit accompanying the requisition, and no other record was produced. Held, that this was not sufficient to justify his arrest and surrender; the complaint referred to could not be intended to be a complaint upon oath, equivalent to an affidavit, within the requirement of this section. State v. Richardson (1885) 34 Minn. 115, 24 N. W. 354.

The governor's warrant for arrest of a person as a fugitive from justice, on requisition alleging that demand has been made pursuant to the constitution and laws of the United States by the governor of Illinois on the governor of Minnesota for the delivery of a designated person as a fugitive from justice, is sufficient, as such warrant need not set forth facts or grounds on which it is issued with the certainty required in criminal pleading. State v. Justus (1901) 87 N. W. 770, 84 Minn. 237, 55 L. R. A. 325.

Where a certified copy of an original information on which extradition proceedings in the demanding state were based, was attached to the requisition,

and charged petitioner with having separated himself from his wife and minor child, they being destitute and depending wholly upon their earnings for adequate support, contrary to the statute, etc., and throughout the papers such offense was designated as "desertion," and was made a misdemeanor by Act Pa. March 13, 1903 (P. L. 26), a warrant for the arrest and return of petitioner to answer for the crime of "desertion" was not objectionable as failing to set out an offense known to the laws of the demanding state. Ex parte Hose (Nev. 1911) 116 P. 417.

Before a magistrate in New York will remand a prisoner brought before him on habeas corpus, who was arrested under a warrant for his extradition to another state, it must satisfactorily appear that a crime has been perpetrated in such other state, that the committing magistrate had jurisdiction of the matter, and the warrant must be sufficient on its face. A warrant which only states that the prisoner is charged with forgery on the oath of ——— will not be deemed sufficient. In re Leland (N. Y. 1869) 7 Abb. Prac. (N. S.) 64.

Where, to a writ of habeas corpus a warrant of extradition issued by the governor was alone returned, which recited a representation by the governor of Connecticut; that the prisoner stood "charged with the crime of theft" committed in said state; that said governor has demanded his arrest and extradition; that the demand was accompanied by affidavits, etc., whereby the prisoner "is charged with said crime and with having fled from the said state"; and that such papers were certified by said governor to be duly authenticated—held, that the warrant fully complied with the statute, and sufficiently established the conditions necessary to its issue; that it was not necessary to state therein the facts constituting the alleged crime. People v. Donohue (1881) 84 N. Y. 438.

Naming relator in habeas corpus as "Scrofford," instead of "Scrafford," as in the governor's warrant of extradition, is not such a misnomer as can be taken advantage of, when it appears that relator was the person intended, and that he was not prejudiced thereby. In re Scrofford (1891) 59 Hun, 320, 12 N. Y. Supp. 943.

The recital of a warrant issued by the governor in extradition proceedings, that the requisition "is accompanied by the papers required by the statute of the United States," and that the papers show that relator has been "duly charged with said crime, and with having fled from said state and taken refuge in the state of New York," and that the papers were duly certified, is sufficient. Id.

An extradition warrant to which the governor's name was signed by his private secretary without special instructions, in the absence of the governor and without his knowledge, but merely on the custom of the office and general instructions of the governor, will not be treated as the warrant of the governor, and the prisoner will not be allowed to be delivered up on it. In re Payne (Ohio D. C. 1877) 2 Wkly. Law Bul. 76.

The recital in an extradition warrant that the demand for the arrest of the fugitive was accompanied by a copy of the affidavit on which it was based, "duly certified as authentic," is equivalent to a recital that the copy was "certified as authentic by the governor" of the state who made the demand, as it could not have been duly certified by any other authority. Ex parte Stanley (1888) 25 Tex. App. 372, 8 S. W. 645, 8 Am. St. Rep. 440.

An extradition warrant stating that the persons whose arrest and surrender is thereby ordered stand charged with a certain crime in the demanding state, and that they "have taken refuge in the state of Texas," sufficiently shows that they are fugitives from justice. Id.

Where extradition papers showed that the alleged fugitive from justice was charged by affidavit, a recital in the warrant of the governor of the state on which the demand was made that the fugitive was charged by indictment was a mere immaterial clerical error. Ex parte Coleman (1908) 113 S. W. 17, 53 Tex. Cr. R. 93.

An extradition warrant, which uses the word "complaint," instead of reciting that the demand was accompanied by a copy of an affidavit duly certified as authentic by the governor of the demanding state, is sufficient. Ex parte McDaniel (Tex. Cr. App. 1915) 173 S. W. 1018.

An extradition warrant is sufficient to entitle an agent of another state to the custody of a fugitive therefrom, where it recites that the executive authority of the state from which the fugitive fled demanded him, and that the demand was accompanied by a copy of the indictment, certified by the governor to be authentic, under this section. In re Foye (1899) 57 P. 825, 21 Wash. 250.

A warrant of extradition reciting that the governor of Massachusetts duly demanded of the governor of this state the delivery of the prisoner to the agent of the state of Massachusetts as a fugitive from justice from that state, and the prisoner was charged with the crime of embezzlement committed in said state, evidenced by a copy of an indictment returned by a grand jury, and duly authenticated by the governor of the state of Massachusetts, is sufficient, under Const. art. 4. § 2, and this section. In re Baker (1899) 57 P. 827, 21 Wash. 259.

A warrant of extradition, reciting that a demand had been made by the

governor of another state for the rendition of the prisoner as a fugitive from justice from that state, that the demand was accompanied by affidavits, complaint, information, indictment, and warrant, whereby the prisoner is charged with the crime of embezzlement, and being a fugitive from justice from that state, and that the papers accompanying the requisition are duly authenticated by the governor of the demanding state, is sufficient, under this section. In re Sylvester (1899) 57 P. 829, 21 Wash. 263.

An extradition warrant, reciting that accused was charged in the demanding state with the crime of buying and receiving stolen property; that he was a fugitive from the justice of that state; that a demand had been made by the governor thereof, accompanied by a copy of the complaint, information, or indictment, certified by the governor to be authentic, was sufficient. Thorp v. Metzger (1913) 137 P. 330, 77 Wash. 62.

A rendition warrant stating that it has been represented by the governor of Kansas that the fugitive stands charged with the crime of obtaining illicit connection with a female of good repute, under 21 years of age, under promise of marriage, committed in said state, and has fled from justice, and taken refuge in Wisconsin, where such an act is a crime, shows that the fugitive is charged with a crime authorising the executive (Const. art. 4, § 2, subd. 2) to cause him to be delivered up to the state of Kansas. In re Hooper (1881) 52 Wis. 699, 58 N. W. 741.

44. —— **Revocation.**—The governor of a state has the power to revoke his warrant for the surrender of an alleged fugitive from justice at any time before he is taken out of the state. State v. Toole (1897) 72 N. W. 53, 69 Minn. 104, 38 L. R. A. 224, 65 Am. St. Rep. 553. But see Hosmer v. Loveland (N. Y. 1854) 19 Barb. 111, holding that the governor has no power to entertain an application to recall or modify a warrant issued in compliance with a requisition.

If a warrant issued under Laws Ohio 1875, p. 79, for the surrender of a fugitive from justice, is obtained in a case in which it should not have been issued, the governor may revoke it, whether issued by himself or his predecessor. Work v. Corrington (1877) 34 Ohio St. 64, 32 Am. Rep. 345.

45. —— **Effect as evidence.**—The issuance of extradition makes a prima facie case in favor of the demanding state. Eaton v. State of West Virginia (1898) 91 Fed. 760, 34 C. C. A. 68; Tiberg v. Warren (1911) 192 Fed. 458, 112 C. C. A. 596; In re Cook (C. C. 1892) 49 Fed. 833 (judgment affirmed Cook v. Hart [1892] 13 Sup. Ct. 40, 146 U. S. 183, 36 L. Ed. 934); In re Bloch (D. C. 1898) 87 Fed. 981; Hines v. State (Ala. App. 1912) 58 So. 973; Ross v. Crofutt (1911) 80 A. 90, 84 Conn. 370; State v. Buzine (Del. 1847) 4 Har. 572; Same v. Schlemn, Id. 577; Hayes v. Palmer (1903) 21 App. D. C. 450; Nichols v. Cornelius (1856) 7 Ind. 611; Kemper v. Metzger (Ind. 1907) 81 N. E. 663; Ex parte Edwards (Miss. 1905) 44 So. 827; Ex parte Walters (Miss. 1914) 64 So. 2; People v. Pinkerton (1879) 77 N. Y. 245; People ex rel. Genna v. McLaughlin (1911) 130 N. Y. S. 458, 145 App. Div. 513; People ex rel. Marshall v. Moore (1915) 153 N. Y. S. 10, 167 App. Div. 479; Gillis v. Leekley (1905) 80 P. 300, 38 Wash. 156; Ryan v. Rogers (Wyo. 1913) 132 P. 95. But is not conclusive. Hyatt v. New York ex rel. Corkran (1903) 23 Sup. Ct. 456, 458, 188 U. S. 691, 47 L. Ed. 657; Ex parte Hart (1894) 63 Fed. 249, 11 C. C. A. 165, 28 L. R. A. 801 (reversing judgment [C. C. 1894] 59 Fed. 894); Bruce v. Rayner (1903) 124 Fed. 481, 62 C. C. A. 501; In re Cook (C. C. 1892) 49 Fed. 833 (judgment affirmed Cook v. Hart [1892] 13 Sup. Ct. 40, 146 U. S. 183, 36 L. Ed. 934); State v. Curtiss (Minn. 1910) 126 N. W. 719; Commonwealth v. McCandlass (1878) 7 Pa. Co. Ct. R. 51.

The warrant of the executive is conclusive evidence that the person named therein stands charged with the crime in another state. In re Leary (D. C. 1879) Fed. Cas. No. 8,162.

The issue of a warrant by the governor, under Gen. St. Mass. c. 177, § 3, for the surrender of a fugitive from the justice of another state upon demand of the governor thereof, is conclusive that the demand is conformable to law and ought to be complied with, in the absence of a defect apparent on the record. In re Kingsbury (1870) 106 Mass. 223.

The governor's warrant for the surrender of a fugitive from justice, under Gen. St. Mass. c. 177, § 3, is at least prima facie evidence of a compliance with all the necessary legal prerequisites, and is conclusive of the right of removal, if the previous proceedings are apparently regular. In re Davis (1877) 122 Mass. 324.

The warrant of the governor, authorizing the extradition of a person charged with an offense in another state, is prima facie evidence that all the essential prerequisites have been observed; and, if the proceedings appear to be regular, such presumption becomes conclusive of the right to extradite the person so charged. People v. Police Com'r of City of New York (1905) 91 N. Y. S. 760, 100 App. Div. 483.

Where a requisition from a foreign state had been considered by the executive of this state, and a warrant issued thereon, it is to be presumed that it was granted on competent proof that the prisoner was a fugitive from justice, charged with a crime, at a time when he was within the state from

which he has fled. State v. Justus (1901) 87 N. W. 770, 84 Minn. 237, 55 L. R. A. 325.

The issuance of a warrant for the apprehension of a prisoner sought to be extradited is sufficient evidence of a finding of the executive authority of the state on whom the demand is made that the prisoner is a fugitive from justice, whether it contains a recital of such finding in express terms or not. Katyuga v. Cosgrove (Sup. 1901) 50 A. 679, 67 N. J. Law, 213.

Where an extradition warrant issued by the governor of Ohio to the sheriff recites the requisition of the governor of the demanding state, and that a copy of the affidavit making the charge, duly certified as authentic, has been filed, such recital prevails; and a certificate from the governor that certain papers were filed, purporting to be an affidavit certified as a copy from the court of the demanding state, does not destroy the force of the recital that the warrant was issued on affidavit certified as authentic by the governor of the demanding state. In re Moore (Ohio Com. Pl. 1877) 2 Wkly. Law Bul. 42.

A person charged with an offense committed in another state cannot be delivered up as a fugitive from justice unless the warrant of the governor shows on its face, where the crime charged is obtaining money by false pretenses, that such crime is contrary to the statute of the demanding state: and it is not the duty of the judge hearing the case to take judicial notice of such statute. Ex parte Butler (Pa. 1878) 7 Luz. Leg. Reg. 209.

In a warrant issued by the governor of Pennsylvania upon a requisition from the governor of New York, it was recited that by the representations of the governor of the last-named state the prisoners were charged by indictment with the crime of obtaining money by false pretenses, committed in C. county, in the state of New York and that they had fled from justice in that state, and taken refuge in the state of Pennsylvania. Held, that the recitals raised a presumption that the offense charged was a crime against the laws of New York. Ex parte Ackerman (Pa. 1879) 3 Del. Co. R. 406.

Where a governor's warrant was issued in extradition proceedings, it will be presumed on habeas corpus in favor of the action of the governor that his requisition was attached to the papers and affidavits on which it was based, and that he stated therein that the annexed papers were duly authenticated in accordance with the laws of the demanding state. Ex parte Cheatham (1906) 95 S. W. 1077, 50 Tex. Cr. R. 51.

46. Arrest and detention.—One who has fled from one state to another may be arrested in the latter on proof of a probability that he committed an offense in the former state, before requisition for his surrender has been made by the executive of the state from which he fled on the executive of the other state, as provided in Const. art. 4, § 2, and this section. State v. Buzine (Del. 1847) 4 Har. 572.

Where party is arrested in extradition proceedings, an indictment found and bench warrant issued in the jurisdiction to which it is sought to take him are not the process upon which he is arrested in the foreign jurisdiction, but merely the evidence upon which the complaint there filed is based. Benson v. Palmer (1908) 31 App. D. C. 561.

Although section 56, Code Ga., may possibly authorize the arrest of a fugitive from justice without warrant, yet the person so acting must, as soon as he can without unnecessary delay, take the alleged fugitive before a magistrate, as in all other arrests without warrant, and if not done within a reasonable time the imprisonment is illegal. Lavina v. State (1879) 63 Ga. 513.

An arrest cannot be made for purposes of extradition to another state without compliance with the laws of the United States. Malcolmson v. Scott (1885) 23 N. W. 166, 56 Mich. 459.

Code Cr. Proc. N. Y. § 830, relating to proceedings against fugitives from justice, provides that if, from the examination under the warrant of arrest, it appears to the satisfaction of the magistrate that the person under arrest is charged in another state with felony or other crime, and has fled from justice, the magistrate, by warrant, must commit him to the proper custody. Held, that the essential facts which must appear to justify the warrant, are that the person under arrest has been charged in another state or territory with the commission of a crime, and has fled from justice. People v. Warden of City Prison (1903) 82 N. Y. S. 439, 83 App. Div. 456.

An information on which a warrant was granted was under oath, and alleged that relator, on a day named, hired a horse and wagon in New Jersey; that he failed to return them; that a complaint was made, charging him with the larceny of the property, on which charge he was duly indicted; and that after the commission of the crime he fled from New Jersey, and was then in the city of New York. There was no denial of any of these facts. Held sufficient to give the magistrate jurisdiction, and to justify the warrant. Id.

Where a sheriff receives from the governor a warrant issued to him under Rev. St. Ohio, 1906, § 97, relating to the extradition of fugitives from justice, it is his duty to arrest the person named therein as fugitive, if found within his county, and take him before

a judge to be examined on the charge named in the warrant, and the probate court is without power by virtue of its general jurisdiction in habeas corpus proceedings or otherwise to order a discharge of the prisoner. Thomas v. Evans (1905) 76 N. E. 862, 73 Ohio St. 140.

A person who has committed a criminal offense in another state may be arrested in this state by a private person without a warrant, and held until a demand for his requisition is made by the governor of the state where the crime was committed. State v. Anderson (S. C. 1833) 1 Hill, Law, 327.

Under the acts of congress as operative in Utah territory, a person may, upon a warrant issued on proper complaint and evidence, be arrested for a crime committed in another state or territory, before any demand made for his extradition by the executive of such state or Territory, and held long enough to communicate with such executive. Ex parte Romanes (1876) 1 Utah, 23.

47. —— **Arrest before demand.**—The judicial tribunals of Louisiana may arrest a felon from Alabama without the demand or order of the governor of either state. Morrell v. Quarles (1860) 35 Ala. 544.

The law of California authorizing the arrest of a fugitive from justice who has fled from another state, before a demand for his surrender by the executive authority of the state from which he fled, and his detention for a reasonable time to afford an opportunity for such executive demand, is not in conflict with Const. art. 4, § 2. Ex parte Cubreth (1875) 49 Cal. 436.

A person charged with committing a felony in one state may be detained in another, on the principle of comity, to afford the former an opportunity to demand the accused. State v. Howell (Ga. 1821) R. M. Charlt. 120.

A fugitive from justice, from another state, arrested in Georgia, may, on sufficient evidence of guilt, be detained in custody for a reasonable time, in order to give the foreign executive an opportunity to make a regular demand for his delivery, under the constitution of the United States. State v. Loper (1842) Ga. Dec. 33, pt. 2.

A fugitive from justice from either of the United States, may, under the provisions of the constitution of the United States, be arrested and detained in New Jersey, in order to his surrender, before a requisition is actually made on the executive for his surrender. In re Fetter (1852) 23 N. J. Law (3 Zab.) 311, 57 Am. Dec. 382.

A fugitive from justice from another state, arrested in Ohio under a warrant, may be detained for a reasonable time, till the requisition of the executive can be made. Rea v. Smith (Ohio, 1856) 2 Handy, 193.

48. —— **Rearrest.**—Upon a requisition from the governor of another state for the surrender of a fugitive from justice, the governor issued a warrant for his arrest to an agent of that state, and a similar warrant to a sheriff and his deputies. Held, that an arrest by the deputy sheriff under the second warrant, and a discharge of the alleged fugitive on bail on a writ of habeas corpus, did not prevent an arrest by the agent of the other state under the first warrant. Commonwealth v. Hall (1857) 75 Mass. (9 Gray) 262, 69 Am. Dec. 285.

Where a fugitive from justice has been delivered up by the governor, allowed bail, forfeited his bond, and again become a fugitive, the governor may order a second arrest and delivery. In re Hughes (1867) 61 N. C. (Phil.) 57.

49. **Bail—Right of bail.**—Fugitives from justice returned to the county wherein the offense was committed under Act Ind. May 27, 1852, may be let to bail until an examination be had. State v. Elder (1871) 35 Ind. 368.

A person arrested in Iowa, charged with the crime of murder, committed in another state, is, upon an adjournment of the examination, entitled to bail for his appearance before the magistrate upon the date to which the final adjournment was made. State v. Hufford (1867) 23 Iowa, 579.

Code Miss. 1892, § 1470 et seq., authorizes conservators of the peace to admit an alleged fugitive from justice from another state to bail pending demand by requisition for his delivery to the authorities of the other state. Section 2162 requires the governor, on demand made by the executive authority of another state, to deliver up a fugitive from justice from that state. Section 2227 excludes from the benefit of the writ of habeas corpus any person charged with an offense committed in another state, and who ought to be delivered up to the executive power of that state. Held, that where a fugitive from justice has been delivered up by the governor pursuant to section 2162, and not merely held for requisition under section 1470, and the chancellor has refused to discharge him on habeas corpus, thereby determining that he should be delivered up, the judges of the Supreme Court cannot, pending an appeal from the chancellor's decision in the habeas corpus proceedings, admit the fugitive to bail. Ex parte Wall (1904) 38 So. 628, 84 Miss. 783.

Code Miss. 1906, § 2446, denies bail to one charged with an offense in another state, and who should therefore be delivered up to the executive power of the other state; and under this statute it is unimportant whether or not the offense was bailable in the state of its commission.—Ex parte Edwards (Miss. 1907) 44 So. 827.

Where the alleged fugitive appeals, he must, in view of Code Civ. Proc.

N. Y. §§ 2058, 2060, be admitted to bail pending the appeal, where the offense charged is bailable. People v. Baker (1910) 124 N. Y. S. 47, 139 App. Div. 471.

Bail may be granted pending final hearing in habeas corpus; but, where the prisoner is held for extradition, bail should not be allowed, if the federal law has been complied with, though, if not, he may be released absolutely or on bail. Ex parte Massee (1913) 79 S. E. 97, 95 S. C. 315, 46 L. R. A. (N. S.) 781.

That the prisoner held for extradition for a crime was guilty of no moral wrong, the prosecution was a hardship and instituted to collect a debt, and another state had refused extradition, did not show the statutes had not been complied with, and, the extradition papers being regular on their face, the court erred in allowing bail pending hearing in habeas corpus. Id.

The right of bail guaranteed by the bill of rights does not obtain in extradition cases originating under the provision of the United States constitution requiring rendition of fugitives from justice. Ex parte Erwin (1879) 7 Tex. App. 288.

A fugitive from justice, under arrest for an offense against the law of the state of asylum, and for extradition under an executive warrant, is not entitled to bail pending the determination of the offense, even though such offense is bailable. Ex parte Hobbs (1893) 32 Tex. Cr. R. 312, 22 S. W. 1035, 40 Am. St. Rep. 782.

50. —— **Forfeiture.**—Where the fugitive fails to appear after being admitted to bail to appear before the magistrate on a date to which a final adjournment has been made, the recognizance may be declared forfeited. State v. Hufford (1867) 23 Iowa, 579.

If, pending final hearing in habeas corpus proceedings, the prisoner is released on bail, and he fails to appear, his bail will be forfeited, and the inquiry into the legality of the arrest be deemed abandoned, unless he can give a legal excuse, the acceptance of which is in the discretion of the court. Ex parte Massee (1913) 79 S. E. 97, 95 S. C. 315, 46 L. R. A. (N. S.) 781.

51. —— **Liability and discharge of surety.**—Where a person arrested by the order of the state court on information for a crime is released on bail and recognizance, and is suffered by his bail to go into another state, and while there, after the forfeiture of the recognizance, is delivered up on the requisition of the governor of a third state for a crime committed therein, and is tried, convicted, and imprisoned in such third state, the bail is not discharged from liability on the recognizance in a suit by the state where the person was first arrested. Taylor v. Taintor (1872) 83 U. S. (16 Wall.) 366, 21 L. Ed. 287, affirming Taintor v. Taylor (1869) 36 Conn. 242.

Under a bail bond for the release of a person committed to await requisition proceedings from a foreign state, and to enable an arrest on the executive warrant to be made thereon, the liability of the surety extends to the production of the defendant in execution of any warrant issued by the governor of New York within the time for which the preliminary detention was ordered, on requisition from the governor of the state at whose instance the preliminary arrest was made. People v. Curphey (1911) 132 N. Y. S. 666, 73 Misc. Rep. 200.

Where persons indicted in Pennsylvania for obstructing justice and for contempt of court were arrested in New York, and after having been committed under the New York statutes, which provide for the preliminary arrest and detention of alleged fugitives from justice, were admitted to bail on an undertaking given by each, conditioned to appear in person before a justice of the court of general sessions at any time within 30 days, and at all times render himself amenable to the process of the court and render himself in execution of any warrant which might be issued by the governor of New York, and the governor subsequently refused to honor the requisition of the governor of Pennsylvania, but at the same time honored a later requisition founded on a subsequent information for offenses based on the same transaction, and issued his warrant for the arrest and surrender of the defendants, but they did not appear, the sureties were not discharged by the refusal to honor the first requisition. Id.

Where a person on bail is surrendered to the authorities of another state on demand of the governor, such act discharges the bail from his recognizance. State v. Allen (1840) 21 Tenn. (2 Humph.) 258.

52. —— **Insane person.**—Where an alleged insane person escaped from the hospital into another state, and extradition proceedings were instituted to return him, in which he applied for bail, the court had authority to appoint an expert commission to ascertain his mental condition and determine whether his enlargement would probably be dangerous to the public peace. Ex parte Thaw (D. C. 1913) 209 Fed. 954.

53. —— **Action on bail bond.**—In an action upon a recognizance given by one arrested for a crime committed in another state, the petition need not allege the particular facts which show that the magistrate had authority to take the bail. State v. Hufford (1868) 23 Iowa, 579.

54. **Agent appointed to receive fugitive.**—One authorized by the governor of another state to demand, under a

requisition, the arrest and extradition of a fugitive from justice, is not an officer or agent of the federal government, but only an agent of the state issuing the requisition. Robb v. Connolly (1884) 4 Sup. Ct. 544, 549, 111 U. S. 624, 28 L. Ed. 542; In re Mohr (1883) 73 Ala. 503, 49 Am. Rep. 63.

When a fugitive from justice is surrendered by the executive of a state upon the requisition of the executive of another state, it is the duty of the agent appointed to receive such fugitive to bring him before the governor who issued the requisition; and, if he does this without unreasonable delay, he is not liable to an action for false imprisonment. Pettus v. State (1871) 42 Ga. 358.

A precept from the governor of a state, appointing an agent to receive a fugitive from justice, reciting that he had made a requisition, agreeably to the constitution and laws of the United States, upon the governor of the state into which the fugitive was alleged to have escaped, is prima facie evidence, for the protection of the agent, of the truth of the recitals. Commonwealth v. Hall (1857) 75 Mass. (9 Gray) 262, 69 Am. Dec. 285.

If the agent appointed by a foreign state to receive and receipt for a fugitive from justice declines to demand such fugitive, and withdraws the requisition for his delivery, such acts must be presumed to have been done by the agent according to the instructions of his principal. In re Troutman (1854) 24 N. J. Law (4 Zab.) 634.

55. State and federal courts—Jurisdiction.—A person held in actual custody by a state for trial in one of its courts under an indictment for a crime against its laws will not be released on habeas corpus by a federal circuit court because the methods by which his personal presence in the state was secured may have violated the provisions of Const. art. 4, § 2, or this section. Pettibone v. Nichols (1906) 27 Sup. Ct. 111, 114, 203 U. S. 192, 51 L. Ed. 148, 7 Ann. Cas. 1047; Moyer v. Same (1906) 27 Sup. Ct. 121, 203 U. S. 221, 51 L. Ed. 160.

A federal court will not on habeas corpus discharge one held for interstate extradition under a charge of crime, where the extradition papers show that no right secured to the prisoner by the constitution or laws of the United States has been violated. Ex parte Dawson (1897) 83 Fed. 306, 28 C. C. A. 354.

The power of the federal courts to interfere in interstate extradition proceedings should only be exercised in cases of urgency, where the error is plain, and the necessity for federal intervention obvious. In re Strauss (1903) 126 Fed. 327, 63 C. C. A. 99.

As a requisition for a fugitive from justice rests altogether on the constitution and laws of the United States, a question as to the validity of the arrest and imprisonment of the accused on the charge of a different offense than that for which he was extradited is within the provisions of Rev. St. § 753, ante, § 1281, giving federal courts jurisdiction to issue writs of habeas corpus. In re Fitton (C. C. 1891) 45 Fed. 471.

A person arrested under a warrant of extradition from one state of the Union to another "is in custody under or by color of the authority of the United States," and the national courts have jurisdiction to inquire by habeas corpus into and determine the legality of the same. In re Doo Woon (D. C. 1883) 18 Fed. 898.

The federal and state courts have concurrent jurisdiction in cases of extradition. The judgments of the latter do not conclude the former on this federal question, but are entitled to great respect, and are strongly advisory. In re Roberts (D. C. 1885) 24 Fed. 132, judgment affirmed Roberts v. Reilly (1885) 6 Sup. Ct. 291, 116 U. S. 80, 29 L. Ed. 544; Ex parte Brown (D. C. 1886) 28 Fed. 653.

The imprisonment of one committed for trial on a criminal charge, under state process which is regular and valid in itself, is not rendered illegal, so as to justify his release on habeas corpus by a federal court, by the fact that the prisoner was brought back from another state as a fugitive from justice, by means of extradition warrants procured by false affidavits. In re Moore (D. C. 1896) 75 Fed. 821, applying Ker v. People v. State of Illinois (1886) 7 Sup. Ct. 225, 119 U. S. 436, 30 L. Ed. 421; Mahon v. Justice (1888) 8 Sup. Ct. 1204, 127 U. S. 700, 32 L. Ed. 283; and Cook v. Hart (1892) 13 Sup. Ct. 40, 146 U. S. 183, 36 L. Ed. 934.

A federal court has power to entertain a habeas corpus proceeding for the release of a person arrested under state process for extradition to another state, where it is alleged that he is restrained of his liberty in violation of the constitution and laws of the United States, and may proceed to a speedy and summary hearing without regard to the extradition proceedings; but it may in its discretion delay the hearing to await the action of the state executive. Ex parte Thaw (D. C. 1913) 209 Fed. 56.

Upon the federal courts is imposed the duty of seeing that the power of interstate extradition, having its source in the federal constitution, is exercised upon due and appropriate process, and that it shall not be extended to fields, and exercised in classes of cases, not clearly intended by the constitution. Ex parte Thaw (D. C. 1914) 214 Fed. 423, order reversed Drew v. Thaw (1914) 35 Sup. Ct. 137.

Where a person sought to be extradicted has been arrested under a warrant issued by the governor pursuant

to the requisition made on him, and has been placed in the custody of the agent of the state demanding the extradition, the state courts have jurisdiction, by writ of habeas corpus, to inquire in and determine the legality of the arrest and detention. In re Mohr (1883) 73 Ala. 503, 49 Am. Rep. 63, 3 Cr. Law Mag. 539.

An arrest by the agent of the governor of one state, who has required the governor of another state to surrender to him a fugitive from justice, is not an arrest by the federal government, and the state courts may inquire by habeas corpus into the validity of the arrest. Id.

The acts of the chief executive of the state in which accused was found in issuing an executive warrant for his extradition, and of the executive and ministerial officers acting in aid of his warrant, is a matter for the consideration of the courts of his state, subject to the reviewing authority of the federal courts in so far as any federal question is involved. Ex parte Moyer (1906) 85 P. 897, 12 Idaho, 250, 118 Am. St. Rep. 214; Ex parte Pettibone, 85 P. 902, 12 Idaho, 264; Ex parte Haywood, Id.

56. —— **Federal question.**—In interstate extradition the prisoner is only held under the extradition process until such time as he reaches the jurisdiction of the demanding state, and is thenceforth held under the process of the courts of that state, so that no federal question is longer involved in his detention. Ex parte Moyer (1906) 85 P. 897, 12 Idaho, 250, 118 Am. St. Rep. 214; Ex parte Pettibone, 85 P. 902, 12 Idaho, 264; Ex parte Haywood, Id.

57. **State laws.**—The courts of a state from which a fugitive from justice is demanded on extradition do not deny to such person any rights secured to him by the constitution and laws of the United States by refusing to pass on the constitutionality of the statute of the demanding state under which the indictment against such person is sufficient. Pearce v. Texas (1894) 15 Sup. Ct. 116, 117, 155 U. S. 311, 39 L. Ed. 164.

The legislature may prescribe whatever conditions it sees fit to the mode in which preliminary arrest and examination of a fugitive from justice from another state shall be conducted. Ex parte Rosenblat (1876) 51 Cal. 285.

Under Rev. St. La. §§ 1040, 1041, held that the governor may direct the arrest of one charged with crime in a sister state, without any proceedings in the local courts. State ex rel. Burnett v. Flournoy (1915) 67 So. 929, 136 La. 852.

The provisions of Rev. St. Mass. c. 142, § 7, authorizing the governor alone to issue his warrant for the apprehension of a fugitive from justice, are not repugnant to this act. Commonwealth v. Hall (1857) 75 Mass. (9 Gray) 262, 69 Am. Dec. 285.

Under this section the governor has authority to order a fugitive from justice from another state to be arrested and delivered up, without any state law conferring such power. In re Briscoe (N. Y. 1876) 51 How. Prac. 422.

A state may provide by statute for the surrender upon requisition of persons indictable for crime in another state, although they are not fugitives from justice. State v. Hall (1894) 115 N. C. 811, 20 S. E. 729, 44 Am. St. Rep. 501, 28 L. R. A. 289.

Act 1875 (75 Ohio Laws, p. 79), relating to fugitives from justice, is valid in so far as it is in aid of the provision of the United States constitution and the act of congress on the same subject. Ex parte Ammons (1878) 34 Ohio St. 518.

The statute of the state is merely in aid of interstate extradition proceedings and not inconsistent with the federal statute. Commonwealth v. Hare (1908) 36 Pa. Super. Ct. 125.

The extradition of fugitives from the justice of a state is provided for by Const. art. 4, § 2, and by federal statutes enacted in furtherance of the provision, and a state statute in aid thereof need not be complied with; and where a fugitive was arrested by an officer on information furnished him from the sister state, and on hearing the governor issued his warrant, the fugitive could not complain that he was not arrested in accordance with White's Ann. Code Cr. Proc. Tex. art. 1051 et seq., providing for the arrest of a person charged in another state with crime. Ex parte Bergman (Tex. Cr. App. 1910) 130 S. W. 174.

The laws of Texas (Vernon's Ann. Code Cr. Proc. art. 1088) touching the return of criminals to other states are governed by the federal act touching the matter. Ex parte Goodman (Tex. Cr. App. 1916) 182 S. W. 1120.

58. **Costs and expenses.**—The objection that an extradition requisition contains a clause that the demanding state will not be responsible for any expense attending the arrest and delivery of the alleged fugitive is not available to the accused on habeas corpus to inquire into the legality of the extradition proceedings, but is a matter for the consideration of the executive of the surrendering state when he receives the official demand for the surrender of the alleged fugitive criminal. Marbles v. Creecy (1909) 30 Sup. Ct. 32, 33, 215 U. S. 63, 54 L. Ed. 92.

59. —— **Under state laws.**—See Kroutinger v. Board of Examiners (1902) 69 P. 279, 8 Idaho, 463; Moon v. Board of Com'rs of Butler County (1883) 2 P. 818, 30 Kan. 458; Rucker v. Board of Com'rs (1898) 54 P. 141, 7 Kan. App. 470; Booker v. Stevenson (1871) 71 Ky. (8 Bush) 39; Wilson v.

Bradley (1898) 48 S. W. 166, 105 Ky. 52, 20 Ky. Law Rep. 1118 (judgment reaffirmed [1899] 48 S. W. 1088, 105 Ky. 52, 20 Ky. Law Rep. 1118); State ex rel. See v. Allen (1904) 79 S. W. 164, 180 Mo. 27; Andrus v. Warren County (1859) 32 Pa. (8 Casey) 540; Steckman v. Bedford County (1877) 84 Pa. 317; Douthett v. Lawrence County (Com. Pl. 1895) 16 Pa. Co. Ct. R. 406, 4 Pa. Dist. R. 608.

60. **Habeas corpus—Right to remedy.**—In extradition proceedings, the governor determines in the first instance whether the demand is in compliance with the law, and whether the person whose return is sought is a fugitive from justice; but his decision is subject to review by habeas corpus. Barriere v. State (1905) 39 So. 55, 142 Ala. 72; Ex parte Owen (Okl. Cr. App. 1913) 136 P. 197. Though the issuance of the warrant makes a prima facie case in favor of the right of extradition. Ex parte Walters (Miss. 1914) 64 So. 2.

61. —— **Jurisdiction.**—The court of common pleas has jurisdiction on habeas corpus to review the action of the governor in granting a warrant of arrest on the requisition of the governor of another state. Commonwealth v. Trach (1887) 3 Pa. Co. Ct. R. 65.

62. —— **Scope of inquiry.**—In habeas corpus proceedings the court may determine whether the person demanded is a fugitive from justice. Ex parte Mohr (1883) 73 Ala. 503, 49 Am. Rep. 63, 3 Cr. Law Mag. 539, 18 Cent. Law J. 252; Law v. State (Ala. App. 1911) 56 So. 79; Hartman v. Aveline (1878) 63 Ind. 344, 30 Am. Rep. 217; Ex parte Knowles (1894) 16 Ky. Law Rep. 263; Commonwealth v. Superintendent of Philadelphia County Prison (1908) 69 A. 916, 220 Pa. 401; Ryan v. Rogers (Wyo. 1913) 132 P. 95. Whether the papers on which the warrant is based are sufficient. In re Waterman (Nev. 1907) 89 P. 291; People v. Conlin (Sup. 1895) 15 Misc. Rep. 303, 36 N. Y. Supp. 888. And whether the purported warrant was in fact issued by the governor. In re Tod (1900) 81 N. W. 637, 12 S. D. 386, 47 L. R. A. 566, 76 Am. St. Rep. 616. And may go behind such executive warrant and review the grounds on which the governor issued the same. Ex parte Cheatham (1906) 95 S. W. 1077, 50 Tex. Cr. R. 51. The guilt of the prisoner cannot be inquired into. In re White (1896) 55 Fed. 54, 5 C. C. A. 29; Bruce v. Rayner (1903) 124 Fed. 481, 62 C. C. A. 501; In re Roberts (D. C. 1885) 24 Fed. 132 (judgment affirmed Roberts v. Reilly [1885] 6 Sup. Ct. 291, 116 U. S. 80, 29 L. Ed. 544); Singleton v. State (1906) 42 So. 23, 144 Ala. 104; Compton v. State (Ala. 1907) 44 So. 685; Blackwell v. Jennings (1907) 57 S. E. 484, 128 Ga. 264; Robinson v. Flanders (1867) 29 Ind. 10; Worth v. Wheatley (Ind. 1915) 108 N. E. 958; Harris v. Magee (Iowa, 1911) 129 N. W. 742; In re Palmer (1904) 100 N. W. 996, 11 Detroit Leg. N. 459, 138 Mich. 36; Ex parte Devine (1897) 22 So. 3, 74 Miss. 715; In re Clark (N. Y. 1832) 9 Wend. 212; Commonwealth v. Superintendent of Philadelphia County Prison (1908) 69 A. 916, 220 Pa. 401; Ex parte Denning (Tex. Cr. App. 1907) 100 S. W. 401. Nor can inquiry be made into matters of defense to the indictment found in the foreign jurisdiction, or into the motive and purpose of the extradition proceeding. In re Bloch (D. C. 1898) 87 Fed. 981; Depoilly v. Palmer (1906) 28 App. D. C. 324; Barranger v. Baum (1898) 30 S. E. 524, 103 Ga. 465, 68 Am. St. Rep. 113; Worth v. Wheatley (Ind. 1915) 108 N. E. 958; In re Sultan (1894) 115 N. C. 57, 20 S. E. 375, 44 Am. St. Rep. 433, 28 L. R. A. 294; Commonwealth v. Superintendent of Philadelphia County Prison (1908) 69 A. 916, 220 Pa. 401. Nor will the court inquire into the merits or sufficiency of alibi testimony. Edmunds v. Griffin (Iowa, 1916) 156 N. W. 353; Ex parte Edwards (Miss. 1907) 44 So. 827; Ex parte Larney (1881) 4 Ohio N. P. 304. Nor, where the indictment accompanying a requisition shows that an offense has been committed against the laws of the demanding state, will the court consider its sufficiency as a pleading for the purposes of trial. Reed v. U. S. (1915) 224 Fed. 378, 140 C. C. A. 64; Worth v. Wheatley (Ind. 1915) 108 N. E. 958; In re Davis (1877) 122 Mass. 324; State v. O'Connor (1888) 38 Minn. 243, 36 N. W. 462; In re Voorhees (1867) 32 N. J. Law (3 Vroom) 141; Katyuga v. Cosgrove (1901) 50 A. 679, 67 N. J. Law, 213; People v. Police Com'r of City of New York (1905) 91 N. Y. S. 760, 100 App. Div. 483; In re Renshaw (1904) 99 N. W. 83, 18 S. D. 32, 112 Am. St. Rep. 778; Pearce v. State (1893) 32 Tex. Cr. R. 301, 23 S. W. 15. But see Armstrong v. Van De Vanter (1899) 59 P. 510, 21 Wash. 682, holding that it is the duty of the court to determine whether the indictment on which the requisition was based sufficiently charges a crime against the laws of the foreign state.

The only inquiry of fact is as to the identity of the prisoner. People v. Conlin (Sup. 1895) 15 Misc. Rep. 303, 36 N. Y. Supp. 888; Commonwealth v. McCandlass (1878) 7 Pa. Co. Ct. R. 51. And whether he is as a matter of fact a fugitive from justice of the state demanding his return. People v. Warden of City Prison (1885) 3 N. Y. Cr. R. 370. The writ can only reach error in the proceedings which is fatal to the jurisdiction of the officer entertaining them, over the person of the accused or the subject-matter of the accusation. Sternaman v. Peck (1897) 80 Fed. 883, 26 C. C. A. 214, affirming order Ex

parte Sternaman (D. C. 1896) 77 Fed. 595.

Where the affidavit charging an alleged fugitive with crime was regarded as sufficient by the governors of the respective states, the judiciary should not interfere on habeas corpus and discharge the fugitive on technical grounds, and unless it is clear that what was done was in plain contravention of law. Compton v. Alabama (1909) 29 Sup. Ct. 605, 607, 214 U. S. 1, 53 L. Ed. 885, 16 Ann. Cas. 1098. Nor could a fugitive from the justice of one state, kidnapped in another state and brought back for trial, avail himself of the writ of habeas corpus to procure his discharge. Ex parte Davis (Tex. Cr. App. 1907) 103 S. W. 891.

Although the courts have power, on habeas corpus, to review the decisions of the executive authority in extradition proceedings, they will not overrule such decisions unless they are clearly satisfied that an error has been committed. Ex parte Brown (D. C. 1886) 28 Fed. 653.

The fugitive from justice cannot, on habeas corpus, impeach the validity of the affidavit upon which the requisition was founded, if it distinctly charge the commission of a crime. Kurtz v. State (1886) 22 Fla. 36, 1 Am. St. Rep. 173. Nor can the court where the fugitive is taken inquire whether the affidavit is a forgery. In re Manchester (1855) 5 Cal. 237. The right to extradite does not depend on guilt, but on flight from charge of guilt. Ex parte Larney (1882) 8 Ohio Dec. 348, 7 Wkly. Law Bul. 149.

Whether crime charged against a fugitive from justice is barred by statutes of demanding state will not be determined by the court on habeas corpus for his discharge. Reed v. U. S. (1915) 224 Fed. 378, 140 C. C. A. 64.

The court, on habeas corpus for the discharge of a fugitive, arrested under this section, need not consider an affidavit attached to the requisition, the sufficiency of which is questioned because of the absence of a showing of the office held by the person by whom the affidavit was made. Law v. State (Ala. App. 1911) 56 So. 79.

Where a party, escaped from another state, is arrested as a fugitive from justice, the judiciary, by a writ of habeas corpus, have jurisdiction to examine into the case; and though the courts possess no power to control the executive discretion, and compel a surrender, yet, the executive having once acted, that discretion may be examined into, in every case where the liberty of the subject is involved. In re Manchester (1855) 5 Cal. 237.

Where one arrested for a crime in another state is brought into court on habeas corpus, the determination must be on the facts in the return shown to have existed at the time of the service of the writ; and a subsequent valid warrant from the governor, issued on the requisition coming into the hands of the person detaining the prisoner, and made a part of the return, cannot be considered. In re Knowlton (Colo. 1883) 5 Cr. Law Mag. 250.

Where, in an extradition proceeding, the accused admits that he was in Maryland frequently during the summer, and again shortly before June 2, 1902, the date on which he was charged in the indictment there with keeping a gaming table and house for gambling, and that he had leased the premises in question, without stating when, but had previously sublet them to the barkeeper of his saloon in this District, who was in control on June 2, 1902, and in whose name the license to sell liquor stood on that date, the question is raised, which is one for the determination of the proper trial court of Maryland, whether the substitution of the barkeeper as lessee of the premises, and with sole responsibility for the uses to which they might be applied, was an act of good faith, or collusion merely. Hayes v. Palmer (1903) 21 App. D. C. 450.

In a judicial inquiry as to what are the laws of a state seeking to extradite the petitioner, the courts are not restricted to the rigid rule of considering only such testimony as has been formally tendered in evidence, but may seek the best sources of information at their command to ascertain the laws of the demanding state on the subject. Barranger v. Baum (1898) 30 S. E. 524, 103 Ga. 465, 68 Am. St. Rep. 113.

The warrant of the chief executive of the state surrendering an accused person, whether issued lawfully or unlawfully, is functus officio as soon as accused is delivered into the demanding state, and the regularity of its issuance thereupon ceases to be a question for judicial inquiry on application by the prisoner for his discharge, where he is at the time held under legal process issued out of a court of competent criminal jurisdiction of the demanding state. Ex parte Moyer (1906) 85 P. 897, 12 Idaho, 250, 118 Am. St. Rep. 214; Ex parte Pettibone (Sup. 1906) 85 P. 902, 12 Idaho, 264; Ex parte Haywood, Id.

On habeas corpus to secure the discharge from arrest of one held under extradition from another state, the question whether the complaint or indictment which is attached to the warrant charges a crime under the laws of the latter state will not be considered, where evidence of such laws is not before the court. Tullis v. Fleming (1879) 69 Ind. 15.

In a proceeding in habeas corpus on behalf of an alleged fugitive from justice, if it appears that the warrant for his surrender has been revoked, he must be discharged, and the grounds of such revocation cannot be inquired into. State v. Toole (1879) 72 N. W. 53, 69 Minn. 104, 38 L. R. A. 224, 65 Am. St. Rep. 553.

Under habeas corpus review in the

supreme court under Gen. Laws Minn. 1895, c. 327, to inquire into the validity of the arrest and custody of a fugitive from the justice of a foreign state, detained on an extradition warrant, the court will not extend its inquisition beyond the rendition warrant to ascertain whether the prisoner had been previously unlawfully arrested or was in unlawful custody when the warrant was served on him. State v. Justus (1901) 87 N. W. 770, 84 Minn. 237, 55 L. R. A. 325.

On the review of proceedings in habeas corpus for the discharge of one sought to be extradited, the court will not consider the evidence taken at the preliminary hearing, and accompanying the requisition, to ascertain whether it sustains the charge, and shows probable cause to believe the person guilty. In re Van Sciever (1894) 42 Neb. 772, 60 N. W. 1037, 47 Am. St. Rep. 730.

In hearing an application for habeas corpus seeking the petitioner's release from the custody of an agent of another state requisitioning the petitioner as a criminal, the court will go behind the executive warrant and inquire into the sufficiency of the requisition papers. Ex parte Overfield (Nev. 1915) 152 P. 568.

Where the papers on which a warrant of arrest was issued in extradition proceedings are not set out, the court on habeas corpus will consider the warrant alone in determining its validity. In re Scrofford (1891) 59 Hun, 320, 12 N. Y. Supp. 943.

In a habeas corpus proceeding the judiciary may review and control the action of the executive on points of law, but not as to any matter within his discretion. In re Hughes (1867) 61 N. C. (Phil.) 57.

While the accused may offer testimony to show that in fact he was never in, and is not a fugitive from, the state from which the requisition comes, yet, in the absence of such testimony, there can be no inquiry as to whether the evidence as to that matter presented to the governor who issued the requisition ought to have been satisfactory to him. Jackson v. Archibald (1896) 5 O. C. D. 533, 12 Ohio Cir. Ct. R. 155.

A judge having jurisdiction to issue the writ of habeas corpus cannot issue it at his own will, and thereby review with new testimony the decision of the judge before whom a warrant in an extradition proceeding is returned, and the parties therein named held in custody for the agents of the state from which they are fugitives from justice. Milford v. Perry (1899) 9 O. C. D. 492, 18 Ohio Cir. Ct. R. 76.

The legality of the revocation of a parol of a convict in Indiana is for the courts of that state. Ex parte Williams (Okl. Cr. App. 1913) 136 P. 597.

63. —— **Notice and hearing.**—When it is made substantially to appear on what showing the governor acted, it is a question of law whether accused has been substantially charged with a crime against the demanding state. Ex parte Willard (Neb. 1913) 140 N. W. 170.

Where it appears that the prisoner is detained on a warrant committing him for examination as an alleged fugitive from justice from another state, the fact that his examination is not closed is no reason for the officer issuing the writ to omit to inquire into the legality of his detention. In re Heyward (1848) 3 N. Y. Super. Ct. (1 Sandf.) 701.

Upon habeas corpus issued from a United States court on behalf of a prisoner held in this state for extradition to another state upon the governor's warrant, notice of the proceedings need not be given to the attorney general of the state. In re Leary (N. Y. 1879) 6 Abb. N. C. 43.

64. —— **Continuance.**—On the return day of a writ of habeas corpus a motion to postpone the hearing was made, upon the ground that counsel for the petitioner was not physically able to try the case. It appeared that counsel was sick at the time he was employed. There were other counsel associated with him who were present. The judge asked counsel if there was any attack on the requisition papers, which required time for preparation. Counsel replied to this inquiry that "he did not wish to give his case away, but expected to attack the proceeding from the foundation." Held, that a refusal to postpone the hearing did not constitute such an abuse of discretion as would authorize a reversal. Blackwell v. Jennings (1907) 57 S. E. 484, 128 Ga. 264.

65. —— **Pleading.**—A petition for a writ of habeas corpus in proceedings to extradite one charged with being a fugitive from the justice of a foreign country, where it is admitted that the commitment was founded upon evidence, to be entitled to consideration must show either (1) all the evidence which was accepted by the commissioner as material, or (2) allegations of fact respecting such evidence which clearly overcome the presumption that legal evidence was heard in support of the commitment; and, in case of allegations of the latter class, mere general conclusions on the part of the pleader of the legal effect of the evidence are insufficient. In re Count De Toulouse Lautrec (1900) 102 Fed. 878, 43 C. C. A. 42. But defendant is entitled to show on habeas corpus that he was illegally restrained of his liberty, and that the process under which he is detained is void, specifications of his petition alleging that the court issuing the warrant against him was without jurisdiction to do so, that the process is void in matters of substance, that it was issued in a case and under circumstances not allowed by law, and was not authorized by any judgment, order, decree, or any provision of law,

are not demurrable. Barriere v. State (1905) 39 So. 55, 142 Ala. 72. The question whether the applicant for the writ is the person named in the warrant cannot be considered where there is no allegation in the pleadings that he is not such person. Gillis v. Leekley (1905) 80 P. 300, 38 Wash. 156. The question of his identity cannot be raised by demurrer to the return. In re Bloch (D. C. 1898) 87 Fed. 981.

An averment in the reply of a prisoner in custody under an extradition warrant that no legal hearing or other judicial proceeding was had to ascertain whether he was a fugitive, was insufficient on demurrer without a statement of the facts which rendered the hearing not legal. Farrell v. Hawley (1905) 61 A. 502, 78 Conn. 150, 112 Am. St. Rep. 98. Neither was an averment that the prisoner was not present in the demanding state when the crime was alleged to have been committed of any avail, where it is admitted that the Governor had probable cause for believing that he was present. Id.

66. —— **Return and traverse.**—A return to a writ of habeas corpus, setting forth the warrant of the governor of this state for the arrest of a fugitive from the justice of another state, which contains recitals of facts necessary to confer authority under the constitution and laws of the United States to issue it, is sufficient, without producing the papers or evidence on which the governor acted. Ex parte Willard (Neb. 1913) 140 N. W. 170; People v. Pinkerton (1879) 77 N. Y. 245. To show prima facie that all necessary prerequisites had been complied with prior to issue of the warrant. Singleton v. State (1906) 42 So. 23, 144 Ala. 104; Campbell v. State (Ala. 1910) 52 So. 399.

Where an executive warrant for the surrender of the fugitive from justice is called in question upon habeas corpus, the existence of the jurisdictional facts required by the act of congress must appear upon the return of the writ, either by the recitals in the warrant, or by the records upon which the same is issued. State v. Richardson (1885) 34 Minn. 115, 24 N. W. 354.

A judgment annexed to the return to a writ of habeas corpus, reciting that the fugitive stands charged by complaint with the crime therein set forth, is insufficient, unless a copy of the complaint is also produced, showing that it has all the essentials of the required affidavit. Id.

A prisoner held under extradition proceedings cannot, on habeas corpus, except to the return of the officer on the ground that the warrant shows no affidavit or indictment charging him with a crime in the state from which he fled, the presumption being that all the necessary legal steps were complied with. Ex parte Devine (1897) 22 So. 3, 74 Miss. 715.

Under Code Miss. 1892, § 2162, which provides, in cases of extradition, that the demand of the executive of the state where the crime is charged shall be accompanied by a copy of the affidavit or indictment, certified as authentic by such executive, the prisoner may, on habeas corpus, traverse the return of the officer, and show that at the time of issuing the warrant the governor had received no copy of an affidavit or indictment certified as required. Id.

67. —— **Evidence.**—Where petitioner in habeas corpus is detained under requisition proceedings, the sheriff, by showing a warrant from the governor of the state, as well as the requisition papers from the governor of the other state, each reciting the jurisdictional facts, and that petitioner was charged with a crime, makes out a prima facie case of lawful detention which can be overcome only by proof by petitioner that he was not a fugitive, or that the process was void; and the sheriff need not prove a law of the other state covering the crime charged. Barriere v. State (1905) 39 So. 55, 142 Ala. 72; State v. Currie (Ala. 1911) 56 So. 735.

On an application for a writ of habeas corpus for the discharge of petitioner from the custody of an officer holding him under a warrant issued by the governor of the state on a requisition from the governor of Tennessee, the petitioner testified that he was not the person mentioned in the requisition and extradition papers under which he was restrained by an officer from Tennessee, and that he had not been in Tennessee since 1903. He did not otherwise deny the charge for which he was being extradited. The officer from Tennessee testified to the identity of the petitioner and that he had been seen in Tennessee in 1905. Held, that the court did not err in refusing to discharge petitioner. Harris v. State (1906) 41 So. 416, 148 Ala. 659.

A prima facie case against petitioner's right to discharge from custody on a writ of habeas corpus held made out. Shreve v. State (1912) 59 So. 223, 4 Ala. App. 216.

The presumption arising from the identity of the name of the defendant in extradition proceedings with the name in the warrant and requisition papers is sufficient prima facie evidence of his identity, in the absence of any claim by him either in his petition for a writ of habeas corpus or in his traverse of the return thereto, that he was not the person named in the warrant. State v. Bates (1907) 112 N. W. 260, 101 Minn. 303.

Upon a petition for discharge from arrest on a warrant of extradition, evidence as to petitioner's identity with

the person wanted in another state held to preponderate in favor of petitioner, and to require his discharge. Ex parte Spencer (Nev. 1911) 117 P. 1.

In habeas corpus proceedings by one arrested on extradition warrant, evidence examined and held insufficient to justify relator's discharge. State v. Schlachter (S. D. 1907) 111 N. W. 566.

Where he sets out his true name and denies that he is the person named in such proceedings as "H., alias S.," the mere return of the officer that he "arrested the above-named relator designated in said warrant as H., alias S.," is insufficient evidence of relator's identity of the person charged with the crime. Barnes v. Nelson (S. D. 1909) 121 N. W. 89.

Testimony of a person sought to be extradited, who was indicted in Prince George county, Maryland, for keeping "a gaming table for gambling" and with keeping and managing "a house for gambling" on June 2, 1902, that he was not in Maryland on that date, but that he had been there shortly before and frequently during that summer, is insufficient to meet the prima facie case of the state; but he should show with precision of statement the date of his departure from Maryland, in which event it would devolve on the state to show that he was a fugitive from justice by producing evidence that he was in the state at the time charged in the indictment, or prove that the date had been erroneously charged and could be carried back to the necessary time. Hayes v. Palmer (1903) 21 App. D. C. 450.

In habeas corpus proceedings for the discharge of a person held under an extradition warrant for return to another state to answer to an indictment for bigamy, where, under the statute of such state, a prosecution for bigamy is barred in two years after the date of the offense, unless the accused flees from justice, and the indictment upon which the requisition was based was found more than two years after the date of the offense laid therein, it is competent for the petitioner to show that he remained in such state, without being concealed, for more than two years after the date of the alleged offense, since such evidence does not go to any matter of defense, but tends to prove that petitioner is not a fugitive from justice. Bruce v. Rayner (1903) 124 Fed. 481, 62 C. C. A. 501.

A person arrested as a fugitive from justice on a warrant issued by the governor of Alabama in pursuance of a requisition by the governor of Pennsylvania, based on an indictment found in that state, for false pretenses, may show, on habeas corpus, that he was not in the state of Pennsylvania at the time the offense is alleged to have been committed, and has never been there since; that the goods in question were obtained by purchase from an agent of the prosecutor in the state of New York, to whom the false representations, if any, were made; and that he has never fled from the state of Pennsylvania, and was therefore not a fugitive from justice. In re Mohr (1883) 73 Ala. 503, 49 Am. Rep. 63.

Evidence offered by a party whose extradition is sought in order that he may be tried on an indictment in a state court, in support of his claim that he is not a fugitive from justice, is properly rejected when to the effect that he resided in the demanding state for more than three years after the alleged commission of the offense there. Depoilly v. Palmer (1906) 28 App. D. C. 324.

In a proceeding of habeas corpus for discharge from arrest on a warrant of extradition issued by a governor in compliance with the requisition of the governor of another state, parol evidence is admissible to show that there had been no such actual presence of the accused in the demanding state. Nolze v. Wilcox (Com. Pl. 1878) 4 Ohio Dec. 125, 3 Wkly. Law Bul. 192, affirmed Wilcox v. Nolze (1878) 34 Ohio St. 520.

It was error to admit as evidence in a habeas corpus proceeding an affidavit of a private individual stating that the governor of the demanding state had told him that an extradition requisition bearing his official signature and the great seal of the state had not been signed by him. Ex parte Massee (1913) 79 S. E. 97, 95 S. C. 315, 46 L. R. A. (N. S.) 781.

Telegrams in relation to extradition proceedings between the governors of the two states, indicating withdrawal of the requisitions, which were considered on the preliminary hearing in habeas corpus without objection, were properly considered on the final hearing. Id.

In a habeas corpus proceeding to release a person arrested on an extradition warrant, the admission of certified copies of the requisition and all papers relating thereto, if error, is harmless, where the warrant was sufficient on its face, and the papers offered tended to prove a strict compliance with the law. Ex parte White (1898) 46 S. W. 639, 39 Tex. Cr. R. 497.

Where, on requisition of the governor of a sister state, a person is arrested as a fugitive from justice, it is error on habeas corpus to admit in evidence, as part of the sheriff's return, the affidavit on which the warrant of arrest was based, but to which it was not attached, yet such admission is no ground for the reversal of an order remanding the prisoner. Ex

parte Stanley (1888) 25 Tex. App. 372, 8 S. W. 645, 8 Am. St. Rep. 440.

68. —— **Presumptions.**—In habeas corpus to secure the release of one in custody under an extradition warrant it is presumable that the governor had sufficient ground for believing that the prisoner was present in the demanding state when the crime was alleged to have been committed. Farrell v. Hawley (1905) 61 A. 502, 78 Conn. 150, 112 Am. St. Rep. 98.

In the absence of a showing to the contrary, the court will presume that the governor in issuing his warrant for the arrest of a fugitive from the justice of a sister state acted only on a proper and legal requisition by the governor of the sister state; and recitals in the warrant for the arrest of the fugitive that the demand was accompanied by a copy of the indictment and judgment duly certified as authentic by the governor of the sister state were conclusive on habeas corpus when not disputed, and the mere fact that an instrument signed by the governor of the sister state was insufficient as a demand was not sufficient to contradict the recitals in the absence of a showing that such instrument was the only paper presented by the governor of the sister state to the governor of Texas. Ex parte Bergman (Tex. Cr. App. 1910) 130 S. W. 174.

69. —— **Burden of proof.**—Where the executive warrant issued in extradition proceedings is in due form, the burden is on defendant as relator in habeas corpus proceedings of overcoming the prima facie case thereby established. State v. Schlachter (S. D. 1907) 111 N. W. 566. The burden is on him to substantiate the allegations of his traverse. Tiberg v. Warren (1911) 192 Fed. 458, 112 C. C. A. 596. And prove his contention, if he so contend, that he is not a fugitive. Morrison v. Dwyer (Iowa, 1909) 121 N. W. 1064. And that the process under which he was arrested is void. Compton v. State (1907) 44 So. 685, 152 Ala. 68. And, where he is held in custody under a warrant regular on its face, show why the warrant should not be executed. Blackwell v. Jennings (1907) 57 S. E. 484, 128 Ga. 264. But where he denies that he is the person against whom the warrant is issued, the burden of proving his identity is on the state seeking his extradition. People v. Byrnes (N. Y. 1884) 33 Hun, 98; Barnes v. Nelson (S. D. 1909) 121 N. W. 89.

An indictment from a sister state, duly authenticated by the proper authorities of that state, accompanied by requisition papers in due form, raises the presumption that it conforms to the laws of the said state in charging a crime, and the burden is on the petitioner to show the contrary. Barranger v. Baum (1898) 30 S. E. 524, 103 Ga. 465, 68 Am. St. Rep. 113. The burden is on him to show that the indictment is insufficient by producing, if necessary, the statute under which it was found; and hence the fact that such statute was not submitted with the requisition papers to the governor under whose warranty he was arrested will not warrant the presumption that the law of the sister state is the same as that of the forum, under which the indictment would be insufficient. In re Renshaw (1904) 99 N. W. 83, 18 S. D. 32, 112 Am. St. Rep. 778.

That the prosecution of the offense is barred by the two-year statute of limitations of the demanding state must be alleged and proved to be available, though the warrant made a part of the return to the writ shows that the indictment was not presented within a period of two years from the commission of the offense. Kemper v. Metzger (Ind. 1907) 81 N. E. 663.

Where no attempt was made to show when the crime was committed, or that there was any error as to the date stated in the affidavit on which the demand was founded, relator was simply required to establish the fact that he was not personally present in the demanding state on the date charged. State v. Schlachter (S. D. 1907) 111 N. W. 566.

70. —— **Matters to defeat extradition.**—That the evidence as to whether one sought to be extradited for a crime claimed to have been committed in Louisiana is conflicting as to whether accused was present in that state when the crime was committed is not ground for refusing extradition and discharging accused on habeas corpus. Ex parte Walters (Miss. 1914) 64 So. 2.

It cannot be claimed that accused should not be extradited as a fugitive from justice from Louisiana, because he is held for the same offense in Mississippi, where the proceeding against him in Mississippi was dismissed before the hearing of accused's application for habeas corpus. Id.

Where, on application for relief under habeas corpus, the petitioner shows that he obtained the consent of the complaining witness, such consent did not prevent him from being a fugitive from justice, and from being subject to extradition. Ex parte Galbreath (N. D. 1913) 139 N. W. 1050.

Where a requisition is made by the governor of a sister state upon the governor of this state for the arrest of one claimed as a fugitive from justice, and the prisoner is arrested upon an order by the governor of this state, he can only obtain relief on habeas cor-

pus by showing that the presumption on which the governor acted in ordering the arrest is unfounded in fact. Hibler v. State (1875) 43 Tex. 197.

71. —— **Right to discharge.**—Petitioner will be discharged where it appears that he was delivered up on a requisition based on a false affidavit that he is a fugitive from justice. State of Tennessee v. Jackson (D. C. 1888) 36 Fed. 258, 1 L. R. A. 370. That he was not in fact a fugitive from justice. Poor v. Cudihee (1905) 79 P. 1105, 37 Wash. 609. Nor, as shown by the preponderance of the evidence, in the demanding state when the crime was committed. State v. Davis (Ala. 1908) 47 So. 182; People ex rel. Fuchs v. Police Com'r of City of New York (1914) 146 N. Y. S. 781, 83 Misc. Rep. 643. But see Shreve v. State (1912) 59 So. 223, 4 Ala. App. 216, holding petitioner not entitled to discharge from custody, under a warrant for his extradition to another state, for trial under an indictment charging commission of an offense on a specified date, by showing that he was not in that state then, since proof that the offense was committed on another date might be made. That the indictment or complaint on which the requisition was made and the executive warrant issued is insufficient. In re Waterman (1907) 89 Pac. 291, 29 Nev. 288, 11 L. R. A. (N. S.) 424, 13 Ann. Cas. 926. And that he has been committed upon warrants from a justice of the peace in New York for offenses alleged to have been committed in Kentucky, and sufficient time has elapsed for the complainant to have procured a demand of him from the executive of that state. People v. Goodhue (N. Y. 1816) 2 Johns. Ch. 198. He will not be discharged where this section has been complied with as to the certificate, by the demanding governor, of the authenticity of the indictment accompanying the requisition, in the absence of any evidence that he was not in fact a fugitive from the justice of the demanding state. Law v. State (Ala. App. 1911) 56 So. 79. Where from the return it appears that the proceedings are in all respects regular. Ex parte Bailey (1884) 3 P. 107, 64 Cal. xvii. Nor for the reason that the extradition papers were defective, and failed to charge a crime, except on complaint of the authorities of the state from which the prisoner was extradited. Ex parte Barker (1888) 87 Ala. 4, 6 South. 7, 13 Am. St. Rep. 17. Nor will he be discharged merely because the evidence is conflicting on the question of his being a fugitive from justice. State v. Currie (Ala. App. 1911) 56 So. 736. Because, in the judgment of the court, the proof showing that he was a fugitive from justice may not be as full as might properly have been required. Ex parte Reggel (1885) 5 Sup. Ct. 1148, 1151, 114 U. S. 642, 29 L. Ed. 250. Because of a doubt as to the sufficiency of the facts stated to sustain the charge, under statutes of the demanding state. Ex parte Hart (C. C. 1894) 59 Fed. 894, judgment reversed (1894) 63 Fed. 249, 11 C. C. A. 165, 28 L. R. A. 801. Because the evidence of an identifying witness was incredible, and mere possession of a portion of the stolen property long after the robbery raised no presumption of guilt. Powell v. U. S. (1913) 206 Fed. 400, 124 C. C. A. 282. Because his name was misspelled in the papers, where there is evidence that he had been known by two names, and that he was the person charged with the crime and demanded by the other state. People ex rel. Edelstein v. Warden of City Prison (1913) 138 N. Y. S. 1095, 154 App. Div. 261. Because of substantial defects in the indictment under the laws of the demanding state. Ex parte Coleman (1908) 113 S. W. 17, 53 Tex. Cr. R. 93. Or because the warrant recited that he stood charged upon "complaint" instead of "affidavit." State v. Bates (1907) 112 N. W. 260, 101 Minn. 303.

Petitioner was duly charged before a magistrate in Wisconsin with the crime of grand larceny, and a warrant of arrest issued, on which was based a requisition to the governor of Minnesota, to which state petitioner had fled. The requisition, however, stated that the crime committed was burglary, and petitioner was discharged on habeas corpus. Thereupon a new proceeding was had before the Wisconsin magistrate, and a new warrant of arrest issued and a new requisition made, in which the crime was properly stated as grand larceny. Petitioner procured a new writ of habeas corpus. Held, that the former discharge was not res adjudicata unless it was shown that it was granted on the question of identity of petitioner with the person charged before the magistrate. In re White (C. C. 1891) 45 Fed. 237.

To justify one's discharge on habeas corpus after order for his extradition, there should be some fatal defect appearing on the face of the record. Taylor v. Wise (Iowa, 1910) 126 N. W. 1126.

One held under executive warrant pursuant to a requisition from the governor of a sister state, honored by the governor of Iowa, preparatory to his return thereunder to the sister state as a fugitive from justice, to answer the criminal charge of deserting his wife and children in the sister state, is not entitled to his discharge on habeas corpus on a showing that he has, since his desertion in the sister state, obtained a divorce in Iowa pursuant to regular proceedings and has remarried in Iowa, since it will be assumed that the courts of the sister state will give full faith and credit to the decree of the court of Iowa and will properly determine the

question whether the divorce and subsequent remarriage bars the prosecution. Ex parte Bruyneel (Iowa, 1912) 133 N. W. 1057.

An objection to the extradition of a prisoner on the ground that the affidavit annexed to the requisition alleging that the prisoner was a fugitive from justice was not properly authenticated did not authorize the release of the prisoner on habeas corpus, such affidavit not being the sole evidence of the fact, and it being presumed that the governor required evidence establishing the fact before granting the requisition. Katyuga v. Cosgrove (Sup. 1901) 50 A. 679, 67 N. J. Law, 213.

After an alleged fugitive from justice has been arrested on an extradition warrant, he will not be discharged on the ground that there was no evidence before the executive issuing the warrant showing that the fugitive had fled from the demanding state to avoid prosecution. Ex parte Sheldon (1878) 34 Ohio St. 319.

A fugitive from the justice of a sister state was illegally brought into Texas by citizens of Mexico. The officers of Texas were not parties to the illegal conduct, but they arrested the fugitive on their attention being called to his presence in the state. Subsequently the governor of Texas honored a requisition of the governor of the sister state. Held, that the fugitive was not entitled to his discharge on habeas corpus. Ex parte Wilson (Tex. Cr. App. 1911) 140 S. W. 98.

When the fugitive is charged with crime by affidavit, and it appears clearly from the whole affidavit that no crime has been committed, it seems that a court, upon habeas corpus, may properly discharge the prisoner, notwithstanding the executive, upon whom the requisition is made, has granted a warrant upon which he has been arrested; but aliter when the prisoner has been indicted in the state from which the requisition comes, and the indictment has been duly certified as authentic. In re Greenough (1858) 31 Vt. 279.

A perpetrator of a burglary in Vermont was arrested in New York upon a requisition. Upon habeas corpus in New York he was refused a discharge, taken before another judge on certiorari, and an order of stay made upon the sheriff, which was discharged by still another judge, pending the certiorari, and the criminal brought to Vermont. Upon petition for habeas corpus, he contended that the discharge of the order of stay was procured by fraud. The requisition, order of notice, and extradition were conformable to law. Held, that the petition should be dismissed. In re Miles (1880) 52 Vt. 609.

72. —— **Appeal.**—A mandate of affirmance of a decision of the circuit court denying a writ of habeas corpus will be stayed pending decision by the supreme court on error, where, if the mandate should issue, the relator would be delivered to the custody of officers in another state. Rose v. Roberts (1900) 99 Fed. 952, 40 C. C. A. 203; People v. Baker (1910) 124 N. Y. S. 47, 139 App. Div. 471.

Whether governor of Indiana might properly have considered delay in presenting requisition, or the prosecuting witness' payments for services of agent of demanding state, presented no question for supreme court. Worth v. Wheatley (Ind. 1915) 108 N. E. 958.

Regularity of proceedings for extradition will be presumed, and that the prisoner is held by virtue of a warrant of extradition, where it appears in a bill of exceptions on error to a refusal of a writ of habeas corpus that a crime was committed in the state demanding extradition, that the accused has fled to the state upon which requisition is made, that the demand was properly made under the federal laws, and that the governor was authorized to grant the warrant, although the record fails to disclose what action was taken by the governor. Craig v. Hamann (1908) 31 Ohio Cir. Ct. R. 108.

An appeal from an order in extradition proceedings takes up only the record, and not the evidence. The fact that the judge of the quarter sessions granted a bill of exceptions is immaterial, since it is based on no statutory authority. Commonwealth v. Superintendent of County Prison (1907) 33 Pa. Super. Ct. 594.

An appeal from an order in habeas corpus to prevent extradition being in effect merely a certiorari to review the proceedings below brings up only the record, and not the evidence, and the fact that the judge of the trial court has allowed a bill of exceptions is immaterial. Commonwealth v. Superintendent of Philadelphia County Prison (1908) 69 A. 916, 220 Pa. 401.

On appeal from habeas corpus proceedings instituted by relator after arrest on requisition, the exclusion of a deed conveying to relator certain property which the complaint and information charged relator with having sold complainant while not the property of relator, did not present error, where the bill of exceptions did not show that the deed conveyed the same property referred to by complainant, and there was no evidence outside the bill offering to show the same. Ex parte Denning (Tex. Cr. App. 1907) 100 S. W. 401.

On appeal from habeas corpus proceedings, where there is no statement of facts or evidence in the record to show the contrary, it will be presumed that the court found that the party wanted under an executive warrant for "Georgia Holland" was the "Georgia Harland" arrested, since a bare discrepancy in the name would not authorize the court of criminal appeals to disregard an executive warrant properly

signed. Ex parte Holland (Tex. Cr. App. 1908) 108 S. W. 1181.

Where papers are regular on their face and no error in arresting the relator for extradition is alleged in the record, the judgment remanding him to custody after the denial of habeas corpus will be affirmed on appeal. Ex parte Iles (Tex. Cr. App. 1914) 162 S. W. 1150.

73. **Proceedings after extradition.**—Where the person brought into the state and confined in the state prison on the ground that he is an escaped convict under sentence is the convict, there is no occasion for the trial of any question between him and the state, unless the state desires to inflict further punishment for the escape, as authorized by Pub. St. N. H. c. 285, § 13; Id., c. 253, § 14. In re Moebus (1905) 62 A. 170, 73 N. H. 350.

In the matter of interstate extradition, the supreme law of the land imposes no condition or limitation upon the jurisdiction and authority of the state to which the fugitive is returned. People v. Thaw (Sup. 1915) 154 N. Y. S. 949, order affirmed In re Thaw (1915) 152 N. Y. S. 771, 167 App. Div. 104.

A fugitive brought into Texas by requisition from another state may while in custody be surrendered to a third state. Ex parte Innes (Tex. Cr. App. 1915) 173 S. W. 291, 297.

74. —— **Habeas corpus.**—Where a prisoner brought into the state on an extradition warrant has been indicted on the charge of murder, and the proceedings appear regular on the face of the return and in conformity with the laws of the state, as the prisoner is held under process duly issued by a court of competent criminal jurisdiction, an application on his part to be discharged on habeas corpus will be denied. Ex parte Moyer (1906) 85 P. 897, 12 Idaho, 250, 118 Am. St. Rep. 214; Ex parte Pettibone (1906) 85 P. 902, 12 Idaho, 264; Ex parte Haywood, Id.

Where accused is within the jurisdiction of the demanding state and applies to the court for his discharge on habeas corpus, he cannot raise the question as to whether or not he has been as a matter of fact a refugee from justice of that state within the meaning of the federal constitution and the act of congress authorizing interstate extradition. Id.

The acts of the chief executive in issuing executive warrant, and of the executive and ministerial officers acting in aid of the warrant, will not be reviewed by the courts of a foreign state. Id.

Where a warrant for the surrender of a fugitive from justice has been revoked by the governor, no inquiry will be made in a proceeding on habeas corpus on behalf of the alleged fugitive as to the grounds for such revocation, although at the time of the revocation the fugitive may have been in custody of the agent of the demanding state. Work v. Corrington (1877) 34 Ohio St. 64, 32 Am. Rep. 345.

75. —— **Prosecution for different offense.**—A fugitive from justice, surrendered by one state to another, may be tried in the state to which he is returned for any other offense than that specified in the requisition for his rendition; and in so trying him, against his objection, no right, privilege, or immunity secured to him by the constitution and laws of the United States is thereby denied. Lascelles v. State of Georgia (1893) 148 U. S. 537, 13 Sup. Ct. 687, 37 L. Ed. 549 (affirming [1892] 90 Ga. 347, 16 S. E. 945, 35 Am. St. Rep. 216); Carr v. State (1894) 104 Ala. 4, 16 South. 150; Id., 104 Ala. 43, 16 South. 155; Williams v. Weber (1891) 1 Colo. App. 191, 28 Pac. 21; Knox v. State (1905) 73 N. E. 255, 164 Ind. 226, 108 Am. St. Rep. 291; State v. Kealy (1893) 89 Iowa, 94, 56 N. W. 283; Ex parte Flack (1913) 129 P. 541, 88 Kan. 616; Taylor v. Commonwealth (1906) 96 S. W. 440, 29 Ky. Law Rep. 714; Commonwealth v. Wright (1893) 158 Mass. 149, 33 N. E. 82, 35 Am. St. Rep. 475, 19 L. R. A. 206; State v. Patterson (1893) 116 Mo. 505, 22 S. W. 696; In re Petry (1896) 47 Neb. 126, 66 N. W. 308; In re Walker (1901) 86 N. W. 510, 61 Neb. 803; Rutledge v. Krauss (Sup. 1906) 63 A. 988, 73 N. J. Law, 397; In re Noyes (N. Y. 1878) 17 Alb. Law J. 407; People v. Cross (1892) 135 N. Y. 536, 32 N. E. 246, 31 Am. St. Rep. 850 (affirming [1892] 64 Hun, 348, 19 N. Y. Supp. 271, 8 N. Y. Cr. R. 421); In re Thaw (1915) 152 N. Y. S. 771, 167 App. Div. 104 (affirming order People v. Thaw [Sup. 1915] 154 N. Y. S. 949); People ex rel. Smith v. Grifenhagen (1915) 152 N. Y. S. 776, 167 App. Div. 112; State v. Glover (1893) 112 N. C. 896, 17 S. E. 525; State v. Stewart (1884) 60 Wis. 587, 19 N. W. 429, 50 Am. Rep. 388. CONTRA, State v. Hall (1888) 40 Kan. 338, 19 Pac. 918, 10 Am. St. Rep. 200.

But see In re Fitton (C. C. 1891) 45 Fed. 471; State v. McNaspy (1897) 50 P. 895, 58 Kan. 691, 38 L. R. A. 756; In re Fowles (1913) 131 P. 598, 89 Kan. 430; In re Cannon (1882) 11 N. W. 280, 47 Mich. 481; In re Hope (Ex. Ch. 1889) 10 N. Y. Supp. 28, 7 N. Y. Cr. R. 406; Ex parte McKnight (1891) 48 Ohio St. 588, 28 N. E. 1034, 14 L. R. A. 128; State v. Boynton (1909) 121 N. W. 887, 140 Wis. 89.

A prisoner returned on a requisition, stating that he was charged with embezzling money, may be tried on an indictment charging embezzlement of money in one count, and of property in another, the same property being involved in each case. Waterman v. State (1888) 116 Ind. 51, 18 N. E. 63.

On a prosecution for conspiracy to

obtain money by false pretenses from an insurance company, a plea in abatement stating that defendant was indicted "for conspiracy to defraud an underwriter" does not show that he is being tried for an offense different from that for which he was extradited. Musgrave v. State (1892) 133 Ind. 297, 32 N. E. 885.

A claim that defendant was extradited for one offense and convicted of another was not sustained by a showing that in the original warrant he was charged with obtaining a signature to a check by false pretenses, while he was convicted of obtaining money from the signer by false pretenses, where the means used by him in obtaining the money were set out in the warrant in detail, and procuring the signature to the check upon which the money was drawn was mentioned as one of the steps in the scheme. State v. Meade (1896) 56 Kan. 690, 44 Pac. 619.

One brought from another state, under a charge of robbery, by force and violence, may be tried under an information charging larceny from the person and pocket, without first being given time and opportunity to return to such other state, since the latter crime is included in the former. State v. Dunn (1903) 71 P. 811, 66 Kan. 483.

One extradited for seduction, an indictable offense, cannot, while detained in the jurisdiction to which he is extradited, be arrested in a bastardy proceeding, which involves no indictable offense. In re Cannon (1882) 47 Mich. 481, 11 N. W. 280.

One extradited for an indictable offense, and admitted to bail, is nevertheless within the operation of the extradition proceedings, and cannot be arrested for an offense for which he could not be extradited. Id.

One who has been extradited, and is on bail for the offense, is not subject meanwhile to arrest by the same prosecuting authority for some other offense, as if he had been at liberty to withdraw from the jurisdiction. Id.

A person extradited for grand larceny may be tried for petit larceny. State v. Walker (1894) 119 Mo. 467, 24 S. W. 1011.

A person surrendered to the authorities of one state by another state or territory, on extradition proceedings, does not waive the privilege which prevents his trial for any other offense than the one on which his extradition was obtained by failing to plead the privilege in abatement of the indictment for such other offense, or by entering a plea of not guilty, if before the trial he asserted the privilege, and objected to the trial. Ex parte McKnight (1891) 48 Ohio St. 588, 28 N. E. 1034, 14 L. R. A. 128.

One extradited from another state on a charge of obtaining money on false pretenses may be tried for forgery. In re Brophy (Com. Pl. 1895) 2 Ohio N. P. 230.

Where a person released on habeas corpus from confinement upon conviction of a crime, on the ground that he had not been extradited for the offense, has been at liberty for 12 days between his release and second arrest, he has had a reasonable opportunity to return to the state from whence he came, but, not having availed himself of that opportunity, the second arrest and trial were lawful. Ex parte McKnight (1896) 4 Ohio Dec. 284.

A person who has been extradited may be convicted of any grade of the crime charged. Commonwealth v. Johnston (O. & T. 1892) 12 Pa. Co. Ct. R. 263.

A person extradited from a sister state for rape may be convicted of fornication and bastardy, under an indictment for rape and fornication. Commonwealth v. Johnston (O. & T. 1894) 2 Pa. Dist. R. 673.

A person extradited from Mexico, charged with the theft of "one certain head of neat cattle," may be prosecuted under an indictment charging him with "willfully taking into his possession, and driving, using, and removing from its accustomed range, one certain steer, without the consent of the owner, and with intent to defraud, etc. Kelley v. State (1882) 13 Tex. App. 158.

A prisoner extradited upon a charge of felony, i. e., the carrying on a swindling game of bunco and twenty-one, may be tried and convicted upon a charge of carrying on the game of twenty-one or top and bottom dice, and swindling a man thereat. Harland v. Territory (1887) 3 Wash. T. 131, 13 Pac. 453.

76. —— Exemption from civil process and suit.—In some jurisdictions, until an extradited person has had reasonable time in which to return to the state from which he was brought, he is privileged from the service of civil process. In re Reinitz (C. C. 1889) 39 Fed. 204, 4 L. R. A. 236; Murray v. Wilcox (1904) 97 N. W. 1087, 122 Iowa, 188, 64 L. R. A. 534, 101 Am. St. Rep. 263; Compton v. Wilder (1883) 40 Ohio St. 130. Issued at the instance of one who procured the extradition. Underwood v. Fetter (1848) 6 N. Y. Leg. Obs. 66; Compton v. Wilder (1883) 40 Ohio St. 130 (affirming [1878] 7 Am. Law Rec. 212); Deuber Watch Co. v. Dalzell (1888) 10 Ohio Dec. 227, 19 Wkly. Law Bul. 269; White v. Marshall (1902) 23 Ohio Cir. Ct. R. 376; Moletor v. Sinnen (1890) 76 Wis. 308, 44 N. W. 1099, 20 Am. St. Rep. 71, 7 L. R. A. 817. But in other jurisdictions an extradited person is not immune from civil suit or process. Reid v. Ham (1893) 54 Minn. 305, 56 N. W. 35, 40 Am. St. Rep. 333, 21 L. R. A. 232; In re Walker (1901) 86 N. W. 510, 61 Neb. 803; Rutledge v. Krauss (Sup. 1906) 63 A. 988, 73 N. J. Law, 397; Bank of the Metropolis v. White (Sup. 1899) 57 N. Y. S. 460,

26 Misc. Rep. 504; In re Thaw (1915) 152 N. Y. Supp. 771, 167 App. Div. 104 (affirming order People v. Thaw [Sup. 1915] 154 N. Y. Supp. 949); People ex rel. Smith v. Grifenhagen (1915) 152 N. Y. Supp. 776, 167 App. Div. 112; Commonwealth v. Daniel (1847) 4 Clark, 49, 6 Pa. Law J. 330. Where his extradition was not procured by connivance or in bad faith. Williams v. Bacon (N. Y. 1834) 10 Wend. 636; Slade v. Joseph (N. Y. 1874) 5 Daly, 187; Olery v. Brown (N. Y. 1875) 51 How. Prac. 92; Browning v. Abrams (N. Y. 1876) 51 How. Prac. 172.

77. Fugitive brought back by artifice, force, or irregular proceedings.—A fugitive extradited from another state may be held for trial, even if the arrest under the rendition proceedings was without legal authority. New Jersey v. Noyes (D. C. 1878) Fed. Cas. No. 10,164; State v. Ross (1866) 21 Iowa, 467.

When a governor of one state has voluntarily surrendered a fugitive from justice to the governor of another, the details of the demand made by one governor, and compliance by the other, are not proper subjects of inquiry upon trial of the case; and hence the objection that the prisoner for whom the requisition was made was not, as therein alleged at the time, in California, but was being illegally carried there, in accordance with an illegal scheme of which the requisition was a part, cannot, even if valid, be urged on the trial of the prisoner for the crime charged, or on appeal from a judgment of conviction. Ker v. State of Illinois (1886) 7 Sup. Ct. 225, 119 U. S. 436, 30 L. Ed. 421.

A fugitive from justice charged with crime will not be released, on habeas corpus, because he was induced by a stratagem to come within territory where he could be properly arrested, provided the stratagem used was not itself an infraction of law. Ex parte Brown (D. C. 1886) 28 Fed. 653.

The fact that a wrong has been committed against a prisoner in the method pursued in subjecting him to the jurisdiction of the state against the laws of which he is charged with having transgressed can constitute no just reason why he should not answer the charge against him before the proper tribunal. Ex parte Moyer (1906) 85 P. 897, 12 Idaho, 250, 118 Am. St. Rep. 214; Ex parte Pettibone (1906) 85 P. 902, 12 Idaho, 264; Ex parte Haywood, Id.

The jurisdiction of a court in which an indictment is found is not impaired by the manner in which the accused is brought before the court. Id.

Where a fugitive from justice has been surrendered without legal authority, he may be detained by the authorities of the state to which he is surrendered. In re Noyes (N. Y. 1878) 17 Alb. Law J. 407.

Where a fugitive from Michigan escapes after having been charged in Pennsylvania with forgery, his arrest in the latter state without legal authority will not entitle the prisoner to discharge before prosecution; his release not being demanded by the governor of Michigan. In re Dow (1851) 18 Pa. (6 Harris) 37.

Where a prisoner was kidnapped, not extradited, from the state of his asylum, comity requires that he be released on demand of the governor of such state. Commonwealth v. Shaw (Pa. 1885) 6 Cr. Law Mag. 245. A., a citizen of New York, committed a crime in Pennsylvania, and fled to New York, whence he was brought back to Pennsylvania by artifice and force. His discharge was refused on a hearing on habeas corpus. The governor of New York then requested A.'s release. Held, that A. should be released. In re Norton (Pa. 1884) 15 Wkly. Notes Cas. 395. It is no ground for the discharge or exemption from punishment of one who had been guilty, within the limits of South Carolina, of an offense against its laws, that he was subsequently arrested with lawless violence in another state, and brought within this state in violation of the jurisdiction of the state in which he was arrested. State v. Smith (S. C. 1829) 1 Bailey, 283, 19 Am. Dec. 679.

A person accused of crime committed within the state may be tried by its courts after he has been brought into the state by virtue of extradition proceedings, although such proceedings were void because the complaint was not made upon affiant's own knowledge, as required by the federal statute, the accused having failed to take advantage of that defect in the state where demand was made. Ex parte Baker (1901) 65 S. W. 91, 43 Tex. Cr. R. 281, 96 Am. St. Rep. 871.

Cited without definite application, Ex parte Clarke (1879) 100 U. S. 399, 409, 25 L. Ed. 715; Streep v. U. S. (1895) 16 Sup. Ct. 244, 246, 160 U. S. 128, 40 L. Ed. 365; Ornelas v. Ruiz (1896) 16 Sup. Ct. 689, 161 U. S. 502, 40 L. Ed. 787; Benson v. Henkel (1905) 25 Sup. Ct. 569, 572, 198 U. S. 1, 49 L. Ed. 919; U. S. v. Powell (C. C. 1907) 151 Fed. 648; In re Doo Woon (D. C. 1883) 18 Fed. 898; U. S. v. Greene (D. C. 1900) 100 Fed. 941, 945; Ex parte Thaw (D. C. 1913) 209 Fed. 56, 73.

§ 10127. (R. S. § 5279.) Penalty for resisting agent, etc.

Any agent so appointed who receives the fugitive into his custody shall be empowered to transport him to the State or Territory from which he has fled. And every person who, by force, sets at liberty

or rescues the fugitive from such agent while so transporting him, shall be fined not more than five hundred dollars or imprisoned not more than one year.

Act Feb. 12, 1793, c. 7, § 2, 1 Stat. 302.
See note to preceding section.

Notes of Decisions

Fugitive from justice.—See Ex parte Galbreath (N. D. 1913) 139 N. W. 1050, and note under § 10126, ante.

Constitutional basis and validity.—See Roberts v. Reilly (1885) 6 Sup. Ct. 291, 299, 116 U. S. 80, 29 L. Ed. 544; Lascelles v. Georgia (1893) 13 Sup. Ct. 687, 688, 148 U. S. 537, 37 L. Ed. 549. See, also, notes under §§ 5278, 10126, ante.

Cited without definite application, Ornelas v. Ruiz (1896) 16 Sup. Ct. 689, 161 U. S. 502, 40 L. Ed. 787; Benson v. Henkel (1905) 25 Sup. Ct. 569, 572, 198 U. S. 1, 49 L. Ed. 919; Eaton v. West Virginia (1898) 91 Fed. 760, 763, 34 C. C. A. 68; In re Doo Woon (C. C. 1883) 18 Fed. 898; In re Robb (C. C. 1884) 19 Fed. 26; In re Fitton (C. C. 1891) 45 Fed. 471, 473; Ex parte Riggins (C. C. 1904) 134 Fed. 404 (reversed [1905] 26 Sup. Ct. 147, 199 U. S. 547, 50 L. Ed. 303); U. S. v. Powell (C. C. 1907) 151 Fed. 648; In re Kopel (D. C. 1906) 148 Fed. 505; In re Thaw (1915) 152 N. Y. S. 771, 167 App. Div. 104 (affirming order People v. Thaw [Sup. 1915] 154 N. Y. S. 949); People ex rel. Smith v. Grifenhagen (1915) 152 N. Y. S. 776, 167 App. Div. 112.

§ 10128. (Act Feb. 9, 1903, c. 529, § 2.) Fugitives from justice of Philippine Islands.

The provisions of sections fifty-two hundred and seventy-eight and fifty-two hundred and seventy-nine of the Revised Statutes, so far as applicable, shall apply to the Philippine Islands, which, for the purposes of said sections, shall be deemed a Territory within the meaning thereof. (32 Stat. 807.)

This section was part of an act to provide for the removal of persons accused of crime to and from the Philippine Islands, cited above.

Section 1 of the act is set forth ante, § 1675.

R. S. §§ 5278, 5279, mentioned in this section, are set forth ante, §§ 10126, 10127.

The provisions of R. S. §§ 5409, 5410, incorporated into Crim. Code, §§ 138, 139, post, §§ 10308, 10309, which made punishable voluntarily suffering a prisoner, in custody by virtue of process under the laws of the United States, to escape, were made applicable to proceedings under this act, by Act Feb. 6, 1905, c. 454, § 2, ante, § 10125.

§ 10129. (Repealed.)

This section contained R. S. § 5280, which read as follows:

"On application of a consul or vice-consul of any foreign government having a treaty with the United States stipulating for the restoration of seamen deserting, made in writing, stating that the person therein named has deserted from a vessel of any such government, while in any port of the United States, and on proof by the exhibition of the register of the vessel, ship's roll, or other official document, that the person named belonged, at the time of desertion, to the crew of such vessel, it shall be the duty of any court, judge, commissioner of any circuit court, justice, or other magistrate, having competent power, to issue warrants to cause such person to be arrested for examination. If on examination, the facts stated are found to be true, the person arrested not being a citizen of the United States, shall be delivered up to the consul or vice-consul, to be sent back to the dominions of any such government, or, on the request and at the expense of the consul or vice-consul, shall be detained until the consul or vice-consul finds an opportunity to send him back to the dominions of any such government. No person so arrested shall be detained more than two months after his arrest; but at the end of that time shall be set at liberty, and shall not be again molested for the same cause. If any such deserter shall be found to have committed any crime or offense, his surrender may be delayed until the tribunal before which the case shall be depending, or may be cognizable, shall have pronounced its sentence, and such sentence shall have been carried into effect."

It was repealed, to take effect upon the termination of provisions of treaties, etc., for arrest or imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign countries, and for co-operation,

etc., of legal authorities in effecting such arrest or imprisonment, pursuant to notice of such termination, by Act March 4, 1915, c. 153, §§ 16–18 ante, §§ 8382a–8382c.

Notes of Decisions

Construction and operation.—This section applies only to cases of desertion that occurred while the vessel was in a port of the United States and wherein the person charged with desertion is not a citizen of the United States. (1879) 16 Op. Atty. Gen. 358.

Treaties.—The statute provision for the surrender of deserting seamen applies only to the seamen of governments with which a treaty exists to that effect. (1853) 6 Op. Atty. Gen. 148.

There is no express provision to that effect in existing treaties between the United States and Denmark. Id.

A legislative act of the British colony of New South Wales, enacting that certain proceedings may be had in the court as to deserting seamen of any foreign country in that colony, provided its government assents. Held, that the President cannot give such assent on the part of the United States, but that it can only be done by treaty or act of congress. (1853) 6 Op. Atty. Gen. 209.

The provisions of the treaty of May 1, 1828, between the United States and Prussia, for the arrest and imprisonment of deserters from public ships and merchant vessels of the respective countries, applies to public vessels sailing under the flag of the North German Union and deserters from such vessels. (1868) 12 Op. Atty. Gen. 463.

—— **Obligations to and rights of foreign countries.**—The remedy which, by treaty with foreign powers, the United States gives in cases of foreign seamen deserting from foreign vessels within the jurisdiction of the United States, is contained in this section, and when the provisions thereof are exhausted the United States has fulfilled its obligations with foreign powers under commercial treaties providing for extradition of deserting seamen. U. S. v. Minges (C. C. 1883) 16 Fed. 657, 658.

Authority from the Swedish government to emigrate to the United States precludes it from subsequently demanding the surrender of the person as a deserting seaman under the treaty of 1827, art. 14. In re Pederson (D. C. 1851) Fed. Cas. No. 10,899a.

Under the treaty of 1819 with Spain, and Act March 2, 1829, c. 41, which was made to carry out that and other treaties of the same kind, the apprehension and delivery of a seaman, who is alleged to be a deserter from a Spanish ship, is a judicial duty, and the State Department cannot change what a judge has done. (1857) 9 Op. Atty. Gen. 96.

To prove the fact of desertion, the treaty requires the exhibition of the ship's roll with the name of the deserter upon it, and this is not met by the mere certificate of a Spanish consul. Id.

Proceedings.—A treaty made in 1892 between Great Britain and the United States provides that a British consul shall have power to require from the proper authority the assistance "provided by law" in apprehending and restoring deserting British seamen. Held, that a commissioner, who, proceeding under such treaty and this statute, has adjudged persons to be deserting British seamen, while he may lawfully order their delivery to the consul, or his authorized representative, on board a British ship within the district, had no power to order them restored to the ship "under the directions" of the consul. U. S. v. Kelly (D. C. 1901) 108 Fed. 538.

Proceedings against deserting seaman need not be carried on or approved by the United States district attorney. (1858) 9 Op. Atty. Gen. 246.

The question as to whether deserters, or alleged deserters, from German ships of war or merchant vessels must, under article 14 of the consular convention of 1871 between the United States and Germany (17 Stat. 929), be given up without the examination authorized by this section upon the written request of a German consul, and the filing of certain papers named in that article, should be submitted to the proper court for a judicial determination. (1903) 25 Op. Atty. Gen. 77.

—— **Jurisdiction.**—This section confers no jurisdiction on the courts or magistrates of this state to arrest a sailor for deserting from a vessel of a foreign nation having such treaty with the United States, the federal courts alone having that power. In re Bruni (N. Y. 1847) 1 Barb. 187.

—— **Application for surrender.**—The restriction of applications under this section A such as may be made on behalf of "any foreign government having a treaty with the United States" does not conflict with any duty imposed by international law. Motherwell v. U. S. (1901) 107 Fed. 437, 441, 48 C. C. A. 97, reversed (1902) 22 Sup. Ct. 195, 183 U. S. 424, 46 L. Ed. 264, affirming (D. C. 1900) 103 Fed. 198.

Cited without definite application, U. S. v. Allred (1895) 15 Sup. Ct. 231, 233, 155 U. S. 591, 39 L. Ed. 273; Ornelas v. Ruiz (1896) 16 Sup. Ct. 689, 161 U. S. 502, 40 L. Ed. 787; Tucker v. Alexandroff (1902) 22 Sup. Ct. 195, 198, 183 U. S. 424, 46 L. Ed. 264; U. S. v. Sullivan (C. C. 1890) 43 Fed. 602, 603.

TITLE LXVII

NEUTRALITY

This Title of the Revised Statutes included sections 5281–5291 thereof. The provisions contained therein were incorporated in the Criminal Code, in chapters 2 and 12, §§ 9–18, 303, thereof, post, §§ 10173–10182, 10476, and were repealed by section 341 of said Code, post, § 10515.

(R. S. §§ 5281-5291. Repealed.)

TITLE LXVIII

REMISSION OF FINES, PENALTIES, AND FORFEITURES

Sec.
10130. Upon summary investigation before district judge.
10131. Upon investigation under regulations of Secretary of Treasury.
10132. Petition to court for relief by persons charged with having incurred fines, etc., under customs-revenue laws; summary hearing by district judge; notice to district attorney and collector.
10133. Hearing; evidence; transmission to Secretary of Treasury.
10134. Applicants to Secretary of Treasury for remission, etc., of fines, etc., to notify district attorney and collector; duty of district attorney and collector.
10135. Remission of penalties under laws relating to vessels; informers' rights; manner of ascertaining facts.
10136. Refunding of penalties under laws relating to vessels or seamen.
10137. Officers and informers may be witnesses.
10138. Discharge of indigent convicts.

§ 10130. (R. S. § 5292, as amended, Act Feb. 27, 1877, c. 69, § 1.) Upon summary investigation before district judge.

Whenever any person who shall have incurred any fine, penalty, or forfeiture, or disability, or may be interested in any vessel or merchandise which has become subject to any seizure, forfeiture, or disability by authority of any provisions of law for imposing or collecting any duties or taxes, or relating to registering, recording, enrolling, or licensing vessels, and for regulating the same, or providing for the suppression of insurrections or unlawful combinations against the United States, shall prefer his petition to the judge of the district in which such fine, penalty, or forfeiture, or disability has accrued, truly and particularly setting forth the circumstances of his case, and shall pray that the same may be mitigated or remitted, the judge shall inquire, in a summary manner, into the circumstances of the case; first causing reasonable notice to be given to the person claiming such fine, penalty, or forfeiture, and to the attorney of the United States for such district, that each may have an opportunity of showing cause against the mitigation or remission thereof; and shall cause the facts appearing upon such inquiry to be stated and annexed to the petition, and direct their transmission to the Secretary of the Treas-

ury. The Secretary shall thereupon have power to mitigate or remit such fine, forfeiture, or penalty, or remove such disability, or any part thereof, if, in his opinion, the same was incurred without willful negligence, or any intention of fraud in the person incurring the same; and to direct the prosecution, if any has been instituted for the recovery thereof, to cease and be discontinued, upon such terms or conditions as he may deem reasonable and just.

Act March 3, 1797, c. 13, § 1, 1 Stat. 506. Act Feb. 11, 1800, c. 6, 2 Stat. 7. Act March 2, 1803, c. 18, § 4, 2 Stat. 210. Act July 13, 1861, c. 3, § 8, 12 Stat. 257. Act May 20, 1862, c. 81, § 4, 12 Stat. 405. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 252.

This section was amended by Act Feb. 27, 1877, c. 69, § 1, cited above, by inserting, after the words "licensing vessels," the words "and for regulating the same," and by inserting, after the words "terms or conditions," the word "as," as set forth here.

Fines, penalties, or liabilities incurred under a statute were not released or extinguished by the repeal of the statute, by R. S. § 13, ante, § 14.

Provisions for the compromise of debts due the United States and for the discharge of poor debtors were contained in R. S. §§ 3469, 3471, 3472, ante, §§ 6375, 6377, 6378.

Notes of Decisions

1. Construction, scope, and validity of section.
2. Power and discretion of secretary.
3. Matters which may be remitted.
4. — Customs duties.
5. "Prosecution."
6. Time for proceedings.
7. Jurisdiction of judge.
8. Effect of ruling on application for remission.
9. Revocation of remission.
10. Conditional remission.

1. Construction, scope, and validity of section.—Congress has power to vest in the Secretary of the Treasury authority to remit forfeitures after condemnation. U. S. v. Morris (1825) 10 Wheat. 246, 6 L. Ed. 314.

This section is liable to erroneous construction by reason of defective punctuation. It may be understood to mean "any person who shall have incurred any fine, penalty, or forfeiture, or disability, or" [who] "may be interested in any vessel or merchandise which has become subject to any seizure, forfeiture, disability," thus providing for two distinct classes of cases. By reference to the original act (1 Stat. 506) it will be seen by the title that "any person" and "any fine, penalty," etc., is limited to the "certain cases therein mentioned." (1894) 20 Op. Atty. Gen. 705.

This section in its relation to penal duties was repealed by the anti-moiety act of June 22, 1874. (1895) 21 Op. Atty. Gen. 283. See § 10132 et seq., post.

The word "vessels," in New York Harbor Act (ante, § 9934), does not relate to vessels in the sense contemplated by this section. (1904) 25 Op. Atty. Gen. 220.

2. Power and discretion of secretary.—The power entrusted by the acts to the Secretary of the Treasury to remit penalties is one for the exercise of his discretion and admits of no appeal to the Court of Claims or to any other court. Dorsheimer v. U. S. (1868) 7 Wall. 166, 173, 19 L. Ed. 187.

The power is lodged entirely with the secretary of the treasury. The court has no revisory power. Gallego v. U. S. (C. C. 1820) Fed Cas. No. 5,-201.

The power of the secretary is wholly distinct from the constitutional pardoning power of the president, and its object is to afford merited relief, where the courts are obliged to inflict the penalty. U. S. v. Morris (C. C. 1822) Fed. Cas. No. 15,816.

The discretion vested in the secretary to remit penalties, in cases where he may be satisfied no willful negligence nor fraudulent intent exists, cannot be revised or controlled by the courts. Macheca v. U. S. (C. C. 1886) 26 Fed. 845.

There is a clear distinction between the compromise of a doubtful case and the remission of a penalty, forfeiture, or disability. The former is strictly a fiscal one, while the latter is in the nature of a pardoning power. (1895) 21 Op. Atty. Gen. 264.

The power to compromise claims in favor of the United States, which includes judgments on recognizances, is vested by law in the Secretary of the Treasury with respect to all claims save those arising under the postal laws. (1897) 21 Op. Atty. Gen. 494.

3. Matters which may be remitted.—The release of a forfeiture applies to the share to which the collecting officer would otherwise be entitled. McLane v. U. S. (1832) 6 Pet. 404, 424, 8 L. Ed. 443.

This act does not give the Secretary of the Interior power to remit in case of property captured as maritime prize of war. The Gray Jacket (1866) 5 Wall. (U. S.) 342, 18 L. Ed. 646.

These provisions allowing the Secretary of the Treasury to remit forfeitures and penalties incurred under

Act July 13, 1861, § 8, do not authorize him to remit a vessel captured as a prize jure belli, and not under that act. The Hampton (1866) 5 Wall. 372, 376, 18 L. Ed. 659.

The secretary of the treasury has no power to remit penalties, unless in cases provided for by law. The Margaretta (C. C. 1815) Fed. Cas. No. 9,072.

The power to remit fines under former Act Jan. 2, 1813, extended to cases of joint ownership between citizens of the United States and citizens of Great Britain, so far as the former were concerned. Gallego v. U. S. (C. C. 1820) Fed. Cas. No. 5,201.

The secretary of the treasury may remit not only the interest of the United States, but of individuals, in penalties and forfeitures in certain cases, after suit brought, and before judgment. U. S. v. Lancaster (C. C. 1821) Fed. Cas. No. 15,557.

Former Act March 3, 1797, c. 13, did not confer the power to release a bond given to entitle the obligor to drawback after the same has become an absolute debt to the United States. (1829) 2 Op. Atty. Gen. 278.

Neither the President nor Secretary of the Treasury had power under the former Act of 1797 to remit the penalty of a bond to return seamen. (1843) 4 Op. Atty. Gen. 273.

The judgments against the employés of the California Steam Navigation Company might be released by remissions of the Secretary of the Treasury under former Act March 3, 1797, c. 13. (1866) 12 Op. Atty. Gen. 103.

The Secretary is not authorized under this title to remit a fine or penalty incurred for violation of the alien immigration laws. (1894) 20 Op. Atty. Gen. 705.

The Secretary of the Treasury cannot remit a penalty imposed on a firm for fraudulent undervaluation by one member of the firm, notwithstanding the fact that it was his purpose to cheat his own firm as well as the United States. (1894) 21 Op. Atty. Gen. 90.

Prior to the taking effect of the act of February 14, 1903 (32 Stat. 825), creating the Department of Commerce and Labor, the Secretary of the Treasury had no authority to remit a fine or penalty imposed for a violation of the New York Harbor act of June 29, 1888 (25 Stat. 209), nor to discontinue a suit instituted by the government to recover a penalty under that act, and therefore the Secretary of Commerce and Labor has no authority to direct the discontinuance of such a suit. (1904) 25 Op. Atty. Gen. 220.

4. —— **Customs duties.**—The secretary of the treasury had no right under the act of 1797 to mitigate, remit, or compromise the amount of duties or taxes due on the property. Dorsheimer v. U. S. (1868) 7 Wall. 166, 174, 19 L. Ed. 187.

The secretary of the treasury had no authority under the Special Importation Act of February 27, 1813 (chapter 175), to make a remission of part only of the property forfeited. The Margaretta (C. C. 1815) Fed. Cas. No. 9,072.

A proceeding to procure remission of a fine, penalty, or forfeiture does not include a tonnage tax alleged to have been levied in excess of the lawful rate. In re Laidlaw (C. C. 1890) 42 Fed. 401.

A debt due the United States under a bond given for duties does not fall under either of the heads named in this section. (1814) 1 Op. Atty. Gen. 176.

The 50 per cent. additional duty levied on imported goods under the second proviso of the seventeenth section of the tariff act Aug. 30, 1842, c. 270, was a penalty which the Secretary of the Treasury could remit under former Act March 3, 1797, c. 13. (1843) 4 Op. Atty. Gen. 182.

Neither the President nor Secretary of the Treasury had power under the former act of 1797 to remit the tonnage duty assessed with reference to the character of the vessel, officers, and crew. (1843) 4 Op. Atty. Gen. 273.

The additional tonnage dues imposed by R. S. § 4219, as amended (ante, § 7812), on any vessel any officer of which shall not be a citizen of the United States, is not a penalty which can be remitted by virtue of this section. (1881) 17 Op. Atty. Gen. 120.

The "additional duties" provided for by section 7 of the former customs administrative act of June 10, 1890 (26 Stat. 134), are penalties within the meaning of this section and sections 10131–10134, post. (1893) 20 Op. Atty. Gen. 660.

The Secretary of the Treasury may remit additional duties provided for by the former customs act of June 10, 1890 (section 7), but has no power to remit any part of the duties strictly so called, however erroneously they may have been assessed. Id.

Where payment of the penal duties imposed under section 7 of the former customs act of June 10, 1890, is required as a condition precedent to the delivery of the goods, the power of the Secretary of the Treasury to remit such penalties is unavailing in many cases, but not in the case of warehoused goods, nor where the penalties are first assessed upon final liquidation after the delivery of the goods to the importer. (1896) 21 Op. Atty. Gen. 418.

5. **"Prosecution."** — "Prosecution," as used in the act for the remission of penalties, includes all the proceedings in a suit, as well before as after judgment, including the execution. U. S. v. Morris (C. C. 1822) Fed. Cas. No. 15,816.

6. Time for proceedings.—The Secretary of the Treasury has authority to remit a forfeiture or penalty accruing under the Revenue Laws at any time before or after final sentence of condemnation or judgment for the penalty until the money is paid over to the collector for distribution. U. S. v. Morris (1825) 10 Wheat. 246, 291, 6 L. Ed. 314.

The provisions giving any person who has incurred a penalty or forfeiture under the laws relating to the collection of duties or taxes or to the registration of vessels the right to prefer a petition through the judge of the district for a remission of such penalty or forfeiture by the Secretary of the Treasury does not require the court to postpone the trial of an action brought to recover the penalty on the presenting of such a petition, the secretary having the same power to remit the penalty after as before judgment thereon. Peacock v. U. S. (1903) 125 Fed. 583, 60 C. C. A. 389.

A proceeding under this act as formerly enacted, for the remission of a forfeiture, cannot be maintained until the forfeiture suit has proceeded to judgment. In re Princess of Orange (D. C. 1831) Fed. Cas. No. 11,431.

This section gives the secretary of the treasury full power to remit any forfeiture occurring without willful negligence or intentional fraud, and this power of remission may be exercised after judgment of condemnation and before payment of the proceeds to the collector. U. S. v. Griswold (D. C. 1885) 24 Fed. 361, 365, affirmed (C. C. 1887) 30 Fed. 762.

After a fine has been imposed by a collector of customs for a violation of the revenue laws, and collected and distributed, the Secretary of the Treasury is not authorized, under former Act of March 3, 1797, c. 13, and Act July 14, 1832, c. 233, or either of them, to remit it. (1837) 3 Op. Atty. Gen. 237.

7. Jurisdiction of judge.—In a proceeding for the remission of a forfeiture, the judge has jurisdiction to determine whether the case presented to him falls within the statute. In re Princess of Orange (D. C. 1831) Fed. Cas. No. 11,431.

8. Effect of ruling on application for remission.—A court in considering the question of forfeiture under the revenue laws will disregard a refusal of the secretary of the treasury to remit the penalty. The Cotton Planter (C. C. 1810) Fed. Cas. No. 3,270.

Where a forfeiture is remitted by the secretary of the treasury, pursuant to the statute authorizing him to do so, the cause of forfeiture is released, and any exactions based thereon are illegal. Murray v. Arthur (C. C. 1876) Fed. Cas. No. 9,956.

The collector must restore the property to the petitioner without order of court, where the secretary of the treasury remitted the forfeiture under the former Act March 3, 1797, § 13, before the libel or information was filed; otherwise, where the remission was made after the proceedings are commenced. The Palo Alto (D. C. 1847) Fed. Cas. No. 10,700.

9. Revocation of remission.—The secretary may revoke the warrant of remission after it has been communicated to the claimant and until the property is actually delivered. The Palo Alto (D. C. 1847) Fed. Cas. No. 10,700.

But where the remission is on condition, the secretary cannot revoke the remission after the condition is performed; and a revocation is not operative until the claimant has notice thereof. Id.

The secretary of the treasury may return the findings to the United States commissioner for a further hearing on a claim of newly discovered evidence. (1896) 21 Op. Atty. Gen. 289.

10. Conditional remission.—The secretary of the treasury may remit the whole or any part of a forfeiture, and may make conditions upon such remission, the acceptance of which will bind the party by way of estoppel. Jungbluth v. Redfield (C. C. 1858) Fed. Cas. No. 7,583.

The authority vested in the Secretary of the Treasury by former Act of March 3, 1797, c. 13, to remit penalties and forfeitures in certain cases, did not authorize him to remit upon conditions which would leave the officer who seized liable to a suit for damages. (1852) 5 Op. Atty. Gen. 658.

Cited without definite application, Fairbank v. U. S. (1901) 21 Sup. Ct. 648, 663, 181 U. S. 283, 45 L. Ed. 862 (dissenting opinion); Helwig v. U. S. (1903) 23 Sup. Ct. 427, 188 U. S. 605, 47 L. Ed. 614; U. S. v. Curtis (D. C. 1883) 16 Fed. 184, 188; U. S. v. Madison (D. C. 1884) 21 Fed. 628; The Scow No. 1 (D. C. 1909) 169 Fed. 717.

§ 10131. (R. S. § 5293, as amended, Act Feb. 27, 1877, c. 69, § 1.)

Upon investigation under regulations of Secretary of Treasury.

The Secretary of the Treasury is authorized to prescribe such rules and modes of proceeding to ascertain the facts upon which an application for remission of a fine, penalty, or forfeiture is founded, as he deems proper, and, upon ascertaining them, to remit the fine, penalty, or forfeiture, if in his opinion it was incurred without willful negligence or fraud, in either of the following cases:

First. If the fine, penalty, or forfeiture was imposed under authority of any revenue law, and the amount does not exceed one thousand dollars.

Second. Where the case occurred within either of the collection-districts in the States of California or Oregon.

Third. If the fine, penalty, or forfeiture was imposed under authority of any provisions of law relating to the importation of merchandise from foreign contiguous territory, or relating to manifests for vessels enrolled or licensed to carry on the coasting-trade on the northern, northeastern, and northwestern frontiers.

Fourth.

Fifth. If the fine, penalty, or forfeiture was imposed by authority of any provisions of law for levying or collecting any duties or taxes, or relating to registering, recording, enrolling, or licensing vessels, and the case arose within the collection-district of Alaska, or was imposed by virtue of any provisions of law relating to fur-seals upon the islands of Saint Paul and Saint George.

Act July 14, 1832, c. 233, 4 Stat. 597. Act Sept. 28, 1850, c. 79, § 4, 9 Stat. 509. Act June 27, 1864, c. 164, § 8, 13 Stat. 198. Act July 18, 1866, c. 201, § 16, 14 Stat. 182. Act July 27, 1868, c. 273, §§ 8, 9, 15 Stat. 242. Act July 1, 1870, c. 185, § 9, 16 Stat. 179. Act July 1, 1870, c. 189, § 7, 16 Stat. 182. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 253.

This section was amended by Act Feb. 27, 1877, c. 69, § 1, cited above, by striking out, after the word "First," the words "If the fine, penalty, or forfeiture was imposed under authority of any provisions of law for imposing or collecting any duties or taxes, or relating to registering, recording, enrolling, or licensing vessels, and the amount does not exceed fifty dollars," which constituted the first subdivision of the section as originally enacted, and by transposing the fourth subdivision so as to make it the first subdivision, as set forth here.

Provisions relating to the proceedings in court and before the Secretary of the Treasury for relief of persons charged with incurring fines, penalties, forfeitures, or disabilities other than imprisonment for violations of the customs-revenue laws were made by the Anti-Moiety Act of June 22, 1874, c. 391, §§ 17, 18, 20, post, §§ 10132–10134.

Provisions for remission of forfeitures and restoration of proceeds of sales of property seized and sold under the revenue laws, to be granted on application to the Secretary of the Treasury therefor, were made by R. S. § 3078, ante, § 5781.

Provisions for remission of fines, penalties, and forfeitures, etc., under laws relating to the officers, etc., or business of the postal service, on investigation by the Auditor of the Treasury for the Post-Office Department under rules, etc., prescribed by the Postmaster-General, by said Auditor with the written consent of the Postmaster-General, were made by R. S. § 409, ante, § 601.

Notes of Decisions

Revenue laws.—The power of the Secretary of the Treasury to remit a forfeiture or penalty accruing under the revenue laws extends to the shares of the forfeiture or penalty to which the officers of the customs are entitled as well as to the interest of the United States. U. S. v. Morris (1825) 10 Wheat. 246, 291, 6 L. Ed. 314.

This section gives the Secretary of the Treasury power to remit fines, penalties, or forfeitures imposed by authority of any provision of law referred to in the first paragraph "for imposing or collecting any duties or taxes," where the amount of the fine, penalty, or forfeiture does not exceed one thousand dollars, without the summary inquiry and statement of facts by a judge, as provided in the preceding section. (1874) 14 Op. Atty. Gen. 454.

Where the delinquent, a private banker, was not guilty of fraud or willful negligence, but in ignorance of the internal revenue statute failed to make his semiannual return, and obeyed the law as soon as he knew its requirements, held, that the facts bring it within the discretion of the Secretary of the Treasury, given by this section, to remit fines, penalties, etc. (1882) 17 Op. Atty. Gen. 433.

It is within the discretion of the Secretary of the treasury under this section to remit a penalty imposed under section 5899, ante, for failure to list taxable property as required by section 5896, ante. Id.

The Secretary of the Treasury has no power to remit the forfeiture of articles contained in the same package with other articles imported in violation of the former statutes relating to customs duties. (1886) 18 Op. Atty. Gen. 424.

The secretary of the treasury cannot remit a penalty imposed on a firm for fraudulent undervaluation by one

member, though it was his purpose to cheat the firm as well as the United States. (1894) 21 Op. Atty. Gen. 90.

Penalties not over $1,000 in customs revenue cases may be remitted under this section without a proceeding before the district judge. (1894) 21 Op. Atty. Gen. 101.

Said limit of $1,000 refers to the amount of the penalty to be remitted and not to the value of merchandise. Id.

The Secretary of the Treasury has the power to remit penal duties under this section in the case of any invoice under $1,000, although it may be part of an entry whose total amount is over $1,000. (1895) 21 Op. Atty. Gen. 283.

The Secretary of the Treasury had authority, under this section, to remit the penalty imposed on a national bank for its failure to make a timely return of its liability for the special tax levied under section 2 of the war revenue act of June 13, 1898. (1901) 23 Op. Atty. Gen. 398.

The words "any revenue laws" authorize the remission of a penalty under the internal revenue laws as well as under the customs revenue laws. Opinion of Attorney General Brewster of July 28, 1882 (17 Op. 433), concurred in. Id.

The additional tax of 50 per cent. imposed by section 5899, ante, is a penalty. Id.

The power of the Secretary of the Treasury to release and remit fines, penalties, and forfeitures under section 5784, ante, and this section, and under sections 10132, 10133, post, now subject to the restriction of section 7 of the customs administrative act as amended (30 Stat. 212), relates only to civil liability and consequences where the value of the property seized or the amount of the fine or forfeiture incurred does not exceed $1,000, but does not include penalties "accrued" or "incurred" which have been "adjudged" as part of the punishment under an "indictment." (1903) 24 Op. Atty. Gen. 583.

The Secretary of the Treasury was without authority to remit or mitigate a seizure made pursuant to the provisions of subsection 7 of section 28 of the former tariff act of Aug. 5, 1909 (36 Stat. 95), on shipments of imported frozen eggs, where the appraised value of the eggs exceeded their entered value more than 75 per cent. (1911) 29 Op. Atty. Gen. 261.

As to customs duties, see, also, note under § 10130, ante.

Seizures in California and Oregon.—The Secretary of the Treasury was authorized by Act Sept. 28, 1850, c. 79 (substantially re-enacted herein), to indemnify owners of goods for damages caused by improper seizures in the districts of Upper California and Oregon. (1852) 5 Op. Atty. Gen. 508.

Seal hunting.—Under this section, fifth paragraph, the secretary has power to remit the forfeiture of a vessel condemned for seal hunting, but only where the forfeiture was imposed "by virtue of any provisions of law relating to fur seals upon the islands of St. Paul and St. George." (1887) 18 Op. Atty. Gen. 584; (1887) 19 Op. Atty. Gen. 5.

Registering, recording, enrolling, or licensing vessels.—Under this section prior to amendment, if the fine, penalty, or forfeiture was imposed by any provision of law referred to in the same paragraph, "relating to registering, recording, enrolling, or licensing vessels," power was given the Secretary to remit the same, without the summary inquiry and statement mentioned only where the amount did not exceed fifty dollars. (1874) 14 Op. Atty. Gen. 454.

The word "vessels," in New York Harbor Act (ante, § 9934), does not relate to vessels in the sense contemplated by this section. (1904) 25 Op. Atty. Gen. 220.

Cited without definite application, Von Cotzhausen v. Nazro (1883) 2 Sup. Ct. 503, 506, 107 U. S. 215, 27 L. Ed. 540; Logan v. U. S. (1892) 12 Sup. Ct. 617, 629, 144 U. S. 263, 36 L. Ed. 429.

§ 10132. (Act June 22, 1874, c. 391, § 17.) Petition to court for relief by persons charged with having incurred fines, etc., under customs-revenue laws; summary hearing by district judge; notice to district attorney and collector.

Whenever, for an alleged violation of the customs-revenue laws, any person who shall be charged with having incurred any fine, penalty, forfeiture, or disability other than imprisonment, or shall be interested in any vessel or merchandise seized or subject to seizure, when the appraised value of such vessel or merchandise is not less than one thousand dollars, shall present his petition to the judge of the district in which the alleged violation occurred, or in which the property is situated, setting forth, truly and particularly, the facts and circumstances of the case, and praying for relief, such judge shall, if the case, in his judgment, requires, proceed to inquire, in a summary manner into the circumstances of the case, at such

reasonable time as may be fixed by him for that purpose, of which the district attorney and the collector shall be notified by the petitioner, in order that they may attend and show cause why the petition should be refused. (18 Stat. 189.)

This section and the two sections next following were part of the Anti-Moiety Act of June 22, 1874, c. 391, cited above.

See notes to section 2 of the act, ante, § 5796.

Notes of Decisions

Scope of statute.—The remedy offered by this and the next section to one who is exposed to a fine, penalty, or forfeiture, in cases provided for, is not exclusive, but relief by way of compromise may also be extended under section 6375, ante. (1879) 16 Op. Atty. Gen. 259; (1894) 20 Op. Atty. Gen. 727.

The power to remit relates only to civil liability. (1903) 24 Op. Atty. Gen. 583.

Conditions precedent and right to remedy.—No application for remission of the penalty of forfeiture of imported merchandise can be instituted, under this section, until a forfeiture has been declared. U. S. v. 150 $^{7}/_{12}$ Dozen Long Gloves (D. C. 1909) 168 Fed. 1010.

An applicant, under this section, for remission of the penalty of forfeiture, is not, though charged with due notice of the forfeiture proceedings, debarred from making such application by reason of failure to appear as claimant in those proceedings. Id.

Proceedings before judge.—The Secretary of the Treasury is not authorized to remit penalties incurred under section 7 of the former customs administrative act of June 10, 1890 (26 Stat. 134), amounting to more than $1,000, until after the proper proceeding before a district judge. (1894) 21 Op. Atty. Gen. 101.

"Persons incurring forfeiture." — Where a vessel was condemned and sold by decree of a United States court as a forfeiture under section 5565, ante, for landing after sunset certain cases of foreign gin and brandy, valued at more than $400, the proceeds of the sale being still retained subject to the orders of the court, held, that the owner and a mortgagee of the vessel are persons who incurred the forfeiture within the meaning of this and the next section, which authorize the Secretary of the Treasury to remit such forfeiture, "if in his opinion the same shall have been incurred without willful negligence or any intention of fraud in the person or persons incurring the forfeiture." (1880) 16 Op. Atty. Gen. 473.

Customs—Revenue laws.—This section does not apply to the case of a tonnage tax alleged to have been levied in excess of the lawful rate. In re Laidlaw (C. C. 1890) 42 Fed. 401.

This section supersedes section 10130, ante, as to all cases arising under the customs revenue laws, except those of vessels and merchandise seized or subject to seizure and of less value than $1,000. (1894) 21 Op. Atty. Gen. 101.

See, also, note under § 10130, ante.

Cited without definite application. Helwig v. U. S. (1903) 23 Sup. Ct. 427, 188 U. S. 605, 47 L. Ed. 614.

§ 10133. (Act June 22, 1874, c. 391, § 18.) Hearing; evidence; transmission to Secretary of Treasury.

The summary investigation hereby provided for may be held before the judge to whom the petition is presented, or if he shall so direct, before any United States commissioner for such district, and the facts appearing thereon shall be stated and annexed to the petition, and, together with a certified copy of the evidence, transmitted to the Secretary of the Treasury, who shall thereupon have power to mitigate or remit such fine, penalty, or forfeiture, or remove such disability, or any part thereof, if, in his opinion, the same shall have been incurred without willful negligence or any intention of fraud in the person or persons incurring the same, and to direct the prosecution, if any shall have been instituted for the recovery thereof, to cease and be discontinued upon such terms or conditions as he may deem reasonable and just. (18 Stat. 190.)

Notes of Decisions

"Persons incurring forfeiture."—See note under preceding section.

Report of commissioner.—Exceptions to the report of a United States commissioner, to whom a case has been referred for summary investigation hereunder, to ascertain the amount of freight due the owners of a vessel on importations forfeited by reason of undervaluation, should not be passed

upon by the court, but go with the report to the secretary of the treasury, and be considered by him in making up his judgment in the case; and an expression of the commissioner as to the law of the case should be stricken from the report as not coming within the reference. U. S. v. Six Hundred Tons of Iron Ore (D. C. 1874) 17 Fed. 137.

Further hearing before commissioner.—In proceedings for remission of penalties hereunder, the Secretary of the Treasury may return the findings to the United States commissioner for a further hearing before him upon a claim of newly discovered evidence. (1896) 21 Op. Atty. Gen. 289. CONTRA, (1897) 21 Op. Atty. Gen. 549.

Cited without definite application, Helwig v. U. S. (1903) 23 Sup. Ct. 427, 188 U. S. 605, 47 L. Ed. 614.

§ 10134. (Act June 22, 1874, c. 391, § 20.) Applicants to Secretary of Treasury for remission, etc., of fines, etc., to notify district attorney and collector; duty of district attorney and collector.

Whenever any application shall be made to the Secretary of the Treasury for the mitigation or remission of any fine, penalty, or forfeiture, or the refund of any duties, in case the amount involved is not less than one thousand dollars, the applicant shall notify the district attorney and the collector of customs of the district in which the duties, fine, penalty, or forfeiture accrued; and it shall be the duty of such collector and district attorney to furnish to the Secretary of the Treasury all practicable information necessary to enable him to protect the interests of the United States. (18 Stat. 190.)

Notes of Decisions

Refund of penalties.—This section confers no power upon the Secretary of the Treasury to refund any duties, penal or otherwise. There is no statutory authority to refund penal duties on the ground that they were incurred without willful negligence or an intention of fraud. (1896) 21 Op. Atty. Gen. 320.

As to "additional duties" as penalties, see note under § 10130, ante.

§ 10135. (R. S. § 5294, as amended, Act Dec. 15, 1894, c. 7, and Act March 2, 1896, c. 37.) Remission of penalties under laws relating to vessels; informers' rights; manner of ascertaining facts.

The Secretary of the Treasury may, upon application therefor, remit or mitigate any fine, penalty, or forfeiture provided for in laws relating to vessels or discontinue any prosecution to recover penalties or relating to forfeitures denounced in such laws, excepting the penalty of imprisonment or of removal from office, upon such terms as he, in his discretion, shall think proper; and all rights granted to informers by such laws shall be held subject to the Secretary's powers of remission, except in cases where the claims of any informer to the share of any penalty shall have been determined by a court of competent jurisdiction prior to the application for the remission of the penalty or forfeiture; and the Secretary shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as he may deem proper.

Act Feb. 28, 1871, c. 100, § 64, 16 Stat. 458. Act Dec. 15, 1894, c. 7, 28 Stat. 595. Act March 2, 1896, c. 37, 29 Stat. 39.

This section, as enacted in the Revised Statutes, was as follows:

"The Secretary of the Treasury may, upon application therefor, remit or mitigate any fine or penalty provided for in laws relating to steam-vessels, or discontinue any prosecution to recover penalties denounced in such laws, excepting the penalty of imprisonment, or of removal from office, upon such terms as he, in his discretion, shall think proper; and all rights granted to informers by such laws shall be held subject to the Secretary's power of remission, except in cases where the claims of any informer to the share of any penalty shall have been determined by a court of competent jurisdiction, prior to the application for the remission of the penalty; and the Secretary shall have authority to ascertain the facts upon all such applications, in such manner and under such regulations as he may deem proper."

It was amended by Act Dec. 15, 1894, c. 7, cited above, by changing "steam-vessels," in the first sentence of the section to "vessels."

It was further amended by Act March 2, 1896, c. 37, last cited above, to read as set forth here.

The Secretary of Commerce was authorized to remit penalties imposed and release vessels seized for violations of regulations adopted for the movements and anchorage of vessels in St. Mary's River, by Act March 6, 1896, c. 49, as amended by Act April 26, 1906, c. 1874, §§ 2, 3, ante, § 9956.

The fines prescribed for the violation of R. S. § 4153, as amended by Act June 19, 1886, c. 421, § 5, ante, § 7730, R. S. § 4177, as amended by Act June 19, 1886, c. 421, § 6, ante, § 7757, and Act June 19, 1886, c. 421, §§ 7, 8, ante, §§ 8096, 8125, could be remitted or mitigated by the Secretary of the Treasury when the offense for which the fine was imposed was not willfully committed, by section 9 of said Act June 19, 1886, c. 421, ante, § 8126.

The Secretary of the Treasury was authorized to refund penalties imposed for violations of laws relating to vessels or seamen, by Act June 26, 1884, c. 121, § 26, post, § 10136.

Notes of Decisions

Validity and scope.—Act July 13, 1861, forfeits goods brought from a state in rebellion into another state. Held, that the secretary of the treasury's remission of the forfeiture incurred under that act, to the owner of a vessel and cargo captured while running the blockade, was no bar to the condemnation of such vessel and cargo as prize of war. The Grey Jacket (1866) 72 U. S. (5 Wall.) 342, 18 L. Ed. 646.

The secretary of the treasury has no power in any case to remit the forfeiture of property captured as maritime prize of war. Id.

Act Feb. 14, 1903, establishing Department of Commerce and Labor, does not confer on the department greater power to remit fines and penalties under this section than was exercised by the Secretary of the Treasury. Findlay v. U. S. (1915) 225 Fed. 337, 139 C. C. A. 207.

An application under this section is based on an admission that the fine or penalty has been incurred. Id.

This section is not unconstitutional. It does not infringe the pardoning power of the president. The Laura (C. C. 1881) 8 Fed. 612, decree affirmed Pollock v. Bridgeport S. S. Co. (1885) 5 Sup. Ct. 881, 114 U. S. 411, 29 L. Ed. 147.

This section, as amended by the act of December 15, 1894 (28 Stat. 595), applies to fines and penalties only, and does not authorize the Secretary of the Treasury to remit a forfeiture. (1896) 21 Op. Atty. Gen. 291.

The Secretary has authority to return a deposit to cover a fine which might be due, but which turns out not to have been incurred. Such return would not be a remission of a fine or penalty, but the restitution of an amount to which the government was never justly entitled. (1900) 23 Op. Atty. Gen. 271.

The general doctrine expressed in the opinion of February 3, 1894 (20 Op. 705), concurred in. Id.

Power of remission of fines for escape of alien immigrants ordered to be deported is not conferred by this section, as amended March 2, 1896 (30 Stat. 39). Id.

The word "vessels," as used in New York Harbor Act (25 Stat. 209), does not relate to vessels in the sense contemplated by this act. (1904) 25 Op. Atty. Gen. 220.

The Secretary of Commerce and Labor had authority, under this section, to remit or mitigate a penalty after entry of final judgment incurred for violating a provision of law relating to vessels and seamen and discontinue the prosecution. (1911) 29 Op. Atty. Gen. 149.

The Secretary of Commerce and Labor had no authority to remit or mitigate a penalty or forfeiture imposed upon a vessel for a violation of section 9157, ante, which requires a vessel to obtain a bill of health before clearing any foreign port for a port in the United States, as that matter still remains within administrative jurisdiction and control of the Secretary of the Treasury. (1911) 29 Op. Atty. Gen. 169.

"Informers."—The term "informer," as used in this section, includes the plaintiff in a popular action, or a person suing for a penalty given by statute to any person suing for the same. Pollock v. The Laura (D. C. 1880) 5 Fed. 133, 142.

Rights of officers and informers under prior acts.—See The Margaretta (C. C. 1815) Fed. Cas. No. 9,072; The Hollen (C. C. 1818) Fed. Cas. No. 6,608; U. S. v. Morris (C. C. 1822) Fed. Cas. No. 15,816; In re Princess of Orange (D. C. 1831) Fed. Cas. No. 11,431; U. S. v. Thomasson (D. C. 1869) Fed. Cas. No. 16,479; (1847) 4 Op. Atty. Gen. 573; (1863) 10 Op. Atty. Gen. 452; (1864) 11 Op. Atty. Gen. 122; (1889) 19 Op. Atty. Gen. 344; (1895) 21 Op. Atty. Gen. 264; (1900) 23 Op. Atty. Gen. 18.

Transportation of passengers.—A remission by the secretary of the treasury, under this section as existing in 1885, of penalties incurred by a steam vessel for taking on board an unlawful number of passengers, granted before trial of a suit in rem, brought for the penalties against the vessel, by an informer, discharges all liability in the suit. The Laura (1885) 5 Sup. Ct. 881, 882, 114 U. S. 411, 29 L. Ed.

147, affirming decree (C. C. 1881) 8 Fed. 612.

A bond to secure payment of penalties for violations of the Passenger Act of 1882, and proceedings leading up to it held not an admission of liability for penalties or an application for remission under this section. Findlay v. U. S. (1915) 225 Fed. 337, 139 C. C. A. 207.

This section, when considered in connection with the history of the legislation and with the interpretation placed thereon by Attorney Generals does not authorize remission of penalties for violations of the Passenger Act of 1882. Id.

Under this section the power of the Secretary of the Treasury to remit penalties incurred under section 8229, ante, for carrying a greater number of passengers than the certificate of inspection of a steam vessel permits is not a power to pardon, but is a condition annexed to the grant of the penalty, and his power to remit penalties extends as well to those given to the informer as to those given to the United States, or partly to each, and in all cases may be exercised as well after as before suit brought, provided the informer's claim has not been actually determined. Pollock v. The Laura (D. C. 1880) 5 Fed. 133, 135.

In certain cases, under the acts of Congress regulating the transportation of passengers in merchant vessels, forfeitures may be remitted by the Secretary of the Treasury. (1854) 6 Op. Atty. Gen. 393.

In cases of mere forfeiture or other penalties accruing to the treasury under the acts of Congress relative to the transportation of passengers, the Secretary of the treasury may remit, as in similar cases arising under the revenue laws. (1854) 6 Op. Atty. Gen. 488.

Act March 3, 1855, c. 213, regulating the carriage of passengers in steamships and other vessels, and imposing penalties and punishment for contravention, is made applicable to ships abroad in sixty days in Europe, and six months in other parts of the world, and requires notice of the act to be given in all foreign ports through the Department of State. Held that, where such notice had failed to be given in such foreign port, and the owner or master of a vessel had thus unconsciously offended, it was proper case for remission of forfeiture and for pardon of the master. (1855) 7 Op. Atty. Gen. 489.

Remission of costs.—The costs which are not, as a general rule, charged against the defendant when proceedings are discontinued by the plaintiff, may also be remitted or mitigated by the Secretary in accordance with the provisions of this section. (1911) 29 Op. Atty. Gen. 149.

§ 10136. (Act June 26, 1884, c. 121, § 26.) Refunding of penalties under laws relating to vessels or seamen.

Whenever any fine, penalty, forfeiture, exaction, or charge arising under the laws relating to vessels or seamen has been paid to any collector of customs or consular officer, and application has been made within one year from such payment for the refunding or remission of the same, the Secretary of the Treasury, if on investigation he finds that such fine, penalty, forfeiture, exaction, or charge was illegally, improperly, or excessively imposed, shall have the power, either before or after the same has been covered into the Treasury, to refund so much of such fine, penalty, forfeiture, exaction, or charge as he may think proper, from any moneys in the Treasury not otherwise appropriated. (23 Stat. 59.)

This section was part of the Shipping Act of June 26, 1884, cited above. See notes to R. S. § 4219, ante, § 7812, as to other sections of said act.

Notes of Decisions

Validity and scope.—The power given by this section to the Secretary of the Treasury does not authorize him to remit a legal charge because it may involve the government in a controversy with a foreign power. Thingvalla Line v. U. S. (1889) 24 Ct. Cl. 255.

The power of remitting fines, penalties, etc., arising under the laws relating to vessels or seamen, given by this section to the Secretary of the Treasury, does not extend to cases where a competent judicial tribunal shall have decided that such fines, penalties, etc., were legally imposed. (1885) 18 Op. Atty. Gen. 282.

As sections 2932 and 3013 of the Revised Statutes were repealed before the date of the exaction under consideration, it does not appear that any power to refund the money illegally exacted exists, except under this section. (1890) 19 Op. Atty. Gen. 660.

Necessity of payment under protest.—This section does not require that a protest shall have accompanied the payment of a fine, etc., a refunding of which by the Secretary of the Treas-

ury is asked. (1884) 18 Op. Atty. Gen. 63.

Moneys improperly exacted from and paid by vessels proceeding under section 5472, ante, to unlade at places other than a port of entry, may be refunded by the Secretary of the Treasury, without formal protest by the applicant, in cases where application has been made within one year from such payment. (1890) 19 Op. Atty. Gen. 646.

Taxes under immigration laws.—The Secretary of the Treasury is authorized, under this section, to refund the head tax levied in the case of the steamship Russia under the provisions of the immigration act of August 3, 1882 (22 Stat. 214), or so much thereof as he may think proper, if, upon investigation, he finds that the same was illegally, improperly, or excessively imposed. (1890) 19 Op. Atty. Gen. 660.

Taxes on foreign-built vessels.—The Secretary of the Treasury was authorized, under this section, to refund the head tax levied in the case of the steamship Russia under the provisions of the former act of August 3, 1882, or so much thereof as he may think proper, if, upon investigation, he found that the same was illegally, improperly, or excessively imposed. (1890) 19 Op. Atty. Gen. 660.

All charges improperly or excessively imposed and erroneously or illegally collected on foreign-built yachts, pleasure boats, and vessels not used or intended to be used for trade, under section 37 of the tariff act of Aug. 5, 1909 (36 Stat. 112), may be refunded under the provisions of section 26 of the act of June 26, 1884 (23 Stat. 59). (1909) 28 Op. Atty. Gen. 21.

Entrance and clearance fees.—The right to a refund of entrance and clearance fees improperly exacted by the collector of customs at Pembina, N. D., from Canadian vessels entering and clearing that port after the passage of the act of March 3, 1897 (section 8139, ante), abolishing such charges, is governed by this section. (1905) 25 Op. Atty. Gen. 376.

Tonnage duties.—This section has no application to tonnage duties. The words "exaction and charge" in this section, which might in some circumstances be held to comprehend tonnage duties, must, from their association with the terms "fine, penalty, forfeiture," be taken in an acceptation akin to that of these latter words. (1885) 18 Op. Atty. Gen. 197.

The Secretary of the Treasury is authorized, under this section, to repay the tonnage tax imposed on the steamer Cuba if, on investigation, he finds that it was "illegally, improperly, or excessively imposed" and if the Commissioner of Navigation shall have first decided, under section 892, ante, that such tax was erroneously or illegally exacted. (1890) 19 Op. Atty. Gen. 660.

The decision of the Commissioner of Navigation is final on all questions of interpretation relating to the collection of tonnage taxes and the refund thereof. The President has no authority to reverse his decision so as to adjust the claims of Sweden and Norway for the return of tonnage dues alleged to have been erroneously exacted. Any application for relief should be addressed to the legislative branch of the government. (1892) 20 Op. Atty. Gen. 367.

This section and section 892, ante, imposing upon the Commissioner of Navigation the supervision of the laws relating to the admeasurement of vessels and the interpretation of all questions relating to the collection of tonnage taxes and the refund of such taxes, are still in force. (1909) 28 Op. Atty. Gen. 21.

Should the provision of section 37 of the former tariff act of August 5, 1909, imposing a duty of $7 per gross ton on the vessels therein named be declared invalid, such duty would be an improper or illegal charge within the meaning of this act and the act of July 5, 1884, and if collected should be refunded. Id.

§ 10137. (R. S. § 5295.) Officers and informers may be witnesses.

Any officer or other person entitled to or interested in a part or share of any fine, penalty, or forfeiture incurred under any law of the United States, may be examined as a witness in any of the proceedings for the recovery of such fine, penalty, or forfeiture by either of the parties thereto, and such examination shall not deprive such witness of his share or interest in such fine, penalty, or forfeiture.

Act Feb. 28, 1865, c. 67, § 2, 13 Stat. 442.

Notes of Decisions

Competency.—An informer is a competent witness, although he may receive part of the penalty. U. S. v. Voss (C. C. 1802) Fed. Cas. No. 16,628; U. S. v. Patterson (C. C. 1842) Fed. Cas. No. 16,009; Id. (C. C. 1843) Fed. Cas. No. 16,010. CONTRA, see U. S. v. McCormick (C. C. 1802) Fed. Cas. No. 15,662.

The owner of goods stolen by a slave,

being entitled to one-half of the fine, is not a competent witness for the prosecution. U. S. v. Rhodes (C. C. 1807) Fed. Cas. No. 16,152.

The prosecutor whose name is indorsed on an indictment for a misdemeanor is not a competent witness for the prosecution. U. S. v. Birch (C. C. 1809) Fed. Cas. No. 14,595.

A deposition, taken before trial, of an informer, who is entitled under the act of congress to a portion of a fine, forfeiture, or penalty, is not admissible. The Thomas & Henry v. U. S. (C. C. 1818) Fed. Cas. No. 13,919.

A general law admitting interested parties to testify as witnesses in all cases held not repealed by a subsequent special law admitting interested parties to testify in certain contingencies. U. S. v. Ten Thousand Cigars (C. C. 1867) Fed. Cas. No. 16,451.

§ 10138. (R. S. § 5296.) Discharge of indigent convicts.

When a poor convict, sentenced by any court of the United States to be imprisoned and pay a fine, or fine and cost, or to pay a fine, or fine and costs, has been confined in prison thirty days, solely for the non-payment of such fine, or fine and costs, such convict may make application in writing to any commissioner of the United States court in the district where he is imprisoned setting forth his inability to pay such fine, or fine and costs, and after notice to the district attorney of the United States, who may appear, offer evidence, and be heard, the commissioner shall proceed to hear and determine the matter. If on examination it shall appear to him that such convict is unable to pay such fine, or fine and costs, and that he has not any property exceeding twenty dollars in value, except such as is by law exempt from being taken on execution for debt, the commissioner shall administer to him the following oath: "I do solemnly swear that I have not any property, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken on civil process for debt by the laws of (naming the State where oath is administered;) and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit. So help me God." Upon taking such oath such convict shall be discharged; and the commissioner shall give to the keeper of the jail a certificate setting forth the facts.

Act June 1, 1872, c. 255, § 14, 17 Stat. 198.

A similar provision was made by R. S. § 1042, ante, § 1706.

Notes of Decisions

Imprisonment until payment of fine.—In this section and section 1706, ante, the word "jail" did not imply that no prisoner should be held in a penitentiary for nonpayment of a fine or a fine and costs, but was used merely to indicate the place of confinement, and hence a federal prisoner could be properly retained in the same institution where he had served his term of imprisonment for the nonpayment of a fine, or a fine and costs, assessed as a part of the sentence, until the fine was paid, or the prisoner applied to take the poor debtor's oath after the expiration of 30 days from the completion of his term. Where a prisoner in the penitentiary, after having served the imprisonment part of the sentence, was erroneously discharged on habeas corpus because it was supposed that his incarceration could not be continued for nonpayment of the fine assessed, the United States, on reversal of such order, could retake and return him to the penitentiary from which he had been released, and hold him therein until he had been lawfully discharged by payment of the fine, or by taking the poor debtor's oath after 30 days' additional imprisonment. Haddox v. Richardson (1909) 168 Fed. 635, 94 C. C. A. 99.

The plaintiff in error, being convicted of manslaughter, was sentenced to punishment therefor under the law of Oregon, instead of the act of 1875 (18 Stat. 473), whereby his imprisonment was authorized for 20 days in excess of the punishment allowed by said act. Held, that the judgment was erroneous, and the same was reversed, with direction to have plaintiff in error sentenced according to law. Kie v. U. S. (C. C. 1886) 27 Fed. 351, 356.

Marshal's fee for service of mandate.—The jailer of a state jail, in which prisoners, under sentence or awaiting trial by the federal courts, are confined, is not an officer of the United States; and a United States commissioner has no power to call upon him to perform any service. A United States marshal

is entitled to a fee of two dollars for the service of a mandate to bring in a poor convict for examination, upon his application for release, pursuant to section 1706, ante, and this section. Saunders v. U. S. (C. C. 1896) 73 Fed. 782; Hitch v. U. S. (D. C. 1895) 66 Fed. 937; Saunders v. U. S. (D. C. 1896) 73 Fed. 792.

(12466)

Cited without definite application, Fink v. O'Neil (1882) 1 Sup. Ct. 325, 334, 106 U. S. 272, 27 L. Ed. 196; Starr v. U. S. (1897) 17 Sup. Ct. 223, 224, 164 U. S. 627, 41 L. Ed. 577; U. S. v. Hom Hing (D. C. 1892) 48 Fed. 635, 639; In re Sanborn (D. C. 1892) 52 Fed. 583, 585; U. S. v. Stacey (D. C. 1907) 155 Fed. 510.

TITLE LXIX

INSURRECTION

Sec.
10139. Insurrection against a State government.
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10161. Forfeiture of vessels belonging to citizens of insurrectionary States.
10162. Refusal of clearance to vessels laden with suspected merchandise.
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§ 10139. (R. S. § 5297.) Insurrection against a State government. In case of an insurrection in any State against the government thereof, it shall be lawful for the President, on application of the legislature of such State, or of the executive, when the legislature cannot be convened, to call forth such number of the militia of any other State or States, which may be applied for, as he deems sufficient to suppress such insurrection; or, on like application, to employ, for the same purposes, such part of the land or naval forces of the United States as he deems necessary.

Act Feb. 28, 1795, c. 36, § 1, 1 Stat. 424. Act March 3, 1807, c. 39, 2 Stat. 443.

Notes of Decisions

Applicability to District of Columbia.—This section applies to the states, and not to the District of Columbia. U. S. v. Stewart (D. C. 1857) Fed. Cas. No. 16,401a.

Discretion of President.—The President is the judge of the necessity of calling the militia into service. Martin v. Mott (1827) 12 Wheat. 19, 31, 6 L. Ed. 537; (1856) 8 Op. Atty. Gen. 8, 13.

The President's decision as to which of two opposing governments is the lawful one cannot be questioned by the courts. Luther v. Borden (1849) 7 How. 1, 43, 12 L. Ed. 581.

When the President has proclaimed a state to be in insurrection, the courts must hold that this condition continues until he decides to the contrary. U. S. v. 129 Packages (D. C. 1862) Fed. Cas. No. 15,941.

The arrest of a United States marshal on civil process under state authority, from which he was immediately released on bail, was not considered an emergency justifying the intervention of armed forces of the United States. (1854) 8 Op. Atty. Gen. 445.

In a time of great and dangerous insurrection the President has discretionary power to hold in custody persons known to have criminal intercourse with the insurgents, or persons against whom there is probable cause for suspicion of such criminal complicity. (1861) 10 Op. Atty. Gen. 74.

Military power subordinate.—Under this act the President may employ the militia and the land and naval forces for the purpose of causing the laws to be duly executed; but when a military force is called into the field for that purpose, its operations must be purely

defensive, and the military power on such an occasion must be kept in strict subordination to the civil authority. (1860) 9 Op. Atty. Gen. 517.

Cited without definite application, Prize Cases (1862) 2 Black, 635, 668, 693, 17 L. Ed. 459; (1861) 10 Op. Atty. Gen. 100.

§ 10140. (R. S. § 5298.) Insurrection against the Government of the United States.

Whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President, to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State or Territory, it shall be lawful for the President to call forth the militia of any or all the States, and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion, in whatever State or Territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed.

Act July 29, 1861, c. 25, § 1, 12 Stat. 281.

Notes of Decisions

What constitutes insurrection.—An insurrection is a rising against civil or political authority; the open and active opposition of a number of persons to the execution of law in city or state. In re Charge to Grand Jury (D. C. 1894) 62 Fed. 828; Spruill v. North Carolina Mut. Life Ins. Co. (1853) 46 N. C. 126; County of Allegheny v. Gibson (1879) 90 Pa. 397, 35 Am. Rep. 670.

The confederate government viewed from the standpoint of the Constitution was nothing more than the military representative of the insurrection against the authority of the United States and the belligerent rights conceded to it in the interest of humanity, were such only as existed during the war. Stevens v. Griffith (1884) 4 Sup. Ct. 283, 284, 111 U. S. 48, 28 L. Ed. 348.

The open and active opposition of a number of persons to the execution of the laws of the United States, of so formidable a nature as to defy for the time being the authority of the government, constitutes an insurrection, though not accompanied by bloodshed, and not of sufficient magnitude to render success probable. In re Charge to Grand Jury (D. C. 1894) 62 Fed. 828. See, also, Presser v. Illinois (1886) 6 Sup. Ct. 580, 585, 116 U. S. 252, 29 L. Ed. 615.

Army as posse comitatus.—The military forces may, however, be used where an organized, armed, and fortified resistance to the execution of the law exists, by direction of the President, under the provisions of this section and section 10142, post, should he deem proper to take certain preliminary steps therein provided and if resistance to the law shall thereafter continue. (1878) 16 Op. Atty. Gen. 162.

Section 1992, ante, renders unavailable the aid of the military forces of the United States for the suppression of unlawful organizations, unless the state of facts be such as to enable these forces to be used under the provisions of this section. (1881) 17 Op. Atty. Gen. 242.

Upon consideration of the facts stated: Advised that the military forces of the United States may be employed under this section, after proclamation as required by section 10142, post, to aid in the execution of the laws and for the suppression of combinations of outlaws and criminals in the territory of Arizona, without the need of further legislation. (1882) 17 Op. Atty. Gen. 333.

It is competent for the President, under this section, to direct the military forces to render the marshal for the Indian Territory, or for Alaska, such aid as may be necessary to enable him to maintain the peace and enforce the laws of the United States, but the marshal himself cannot call on the troops for aid, their use as a posse comitatus being forbidden by section 1992, ante. (1889) 19 Op. Atty. Gen. 293, 368.

§ 10141. (R. S. § 5299.) Power to suppress insurrection in violation of civil rights.

Whenever insurrection, domestic violence, unlawful combinations, or conspiracies in any State so obstructs or hinders the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, or protection, named in the Constitution and secured by the laws for the protection of such rights, privileges, or immunities,

and the constituted authorities of such State are unable to protect, or, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States; and in all such cases, or whenever any such insurrection, violence, unlawful combination, or conspiracy, opposes or obstructs the laws of the United States, or the due execution thereof, or impedes or obstructs the due course of justice under the same, it shall be lawful for the President, and it shall be his duty, to take such measures, by the employment of the militia or the land and naval forces of the United States, or of either, or by other means, as he may deem necessary, for the suppression of such insurrection, domestic violence, or combinations.

Act April 20, 1871, c. 22, § 3, 17 Stat. 14

Provisions prohibiting the use of the Army as a posse comitatus, except as expressly authorized by the Constitution and the laws, were contained in Act June 18, 1878, c. 263, § 15, ante, § 1992.

§ 10142. (R. S. § 5300.) Proclamation to insurgents to disperse.

Whenever, in the judgment of the President, it becomes necessary to use the military forces under this Title, the President shall forthwith, by proclamation, command the insurgents to disperse and retire peaceably to their respective abodes, within a limited time.

Act July 29, 1861, c. 25, § 2, 12 Stat. 282.

Notes of Decisions

Essentials of proclamation.—A proclamation held to have taken effect when signed by the President and sealed. Lapeyre v. U. S. (1872) 17 Wall. 191, 197, 21 L. Ed. 606.

§ 10143. (R. S. § 5301.) Suspension of commercial intercourse.

Whenever the President, in pursuance of the provisions of this Title, has called forth the militia to suppress combinations against the laws of the United States, and to cause the laws to be duly executed, and the insurgents shall have failed to disperse by the time directed by the President, and when the insurgents claim to act under the authority of any State or States, and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such State or States, or in the part or parts thereof in which such combination exists, and such insurrection is not suppressed by such State or States, or whenever the inhabitants of any State or part thereof are at any time found by the President to be in insurrection against the United States, the President may, by proclamation, declare that the inhabitants of such State, or of any section or part thereof where such insurrection exists, are in a state of insurrection against the United States; and thereupon all commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue; and all goods and chattels, wares and merchandise, coming from such State or section into the other parts of the United States, or proceeding from other parts of the United States to such State or section, by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or section, be forfeited to the United States.

Act July 13, 1861, c. 3, § 5, 12 Stat. 257. Act July 31, 1861, c. 32, 12 Stat. 284.

Notes of Decisions

1. Construction of act.
2. Effect of act and proclamations thereunder.
3. Territory and persons affected.
4. Nonresident aliens.
5. Commercial intercourse in general.
6. —— Contracts.
7. —— Conveyances, leases, and mortgages.
8. —— Sales.
9. —— Bills and notes.
10. Enforcement.
11. Goods and vessels subject to forfeiture.

1. Construction of act.—This was not a temporary act, though passed during the late rebellion; nor on the cessation of hostilities did forfeitures which had

been incurred, after proclamation, cease to be capable of enforcement. The Reform (1865) 3 Wall. 617, 629, 18 L. Ed. 105; Winchester v. U. S. (1878) 14 Ct. Cl. 43.

None of the provisions of this act have any reference to cases of condemnation as prize of war. The Hampton (1866) 72 U. S. (5 Wall.) 372, 18 L. Ed. 659.

Regulations of secretary of treasury, exacting certain payments as condition precedent to shipment of cotton from disloyal states held legal and valid. Hamilton v. Dillin (C. C. 1871) Fed. Cas. No. 5,979.

This is not a penal, but a revenue, statute, and is to be construed liberally, so as to accomplish its proposed object. U. S. v. One Hundred and Twenty-Nine Packages (D. C. 1862) Fed. Cas. No. 15,941.

Whether the rebellion was suppressed, and when it was suppressed, are facts for the determination of the political branches of the government, and the judiciary are concluded by their action in the premises. The President by virtue of the acts of July 13, 1861 (12 Stat. 257), July 31, 1861 (12 Stat. 284), and June 7, 1862 (12 Stat. 422, § 2), had the right to declare from time to time what states or parts of states were in insurrection against the United States. This power necessarily carried with it the right to decide and declare that the rebellion had been suppressed in any state or part of a state where it had before existed. Grossmeyer v. U. S. (1868) 4 Ct. Cl. 1.

The statutes and proclamations authorizing and prohibiting commercial intercourse with and in the insurrectionary districts during the rebellion examined and reviewed. Walker's Ex'rs v. U. S. (1876) 12 Ct. Cl. 408.

Under this section and section 10154, post, a sound discretion was vested in the secretary of the treasury to make rules in relation to commercial intercourse with the insurrectionary states, which was of a governmental character and not subject to revision. Hughes v. Oakes (1868) 59 Pa. 32.

Mere military occupation of a territory by the forces of a belligerent, without confirmation, of conquest in one of the modes recognized by international law, does not change the national character of the inhabitants; and the President's proclamation of August 16, 1861, under this act, only regulated intercourse of the people of those sections of the Confederate States occupied by the Federal forces with the people of the United States, and did not regulate the intercourse of citizens of the territory thus held with other citizens of the Confederate States. Shaw v. Carlile (1872) 56 Tenn. (9 Heisk.) 594.

2. Effect of act and proclamations thereunder.—The suspension of intercourse during the Civil War did not prevent the accrual of interest on a debt due by a citizen of a state in insurrection to a citizen of a loyal state. Shortridge v. Macon (C. C. 1867) Fed. Cas. No. 12,812; Rogers v. Arthur (D. C. 1867) Fed. Cas. No. 12,006.

Though a contract limitation in an insurance policy does not operate in the same manner in case of war as a statute of limitations, the disability imposed by the war on a beneficiary relieves him of the consequences of failure to bring suit within the contract period. Semmes v. Hartford Ins. Co. (1871) 13 Wall. (U. S.) 158, 20 L. Ed. 490.

Before this enactment and the president's proclamation of August 16, 1861, commercial intercourse between citizens of the states in insurrection and citizens of the rest of the United States was not unlawful, and a partnership between persons residing in New York and Louisiana was not dissolved on April 23, 1861, and so that the acceptance of a bill of exchange by the firm on the latter date was valid. Matthews v. McStea (1875) 91 U. S. 7, 9, 23 L. Ed. 188.

Partition proceedings in Georgia courts by devisees of lands in Georgia during the Civil War were void as against a devisee who was in the discharge of duties as a surgeon in the United States army and was prevented by the war from communication with the state of Georgia. Cuyler v. Ferrill (C. C. 1867) Fed. Cas. No. 3,523.

A state statute of limitations was suspended by the Civil War. Brown v. Hiatt (C. C. 1870) Fed. Cas. No. 2,011; Chappelle v. Olney (C. C. 1870) Fed. Cas. No. 2,613.

The president's proclamation, issued under authority of congress, declaring the inhabitants of certain states in rebellion to be in a state of insurrection, and forbidding all commercial intercourse with them, suspends suits in federal courts until after re-establishment of loyal government. Currie v. The Josiah Harthorn (D. C. 1862) Fed. Cas. No. 3,491a.

One effect of the Nonintercourse Act was to postpone and determine the time when commercial intercourse between the loyal and insurrectionary States should become unlawful. Chesapeake & O. R. Co. v. U. S. (1885) 20 Ct. Cl. 49.

The proclamation of the president prohibiting intercourse did not prevent proceedings to condemn the land of a party residing in one of the rebellious states for railroad purposes. Mixer v. Sibley (1869) 53 Ill. 61.

This act and the proclamation pursuant thereto, issued August 16, 1861, prohibiting such intercourse, were not designed to deprive creditors in the loyal states of the use of all such remedies for the collection of their debts as the laws of those states gave them. Willard v. Boggs (1870) 56 Ill. 163.

The existence of the late Civil War, and the president's proclamation, issued in pursuance of the nonintercourse acts, did not suspend the operation of the Illinois statutes authorizing the prosecution of suits against nonresident defendants domiciled in the rebellious states, in respect to their property situate in Illinois by publication of notice, so as to deprive the courts, in such cases, of all jurisdiction. Seymour v. Bailey (1872) 66 Ill. 288.

Contracts made prior to the proclamation of August 16, 1861, were valid; but during the War the debt and the remedy were suspended, and did not revive until the restoration of peace. Perkins v. Rogers (1871) 35 Ind. 124, 9 Am. Rep. 639.

After the president's proclamation of August, 1861, interdicting commercial intercourse between the rebellious and the loyal states, a note having been dishonored, certain lands were sold under a deed of trust to satisfy the debt. Held, that a bill in equity would not lie on behalf of the maker to set aside the sale on the ground that he was, when the note matured and the land was sold, within the Confederate lines, and cut off from all intercourse with the loyal states; it appearing that he had voluntarily gone and remained South. De Jarnette v. De Giverville (1874) 56 Mo. 440; Black v. Gregg (1875) 58 Mo. 565.

A copartnership existing between citizens of New York and citizens of New Orleans was not terminated by reason of the war until the president's proclamation, August 16, 1861, declaring commercial intercourse between the citizens of the insurrectionary states and of the loyal states unlawful. McStea v. Matthews (1872) 50 N. Y. 166.

This act did not prevent legal transactions between residents of different states of the Confederacy. Bond v. Owen (1874) 66 Tenn. (7 Baxt.) 340.

Where a vendee, who before the beginning of the late Civil War and during its continuance resided in Madison county, Va., east of the Allegheny Mountains, purchased land before the commencement of said war situated in Fayette county, Va., from his vendor, who then resided and who during said war continued to reside in the county of Kanawha, Va., the right of the vendor to a specific execution of the contract was suspended from August 16, 1861, the date of the President's proclamation, to the end of the war, and during that period it was unlawful for the vendee to enter the military lines of the United States to pay installments of the purchase money as they became payable. Grinnan v. Edwards (1883) 21 W. Va. 347.

3. Territory and persons affected.—The rule that war makes all citizens or subjects of one belligerent enemies of all citizens and subjects of the other applies to civil war. The Venice (1864) 2 Wall. 258, 17 L. Ed. 866; Small's Adm'r v. Lumpkin's Ex'r (1877) 28 Gratt. (Va.) 832.

Where states have assumed to secede and the functions of the federal courts are suspended in rebellious territory, the United States government is entitled to exercise belligerent rights against the seceded territory. U. S. v. The F. W. Johnson (D. C. 1861) Fed. Cas. No. 15,179; Green's Case (1874) 10 Ct. Cl. 466, 470.

The court cannot take judicial notice of the varying lines of the federal army of occupation during the rebellion so as to determine the validity of the trade permits. U. S. v. Weed (1866) 5 Wall. 62, 72, 18 L. Ed. 531.

An inhabitant of a loyal state held not to have acquired a domicile in the insurrectionary states, and hence his purchases there constituted trading with the enemy. Mitchell v. U. S. (1874) 21 Wall. 350, 352, 22 L. Ed. 584.

A party held to be domiciled in the insurrectionary states, and hence his purchase there constituted trading with the enemy. Desmare v. U. S. (1876) 93 U. S. 605, 610, 23 L. Ed. 959.

A citizen temporarily residing in the enemy's country is entitled to a reasonable time to collect his effects and convert them into available and manageable funds, to enable him to withdraw them from the country. The John Gilpin (C. C. 1863) Fed. Cas. No. 7,344.

Where a loyal citizen, residing within the Confederate lines, transmits money to another city, also within the Confederate lines, to be invested in sugar, etc., and the investment is not made until after the place of domicile is captured, so that the purchaser becomes thereby a resident within the Union lines, the transaction does not come within the prohibition of this act. Furman v. U. S. (1869) 5 Ct. Cl. 579.

In March, 1865, commercial intercourse between a citizen of a loyal state and a person residing in Savannah is unlawful, although Savannah is permanently occupied by United States forces; the acts and proclamations affecting commercial intercourse during the rebellion examined and construed. Cutner v. U. S. (1870) 6 Ct. Cl. 415.

A resident alien owes the same obedience to the law of the place in which he is, be it municipal or military, as a citizen; and when one, resident in New Orleans after its capture, transmits money across the lines to his agent, previously appointed, to buy cotton, it is commercial intercourse forbidden by both municipal and military law, and he acquires no valid title to the property purchased. Queyrouze v. U. S. (1871) 7 Ct. Cl. 402.

The proclamation of August 16, 1861, forbidding commercial intercourse between the inhabitants residing within the insurrectionary districts and those residing in such portions thereof as

"may be from time to time occupied and controlled by forces of the United States," does not forbid a person residing in a district of country alternately raided on by both belligerents, and occasionally occupied by one or the other, from acquiring a valid title to property situated within the Confederate lines. The prohibition imposed by the words "from time to time occupied and controlled" must be held to mean more than a mere raid or transient occupation. The occupation implied by the law was actual, substantial, and complete. Cartwright v. U. S. (1872) 8 Ct. Cl. 465.

The status of a person in the Civil War was fixed by his residence, and business between persons in the warring sections became illegal. Shacklett v. Polk (1875) 51 Miss. 378.

The question of whether a locality was under the Federal or Confederate authority at a time during the war was not governed by the fact that at such time the state capital was held by a Federal military governor, but depends on actual occupation and dominion. Bond v. Perkins (1871) 51 Tenn. (4 Heisk.) 364.

Although there seems to have been some doubt, under the first proclamation of the president of the United States, forbidding commercial intercourse between the United States and the Confederate States, whether there was not an exception in favor of places permanently occupied by the United States forces (although the court held no such exception existed), there was no such exception after March 31, 1863. Nelson v. Trigg (1877) 3 Tenn. Cas. 733.

It is competent to establish by evidence in pais whether the people of a county not specifically mentioned in the president's proclamation of August, 1861, declaring certain states and parts of states in insurrection, maintained a loyal adhesion to the constitution and the Union. Winternitz v. Hyland (1869) 3 W. Va. 461.

The people of the county of Berkeley maintained a loyal adhesion to the Constitution and Union at the date of the proclamation of August 16, 1861, and were, therefore, excepted from the operation thereof as against parties in rebellion, and were inhibited from commercial intercourse with parties engaged therein as public enemies of the United States. Winternitz v. Hyland (1869) 3 W. Va. 461, cited and approved Hawver v. Seibert (1871) 4 W. Va. 586.

The inhabitants of Green Brier county, W. Va., were not declared to be in a state of insurrection by the proclamation of the president of August 16, 1861, but were specially excepted from the operation thereof; and commercial intercourse with them was not inhibited in September, 1862. Hawver v. Seibert (1871) 4 W. Va. 586.

4. Nonresident aliens.—A contract for the purchase of cotton, made during the Civil War by a subject of Norway, domiciled in New York, with a citizen of Texas, actually residing therein at the date of the contract, held void. Habricht v. Alexander (C. C. 1867) Fed. Cas. No. 5,886.

This act and Act Aug. 6, 1861 (section 10150, post), are purely municipal regulations, with which foreigners have no concern. U. S. v. The William Arthur (D. C. 1861) Fed. Cas. No. 16,702.

Although commercial intercourse between persons in the loyal states and persons within the insurrectionary districts during the rebellion must be held unlawful, still the act does not apply to nonresident aliens. Commercial intercourse between a neutral and a belligerent is not only lawful, but to be protected by courts, so long as it is impartial and not intended to violate any blockade or siege, or to deal in goods contraband of war. Hence, where an alien, resident in France, purchased goods through an agent during the rebellion within the insurrectionary districts, and it does not appear that the appointment of the agent or the means to purchase the goods were transmitted during the rebellion, and it does appear that the alien formerly resided at New Orleans, and on his departure left a large amount of property in the South, the purchase will be held valid, and the alien entitled to relief under the abandoned or captured property act (12 Stat. 820). La Plante v. U. S. (1870) 6 Ct. Cl. 311.

Merchandise ordered from China by merchants of Richmond, Va., and originally consigned to them, but for which, three days before the president's proclamation declaring that part of Virginia in a state of insurrection, the merchants executed an assignment to New York creditors, which merchandise on its arrival at New York passed into the custody of the assignees, was not liable to confiscation. U. S. v. 156 Packages of Tea (D. C. 1865) Fed. Cas. No. 15,933.

A contract made in 1862, between French subjects residing in France of the one part, and persons residing within the rebel lines, and within the limits of the insurrectionary states of the United States, of the other, was not a traffic between enemies, forbidden by the law of nations, the president's proclamation, or the acts of congress. Devot v. Marx (1867) 19 La. Ann. 491.

An alien, residing abroad, could acquire a title to personal property in the insurrectionary district, during the rebellion, by purchase through an agent there. Collie v. U. S. (1873) 9 Ct. Cl. 431.

5. Commercial intercourse in general.—By this act and the proclamation of the president of August 16, 1861, all

commercial intercourse between the citizens of the loyal states and the inhabitants of the states declared to be in insurrection was interdicted and became unlawful. (1861) 10 Op. Atty. Gen. 152; Perkins v. Rogers (1871) 35 Ind. 124, 9 Am. Rep. 639; Leathers v. Commercial Ins. Co. (1867) 65 Ky. (2 Bush) 296, 92 Am. Dec. 483; Woods v. Wilder (1870) 43 N. Y. 164, 3 Am. Rep. 684; McStea v. Matthews (N. Y. 1871) 3 Daly, 349 (reversed [1872] 50 N. Y. 166); Bank of Tennessee v. Woodson (1867) 45 Tenn. (5 Cold.) 176; McCormick v. Arnspiger (1873) 38 Tex. 569.

The rule that war dissolves all commercial partnerships and all contracts wholly executory and requiring commercial intercourse, and that it suspends all other contracts and obligations between the citizens of the respective belligerents, applies to civil war. Hamilton v. Mut. Life Ins. Co. (C. C. 1871) Fed. Cas. No. 5,986; Jackson Ins. Co. v. Stewart (C. C. 1866) Fed. Cas. No. 7,152; Small's Adm'r v. Lumpkin's Ex'r (1877) 28 Gratt. (Va.) 832.

Power to license trading with enemy defined. McKee v. U. S. (1868) 8 Wall. 163, 166, 19 L. Ed. 329; U. S. v. Lane (1868) 8 Wall. 185, 195, 19 L. Ed. 445.

Real estate of a testator was sold by the executors in Virginia in 1860, and when a bond for a part of the purchase money fell due, in 1862, one of the executors, who still resided in Virginia, accepted payment thereof, in goods faith, in Confederate money, and distributed a portion of the amount to such heirs and legatees as were within reach, and charged himself in his accounts with the balance. The other executor at that time resided in Indiana. Held, in an action brought by the latter, after the death of the Virginia executor, against the executor of the purchaser, to recover the amount of the bond, that the payment in Confederate money discharged the debt. Glasgow v. Lipse (1886) 6 Sup. Ct. 757, 117 U. S. 327, 29 L. Ed. 901.

In a civil war persons who adhere to their allegiance are not, though they reside in insurrectionary district, regarded as enemies; and trade with such persons in good faith is lawful unless interdicted. By this section and a proclamation thereunder trade is interdicted by the proper authority. Charge to Grand Jury (C. C. 1861) Fed. Cas. No. 18,271.

Transporting gold to a territory in insurrection, without a license, will subject it to forfeiture, though the insurrectionary district was at the time in possession of the federal forces. U. S. v. Gay's Gold (C. C. 1870) Fed. Cas. No. 15,194.

The measure of damages for failure of a carrier to deliver a package of Confederate notes from one point to another within the Confederate states was their value at the close of the war when demand was made therefor, and interest is to be computed from that time. Caldwell v. Southern Exp. Co. (C. C. 1876) Fed. Cas. No. 2,303.

Commercial transactions carried on within the Confederate lines contrary to this section is aid and comfort to the rebellion, within the abandoned or captured property act. Where a claimant voluntarily enters the enemy's lines, he cannot claim that services rendered the enemy were involuntary. Gearing v. U. S. (1867) 3 Ct. Cl. 165.

A citizen of a loyal state involuntarily detained during the rebellion within the confederate lines may, with his earnings, buy and sell, acquire property and dispose of property, so long as he gives neither aid nor comfort to the rebellion, and so long as he brings nothing within and carries nothing without the Confederate lines. Such commercial intercourse is not in violation of this act. Ealer v. U. S. (1869) 5 Ct. Cl. 708.

Commercial intercourse in March, 1864, between a resident of Memphis and persons within the Confederate military lines, through an agent then appointed at Memphis, by power of attorney, who passes the United States lines under a provost marshal's authority, is unlawful, and no title to personal property could be thus acquired, notwithstanding that the proclamation of April 2, 1863, declares Tennessee in a state of insurrection, and prohibits commercial intercourse between its citizens and those of loyal states. Ensley v. U. S. (1870) 6 Ct. Cl. 282.

Where partners domiciled on loyal and disloyal territory were engaged in growing cotton before the war, the resident partner might turn over to a common agent appointed before the war a mass of cotton as the share of the absent partner. After the war the absent partner could affirm the transaction and assert a valid title. A payment by one partner to a partner absent on hostile territory, in good faith, whether in money or goods, will be upheld. Douglas v. U. S. (1878) 14 Ct. Cl. 1.

A. moved from Georgia to the North in 1862, leaving money with an agent, who invested it in county bonds. The county pleaded this section in defense to A.'s suit on the bonds. Held, that A. could recover. Bartow County Com'rs v. Newell (1880) 64 Ga. 699.

A bill in equity cannot be sustained by one partner against his copartners for an account of profits resulting from an illegal trading with inhabitants of states declared in insurrection against the United States. Dunham v. Presby (1876) 120 Mass. 285.

6. —— **Contracts.** — Contracts between residents in the Confederate States during the Civil War, not de-

signed to aid the Rebellion, payable in Confederate money, will be enforced by reducing the nominal amount due to its value in lawful money of the United States at the time and place where such contracts were made. Effinger v. Kenney (1885) 6 Sup. Ct. 179, 115 U. S. 566, 29 L. Ed. 495.

The fact that a contract was made in enemy territory to a loyal citizen of the United States does not necessarily imply unlawful intercourse between the parties; transactions within Confederate lines and affecting loyal citizens outside were not all unlawful. Carson v. Dunham (1887) 7 Sup. Ct. 1030, 1034, 121 U. S. 421, 30 L. Ed. 992.

A contract between a resident of a state in insurrection and a loyal state is void where made without license or authority from the government. Philips v. Hatch (C. C. 1871) Fed. Cas. No. 11,094.

Where a citizen during hostilities may pay to a resident agent his debt due an alien enemy and the agent may accept and bind his principal, the agent may receive the money and protect it by investment, and the owner, after the war, may recover the property or its proceeds. Stoddart v. U. S. (1870) 6 Ct. Cl. 340.

All contracts made with a public enemy without license or permission of the government are void upon grounds of public policy. Rice v. Shook (1871) 27 Ark. 137, 11 Am. Rep. 783.

Where parties within the lines of the United States forces contracted to go into an insurgent state to gather a crop, and transport it to the United States, and provided that clearances, licenses, or permits should be obtained, no intention to violate the law was shown. Shacklett v. Polk (1875) 51 Miss. 378.

A. resided in that part of Tennessee which became subject to the president's proclamation of August 16, 1861, prohibiting commercial intercourse with the insurgent states, and remained there up to the time of the proclamation. B., his partner, resided at the same place, but fled into the Union lines when the war broke out, and adhered to the Union cause, though compelled to provide for his family near his place of residence. Held, that in the absence of proof of A.'s loyalty or disloyalty to the Union, that he was within the prohibitions of the proclamation, and thereby, and as a citizen of a belligerent state, precluded from making a commercial contract with a citizen of a loyal state, but that it was otherwise as to B. Leftwich v. Clinton (N. Y. 1870) 4 Lans. 176.

7. —— **Conveyances, leases, and mortgages.**—Where the creditors were residents of a loyal state, a sale, during the War of the Rebellion under a power of sale in a trust deed whose grantors were residents of a state in rebellion, and were not in default when the war broke out, is void. Kanawha Coal Co. v. Kanawha & O. Coal Co. (C. C. 1870) Fed. Cas. No. 7,606.

A deed executed in time of war within the United States lines to citizens of the United States by the attorney of the grantor, while the grantor is within the Confederate lines and an alien enemy, is void as a contract between enemies. Filor v. U. S. (1867) 3 Ct. Cl. 25.

Where a deed is executed in New York on the 20th of May, 1861, by a loyal citizen resident in that city, which conveys property in Savannah to a citizen thereof, for the purpose of saving it from confiscation by the Confederate government, it constitutes a standing relation between enemies, forbidden under this act. Dillon v. U. S. (1869) 5 Ct. Cl. 586.

A mortgage of real estate in Kentucky, executed by a citizen of Tennessee to a citizen of Kentucky, after the proclamation of the president declaring the state of Tennessee to be in a state of insurrection and forbidding all intercourse with the inhabitants thereof, is void. Hyatt v. James' Adm'r (1867) 65 Ky. (2 Bush) 463, 92 Am. Dec. 505.

A lease of a plantation lying within one of the seceded states, made within the state by a citizen and resident thereof, during the Civil War of 1861–65, to a citizen of Massachusetts, at a rent payable and paid in part in cash on taking possession of the plantation, and the rest payable out of the cotton crop to be raised thereon, and by which the lessor agreed to deliver and the lessee to receive and pay for corn then on the plantation, and which was immediately delivered accordingly, and used thereon, was not prohibited by the law of nations, or by this section and the proclamations issued by the president thereunder, but was valid to sustain an action in a Massachusetts court to recover an unpaid installment of the rent and the value of the corn. Kershaw v. Kelsey (1868) 100 Mass. 561, 97 Am. Dec. 124, 1 Am. Rep. 142.

A sale of realty under a deed of trust executed before the Civil War is valid, though the grantors were citizens of a state declared in insurrection when the war was in progress. Mitchell v. Nodaway County (1883) 80 Mo. 257.

Where the vendor in a contract for the sale of land executed before the late Civil War on the declaration of war resided in Union territory and the vendee in Confederate territory, intercourse between them during the war being prohibited, the failure of the vendee to pay the installment of the purchase price falling due during the

war did not entitle the vendor to have the land sold to enforce their payment. Grinnan v. Edwards (1883) 21 W. Va. 347.

8. —— Sales.—This act and a proclamation of President Lincoln thereunder making commercial intercourse unlawful rendered void purchases of cotton from the Confederacy by citizens or corporations of New Orleans after May 6, 1862. Withenbury v. U. S. (1867) 6 Wall. 521, 530, 18 L. Ed. 935.

A sale held void as being a trading with enemies. Montgomery v. U. S. (1872) 15 Wall. 395, 399, 21 L. Ed. 97. See, also, Walker's Ex'rs v. U. S. (1882) 1 Sup. Ct. 300, 106 U. S. 413, 27 L. Ed. 166.

A sale made without a license to trade by a loyal citizen of the United States on March 6, 1865, when Savannah was occupied by federal troops, to a loyal citizen of New York, of cotton which had been returned by the owner, registered and taken into possession by the United States, and sent for sale to New York under the Captured and Abandoned Property Act, is void, and the vendor may not sustain a suit in the Court of Claims for the proceeds of the cotton for the use of the vendee, and the vendor may not sue for himself. Cutner v. U. S. (1873) 17 Wall. 517, 520, 21 L. Ed. 656.

Where a merchant residing in Georgia left there at the commencement of the Civil War, and remained in loyal territory, and his agent, with money collected on his account, bought cotton, which was afterwards captured by the United States and sold, he was entitled to recover the proceeds in the Court of Claims. U. S. v. Quigley (1880) 103 U. S. 595, 26 L. Ed. 524.

During the Civil War citizens of loyal states could make a valid sale or mortgage of cotton growing within an insurgent state, passing title to existing cotton and future crops. Briggs v. U. S. (1892) 143 U. S. 346, 12 Sup. Ct. 391, 36 L. Ed. 180.

Preparing cotton for market within one of the insurrectionary states during the war of the rebellion, under an agreement with the owner that the claimant should have one-half of the cotton, is "commercial intercourse" within the meaning of the act, and is not legalized by the permit of the commanding general. Blakeley v. U. S. (1866) 2 Ct. Cl. 323.

Buying and selling by an agent within rebel territory without the knowledge of his principal is not a violation of this section. Mayer v. U. S. (1867) 3 Ct. Cl. 249.

Where a citizen of a loyal state temporarily in the insurrectionary district at the outbreak of the rebellion is involuntarily compelled to remain, his purchase of personal property is not in violation of the nonintercourse laws, there being neither effort nor interest to carry it through the lines, and the purchase money being his earnings during his involuntary residence. Spain v. U. S. (1869) 5 Ct. Cl. 598.

Where in 1863 and 1864 an agent within the Confederate lines buys cotton, with funds previously placed in his hands, the principal then residing as a refugee in Nashville, the purchase is not in violation of the Nonintercourse Act. The acts and proclamations relating to commercial intercourse enumerated and examined. Faulkner v. U. S. (1869) 5 Ct. Cl. 612.

Where during the rebellion a sale of personal property is made by an agent within the Union lines, while his principal and the property are both within the Confederate lines, the sale is void, and no title is acquired within the intent of this act, as construed by the Court of Claims in Blakely's Case (2 C. Cls. R., p. 323), and by the supreme court in the cases of Lane and Grossmeyer. Montgomery v. U. S. (1869) 5 Ct. Cl. 648.

Where merchants within the insurrectionary districts, early in the rebellion, send their clerk, in the ordinary course of their business, into the country to make collections and buy cotton, and the clerk does so, the merchants acquire a valid title to the cotton bought, notwithstanding that between the departure of the clerk and the purchase of the cotton the merchants pass within the United States lines by the capture of their city, while the clerk remains within the rebel lines. Such a purchase, through an agent, pursuant to his previous instructions, is not commercial intercourse across the military lines, nor between the residents of loyal and disloyal states, and is valid. Lapene v. U. S. (1870) 6 Ct. Cl. 363.

Where the chief business office of a mercantile firm is in a loyal state, with a branch and resident partner in the insurrectionary districts, the firm cannot, through the resident partner, appoint an agent after the rebellion has begun, to buy property with partnership funds; and no valid title to such property can thereby be acquired. Such an agency would be constructive commercial intercourse between enemies. Cramer v. U. S. (1870) 6 Ct. Cl. 381.

Where a British subject residing in New Orleans procures from the treasury agent there a permit to buy cotton, and in 1864 passes within the Confederate lines and confirms a purchase already made, the transaction is illegal. Millar v. U. S. (1872) 8 Ct. Cl. 407.

A person whose domicile was in New Orleans during the rebellion, but who left the city after its capture, and without change of domicile acted as a Confederate financial agent within the rebel lines, could not acquire a legal title to cotton which he bought there.

He remained under the restriction of nonintercourse so long as his domicile continued in New Orleans. Desmare v. U. S. (1874) 10 Ct. Cl. 385.

A purchase of cotton within the Confederate lines during the late war, under military sanction, was in direct contravention with the laws of the United States and the proclamation of the president, and was therefore void. State v. Louisiana State Bank (1868) 20 La. Ann. 468.

In an action by a partnership claiming interest in the profits of a contract for the purchase of cotton upon unprohibited territory during the continuance of the president's proclamation of August 16, 1861, one of the partners died before trial, and the suit was continued under order of the court by the survivor who was a loyal citizen of the United States. Held, that the rights of the survivor were protected, notwithstanding the invalidity of the contract in respect to the deceased partner, who was a resident of one of the insurgent states, and might be enforced. Leftwich v. Clinton (N. Y. 1870) 4 Lans. 176.

9. —— **Bills and notes.**—A draft drawn within the Confederate States, in a section not under the control of the federal forces, upon a person in a loyal state, is absolutely void as to all parties. Moore v. Foster (C. C. 1868) Fed. Cas. No. 9,760; Britton v. Butler (C. C. 1872) Fed. Cas. No. 1,903.

Forfeitures declared hereunder can only be enforced by seizure of the property. U. S. v. Stevenson (C. C. & D. C. 1869) Fed. Cas. No. 16,396.

The owner of a promissory note, being a resident citizen of New York, might there lawfully transfer it in the year 1862 to another resident citizen of New York, although the note itself was then in the hands of a sequestration receiver of the Confederate states in Alabama, where the maker lived. Morris v. Poillon (1874) 50 Ala. 403.

A party residing in Illinois, holding a promissory note against a person residing in one of the states in rebellion, in the year 1862, after the act of congress and the president's proclamation prohibiting commercial intercourse between the adhering states and those in rebellion, commenced a suit thereon by attachment, which was levied on real estate situate in Illinois, belonging to the maker, and obtained a judgment, and procured a sale to be made of the premises attached. Held, that the court had jurisdiction of the cause, and the judgment and proceedings thereunder were valid and binding, notwithstanding the defendant resided in one of the rebellious states, and the war was at the time in active progress. Mixer v. Sibley (1869) 53 Ill. 61.

An order for money drawn in Kentucky upon a resident of Texas, payable to another resident of the latter state, by a resident thereof, and delivered to a second person in Kentucky, who sent the order through the lines during the war, was not illegal, nor in violation of the act or of the proclamation of August 16, 1861. Haggard v. Conkwright (1869) 70 Ky. (7 Bush) 16, 3 Am. Rep. 297.

A note given for the purchase of negroes taken into the states in insurrection without special license, after the proclamation of the president of August 16, 1861, is without legal consideration, and invalid. Carson v. Hunter (1870) 46 Mo. 467, 2 Am. Rep. 529.

Under this act the payment of a note in Confederate money, and the taking of a receipt by an attorney of a party resident within the military lines of territory occupied and permanently held by the federal troops, from the cashier of the Bank of Tennessee, a resident of the insurrectionary district, was illegal, and not binding on the bank. Bank of Tennessee v. Woodson (1867) 45 Tenn. (5 Cold.) 176.

Bills or checks drawn by a bank in Richmond, Va., upon a bank in New Orleans, were indorsed in Petersburg, Va., in February, 1863, to a resident of Vicksburg. The late war was then in progress, and Petersburg, Richmond, and Vicksburg were within the Confederacy, while New Orleans was in the permanent possession of the Federal forces. After Vicksburg had been taken possession of by the Federal forces the bills were presented for payment at the New Orleans Bank, and payment was refused. Held, that under the proclamation of the President of the United States of April 2, 1863, intercourse between Vicksburg and New Orleans was still prohibited, and the demand of payment was illegal. Billgerry v. Branch (Va. 1869) 19 Grat. 393, 100 Am. Dec. 679.

10. **Enforcement.** — Forfeitures incurred under this act may be enforced after cessation of hostilities. Duvall v. U. S. (1866) 14 Sup. Ct. 1162, 1163, 154 U. S. 548, 18 L. Ed. 252; U. S. v. Stevenson (C. C. & D. C. 1869) Fed. Cas. No. 16,396.

A license to trade in the rebellious states, obtained through error, mistake, or fraud, will not prevent the forfeiture under this act and act May 20, 1862; the same being prohibitory acts. U. S. v. One Hundred and Twenty-Nine Packages (D. C. 1862) Fed. Cas. No. 15,941; U. S. v. One Hundred Barrels of Cement (D. C. 1876) Fed. Cas. No. 15,945.

Claimants held not estopped, by license and clearance for one place, to show that the primary destination of the voyage was another place, so as to save forfeiture. The David E. Wolf (D. C. 1867) Fed. Cas. No. 3,594.

Where the military authorities reasonably believed that horses were about to be carried into the lines of the enemy for sale, they could prevent

the consummation of such intention, since it was as much the duty of the military commanders as of the civil authorities to see that the nonintercourse laws were enforced and that nothing calculated to subserve the military purposes of the enemy should be carried within their lines. McKrell v. Metcalfe (1866) 63 Ky. (2 Duv.) 533.

One may recover from a private citizen for his conversion of live stock sent by the owner through the lines from Missouri into Texas after the president's proclamation of nonintercourse of 1861. The owner's illegal act only authorized the appropriation of the stock by the general government. Charles v. McCune (1874) 57 Mo. 166.

II. Goods and vessels subject to forfeiture.—Gold coin comes within the description of "goods and chattels, wares and merchandise." U. S. v. Canoe (C. C. 1867) Fed. Cas. No. 14,718; U. S. v. American Gold Coin (C. C. 1868) Fed. Cas. No. 14,439.

The act did not embrace choses in action, such as bonds, stocks, etc., nor money. U. S. v. Virginia Bonds (D. C. 1862) Fed. Cas. No. 16,626.

Under Act July 13, 1861, goods forming the cargo of a vessel proceeding to a point in the insurrectionary states were liable to forfeiture only when in transitu, and the vessel only while the contraband cargo is on board, but under the regulations made under the authority of Acts July 13, 1861, May 20, 1862, and July 2, 1864, a vessel engaged in a prohibited trade is liable to forfeiture, even after the termination of the prohibited voyage and the discharge of the contraband cargo. U. S. v. The Francis Hatch (D. C. 1864) Fed. Cas. No. 15,158.

A vessel has not proceeded or departed on her voyage within this act and the act of May 20, 1862, and the rules and regulations of the secretary of the treasury supplementary thereto, until she is outside the limits of the harbor or her port of departure. U. S. v. The George Darby (D. C. 1864) Fed. Cas. No. 15,200.

Dry goods, groceries, and medicines sold to the inhabitants along the Mississippi river during the last year of the Civil War held not articles contraband of war by the legislation of congress, or the regulations of the treasury department, or by the law of nations. U. S. v. The Henry C. Homeyer (D. C. 1868) Fed. Cas. No. 15,353.

The act positively prohibits residents of both the loyal and insurrectionary states from all commercial intercourse for whatever purposes, and subjects to confiscation the vehicles employed therein either for profit or gratuitously. U. S. v. The Josie (D. C. 1864) Fed. Cas. No. 15,498a.

The transportation of coin or bullion from Mexico into Texas during the Civil War was in violation of law, and no contract for such transportation can be enforced. Cantu v. Bennett (1873) 39 Tex. 303.

Cited without definite application, Hanger v. Abbott (1867) 6 Wall. 532, 534, 18 L. Ed. 939; Gay's Gold (1871) 13 Wall. 358, 362, 20 L. Ed. 606; Burbank v. Conrad (1877) 96 U. S. 291, 293, 24 L. Ed. 731; Dow v. Johnson (1879) 100 U. S. 158, 181, 25 L. Ed. 632.

§ 10144. (R. S. § 5302.) In loyal States.

Whenever any part of a State not declared to be in insurrection is under the control of insurgents, or is in dangerous proximity to places under their control, all commercial intercourse therein and therewith shall be subject to the prohibitions and conditions of the preceding section for such time and to such extent as shall become necessary to protect the public interests, and be directed by the Secretary of the Treasury, with the approval of the President.

Act July 2, 1864, c. 225, § 5, 13 Stat. 376.

Cited without definite application,
Pargoud v. U. S. (1868) 4 Ct. Cl. 337.

§ 10145. (R. S. § 5303.) To whom prohibition shall extend.

The provisions of this Title in relation to commercial intercourse shall apply to all commercial intercourse by and between persons residing or being within districts within the lines of national military occupation in the States or parts of States declared in insurrection, whether with each other or with persons residing or being within districts declared in insurrection and not within those lines; and all persons within the United States, not native or naturalized citizens thereof, shall be subject to the same prohibitions, in all commercial intercourse with inhabitants of States or parts of States declared in insurrection, as citizens of States not declared to be in insurrection.

Act July 2, 1864, c. 225, § 4, 13 Stat. 376.

Notes of Decisions

Effect of statute.—A contract for the purchase of cotton, made during the Civil War by a subject of Norway, domiciled in New York, with a citizen of Texas, was void. This section was only declaratory of a well-known prin-

ciple of international law. Habricht v. Alexander (C. C. 1867) Fed. Cas. No. 5,886.

Cited without definite application, Walker v. U. S. (1882) 1 Sup. Ct. 301, 304, 106 U. S. 413, 27 L. Ed. 166.

§ 10146. (R. S. § 5304.) Commercial intercourse, to what extent permitted.

The President may, in his discretion, license and permit commercial intercourse with any part of such State or section, the inhabitants of which are so declared in a state of insurrection, so far as may be necessary to authorize supplying the necessities of loyal persons residing in insurrectionary States, within the lines of actual occupation by the military forces of the United States, as indicated by published order of the commanding general of the department or district so occupied; and, also, so far as may be necessary to authorize persons residing within such lines to bring or send to market in the loyal States any products which they shall have produced with their own labor or the labor of freedmen, or others employed and paid by them, pursuant to rules relating thereto, which may be established under proper authority. And no goods, wares, or merchandise shall be taken into a State declared in insurrection, or transported therein, except to and from such places and to such monthly amounts as shall have been previously agreed upon, in writing, by the commanding general of the department in which such places are situated, and an officer designated by the Secretary of the Treasury for that purpose. Such commercial intercourse shall be in such articles and for such time and by such persons as the President, in his discretion, may think most conducive to the public interest; and, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury.

Act July 13, 1861, c. 3, § 5, 12 Stat. 257. Act July 2, 1864, c. 225, § 9, 13 Stat. 377.

Notes of Decisions

Authority to issue license.—Power to license trading with enemy defined. McKee v. U. S. (1868) 8 Wall. 163, 166, 19 L. Ed. 329; U. S. v. Lane (1868) 8 Wall. 185, 195, 19 L. Ed. 445; Snell v. Dwight (1876) 120 Mass. 9.

Under this proviso, which gave the President power in his discretion to license intercourse, no one else could give licenses. The Reform (1865) 3 Wall. 617, 18 L. Ed. 105, affirming The Sea Lion (1865) Id. 642; Withenbury v. U. S. (1867) 6 Wall. 521, 531, 18 L. Ed. 935.

Only the president can license intercourse with the inhabitants of a state in insurrection, and a license by the special agent of the treasury, though certified by the military commander of that district, is unavailing. The Sea Lion (1866) 5 Wall. 630, 646, 18 L. Ed. 618.

During the rebellion the President alone had power to license commercial intercourse between places within the lines of military occupation, by forces of the United States, and places under the control of insurgents against it. Hall v. Coppell (1868) 7 Wall. 542, 554, 19 L. Ed. 244.

Under treasury regulations, a vessel engaging in trade with the insurrectionary districts in the Civil War was liable to forfeiture even after the termination of the prohibited voyage and the discharge of the contraband cargo. The imposing of such forfeiture is within the power to make regulations conferred on the secretary of the treasury. U. S. v. The Francis Hatch (D. C. 1864) Fed. Cas. No. 15,158.

Preparing cotton for market within an insurgent state under an agreement with the owner that the claimant should have one-half of the cotton is "commercial intercourse," and is not legalized by the permit of the commanding general. Blakeley v. U. S. (1866) 2 Ct. Cl. 323.

It is within the discretion of the president to determine what are necessaries and to fix the rule by which loyalty, so far as the purchase of necessaries is concerned, is to be determined. (1865) 11 Op. Atty. Gen. 219.

The president's proclamation of June 13, 1865, removing restrictions generally upon trade with the states in rebellion, was lawful. (1895) 21 Op. Atty. Gen. 269.

Form and effect of license.—Permits granted during the rebellion by the proper licensing officers to purchase goods in a locality occupied by the federal troops are prima facie evidence that the locality is properly within the trade regulations. U. S. v. Weed (1866) 5 Wall. 62, 72, 18 L. Ed. 531.

The grant of a license pursuant to the power herein granted restores the standing of the grantee to be heard in the United States courts. U. S. v. 100

Barrels of Cement (D. C. 1862) Fed. Cas. No. 15,945.

A steamboat having a permit from a special treasury agent to engage in purchasing cotton along the Mississippi river was fully authorized to make such purchases, and the forfeiture of the boat and cargo was not incurred thereby. U. S. v. The Henry C. Homeyer (D. C. 1868) Fed. Cas. No. 15,353.

A citizen within the United States lines, who buys cotton during the war, under a permit, may recover the residue of proceeds thereof under the "captured and abandoned property act." Rubey v. U. S. (1867) 3 Ct. Cl. 59.

Where a custom house permit issued in October, 1862, under the President's order, authorizes "partial restoration of commercial intercourse" in Tennessee, is limited to "within the lines of the United States army," and the holder proceeds beyond the lines, and enters into a contract for cotton to be delivered and paid for within the lines, the transaction is illegal and void. Cones v. U. S. (1872) 8 Ct. Cl. 421.

Under this section trade was authorized between the loyal states and the states in rebellion under a license granted by the president through and under regulations and restrictions prescribed by the secretary of the treasury. Held, that the statute did not mean that such trade should be carried on by individual licenses under the sign manual of the president, but. when the authorized officer of the government granted such a license, no illegality should be imputed to transactions of citizens acting under it. Graham v. Merrill (1868) 45 Tenn. (5 Cold.) 622.

A party, relying upon a license to establish the validity of commercial transactions in the insurrectionary states during the Civil War, has the burden of proving the existence of such license. Lacy v. Sugarman (1873) 59 Tenn. (12 Heisk.) 354.

Charges and fees.—The treasury regulations giving permission to buy cotton in the insurrectionary states and export same on condition of paying the bonus prescribed were authorized. Hamilton v. Dillin (1874) 21 Wall. 73, 87, 22 L. Ed. 528.

The charge of 5 per cent. on the value of all shipments from the loyal to the insurrectionary states, imposed by the regulations of the secretary of the treasury, during the rebellion, though not expressly authorized by this section, received an implied legislative ratification from subsequent acts on the same subject which neither rescinded nor changed them, and an express sanction by the act in addition to the several acts concerning commercial intercourse, etc., Act July 2, 1864 (13 Stat. 375). Folsom v. U. S. (1868) 4 Ct. Cl. 366.

It must be held from the nature of the decision that the Supreme Court intended to decide in La Peyre's Case (8 C. Cls. R. p. 165) that the claimant had primarily a good cause of action, i. e., that his payment of a bonus or fee to a treasury agent for a license to bring cotton into New Orleans in June, 1865, under the nonintercourse acts, was not a voluntary payment made in ignorance of law, all restrictions having then been abrogated by the President's proclamation of June 24, 1865, but the owner and agent being ignorant of the existence of the proclamation. Norton v. U. S. (1875) 11 Ct. Cl. 672.

Military occupation. — Substantial, complete, and permanent military occupation and control, as distinguished from one that is illusory, imperfect, and transitory, works the exception in the act, and such military occupation draws after it the full measure of protection to persons and property consistent with a necessary subjection to military government. The Venice (1864) 2 Wall. 258, 277, 17 L. Ed. 866.

Cited without definite application, Hanger v. Abbott (1867) 6 Wall. 532, 534, 18 L. Ed. 939; Walker v. U. S. (1882) 1 Sup. Ct. 301, 305, 106 U. S. 413, 27 L. Ed. 166.

§ 10147. (R. S. § 5305.) Appointment and compensation of officers.

The Secretary of the Treasury may appoint such officers at places where officers of the customs are not now authorized by law as may be needed to carry into effect such licenses, rules, and regulations. In all cases where officers of the customs, or other salaried officers, are appointed by him to carry into effect such licenses, rules, and regulations, such officer shall be entitled to receive one thousand dollars a year for his services, in addition to his salary or compensation under any other law. But the aggregate compensation of any such officer shall not exceed the sum of five thousand dollars in any one year.

Act July 13, 1861, c. 3, § 5, 12 Stat. 257. Act June 30, 1864, c. 171, § 28, 13 Stat. 218.

§ 10148. (R. S. § 5306.) Trading without license, etc.

Every officer of the United States, civil, military, or naval, and every sutler, soldier, marine, or other person, who takes, or causes to be taken into a State declared to be in insurrection, or to any other point to be thence taken into such State, or who transports

or sells, or otherwise disposes of therein, any goods, wares, or merchandise whatsoever, except in pursuance of license and authority of the President, as provided in this Title, or who makes any false statement or representation upon which license and authority is granted for such transportation, sale, or other disposition, or who, under any license or authority obtained, willfully and knowingly transports, sells, or otherwise disposes of any other goods, wares, or merchandise than such as are in good faith so licensed and authorized, or who willfully and knowingly transports, sells, or disposes of the same, or any portion thereof, in violation of the terms of such license or authority, or of any rule or regulation prescribed by the Secretary of the Treasury concerning the same, or who is guilty of any act of embezzlement, of willful misappropriation of public or private money or property, of keeping false accounts, or of willfully making any false returns, shall be deemed guilty of a misdemeanor, and shall be fined not more than five thousand dollars, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same.

Act July 2, 1864, c. 225, § 10, 13 Stat. 377.

§ 10149. (R. S. § 5307.) Investigations to detect frauds.

It shall be the duty of the Secretary of the Treasury, from time to time, to institute such investigations as may be necessary to detect and prevent frauds and abuses in any trade or transactions which may be licensed between inhabitants of loyal States and of States in insurrection. And the agents making such investigations shall have power to compel the attendance of witnesses, and to make examinations on oath.

Act July 2, 1864, c. 225, § 10, 13 Stat. 377.

Provisions authorizing any officer of any Department detailed to investigate frauds on the Government, or any official misconduct, to administer oaths to witnesses, were made by R. S. § 183, as amended by Act March 2, 1901, c. 809, § 3, and Act Feb. 13, 1911, c. 43, ante, § 265.

§ 10150. (R. S. § 5308.) Confiscation of property employed in aid of insurrection.

Whenever during any insurrection against the Government of the United States, after the President shall have declared by proclamation that the laws of the United States are opposed, and the execution thereof obstructed, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person, or his agent, attorney, or employé, purchases or acquires, sells or gives, any property of whatsoever kind or description, with intent to use or employ the same, or suffers the same to be used or employed in aiding, abetting, or promoting such insurrection or resistance to the laws, or any person engaged therein; or being the owner of any such property, knowingly uses or employs, or consents to such use or employment of the same, all such property shall be lawful subject of prize and capture wherever found; and it shall be the duty of the President to cause the same to be seized, confiscated, and condemned.

Act Aug. 6, 1861, c. 60, § 1, 12 Stat. 319.

Notes of Decisions

1. Validity.
2. Right of confiscation defined.
3. Property subject to confiscation.
4. —— Nature of property.
5. —— Corporate property.
6. —— Property sold to or owned by insurgent government.
7. —— Knowledge and consent of owner to unlawful use of property.
8. Right to rent on real property seized.
9. Effect of pardon and amnesty.
10. Nature and form of proceedings for confiscation.
11. Purchase of property condemned.

1. Validity.—The act is constitutional. Miller v. U. S. (1870) 11 Wall. 268, 305, 20 L. Ed. 135; Tyler v. Defrees (1870) 11 Wall. (U. S.) 331, 20 L. Ed. 161; Semple v. U. S. (D. C. 1868) Fed. Cas. No. 12,661.

This statute is an exercise of the power vested in Congress by Const. art. 1, § 8, to make rules concerning captures on land and water. Kirk v. Lynd (1882) 1 Sup. Ct. 296, 297, 106 U. S. 315, 27 L. Ed. 193.

2. **Right of confiscation defined.**—See Miller v. U. S. (1870) 11 Wall. 268, 305, 20 L. Ed. 135.

3. **Property subject to confiscation.**—This provision does not contemplate any proceeding as in admiralty where there existed no specific property or proceeds capable of seizure and capture, and an information which presents only a case of unlawful conversion cannot be sustained. Morris v. U. S. (1868) 7 Wall. 578, 580, 19 L. Ed. 281.

In view of this statute and Act July 17, 1862 (Rev. St. § 5332, post, § 10166), it was held that an order on August 17, 1863, by an officer in command of the forces then in quiet possession of the city of New Orleans, for the confiscation of private property, was unauthorized. Planters' Bank v. Union Bank (1872) 16 Wall. 483, 494, 21 L. Ed. 473.

A loyal citizen converted his property into a vessel and cargo for the purpose of withdrawing himself and effects from the enemy's country. Held not subject to capture as enemy's property. The General C. C. Pinckney (C. C. 1863) Fed. Cas. No. 5,309, reversing (D. C. 1862) Fed. Cas. No. 5,308.

Property found on shore, or even land itself, may be condemned under this act. U. S. v. Athens Armory (D. C. 1862) Fed. Cas. No. 14,473.

Merchandise at sea, consigned to merchants in an insurrectionary state, but assigned to creditors in New York, to cover previous advances, three days before the proclamation of August 16, 1861, and passing into the custody of the assignees on its arrival; held not subject to confiscation. U. S. v. One Hundred and Fifty-Six Packages of Tea (D. C. 1865) Fed. Cas. No. 15,933.

4. —— **Nature of property.**—Cotton in the southern rebel districts is a proper subject of capture by the government during the rebellion on general principles of public law relating to war, and the legislation of Congress during the rebellion authorized such captures. Mrs. Alexander's Cotton (1864) 2 Wall. 404, 419, 17 L. Ed. 915.

The act extended to all descriptions of property, real or personal, on land or water. An owner of real property in New Orleans, who leased it during the Rebellion to a firm publicly engaged in manufacturing arms for the Confederacy, the leases stating in terms that lessees intended to establish "engines, machinery," etc., in the property leased, was presumed to know the purpose for which it was to be used and to have consented to it, and his interest in the property was rightly confiscated under this act, but the presumption was held to be otherwise as to a party taking a mortgage from him before lessees took possession, and where there was no proof of consent to such use by the mortgagee beyond the fact of taking the mortgage, and the interest of the mortgagee was held not confiscable under the act. Union Ins. Co. v. U. S. (1867) 6 Wall. 759, 765, 18 L. Ed. 879.

A debt or credit is capable of seizure. Pelham v. Way (1872) 15 Wall. 196, 201, 21 L. Ed. 55.

Money in a bank in New York held to the credit of an institute in South Carolina is not of such specific quality that it is liable to seizure by a United States marshal in confiscation proceedings. Phœnix Bank v. Risley (1884) 4 Sup. Ct. 322, 324, 111 U. S. 125, 28 L. Ed. 374.

The act applies to real estate. U. S. v. Republican Banner Officers (C. C. 1863) Fed. Cas. No. 16,148.

This section authorizes a seizure only with a view to judicial proceedings. It does not authorize the confiscation of moneys due on drafts found on a person captured, drawn by persons within the lines of the enemy on persons within a city occupied by the federal forces. Britton v. Butler (C. C. 1872) Fed. Cas. No. 1,903.

Bonds of the United States purchased in London without notice that the sale was for the purpose of raising supplies for the rebel military forces are not subject to confiscation. (1866) 12 Op. Atty. Gen. 72.

The right to money due to an enemy cannot be confiscated. Page v. Pendleton (Va. 1793) Wythe, 211 (Orig. Ed. 127).

5. —— **Corporate property.**—The federal confiscation acts of 1861 and 1862 do not authorize the confiscation of the property of corporations. Ellis v. Phenix Nat. Bank (N. Y. 1883) 12 Daly, 177, judgment affirmed (1884) 96 N. Y. 630.

6. —— **Property sold to or owned by insurgent government.**—Where land was sold to the so-called "Confederate States," and was captured by the United States, it became, on the extinction of the Confederacy, without further proceeding, the property of the United States. U. S. v. Huckabee (1872) 16 Wall. (U. S.) 414, 21 L. Ed. 457; Titus v. U. S. (1874) 20 Wall. 475, 22 L. Ed. 400; U. S. v. Tract of Land (C. C. 1871) Fed. Cas. No. 16,535.

This act was intended for private, not public property, for such property of persons as required, under the laws of war, a judicial sentence of condemnation to divest the title of its owner, not such property of a hostile government as had already been captured by an army and subjected to the complete and undisputed dominion and ownership of the conquering power. Titus v.

U. S. (1874) 20 Wall. 475, 482, 22 L. Ed. 400.

The mere existence of a law prescribed by an insurrectionary government in itself is not sufficient to justify a sale to it, and prevent a forfeiture of the property sold, under this act. U. S. v. One Thousand Five Hundred Bales of Cotton (C. C. 1872) Fed. Cas. No. 15,958, reversing (D. C. 1869) Fed. Cas. No. 15,957.

7. —— Knowledge and consent of owner to unlawful use of property.—A forfeiture of property is imposed by this act only where it is employed, with the knowledge or consent of its owner, in aid of insurrection. U. S. v. One Thousand Seven Hundred and Fifty-Six Shares of Capital Stock (C. C. 1865) Fed. Cas. No. 15,961; (1869) 13 Op. Atty. Gen. 105.

Property of a resident of a loyal state employed in trade with the insurgents, is subject to confiscation, regardless of the question of violation of blockade, or of the owner's ignorance of the law. The Shark (D. C. 1862) Fed. Cas. No. 12,708.

8. Right to rent on real property seized.—Where military officers seized real property in the insurrectionary district during the war, and continued to occupy it after the war closed, under a claim of right, a claim for rent cannot be maintained in the Court of Claims. Bishop v. U. S. (1868) 4 Ct. Cl. 448; Dykes v. U. S. (1880) 16 Ct. Cl. 289.

9. Effect of pardon and amnesty.—A full pardon and amnesty by the President for all offenses committed by the owner of property seized under this act relieved him from forfeiture of such property so far as the right accrued to the United States. Armstrong's Foundry v. U. S. (1867) 6 Wall. 766, 769, 18 L. Ed. 882.

Effect of pardon on rights to confiscated property. Osborn v. U. S. (1875) 91 U. S. 474, 475, 23 L. Ed. 388.

10. Nature and form of proceedings from confiscation.—Under this and the following section the property seized being real estate, the proceedings in the circuit court should not conform to the course in admiralty, but to the procedure by information on the common-law side of the court in cases of seizure upon land. The Circuit Court had jurisdiction, and the proceedings might be in the form and modes analogous to those used in admiralty, but issues of fact, on demand of either party were required to be tried by jury. Such proceedings did not necessarily constitute a "cause in admiralty." Where a proceeding was carried on in a circuit court by libel, monition, claim interposed, and testimony taken in conformity with admiralty practice, and without a jury anywhere, jurisdiction was taken by the supreme court on appeal only to reverse the decree as irregular and direct a new trial. Union Ins. Co. v. U. S. (1867) 6 Wall. 759, 763, 764, 765, 18 L. Ed. 879. See, also, § 10153, post.

11. Purchase of property condemned.—This act was aimed exclusively at the property itself, to weaken insurrection, and not to punish the owner. Consequently the purchaser of property condemned thereunder took title in fee, and not a mere life estate for the life of the owner. Kirk v. Lynd (1882) 1 Sup. Ct. 296, 106 U. S. 315, 27 L. Ed. 193, decree affirmed Kirk v. Lewis (C. C. 1881) 9 Fed. 645.

Cited without definite application, Morris's Cotton (1869) 8 Wall. 507, 510, 19 L. Ed. 481; Conrad v. Waples (1877) 96 U. S. 279, 285, 24 L. Ed. 721; Jones v. Buckell (1881) 104 U. S. 554, 555, 556, 26 L. Ed. 841; U. S. v. Sayward (1895) 16 Sup. Ct. 371, 372, 160 U. S. 493, 40 L. Ed. 508; Oakes v. U. S. (1899) 19 Sup. Ct. 864, 868, 174 U. S. 778, 43 L. Ed. 1169; U. S. v. Dewey (1903) 23 Sup. Ct. 415, 424, 188 U. S. 254, 47 L. Ed. 463; U. S. v. The Etta (D. C. 1864) Fed. Cas. No. 15,060; (1866) 11 Op. Atty. Gen. 480; (1867) 12 Op. Atty. Gen. 125, 127.

§ 10151. (R. S. § 5309, as amended, Act Feb. 27, 1877, c. 69, § 1.) Proceedings, where had.

Such prizes and capture shall be condemned in the district [or circuit] court of the United States having jurisdiction of the amount, or in admiralty in any district in which the same may be seized, or into which they may be taken and proceedings first instituted.

Act Aug. 6, 1861, c. 60, § 2, 12 Stat. 319. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 253.

This section was amended by Act Feb. 27, 1877, c. 69, § 1, cited above, by inserting, after the words "any district in which the same," the word "may," as set forth here.

The words "or circuit," inclosed in brackets in this section, were superseded by the abolition of the circuit courts and the transfer of their jurisdiction to the district courts, by Jud. Code, §§ 289–291, ante, §§ 1266–1268.

Notes of Decisions

Jurisdiction.—A Circuit Court held to have no jurisdiction to proceed by information under this and the following sections, where land sold to the

Confederacy was seized during the war and subsequently sold and conveyed by order of the President and the conveyance confirmed by act of Congress. U. S. v. Huckabee (1872) 16 Wall. 414, 424, 21 L. Ed. 457.

A steamboat, which was in the hands of the Confederate forces in a western river, and had been dismantled by them for the purpose of converting it into a gunboat, when it was captured, in February, 1862, under fire, by detachments of men in small boats from federal gunboats, under command of a naval officer, there being no federal land forces in the vicinity, must be regarded as a naval capture, and not one by the army, although the naval forces on such rivers were at the time under the general control of the war department. Oakes v. U. S. (1899) 19 Sup. Ct. 864, 866, 174 U. S. 778, 43 L. Ed. 1169, affirming judgment (1895) 30 Ct. Cl. 378.

A federal district court in New York cannot acquire jurisdiction in rem to declare a forfeiture under this act and that of July 17, 1862, of shares in the capital stock of an Illinois corporation. U. S. v. One Thousand Seven Hundred and Fifty-Six Shares of Capital Stock (C. C. 1865) Fed. Cas. No. 15,961.

The district courts of the United States have exclusive jurisdiction in prize cases. The Hiawatha (D. C. 1861) Fed. Cas. No. 6,451.

Confiscations can be carried into effect by the prize courts of the United States, as respects property captured at sea. The Sarah Starr (D. C. 1861) Fed. Cas. No. 12,352.

Under this act the jurisdiction of the United States district court to entertain proceedings for condemnation of such property included the general power of determining whether the property proceeded against was enemies' property, and if the proceedings were regular in form, the decree cannot be impeached in a state court, on the ground that the owner of the property was a loyal citizen and had no notice of the proceedings. Chapman v. Phœnix Nat. Bank (1878) 44 N. Y. Super. Ct. (12 Jones & S.) 340.

Nature of proceedings.—This provision does not contemplate any proceeding as in admiralty where there existed no specific property or proceeds capable of seizure and capture. Morris v. U. S. (1868) 7 Wall. 578, 580, 19 L. Ed. 281.

Under this act, where the subject of condemnation proceedings was a vessel, and the libel therefor was filed in a court of admiralty, the pleadings and procedure were governed by the rules in admiralty, and not by the strict rules of criminal procedure. Nor was a preliminary order by the president directing such proceedings to be instituted essential to their validity under such statute. Oakes v. U. S. (1899) 19 Sup. Ct. 864, 868, 174 U. S. 778, 43 L. Ed. 1169, affirming judgment (1895) 30 Ct. Cl. 378.

The practice of prize courts is to make final condemnation of enemy property at the hearing, upon the ship's papers and the evidence in preparatorio. The Falcon (D. C. 1861) Fed. Cas. No. 4,616.

In a proceeding hereunder to forfeit an interest in a vessel, the pleadings and proceedings are subject to like rules as in ordinary cases of prize of war. U. S. v. The Picayune (D. C. 1863) Fed. Cas. No. 16,041a.

The proper method of procedure in the case of seizures at sea and on navigable waters of the United States is in accordance with the practice in admiralty, while, as to seizures on land, the proceeding must be at common law and in rem. Pasteur v. Lewis (1887) 39 La. Ann. 5, 1 South. 307.

The effect of a monition and publication in such a proceeding in rem for the condemnation of property is to make all parties interested in the property, including alien enemies, parties to the proceeding, and to give them the right to appear and defend, and their rights are concluded by a judgment therein. Id.

Proceedings under this act and that of 1862 were not simply in rem, but the right to condemn property under them depended upon the delictum of the owner, whom it was necessary to bring into court in some manner so that he could have a hearing. Chapman v. Phœnix Nat. Bank of New York (1881) 85 N. Y. 437.

Method of seizure.—Seizure of corporate stocks held sufficient to give the court jurisdiction to condemn them as forfeited. Miller v. U. S. (1870) 11 Wall. 268, 294, 20 L. Ed. 135.

In a proceeding to confiscate debts due from a municipal corporation to a person charged to be in rebellion, the method of seizure must conform to the state law as nearly as possible, and notice of the seizure must be given to the person on whom, by law, process against the corporation is required to be served. Fairfax v. City of Alexandria (Va. 1877) 28 Grat. 16.

Trial by jury.—The circuit court had jurisdiction hereunder of proceedings to condemn real estate or property on land, and such proceedings might be shaped in general conformity to the practice in admiralty; that is to say, they might be in the form and modes analogous to those used in admiralty, but issues of fact, on demand of either party, were required to be tried by jury. Union Ins. Co. v. U. S. (1867) 6 Wall. 759, 763, 18 L. Ed. 879.

Such proceedings did not necessarily constitute a "cause in admiralty." Id.

Where a proceeding hereunder to enforce forfeiture of real estate was carried on in a circuit court by libel, monition, claim interposed, and testimony taken in conformity with admiralty practice, and without a jury anywhere, jurisdiction was taken by the Supreme

Court on appeal only to reverse the decree as irregular and direct a new trial. Id.

Proceedings in cases of seizure of real estate should, as to trial by jury and exceptions to evidence, be conformed to the course of proceedings by information on the common-law side of the court in cases of seizure on land. Id.

Claimants of property seized on land held entitled to trial by jury. Morris' Cotton (1869) 8 Wall. 507, 511, 19 L. Ed. 481.

Enforcement of forfeiture.—To effect a seizure of a debt evidenced by a note, it is necessary for the marshal to take the note into his actual custody. Pelham v. Way (1872) 15 Wall. 196, 202, 21 L. Ed. 55.

Forfeitures declared under this act can only be enforced by seizure of the property. U. S. v. Stevenson (C. C. & D. C. 1869) Fed. Cas. No. 16,396.

Sale.—A purchaser of real property condemned under the confiscation act, takes title in fee. Kirk v. Lynd (1882) 1 Sup. Ct. 296, 106 U. S. 315, 27 L. Ed. 193.

This act required confiscation to be decreed by a district court of the United States, and title through that source must be proved by the record. Snow v. Grace (1874) 29 Ark. 131.

A person who engaged in the Rebellion, and whose real estate has been sold under this act, in pursuance of a judicial decree of confiscation, forfeits thereby its use during life; but such decree and sale do not work a divestiture of title, and he has afterwards the right to execute a mortgage or conveyance of the same property; which, however, will only take effect upon the death of the original owner. Wallach v. Van Riswick (D. C. 1873) 1 MacArthur, 73.

Title acquired.—The rightful capture of movable property on land transfers the title to the government of the captor as soon as the capture is complete, which it is when the property is reduced to "firm possession," and there is no necessity for judicial condemnation, in which respect captures on land differ from those at sea. Young v. U. S. (1877) 97 U. S. 39, 60, 24 L. Ed. 992.

Property captured by the United States forces from the public enemy, and afterwards regularly inspected and sold by a quartermaster as condemned property under the acts of congress in relation to forfeiture of private property, will not pass by virtue of such sale to the party purchasing, if the original owner can show that it was stolen from him and used by the wrongful taker in aid of the Rebellion, without his consent. Porter v. Botts (1866) 63 Ky. (2 Duv.) 365.

The refusal of the United States district court to set aside a void decree of confiscation and the proceedings had thereunder does not validate the decree, nor prevent the true owner of the confiscated property from asserting his rights therein. Chapman v. Phœnix Nat. Bank of City of New York (1881) 85 N. Y. 437.

Review.—Proceedings under this act relating to a seizure of land present a case of common law jurisdiction, which proceedings are to be conformed as to trial by jury and exceptions to evidence to the course of the common law, a final decision in which can be reviewed in the supreme court only on writ of error. Armstrong's Foundry v. U. S. (1867) 6 Wall. 766, 769, 18 L. Ed. 882.

A claimant of property held entitled to sue out a writ of error, though not a claimant in the court below. Page v. U. S. (1870) 11 Wall. 268, 293, 20 L. Ed. 135.

Proceedings for the condemnation of land can only be reviewed after final judgment or decree on writ of error. Semple v. U. S. (D. C. 1868) Fed. Cas. No. 12,661.

Cited without definite application, Conrad v. Waples (1877) 96 U. S. 279, 285, 24 L. Ed. 721; U. S. v. Dewey (1903) 23 Sup. Ct. 415, 424, 188 U. S. 254, 47 L. Ed. 463; Four hundred and Forty-Three Cans of Frozen Egg Product v. U. S. (1912) 33 Sup. Ct. 50, 226 U. S. 172, 57 L. Ed. 174.

§ 10152. (R. S. § 5310.) Property taken on inland waters.

No property seized or taken upon any of the inland waters of the United States by the naval forces thereof shall be regarded as maritime prize; but all property so seized or taken shall be promptly delivered to the proper officers of the courts.

Act July 2, 1864, c. 225, § 7, 13 Stat. 377.

Notes of Decisions

"Inland waters."—A capture made within a state on a river 130 miles from its mouth is a capture upon "inland waters" within the meaning of this section. The Cotton Plant v. U. S. (1870) 10 Wall. 577, 580, 19 L. Ed. 983.

This section applies to all the waters of the United States upon which a naval force could go, other than bays and harbors on the seacoast, and includes such water as the James river, lying within the body of counties in Virginia. U. S. v. Steam Vessels of

War (1883) 1 Sup. Ct. 539, 106 U. S. 607, 27 L. Ed. 286.

Rivers across which a person can see from one bank what is done on the other are inland waters, though the tide may ebb and flow for miles above their mouths. Id.

Cited without definite application, U. S. v. Dewey (1903) 23 Sup. Ct. 415, 424, 188 U. S. 254, 47 L. Ed. 463.

§ 10153. (R. S. § 5311.) How proceedings shall be instituted.

The Attorney-General, or the attorney of the United States for any judicial district in which such property may at the time be, may institute the proceedings of condemnation, and in such case they shall be wholly for the benefit of the United States; or any person may file an information with such attorney, in which case the proceedings shall be for the use of such informer and the United States in equal parts.

Act Aug. 6, 1861, c. 60, § 3, 12 Stat. 319.

Notes of Decisions

Right to prosecute.—Private persons, other than mere informers, cannot join with the United States in prosecuting an information; nor can the United States prosecute such a suit merely to confirm the title of a third party. U. S. v. Huckabee (1872) 16 Wall. 414, 430, 21 L. Ed. 457.

Rights of informers.—While an informer may file an information along with the attorney general and so make the proceeding inure to his own benefit equally as to the benefit of the United States, yet, after a proceeding has been instituted by the attorney general alone, an informer cannot come in and share the benefits. Francis v. U. S. (1866) 5 Wall. 338, 341, 18 L. Ed. 603.

An informer has no vested interest in the subject-matter of suits, and the attorney general may, against the interest and objection of the informer, ask for a dismissal of an appeal to the Supreme Court and for a remand of the cause to the court below with directions to dismiss the libel. Confiscation Cases (1868) 7 Wall. 454, 455, 19 L. Ed. 196.

Under this act, an informer acquires no right in regard to land informed against after a complete title to the property has been acquired by conquest. Titus v. U. S. (1874) 20 Wall. 475, 22 L. Ed. 400.

Form and effect of proceedings.—In a proceeding under this act to forfeit an interest in a vessel, the pleading and proceedings are subject to like rules as in ordinary cases of prize of war, and therefore the charge of the offense is all the specification that need be made in a libel alleging that the property was seized as a prize. U. S. v. The Picayune (D. C. 1863) Fed. Cas. No. 16,041a.

Land condemnation proceedings hereunder may be according to forms used in admiralty, but they must conform to the course of the common law in respect to issues of fact and exceptions to evidence. Semple v. U. S. (D. C. 1868) Fed. Cas. No. 12,661.

The institution of proceedings against real property under this act waives any claim on the part of the United States of title by conquest. (1866) 12 Op. Atty. Gen. 76.

Cited without definite application, U. S. v. Dewey (1903) 23 Sup. Ct. 415, 424, 188 U. S. 254, 47 L. Ed. 463; Four Hundred and Forty-Three Cans of Frozen Egg Product v. U. S. (1912) 33 Sup. Ct. 50, 226 U. S. 172, 57 L. Ed. 174.

§ 10154. (R. S. § 5312.) Prohibition upon transportation of goods to aid insurrection.

The Secretary of the Treasury is authorized to prohibit and prevent the transportation in any vessel, or upon any railroad, turnpike, or other road or means of transportation within the United States, of any property, whatever may be the ostensible destination of the same, in all cases where there are satisfactory reasons to believe that such property is intended for any place in the possession or under the control of insurgents against the United States, or that there is imminent danger that such property will fall into the possession or under the control of such insurgents; and he is further authorized, in all cases where he deems it expedient so to do, to require reasonable security to be given that property shall not be transported to any place under insurrectionary control, and shall not, in any way, be used to give aid or comfort to such insurgents; and he may establish all such general or special regulations as may be necessary

or proper to carry into effect the purposes of this section; and if any property is transported in violation of this act, or of any regulation of the Secretary of the Treasury, established in pursuance thereof, or if any attempt shall be made so to transport any, it shall be forfeited.

Act May 20, 1862, c. 81, § 3, 12 Stat. 404.

Notes of Decisions

Regulations authorized.—Gold coin in packages and not used for traveling expenses was merchandise in 1864 and within the mischief to be remedied by the nonintercourse acts. Gay's Gold (1871) 13 Wall. 358, 362, 20 L. Ed. 606; U. S. v. Canoe (C. C. 1867) Fed. Cas. No. 14,718.

The treasury regulation forbidding all transportation of coin or bullion to any state or section declared by the president's proclamation to be in insurrection is valid as authorized by this act. Gay's Gold (1871) 13 Wall. 358, 362, 20 L. Ed. 606.

Under this section a sound discretion was vested in the secretary of the treasury to make rules in relation to the commercial intercourse with the insurrectionary states, which was of a governmental character and not subject to revision. Hughes v. Oakes (1868) 59 Pa. (9 P. F. Smith) 32.

Security required.—A bond taken by a collector in double the value of the goods, executed by the shipper and two sureties, was a reasonable security. U. S. v. Mora (1878) 97 U. S. 413, 24 L. Ed. 1013.

Enforcement of forfeiture.—Forfeitures declared under this act can only be enforced by seizure of the property. U. S. v. Stevenson (C. C. & D. C. 1869) Fed. Cas. No. 16,396.

§ 10155. (R. S. § 5313.) Prohibition upon trade in captured or abandoned property.

All persons in the military or naval service of the United States are prohibited from buying or selling, trading, or in any way dealing in captured or abandoned property, whereby they shall receive or expect any profit, benefit, or advantage to themselves, or any other person, directly or indirectly connected with them; and it shall be the duty of such person whenever such property comes into his possession or custody, or within his control, to give notice thereof to some agent, appointed by virtue of this Title, and to turn the same over to such agent without delay. Any officer of the United States, civil, military, or naval, or any sutler, soldier, or marine, or other person who shall violate any provision of this section, shall be deemed guilty of a misdemeanor, and shall be fined not more than five thousand dollars, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same.

Act July 2, 1864, c. 225, § 10, 13 Stat. 377.

Notes of Decisions

Captured and abandoned property.—Property is captured on land when seized or taken from hostile possession by the military forces under orders from a command-officer. Lamar v. Browne (1875) 92 U. S. 187, 193, 23 L. Ed. 650.

Property was not "abandoned," in the meaning of the statute, unless the owner was voluntarily absent engaged in aiding or encouraging the Rebellion by arms or otherwise. Kimball v. Taylor (C. C. 1874) Fed. Cas. No. 7,775.

Where property was seized and sold, and the proceeds paid into the United States treasury, under the captured and abandoned property act, the question whether the property was in fact captured or abandoned is not open to litigation in the courts, but the only remedy of the person claiming to be the owner is by a proceeding for the proceeds in the court of claims. Chamberlain v. Stanton (C. C. 1875) Fed. Cas. No. 2,579.

Property in a rebel city, occupied by the military authorities for the accommodation of our troops in garrisoning the city, cannot be brought as captured property within the operation of the captured and abandoned property acts. (1867) 12 Op. Atty. Gen. 125.

A woman left her house and furniture during the Civil War, first making a pretended sale thereof to another, and went to reside in an adjoining county. Held, that these facts did not amount to an "abandonment," within Act March 12, 1863, authorizing the secretary of the treasury to appoint agents to collect abandoned property. Hart v. Reynolds (1870) 48 Tenn. (1 Heisk.) 208.

Custody of captured and abandoned property.—Under this act the collection of captured and abandoned property within the districts dominated by the seceding states in the Civil War was given to the secretary of the treasury, and on him devolved the execution of the statute, through his appointed agents; and in the absence of fraud, positive violation of the statute, or contravention of public policy, a settlement made by the treasurer with an agent will not be set aside on mere technicalities, especially after the agent's remedy is barred by lapse of time. U. S. v. Johnston (1888) 8 Sup. Ct. 446, 455, 124 U. S. 236, 31 L. Ed. 389.

No treasury agent could receive after June 30, 1865, any captured or abandoned property, unless theretofore surrendered by Confederate agents or officers. McLeod v. Callicott (C. C. 1869) Fed. Cas. No. 8,897.

A treasury agent acting under color of the captured and abandoned property act, or under a mistaken sense of duty, cannot be held personally responsible. Id.

§ 10156. (R. S. § 5314.) Change of port of entry in case of insurrection.

Whenever the President shall deem it impracticable, by reason of unlawful combinations of persons in opposition to the laws of the United States, to collect the duties on imports in the ordinary way, at any port of entry in any collection-district, he may cause such duties to be collected at any port of delivery in the district until such obstruction ceases; in such case the surveyor at such port of delivery shall have the powers and be subject to all the obligations of a collector at a port of entry. The Secretary of the Treasury, with the approval of the President, shall also appoint such weighers, gaugers, measurers, inspectors, appraisers, and clerks, as he may deem necessary, for the faithful execution of the revenue laws at such port of delivery, and shall establish the limits within which such port of delivery is constituted a port of entry. And all the provisions of law regulating the issue of marine papers, the coasting-trade, the warehousing of imports, and the collection of duties, shall apply to the ports of entry thus constituted, in the same manner as they do to ports of entry established by law.

Act July 13, 1861, c. 3, § 1, 12 Stat. 255.

§ 10157. (R. S. § 5315.) Removal of custom-house.

Whenever, at any port of entry, the duties on imports cannot, in the judgment of the President, be collected in the ordinary way, or by the course provided in the preceding section, by reason of the cause mentioned therein, he may direct that the custom-house for the district be established in any secure place within the district, either on land or on board any vessel in the district, or at sea near the coast; and in such case the collector shall reside at such place, or on shipboard, as the case may be, and there detain all vessels and cargoes arriving within or approaching the district, until the duties imposed by law on such vessels and their cargoes are paid in cash. But if the owner or consignee of the cargo on board any vessel thus detained, or the master of the vessel, desires to enter a port of entry in any other district where no such obstructions to the execution of the laws exist, the master may be permitted so to change the destination of the vessel and cargo in his manifest; whereupon the collector shall deliver him a written permit to proceed to the port so designated. And the Secretary of the Treasury, with the approval of the President, shall make proper regulations for the enforcement on shipboard of such provisions of the laws regulating the assessment and collection of duties as in his judgment may be necessary and practicable.

Act July 13, 1861, c. 3, § 2, 12 Stat. 256.

§ 10158. (R. S. § 5316.) Enforcement of preceding sections.

It shall be unlawful to take any vessel or cargo detained under the preceding section from the custody of the proper officers of

the customs, unless by process of some court of the United States; and in case of any attempt otherwise to take such vessel or cargo by any force, or combination, or assemblage of persons, too great to be overcome by the officers of the customs, the President, or such person as he shall have empowered for that purpose, may employ such part of the Army or Navy or militia of the United States, or such force of citizen volunteers as may be necessary, to prevent the removal of such vessel or cargo, and to protect the officers of the customs in retaining the custody thereof.

Act July 13, 1861, c. 3, § 3, 12 Stat. 256.

§ 10159. (R. S. § 5317.) Entire district closed to entry.

Whenever, in any collection-district, the duties on imports cannot, in the judgment of the President, be collected in the ordinary way, nor in the manner provided by the three preceding sections, by reason of the cause mentioned in section fifty-three hundred and fourteen, the President may close the port of entry in that district; and shall in such case give notice thereof by proclamation. And thereupon all right of importation, warehousing, and other privileges incident to ports of entry shall cease and be discontinued at such port so closed until it is opened by the order of the President on the cessation of such obstructions. Every vessel from beyond the United States, or having on board any merchandise liable to duty, which attempts to enter any port which has been closed under this section, shall, with her tackle, apparel, furniture, and cargo, be forfeited.

Act July 13, 1861, c. 3, § 4, 12 Stat. 256.

§ 10160. (R. S. § 5318.) Vessels, in addition to revenue-cutters, may be employed.

In the execution of laws providing for the collection of duties on imports and tonnage, the President, in addition to the revenue-cutters in service, may employ in aid thereof such other suitable vessels as may, in his judgment, be required.

Act July 13, 1861, c. 3, § 7, 12 Stat. 257.

§ 10161. (R. S. § 5319.) Forfeiture of vessels belonging to citizens of insurrectionary States.

From and after fifteen days after the issuing of the proclamation, as provided in section fifty-three hundred and one, any vessel belonging in whole or in part to any citizen or inhabitant of such State or part of a State whose inhabitants are so declared in a state of insurrection, found at sea, or in any port of the rest of the United States, shall be forfeited.

Act July 13, 1861, c. 3, § 7, 12 Stat. 257.

Notes of Decisions

Status of owner.—Vessel belonging to alien woman residing transiently in rebel territory, not engaged in mercantile business, held not subject to confiscation. The D. F. Keeling (D. C. 1861) Fed. Cas. No. 3,873.

The fact that a person's place of residence is occupied by the army of the United States will not affect his status, where the government of the state is still under the control of the insurgents. U. S. v. The Allegheny (D. C. 1863) Fed. Cas. No. 14,429.

Before the passage of the ordinance of secession by Virginia, a vessel cleared from Norfolk, owned in Virginia, and her officers and crew were inhabitants of that state. On her return voyage she was captured by a United States man of war. Her papers were regular, and she sailed under the United States flag. Her master testified that he considered himself a subject of the United States, that he considered his allegiance to the Union as greater and stronger than the allegiance to his native state, and that he would sustain the United States against his native state. Held, that the vessel at the time of her capture was enemy property, in consequence of the residence of her owners in the enemy country. U. S. v. The Sally Mears (1864) 6 D. C. 36.

Liens.—Where the share of one owner in a vessel was condemned under this act, and the remainder acquitted, held, that the owner of the latter had no lien for outlays in fitting the vessel. The Mary McRae (D. C. 1861) Fed. Cas. No. 9,221.

§ 10162. (R. S. § 5320.) Refusal of clearance to vessels laden with suspected merchandise.

The Secretary of the Treasury is authorized to refuse a clearance to any vessel or other vehicle laden with merchandise, destined for a foreign or domestic port, whenever he shall have satisfactory reason to believe that such merchandise, or any part thereof, whatever may be its ostensible destination, is intended for ports in possession or under control of insurgents against the United States; and if any vessel for which a clearance or permit has been refused by the Secretary of the Treasury, or by his order, shall depart or attempt to depart for a foreign or domestic port without being duly cleared or permitted, such vessel, with her tackle, apparel, furniture, and cargo, shall be forfeited.

Act May 20, 1862, c. 81, § 1, 12 Stat. 404.

Notes of Decisions

Grounds for refusal of clearance.—A license from a blockading squadron to a neutral vessel carrying provisions will not authorize refusal of clearance unless illicit intercourse is contemplated. Bas v. Steele (C. C. 1818) Fed. Cas. No. 1,088.

Cited without definite application. U. S. v. Mora (1878) 97 U. S. 413, 24 L. Ed. 1013.

§ 10163. (R. S. § 5321.) Bond upon clearance.

Whenever a permit or clearance is granted for either a foreign or domestic port, it shall be lawful for the collector of the customs granting the same, if he deems it necessary, under the circumstances of the case, to require a bond to be executed by the master or the owner of the vessel, in a penalty equal to the value of the cargo, and with sureties to the satisfaction of such collector, that the cargo shall be delivered at the destination for which it is cleared or permitted, and that no part thereof shall be used in affording aid or comfort to any person or parties in insurrection against the authority of the United States.

Act May 20, 1862, c. 81, § 2, 12 Stat. 404.

Notes of Decisions

Indemnity for detention of foreign vessel.—Where a Prussian ship was detained in New Orleans by order of the commanding general after the port had been thrown open to commerce by the President's proclamation, the owner is entitled to indemnity. Diekelman v. U. S. (1872) 8 Ct. Cl. 371.

Cited without definite application. U. S. v. Mora (1878) 97 U. S. 413, 24 L. Ed. 1013.

§ 10164. (R. S. § 5322.) Liens upon condemned vessels.

In all cases wherein any vessel, or other property, is condemned in any proceeding by virtue of any laws relating to insurrection or rebellion, the court rendering judgment of condemnation shall, notwithstanding such condemnation, and before awarding such vessel, or other property, or the proceeds thereof, to the United States, or to any informer, first provide for the payment, out of the proceeds of such vessel, or other property, of any bona-fide claims which shall be filed by any loyal citizen of the United States, or of any foreign state or power at peace and amity with the United States, intervening in such proceeding, and which shall be duly established by evidence as a valid claim against such vessel, or other property, under the laws of the United States or of any State thereof not declared to be in insurrection. No such claim shall be allowed in any case where the claimant has knowingly participated in the illegal use of such ship, vessel, or other property. This section shall extend to such claims only as might have been enforced specifically

against such vessel, or other property, in any State not declared to be in insurrection, wherein such claim arose.

Act March 3, 1863, c. 90, 12 Stat. 762.

Notes of Decisions

Proof and priority of liens and claims.—A lien on enemy's property set up under Act March 3, 1863, to protect the liens of all citizens of vessels and other property which belonged to rebels, was not sufficiently proved by the test oath of the party setting up a lien and asserting it without any specification as to date of origin, "from correspondence" with the parties and "copies of the invoice of the cargo" sworn to as "believed to be true," the correspondence and copies not being produced, nor their absence accounted for. The Sally Magee (1865) 3 Wall. 451, 458, 18 L. Ed. 197.

The mere affidavit of a claimant that he is not within the exceptions of a proclamation which he sets up in support of his claim is not sufficient proof that he is not. The Gray Jacket (1866) 72 U. S. (5 Wall.) 342, 18 L. Ed. 646.

A mortgagee of a vessel captured as a prize cannot claim that his rights are superior to those of the captors because he was a loyal citizen. The Hampton (1866) 5 Wall. 372, 375, 18 L. Ed. 659.

Vessels captured jure belli.—A vessel was captured jure belli and not under the nonintercourse acts of Congress, and the vessel and cargo libeled as enemy property simply and in that character alone were condemned. Held, that the case did not come within this section. U. S. v. The Hampton (1864) 6 D. C. 75.

TITLE LXIX A

THE CRIMINAL CODE

The Criminal Code was enacted by Act March 4, 1909, c. 321, 35 Stat. 1088, entitled "An act to codify, revise, and amend the penal laws of the United States," the enacting clause of which was as follows:

"Be it enacted, etc., That the penal laws of the United States be, and they hereby are, codified, revised, and amended, with title, chapters, headnotes, and sections, entitled, numbered, and to read as follows."

Said act took effect January 1, 1910, by section 345 thereof, post, § 10519.

This Title of this compilation includes said Criminal Code and specific amendments thereof incorporated in the several sections amended, and subsequent provisions relating to subjects embraced in the Code, each such provision inserted in connection with the provisions of the Code of the same nature.

Many sections of Title LXX of the Revised Statutes, "Crimes," and subsequent acts and parts of acts relating to the subjects thereof, were incorporated in the Criminal Code and repealed or superseded thereby. Such repeals, etc., are indicated specifically, post, under the several chapters of said Title LXX affected thereby.

Acts and parts of acts subsequent to the Revised Statutes relating to subjects included in Title LXII thereof, but not within the scope of the Criminal Code, which remain in force, are set forth, post, under the several chapters of said Title LXX.

For penal provisions, other than those contained in this title, see the General Index under the heading "Crimes and Offenses."

CRIMES

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CHAPTER ONE

Offenses against the Existence of the Government

Sec.
10165. Treason defined.
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10170. Seditious conspiracy; punishment for.
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§ 10165. (Crim. Code, § 1.) Treason defined.

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason.

R. S. § 5331. Act March 4, 1909, c. 321, § 1, 35 Stat. 1088.

Notes of Decisions

1. Levying war in general.
2. Adhering to enemies and giving them aid and comfort.
3. Persons regarded as enemies.
4. Overt acts.
5. Felonious intent.
6. Duress and compulsion.
7. Persons liable in general.
8. Persons owing allegiance.
9. People in rebellion.
10. Secession ordinances as defense.
11. Merger of treason against state in treason against United States.
12. Revolutionizing territory as means for foreign expedition.
13. Quashing indictment.
14. Evidence.

See note under § 10,171, post. See, also, notes under Const. art. 3, § 3, cl. 1, and Amend. 14, § 3.

1. Levying war in general.—To constitute a levying of war, there must be an assemblage of persons for the purpose of effecting by force a treasonable purpose. Enlistment of men to serve against government is not sufficient. When war is levied, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are traitors. Any assemblage of men for the purpose of revolutionizing by force the government established by the United States in any of its territories, although as a step to, or the means of executing some greater projects, amounts to levying war. The traveling of individuals to the place of rendezvous is not sufficient; but the meeting of particular bodies of men, and their marching from places of partial, to a place of general, rendezvous, is such an assemblage as constitutes a levying of war. Ex parte Bollman (1807) 4 Cranch, 75, 125, 2 L. Ed. 554.

A conspiracy to prevent by force, the execution of any one law of the United States in all cases, is a treasonable conspiracy; and if there be an actual assemblage of men for the purpose of carrying this intention into effect,—that is, of acting together, and preventing by force the execution of the law generally—this constitutes a levying of war, and involves the crime of treason. Charge to Grand Jury, Treason (C. C. 1842) Fed. Cas. No. 18,275; Charge to Grand Jury, Fugitive Slave Law (C. C. 1851) Fed. Cas. No. 18,-262; Charge to Grand Jury, Treason (D. C. 1863) Fed. Cas. No. 18,274.

The sudden outbreak of a mob, or the assembling of men, in order, by force, to prevent the execution of a law in a particular instance, and then to disperse, without any intention of continuing together or reassembling for defeating the law generally and in all cases, is not a levying of war such as constitutes treason. Charge to Grand Jury, Fugitive Slave Law (C. C. 1851) Fed. Cas. No. 18,262; Charge to Grand Jury, Treason (D. C. 1863) Fed. Cas. No. 18,274.

The combination of a body of men, with the design of seizing, and the actual seizing, of the forts and other public property of the United States, is a levying of war against the United States, and is treason. Charge to Grand Jury, Treason (C. C. 1861) Fed. Cas. No. 18,270; Id. (D. C. 1863) 18,-274.

A combination to suppress the excise officers of the government, and prevent the execution of an act of Congress, accompanied by a display of force, consisting of a number of men arrayed in a military manner, and with arms, and by acts of violence, for the purpose of compelling an excise officer to resign his commission, is a levying of war, and constitutes treason. U. S. v. Mitchell (C. C. 1795) Fed. Cas. No. 15,788, 2 Dall. 348, 1 L. Ed. 410; Same v. Vigol (C. C. 1795) Fed. Cas. No. 16,621, 2 Dall. 346, 1 L. Ed. 409.

To go, with a large party, in arms, marshaled and arrayed, to the houses of officers of the excise, and there commit acts of violence and devastation, with the avowed object of suppressing such offices, and compelling the resignation of the officers for the purpose of nullifying an act of congress, is treason. Id.

Opposing, by force of arms, an act of congress, with a view to defeating its efficacy, and thus defying the authority of the government is levying war against the United States, and constitutes treason. Case of Fries (C. C. 1799) Fed. Cas. No. 5,126.

An insurrection to resist by force the execution of a federal tax law, or the militia called out to enforce it, on any ground whatever, is a levying of war against the United States. Case of Fries (C. C. 1800) Fed. Cas. No. 5,127.

A conspiracy to raise an insurrection to resist the execution of a federal statute by force is only a misdemeanor. Treason is not committed until the persons proceed to carry the intention into execution by force. Id.

Either acts of hostility and resistance to the government, or a hostile intention in the body assembled, are necessary to convert a meeting of men

with ordinary appearances into an act of levying war. A treasonable intent on the part of the leader, uncommunicated to the assemblage, is not sufficient. U. S. v. Burr (C. C. 1807) Fed. Cas. No. 14,694a.

An intention to commit treason against the United States by levying war, not carried out by the actual assembling of troops, is not punishable as treason. Id.

The engaging or enlisting of men for levying war against the United States, not followed by a future embodying of such men, is not punishable as treason. Id.

The fact of levying war may consist of a multiplicity of acts performed in different places by different persons, and any one of such persons, when leagued in the general conspiracy, is liable as a principal traitor. Id.

If there be an assembly of persons, with force, with an intent to prevent the collection of lawful taxes or duties levied by the government, or to destroy all customhouses, or to resist the administration of justice in the courts of the United States, and the assemblage proceed to execute this purpose by force, this is treason against the United States. Charge to Grand Jury, Treason (C. C. 1842) Fed. Cas. No. 18,275.

If the assembly is arrayed in a military manner, if they are armed and marched in military form, for the express purpose of overawing and intimidating the public, and thus attempt to carry into effect the treasonable design, this will, of itself, amount to a levy of war, although no actual blow be struck or engagement take place. Id.

There may be treason against a state by levying war which is aimed altogether against the sovereignty of the state. Id.

To constitute treason against the United States by levying war, there must be a levying of war against the United States in their sovereign character and not merely a levying of war exclusively against the sovereignty of a particular state. Id.

Direct proof of the combining to prevent the enforcement of a law may be found in declared purposes of the individual party before the actual outbreak, or it may be derived from proceedings of meetings in which he took part openly, or which he either prompted or made effective by his countenance or sanction, commending, counseling, or instigating forcible resistance to the law. Charge to Grand Jury, Treason (C. C. 1851) Fed. Cas. No. 18,276.

The words "levying war," as used in the constitutional definition of "treason," include not only the act of making war for the purpose of entirely overturning the government, but also any combination forcibly to oppose the execution of any public law of the United States, with intent to prevent its enforcement in all cases, if accompanied or followed by an act of forcible opposition to such law in pursuance of such combination. Charge to Grand Jury, Neutrality Laws and Treason (C. C. 1851) Fed. Cas. No. 18,-269; Charge to Grand Jury, Treason (C. C. 1851) Fed. Cas. No. 18,276.

To be employed in actual service in an army raised to oppose the government in its action, or directly or indirectly to aid or assist in the levying or embodying of a military force for the subversion of the government, are plainly acts of "levying war," and involve the commission of the crime of treason. The constitutional definition of treason, however, is of broader signification, and includes all those who join a hostile army after war is begun. Charge to Grand Jury, Treason (C. C. 1861) Fed. Cas. No. 18,272.

All persons engaged therein are by the law regarded as levying war against the United States; and all who adhere to them are to be regarded as enemies; and all who give them, in any part of the United States, aid and comfort, come within the provisions of the act of April 30, 1790, and are guilty of treason. Id.

A letter of marque issued by an insurrectionary government, which has not been recognized by the legislative and executive departments of the existing government, is no defense to treason in levying war under such letter. U. S. v. Greathouse (C. C. 1863) Fed. Cas. No. 15,254.

Levying war against the United States by citizens of the republic, under the pretended authority of the new state government of North Carolina, or of the so-called "Confederate Government," is treason against the United States. Shortridge v. Macon (C. C. 1867) Fed. Cas. No. 12,812.

Levying war against the United States by persons however combined and confederated, even though successful in establishing their actual authority in several states, is treason. Keppel v. Petersburg R. Co. (C. C. 1868) Fed. Cas. No. 7,722.

If a convention, legislature, junto, or other assemblage entertain the purpose of subverting the government, and to that end pass acts, resolves, ordinances, or decrees, even with the view of raising a military force to carry their purpose into effect, this alone does not constitute a levying of war. Charge to Grand Jury, Treason (D. C. 1863) Fed. Cas. No. 18,274.

If a body of men be actually assembled in force, in a condition to make war, in order to overturn the government at any one place by force, this is levying war. It is not necessary that the assemblage should be with military arms and array; numbers

alone may supply the requisite force. Id.

2. Adhering to enemies and giving them aid and comfort.—The going from the enemy's squadron to the shore for the purpose of peaceably procuring provisions for the enemy is not an act of treason; otherwise where provisions are carried towards the enemy with intent to supply them, though such intention is defeated. U. S. v. Pryor (C. C. 1814) Fed. Cas. No. 16,096.

Delivering up prisoners and deserters to an enemy is treason, and nothing but a well-grounded fear of life will excuse the act. U. S. v. Hodges (C. C. 1815) Fed. Cas. No. 15,374.

A person present, directing, aiding, abetting, counseling, or countenancing the violence, or if, though absent at the time of its actual perpetration, he yet directed the act, or devised or knowingly furnished the means for carrying it into effect, and instigated others thereto, he is guilty of treason. Charge to Grand Jury, Treason (C. C. 1851) Fed. Cas. No. 18,276.

The words, "adhering to their enemies, giving them aid and comfort," include, in general, any act committed after war actually exists which indicates a want of loyalty to the government and sympathy with its enemies, and which, by fair construction, is directly in furtherance of their hostile designs. Charge to Grand Jury, Treason (C. C. 1861) Fed. Cas. No. 18,272.

Mere expressions of opinion indicative of sympathy with the public enemy are not sufficient, under the constitution and laws, to warrant a conviction of treason. Id.

After war actually exists, it is treasonable to sell to, or provide arms or munitions of war, or military stores and supplies, including food, clothing, etc., for the use of the enemy; to hire, sell, or furnish boats, railroad cars, or other means of transportation, or to advance money or obtain credits for the use and support of the hostile army; and to communicate intelligence to the enemy by letter, telegraph, or otherwise, relating to the strength, movements, or position of the army. Id.

Overt acts which, if successful, would advance the interests of the rebellion, amount to aid and comfort, though they failed. U. S. v. Greathouse (C. C. 1863) Fed. Cas. No. 15,254.

If war be actually levied at one place, and any person actually engaged therein send them arms, money, provisions or intelligence for the purpose of aiding them, he is guilty. Charge to Grand Jury, Treason (D. C. 1863) Fed. Cas. No. 18,274.

And it makes no difference how distant he may be from the place of the assemblage of the enemy. Id.

It is treason for a citizen or other person not commissioned within the United States to abet France during a maritime war with her. (1798) 1 Op. Atty. Gen. 84.

3. Persons regarded as enemies.—In a civil war, persons who adhere to their allegiance are not, although they reside in an insurrectionary district, regarded as enemies; and trade with such persons, in good faith and without collusion with the enemy, is lawful, unless interdicted by the government. Charge to Grand Jury, Treason (C. C. 1861) Fed. Cas. No. 18,271.

4. Overt acts.—See, also, notes under § 10,170, post.

The fact that treason might incidentally arise in the attempt to embark troops against a foreign nation, with which the United States are at peace, will not affect a previous assemblage of troops, where the treason was neither committed nor intended. U. S. v. Burr (C. C. 1807) Fed. Cas. No. 14,694a.

A person who advised or procured a warlike assemblage, charged as the overt act of treason, cannot be convicted of treason until after the conviction of one of those charged with the overt act. U. S. v. Burr (C. C. 1807) Fed. Cas. No. 14,693.

An indictment for levying war against the United States must specify an overt act, and the charge must be proved as laid. U. S. v. Burr (C. C. 1807) Fed. Cas. No. 14,693.

And there must be some overt act done, or some attempt made by them, with force, to execute, or towards executing, that purpose. The assembly must be in a condition to use force, and must intend to use it, if necessary, to further, aid, or accomplish the treasonable design. Charge to Grand Jury, Treason (C. C. 1842) Fed. Cas. No. 18,275.

Where a body of armed men is mustered in military array for a treasonable purpose, every step which any one of them takes, by marching or otherwise, in part execution of such purpose, is an overt act of treason in levying war. U. S. v. Greiner (D. C. 1861) Fed. Cas. No. 15,262.

Words, oral, written, or printed, however treasonable, seditious, or criminal of themselves, do not constitute an overt act of treason. Charge to Grand Jury, Treason (C. C. 1861) Fed. Cas. No. 18,271.

Purchase of a vessel, and fitting her up for service with arms and ammunition, and the employment of men to manage it, in pursuance of a design to commit hostilities on the high seas in aid of an existing rebellion against the United States, are overt acts of treason. U. S. v. Greathouse (C. C. 1863) Fed. Cas. No. 15,254.

5. Felonious intent.—Treason in the assembling of bodies of men, armed or arrayed in a warlike manner, is determined by the intent. If the purpose be of a private nature, it is not treason, regardless of the acts actually committed; otherwise, where the intent is to effect some object of general public na-

ture. Case of Fries (C. C. 1800) Fed. Cas. No. 5,127.

If a man joins and acts with an assembly of people, his intent is always to be considered and adjudged to be the same as theirs; and the law judges of the intent by the fact. Case of Fries (C. C. 1800) Fed. Cas. No. 5,127.

A conspiracy to resist by force the execution of a law of the United States in particular instances only, for personal or private purposes only, is not treason. U. S. v. Hoxie (C. C. 1808) Fed. Cas. No. 15,407.

A felonious intent is necessary to commit treason. The Ambrose Light (D. C. 1885) 25 Fed. 408, 427.

6. Duress and compulsion.—The putting in fear which is sufficient to excuse the perpetration of a criminal act must proceed from an immediate and actual danger threatening the life of the accused. The apprehension of the loss of property or of slight or remote injury to the person is not sufficient. U. S. v. Vigol (C. C. 1795) Fed. Cas. No. 16,621.

Except in the case of force under a personal fear of death, a private soldier or subordinate officer cannot excuse a treasonable act on the ground of compulsion. U. S. v. Greiner (D. C. 1861) Fed. Cas. No. 15,262.

7. Persons liable in general.—If a body of men be actually assembled to effect by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered guilty of treason. Charge to Grand Jury, Neutrality Laws and Treason (C. C. 1851) Fed. Cas. No. 18,269; Charge to Grand Jury, Treason and Piracy (C. C. 1861) Fed. Cas. No. 18,277.

An alien resident may be guilty of treason by co-operating either with rebels or foreign enemies. Charge to Grand Jury, Treason (D. C. 1863) Fed. Cas. Nos. 18,274 (C. C. 1851), 18,276.

All who aid in the prosecution of war levied against the United States, whether by open hostilities in the field, or by performing any part in the furtherance of the common object, however minute, or however remote from the scene of action, are guilty of treason. U. S. v. Greathouse (C. C. 1863) Fed. Cas. No. 15,254.

In treason there are no accessories. All who engage in rebellion, or who designedly give to it any species of aid and comfort, in whatever part of the country they may be, are principals. U. S. v. Greathouse (C. C. 1863) Fed. Cas. No. 15,254; Case of Fries (C. C. 1800) Fed. Cas. No. 5,127.

8. Persons owing allegiance. — The words "owing allegiance to the United States" in this section are surplusage, since treason is a breach of allegiance, and can be committed by one only who owes allegiance either perpetual or temporary. U. S. v. Wiltberger (1820) 5 Wheat. 76, 97, 5 L. Ed. 37.

9. People in rebellion.—Until belligerent rights are accorded by the political department of the government to the state or people in rebellion, the judiciary must regard them as rebels and lawless aggressors, and apply to them the penal law. Charge to Grand Jury (C. C. 1861) Fed. Cas. No. 18,256.

Belligerent rights conceded to the Confederate States cannot be invoked for the protection of persons entering within the limits of a loyal state, and secretly getting up hostile expeditions against the government. U. S. v. Greathouse (C. C. 1863) Fed. Cas. No. 15,254.

The agreement of capitulation between Generals Sherman and Johnston was a mere military parol, terminating with the war, and the persons included were liable to arrest for treason after the war. U. S. v. Rucker (C. C. 1866) Fed. Cas. No. 16,203.

The national government conceded belligerent rights to the armies of the Confederate States; and acts of a strictly military character, performed under military authority, may be protected by reason therof. U. S. v. Morrison (C. C. 1869) Fed. Cas. No. 15,817.

The whole existence of the Confederate government was a continued rebellion against the lawful government of the United States; and no one can be protected by the sanction of its authority save in acts of war. Id.

Rebellion, whether conducted on land or sea, is felonious and treasonable, and punishable by death. The Ambrose Light (D. C. 1885) 25 Fed. 408, 427.

10. Secession ordinances as defense.—The ordinances of secession of the states in rebellion do not furnish any defense to their citizens for treasonable acts against the United States government. U. S. v. Cathcart (C. C. 1864) Fed. Cas. No. 14,756.

11. Merger of treason against state in treason against United States.—Treason begun against a state may be mixed up or merged in treason against the United States. If the treasonable purpose be to overthrow the government of the state, and forcibly to withdraw it from the Union, and thereby to prevent the exercise of the national sovereignty within the limits of the state, this would be treason against the United States. Charge to Grand Jury, Treason (C. C. 1842) Fed. Cas. No. 18,275.

If the troops of the United States should be called out by the president, upon the application of a state legislature or executive, to protect the state against domestic violence, and there should be an assembly of persons with force to resist and oppose the United States troops, this would be treason against the United States, although the primary intention of the insurgents may have been only to overthrow the state government or the state laws.

Charge to Grand Jury, Treason (C. C. 1861) Fed. Cas. No. 18,272. See, also, Charge to Grand Jury (C. C. 1842) Fed. Cas. No. 18,275.

12. Revolutionizing territory as means for foreign expedition.—The act of revolutionizing a territory of the United States, though only as a means for an expedition against a foreign power, is treason. U. S. v. Burr (C. C. 1807) Fed. Cas. No. 14,692a.

13. Quashing indictment.—On motion to quash an indictment for treason, held, that defendant's counsel would be required to file with the clerk a formal statement of the grounds on which the motion was based. Case of Davis (C. C. 1867–1871) Fed. Cas. No. 3621a.

14. Evidence.—It is not competent, on a trial for treason, to prove that the accused, in the course of the insurrection, joined with others in robbing the mails, when a separate indictment for that offense is already pending against him. U. S. v. Mitchell (C. C. 1795) Fed. Cas. No. 15,789.

Where it was claimed that a circular letter had been written by leaders of an insurrection calling citizens to assemble with arms, etc., held, that a copy thereof was not admissible, unless it was proved to be one of the copies actually circulated. Id.

Where it is shown by the evidence of several witnesses that accused was present and took part in a treasonable conspiracy, proof by two or more witnesses that he marched as a volunteer with arms and in military array, with a party which actually used force to prevent the execution of an act of Congress, is sufficient without proof by two witnesses that he was actually present when the acts of violence were committed. Id.

On the trial of a person indicted for treason in levying war against the United States, the court cannot control the order of proof to the extent of requiring the prosecution to prove the overt act charged, before proving the intention with which such act was committed. U. S. v. Burr (C. C. 1807) Fed. Cas. No. 14,692b (C. C. 1807) Id. 14,693; Same v. Lee (C. C. 1814) Id. 15,584.

A person will not be held to trial for treason in levying war against the United States on an affidavit that he is enlisting men for such purpose, without proof of the actual embodying of men, where ample time is given to get such proof. U. S. v. Burr (C. C. 1807) Fed. Cas. No. 14,692a.

Facts out of the district may be proved after the overt act as corroborative evidence of the intention. Id.

The overt act of levying war must be proved by two witnesses before testimony is admissible relative to the conduct or declarations of the prisoner elsewhere, and subsequent to the overt act charged. Id.

Proof of remote intentions may be relevant by proof of the continuance of the intention, and consequently is admissible. Id.

Query, whether, after proving a connection for some general object between persons accused of treason in levying war, the conversations of one with third persons may be given in evidence against the other to prove what that object was. Id.

The declaration of the prisoner accompanying the overt act charged may be proved to show his intention in doing it; but his confession of committing such act is not admissible. U. S. v. Lee (C. C. 1814) Fed. Cas. No. 15,584.

Everything tending to show that there was an intention to make public resistance to a law of the United States is entirely evidence in chief, and cannot be received in rebuttal. U. S. v. Hanway (C. C. 1851) Fed. Cas. No. 15,299.

Facts occurring and rumors prevalent in the neighborhood which would explain certain particulars relied upon to show treasonable intent, and make them show a different intent, though a long time in advance of the alleged treasonable occurrence, are admissible. Id.

Direct proof of the purpose, however, is not legally necessary. The concert of purpose may be deduced from the concerted action itself, or it may be inferred from facts occurring at the time, or before or afterwards. Charge to Grand Jury, Treason (C. C. 1851) Fed. Cas. No. 18,276.

Cited without definite application. Hart's Adm'r v. U. S. (1880) 16 Ct. Cl. 459; U. S. v. Craig (C. C. 1886) 28 Fed. 795, 801.

§ 10166. (Crim. Code, § 2.) Punishment for.

Whoever is convicted of treason shall suffer death; or, at the discretion of the court, shall be imprisoned not less than five years and fined not less than ten thousand dollars, to be levied on and collected out of any or all of his property, real and personal, of which he was the owner at the time of committing such treason, any sale or conveyance to the contrary notwithstanding; and every person so convicted of treason shall, moreover, be incapable of holding any office under the United States.

R. S. § 5332. Act March 4, 1909, c. 321, § 2, 35 Stat. 1088.

Notes of Decisions

Death penalty.—Where the treason consists in engaging in or assisting a rebellion or insurrection, the death penalty cannot be inflicted, under Act July

17, 1862. U. S. v. Greathouse (C. C. 1863) Fed. Cas. No. 15,254.

Disqualification from holding office.—Quære, whether the constitutional disqualifications from holding office by having engaged in rebellion (Amendment 14) operates to exempt from prosecution for treason. Case of Davis (C. C. 1867–1871) Fed. Cas. No. 3,621a.

Jurisdiction.—See charge to Grand Jury, Treason (C. C. 1861) Fed. Cas. No. 18,270.

Confiscation of property, etc., under former laws.—See notes under § 10168, post.

§ 10167. (Crim. Code, § 3.) Misprision of treason defined; punishment for.

Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be imprisoned not more than seven years and fined not more than one thousand dollars.

R. S. § 5333. Act March 4, 1909, c. 321, § 3, 35 Stat. 1088.

Notes of Decisions

Persons guilty of offense.—Persons who have any knowledge of acts of treason, and do not as soon as possible make it known in the manner prescribed by Act April 30, 1790, § 2, are guilty of misprision of treason. Charge to Grand Jury, Treason (C. C. 1861) Fed. Cas. No. 18,270.

§ 10168. (Crim. Code, § 4.) Inciting, etc., rebellion or insurrection; punishment for.

Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be imprisoned not more than ten years, or fined not more than ten thousand dollars, or both; and shall, moreover, be incapable of holding any office under the United States.

R. S. § 5334. Act March 4, 1909, c. 321, § 4, 35 Stat. 1088.

Notes of Decisions

See notes under § 10165, ante.

Former law as limited to persons owing allegiance.—The general terms of the former statute relating to the same offense held limited to persons owing allegiance to the United States, either perpetual or temporary. U. S. v. Wiltberger (1820) 5 Wheat. 76, 97, 5 L. Ed. 37.

Despatching vessel ultimately intended to carry cargo to blockaded port.—The act of despatching an American vessel in ballast from a port of the United States with an immediate destination to a neutral port, and an ulterior destination, with cargo taken in at such neutral port, to a blockaded port, is an offense against the United States under this section. (1863) 10 Op. Atty. Gen. 513.

Indictment.—On indictment under Act July 17, 1862, § 2, need not use the phrase "levying war" specifically; it is sufficient to follow the language of the act. U. S. v. Greathouse (C. C. 1863) Fed. Cas. No. 15,254.

Confiscation of property under former law.—See Bigelow v. Forrest (1869) 76 U. S. (9 Wall.) 339, 19 L. Ed. 696; Planters' Bank v. Union Bank (1872) 16 Wall. 483, 494, 21 L. Ed. 473; Chaffraix v. Shiff (1875) 92 U. S. 214, 23 L. Ed. 478; Pike v. Wassell (1876) 94 U. S. 711, 24 L. Ed. 307; Waples v. Hays (1882) 1 Sup. Ct. 80, 81, 108 U. S. 6, 27 L. Ed. 632; Kirk v. Lynd (1882) 1 Sup. Ct. 296, 299, 106 U. S. 315, 27 L. Ed. 193; Avegno v. Schmidt (1885) 5 Sup. Ct. 487, 489, 113 U. S. 293, 28 L. Ed. 976; Snow v. Grace (1874) 29 Ark. 131; The Confiscation Cases (C. C. 1872) Fed. Cas. No. 3,097; Pike v. Wassell (C. C. 1873) Fed. Cas. No. 11,164; Wallach v. Van Riswick (D. C. 1873) 1 MacArthur, 73; Knoefel v. Williams (1868) 30 Ind. 1; Dewey v. McLain (1871) 7 Kan. 126, 12 Am. Rep. 418; Menger v. Carruthers (1896) 3 Kan. App. 75, 44 Pac. 1096; Norris v. Doniphan (1863) 61 Ky. (4 Metc.) 385; Nelligan v. Citizens' Bank of Louisiana (1869) 21 La. Ann. 332, 99 Am. Dec. 734; Micou v. Benjamin (1874) 26 La. Ann. 718; Burbank v. Conrad (1875) 27 La. Ann. 152; Slidell's Heirs v. Hippenbauer (1875) 27 La. Ann. 383; Pendegast v. Schawtz (1878) 30 La. Ann. 590; Thomas v. Hunter (1868) 29 Md. 406; Chapman v. Phœnix Nat. Bank of New York (1881) 85 N. Y. 437; Ellis v. Phenix Nat. Bank (N.

Y. 1883) 12 Daly, 177; Underwood v. McVeigh (Va. 1873) 23 Grat. 409; Avegno v. Schmidt (1883) 35 La. Ann. 585.

Transfers of property invalidated under former law.—See Wallach v. Van Riswick (D. C. 1879) 3 MacArthur, 168; Knoefel v. Williams (1868) 30 Ind. 1; Dobbins v. Hyde (1865) 37 Mo. 114; Galbraith v. McFarland (1866) 43 Tenn. (3 Cold.) 267, 91 Am. Dec. 281.

§ 10169. (Crim. Code, § 5.) Criminal correspondence with foreign governments; punishment for; redress of private injuries.

Every citizen of the United States, whether actually resident or abiding within the same, or in any place subject to the jurisdiction thereof, or in any foreign country, without the permission or authority of the Government, directly or indirectly, commences or carries on any verbal or written correspondence or intercourse with any foreign government or any officer or agent thereof, with an intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the Government of the United States; and every person, being a citizen of or resident within the United States or in any place subject to the jurisdiction thereof, and not duly authorized, counsels, advises, or assists in any such correspondence with such intent, shall be fined not more than five thousand dollars and imprisoned not more than three years; but nothing in this section shall be construed to abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects.

R. S. § 5335. Act March 4, 1909, c. 321, § 5, 35 Stat. 1088.

Notes of Decisions

Letters urging acknowledgment of independence of insurgents.—It is an offense punishable by fine and imprisonment, under the act of 1799 (1 Stat. 618, c. 1), for a citizen of the United States, at a time when a part of the inhabitants of the United States are in rebellion against the government, to write letters to a member of the British parliament, urging that body to acknowledge the independence of the insurgents. Charge to Grand Jury, Treason and Piracy (C. C. 1861) Fed. Cas. No. 18,277.

Cited without definite application, U. S. v. Craig (C. C. 1886) 28 Fed. 795, 801.

§ 10170. (Crim. Code, § 6.) Seditious conspiracy; punishment for.

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than five thousand dollars, or imprisoned not more than six years, or both.

R. S. § 5336. Act March 4, 1909, c. 321, § 6, 35 Stat. 1089.

Provisions defining and punishing conspiracies to prevent the acceptance or holding of an office under the United States were made by Crim. Code, § 21, post, § 10185.

Notes of Decisions

Offense in general.—To constitute the offense, there must be a conspiracy to resist generally and publicly by force, and an actual resistance by force or by intimidation of numbers, a law of the United States. U. S. v. Hanway (C. C. 1851) Fed. Cas. No. 15,299.

A conspiracy to resist by force the execution of such law in particular instances only, for personal or private purposes only, is not treason. U. S. v. Hanway (C. C. 1851) Fed. Cas. No. 15,299; Same v. Hoxie (C. C. 1808) Id. 15,407.

Overt act.—Prior to Act July 31, 1861, of which this section is a part, there was no law for punishing trea-

sonable combinations or conspiracies which were not consummated by an overt act. The statute of that date, however, makes criminal not only combinations to overthrow the government, but conspiracies or mutual agreements, whether by few or many, whether public or private, forcibly to resist, or even to delay, the execution of any law. Charge to Grand Jury, Treason and Piracy (C. C. 1861) Fed. Cas. No. 18,277; Charge to Grand Jury, Treason (C. C. 1861) Fed. Cas. No. 18,272.

Opposing authority of government or preventing, hindering, or delaying execution of law.—The ill treatment of Chinese in this country, and their expulsion from a town where they reside, is not, in itself, opposing by force the authority of the United States, or preventing the execution of any law thereof, within this section, and such acts are not punishable thereunder. Baldwin v. Franks (1887) 120 U. S. 678, 7 Sup. Ct. 656, 657, 32 L. Ed. 766, reversing judgment In re Baldwin (C. C. 1886) 27 Fed. 187.

A conspiracy or agreement of two or more persons to drive the Chinese out of the United States, or to maltreat or intimidate them, with a view of constraining them to depart therefrom, is prima facie a conspiracy to prevent and hinder the execution, operation, or fulfillment of a law of the United States, namely, the treaties with China of 1868 and 1880, and is an indictable offense under this section. In re Impaneling and Instructing the Grand Jury (D. C. 1886) 26 Fed. 749.

Cited without definite application, Johnson v. U. S. (1912) 32 Sup. Ct. 748, 750, 225 U. S. 405, 56 L. Ed. 1142; Wright v. U. S. (1901) 108 Fed. 805, 48 C. C. A. 37 (writ of certiorari denied [1901] 21 Sup. Ct. 924, 181 U. S. 620, 45 L. Ed. 1031); In re Baldwin (C. C. 1886) 27 Fed. 187, 193 (reversed [1887] 7 Sup. Ct. 656, 763, 120 U. S. 678, 30 L. Ed. 766).

§ 10171. (Crim. Code, § 7.) Recruiting for service against United States; punishment for.

Whoever recruits soldiers or sailors within the United States, or in any place subject to the jurisdiction thereof, to engage in armed hostility against the same, or opens within the United States, or in any place subject to the jurisdiction thereof, a recruiting station for the enlistment of such soldiers or sailors to serve in any manner in armed hostility against the United States, shall be fined not more than one thousand dollars and imprisoned not more than five years.

R. S. § 5337. Act March 4, 1909, c. 321, § 7, 35 Stat. 1089.

Notes of Decisions

Statute as reaching acts not deemed treasonable.—This section was intended to reach acts not deemed treasonable under the statute. Charge to Grand Jury, Treason (C. C. 1861) Fed. Cas. No. 18,272.

§ 10172. (Crim. Code, § 8.) Enlisting to serve against United States; punishment for.

Every person enlisted or engaged within the United States or in any place subject to the jurisdiction thereof, with intent to serve in armed hostility against the United States, shall be fined one hundred dollars and imprisoned not more than three years.

R. S. § 5338. Act March 4, 1909, c. 321, § 8, 35 Stat. 1089.

CHAPTER TWO

Offenses against Neutrality

Sec.
10173. Accepting foreign commission to serve against friendly power; punishment for.
10174. Enlisting in foreign service; punishment for.
10175. Arming vessels against friendly powers; punishment; forfeiture of vessel, etc.
10176. Augmenting force of foreign armed vessel; punishment for.
10177. Organizing military expedition against friendly power; punishment for.
10178. Enforcement by courts; employment of land or naval forces.
10179. Compelling foreign vessels to depart.

Sec.
10180. Bonds from armed vessels on clearing.
10181. Detention by collectors of customs.
10182. Construction of this chapter; transient aliens; prosecutions for treason or piracy not affected.
10182a. Withholding clearance from vessel; departing, etc., without clearance punishable, and vessel to be forfeited; employment of land and naval forces to carry out provisions authorized; extent of application of provisions.

§ 10173. (Crim. Code, § 9.) Accepting foreign commission to serve against friendly power; punishment for.

Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony, district, or people, in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, shall be fined not more than two thousand dollars and imprisoned not more than three years.

R. S. § 5281. Act March 4, 1909, c. 321, § 9, 35 Stat. 1089.

Subsequent provisions, empowering the President to better enforce and maintain the neutrality of the United States, were made by Joint Res. March 4, 1915, No. 14, post, § 10182a.

Notes of Decisions

Overt act constituting offense.—To constitute the offense of accepting and exercising a commission to serve against a foreign prince, state, etc., with whom the United States are at peace, under the first section of the act of congress, some overt act under the commission must be done, such as raising men for the enterprise, collecting provisions, munitions of war, or any other act which shows an exercise of the authority which the commission was supposed to confer. Charge to Grand Jury, Neutrality Laws (C. C. 1838) Fed. Cas. No. 18,-265.

Secondary evidence of commission.—Secondary evidence of the commission is admissible if the nonproduction of the instrument is satisfactorily accounted for. U. S. v. Reyburn (1832) 6 Pet. 352, 364, 8 L. Ed. 424.

Decisions Relating to Subject in General

Effect of proviso in repealing clause of act.—The proviso in the repealing clause of the neutrality act does not authorize a forfeiture under Act March 3, 1817, which is included in the repeal, after the time when the act would have expired by its own limitation. The Irresistible (1822) 7 Wheat. 551, 5 L. Ed. 520.

Purpose and operation of neutrality laws in general.—R. S. tit. 67, including sections 5281–5291 (see this compilation, §§ 10173–10182), was designed in general to secure neutrality in wars between two other nations, or between contending parties recognized as belligerents, but its operation is not necessarily dependent on the existence of such state of belligerency. U. S. v. The Three Friends (1897) 17 Sup. Ct. 495, 497, 166 U. S. 1, 41 L. Ed. 897.

The neutrality laws are not designed to interfere with commerce, even in contraband of war, but merely to prevent distinctly hostile acts, as against a friendly power, which tend to involve this country in war. U. S. v. The Laurada (D. C. 1898) 85 Fed. 760.

Act April 20, 1818, c. 88, like that of June 5, 1794, c. 50, was intended to secure, beyond all risk of violation, the neutral and pacific policy which they consecrate as our fundamental law. (1842) 3 Op. Atty. Gen. 741.

The neutrality laws of the United States, so called because their main purpose is to carry out the obligations imposed upon the United States while occupying a position of neutrality toward belligerents, were intended to prevent offenses against friendly powers, whether they should or should not be engaged in war or in attempting to suppress revolt. (1895) 21 Op. Atty. Gen. 267.

Former laws repealed.—No part of Act June 5, 1794, c. 226, is repealed by Act March 3, 1817, c. 58. Act 1794, c. 226, remained in force until Act April 20, 1818, c. 83, by which all the provisions as to our neutral relations were embraced, and all former laws on the same subject were repealed. The Estrella (1819) 4 Wheat. 298, 310, 4 L. Ed. 574.

Obligations and duties of government and citizens in general.—The duty of the United States, when a state of war is declared or recognized by another country, is of its own motion to use diligence to discover and prevent within its borders the formation or departure of any military expedition intended to carry on or take part in such war. (1895) 21 Op. Atty. Gen. 267.

The rules of international law with respect to belligerent and neutral rights

and duties do not apply to the present Cuban insurrection. Id.

The failure of the United States to pass neutrality laws would not diminish its international obligations, nor would the passing thereof increase such obligations. Id.

Neither our government nor our citizens have means of knowledge, and therefore are not bound to take notice as to who are and who are not loyal subjects of Spain so long as their actions are confined to her own territory. Id.

International law takes no account of a mere insurrection confined within the limits of a country, which has not been protracted or successful enough to secure for those engaged in it recognition as belligerents by their own government or by foreign governments. Id.

The fact that neutral individuals, instead of their government, give aid to the belligerent, does not relieve the neutral government from guilt; but the government is innocent if the acts of individuals are such as, from their nature, make it impracticable or excessively burdensome for the government to watch and prevent, or, if preventable without excessive burden, the government uses due diligence about their prevention. (1902) 24 Op. Atty. Gen. 15.

The fact that neutral merchants give aid to belligerents purely from motives of gain seeking does not relieve their government from its obligation to prevent such aid being given. (1902) 24 Op. Atty. Gen. 15.

It is no infraction of neutrality, for a neutral nation to carry its exports, not contraband, to a port of one of the belligerents. Vasse v. Ball (Pa. 1797) 2 Dall. 270, 1 L. Ed. 377.

Treaty provisions.—The provision of chapter 2, art. 11, of the Hague Treaty of October 18, 1907, ratified by the United States November 27, 1909 (36 Stat. 2324), requiring a neutral power which receives on its territory troops of a belligerent army to intern them, does not require legislation to make it effective. Ex parte Toscano (D. C. 1913) 208 Fed. 938.

That the United States has not accorded official recognition to either party to the civil war in Mexico does not alter their status as belligerent parties, nor affect its right and duty to execute such treaty provision. Id.

The provision of chapter 2, art. 11, of the Hague Treaty of October 18, 1907, ratified by the United States November 27, 1909 (36 Stat. 2324), requiring a neutral power which receives on its territory troops of a belligerent army to intern them, does not violate any constitutional provision. Id.

Sale of vessel by belligerent to neutral.—A sale by a belligerent of a war ship to a neutral in a neutral port is invalid by the law of nations. The Georgia (D. C. 1866) Fed. Cas. No. 5,349.

Sale or shipment of contraband.—See, also, notes under § 10177, post.

There is nothing in the laws of the United States, or in the laws of nations, that forbids neutrals from sending armed vessels as well as munitions of war to foreign ports for sale. It is a commercial adventure, which no nation is bound to prohibit, and which only exposes those engaged in it to the penalty of confiscation. The Santissima Trinidad (1822) 20 U. S. (7 Wheat.) 283, 5 L. Ed. 454.

While flour is not in general contraband of war it may be so if intended for military use by a belligerent or destined for a port of military or naval equipment, and being thus on the border line a proclamation of one of the governments at war declaring it contraband is sufficient to impress it with that character. Balfour, Guthrie & Co. v. Portland & Asiatic S. S. Co. (D. C. 1909) 167 Fed. 1010.

A citizen of a neutral state may lawfully contract to carry contraband of war and his undertaking will be enforced by the courts of the neutral state. Id.

On indictment for violation of the neutrality laws by shipping arms to the state of Sonora in Mexico, the court would take judicial notice that such state was a large country and not a "place" in Mexico. U. S. v. Albert Steinfeld & Co. (D. C. 1913) 209 Fed. 904.

The mere sale or shipment of arms and munitions of war by persons in the United States to persons in Cuba is not a violation of international law, however strong a suspicion there may be that they are to be used in an insurrection against the Spanish government. Individuals in the United States have a right to sell such articles and ship them to whoever may choose to buy. (1895) 21 Op. Atty. Gen. 267.

The goods, and sometimes the ship carrying them, are subject to seizure by the government within whose jurisdiction they may come, if its domestic laws or regulations are violated, but international law imposes no duty upon our government with respect to such transactions. Id.

The sale and shipment or carriage of such articles to Cuba does not become a violation of international law merely because they are not destined to a port thereof which is recognized by the Spanish government as open to commerce, nor because they are to be, or are, landed by stealth. Id.

If, however, the persons supplying or carrying arms and munitions from a place in the United States are in any wise parties to a design that force shall be employed against the authorities of Spain, or that, either in the United

States or elsewhere, before final delivery of such arms and munitions, men with hostile purpose toward the Spanish government shall also be taken on board and transported in furtherance of such purpose, the enterprise is not commercial but military, and is in violation of international law and of the United States Statutes. Id.

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A general statement of the law to be applied in the matter of the shipment of horses from New Orleans to South Africa, for military purposes, and the alleged establishment of foreign agencies in the United States for the purchase and shipment of hostile supplies (horses and mules) for use against a third party. (1902) 24 Op. Atty. Gen. 15.

According to the weight of authority, the sale of contraband or war supplies to a belligerent is not unlawful, or a thing which a neutral nation must forbid to its citizens. Id.

A neutral nation must not give aid to one of the belligerents in the carrying on of war; but the carrying on of commerce with the belligerent nations in the manner usual before the war is not in itself the giving of such aid. Id.

The mere increased demand for warlike articles, and their consequent increased quantity in the commerce between the neutral and the belligerent countries, does not of itself make the commerce cease to be the same that was usual before the war. Id.

A belligerent may seize merchandise at sea involved in such commerce when it is the property of his enemy, or when it is composed of articles for direct and immediate use for warlike purposes. Id.

In determining whether a series of transactions which, in one aspect are commercial in character, are prohibited to the neutral nation and its people as being an aid to one of the belligerents in carrying on war against the other, the criteria are practically impossible to specify in advance. Among the points by which to be guided in determining that question are the systematic character of the transactions, their greater or less extensiveness, their persistence in time, their governmental character or the absence of it, their objects and results, and, principally, their relation, if any, to the prosecution of the war being carried on by the belligerent. Id.

The mere shipment or exportation of arms, in the way of commerce, to a country in which there are insurrectionary movements, does not seem to be prohibited by the statutes of the United States or by the law of nations. (1902) 24 Op. Atty. Gen. 25.

A neutral merchant is not obliged to regard the state of war between other nations; but, if he ships goods prohibited, they will be liable to seizure and condemnation. Richardson v. Maine Fire & Marine Ins. Co. (1809) 6 Mass. 102, 4 Am. Dec. 92.

Carrying contraband of war by the subjects of a neutral is not a sufficient cause for war against such neutral. Id.

The penalty of forfeiture, incurred by a neutral by carrying on a circuitous trade between the mother country and a colony, which is prohibited, attaches only during the prohibited voyage, and does not vitiate a subsequent lawful voyage. Kemble v. Rhinelander (N. Y. 1802) 3 Johns. Cas. 130.

Cited without definite application, Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 1133, 163 U. S. 632, 41 L. Ed. 289.

§ 10174. (Crim. Code, § 10.) Enlisting in foreign service; punishment for.

Whoever, within the territory or jurisdiction of the United States, enlists, or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of

any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, shall be fined not more than one thousand dollars and imprisoned not more than three years.

R. S. § 5282. Act March 4, 1909, c. 321, § 10, 35 Stat. 1089.

Notes of Decisions

See notes under § 10177, post.

Raising troops in the United States in general.—It is a settled principle of the law of nations that no belligerent can rightfully make use of the territory of a neutral state for belligerent purposes without the consent of the neutral government. Hence the undertaking of a belligerent to enlist troops of land or sea in a neutral state, without the previous consent of the latter, is a hostile attack on its national sovereignty. (1855) 7 Op. Atty. Gen. 367.

A neutral state may, if it please, permit or grant to belligerents the liberty to raise troops of land or sea within its territory; but for the neutral state to allow or concede this liberty to one belligerent and not to all would be an act of manifest belligerent partiality and a palpable breach of neutrality. Id.

The United States constantly refuse this liberty to all belligerents alike, with impartial justice, and that prohibition is made known to the world by a permanent act of Congress. Id.

Great Britain, in attempting, by the agency of her military and civil authorities in the British North American provinces, and her diplomatic and consular functionaries in the United States, to raise troops here, committed an act of usurpation against the sovereign rights of the United States. Id.

All persons engaged in such undertaking to raise troops in the United States for the military service of Great Britain, whether citizens or foreigners, individuals or officers, unless protected by diplomatic privilege, are indictable as malefactors by statute. Id.

Foreign consuls are not exempted, either by treaty or the law of nations, from the penal effect of the statute. And in case of indictment of any such consul or other official person, his conviction of the misdemeanor, or his escape by reason of arranged instructions or contrivances to evade the operation of the statute, is primarily a matter of domestic administration, altogether subordinate to the consideration of the national insult or injury to this government involved in the fact of a foreign government instructing its officers to abuse, for unlawful purposes, the privileges which they happen to enjoy in the United States. Id.

The undertaking of a belligerent to enlist troops of land or sea in a neutral state without the previous consent of the latter, is a hostile attack on its national sovereignty. (1855) 7 Op. Atty. Gen. 367.

Views on questions involved in the enlistment of troops by British officers in the United States. Id.

Statutes prohibiting enlistments as matter of domestic or municipal right.—The acts of Congress prohibiting foreign enlistments is a matter of domestic or municipal right, as to which foreign governments have no right to inquire, the international offense being independent of the question of the existence of a prohibitory act of Congress. (1855) 7 Op. Atty. Gen. 367.

Foreign minister enlisting troops.—A foreign minister who engages in the enlistment of troops here for his government is subject to be summarily expelled from the country, or, after demand of recall, dismissed by the President. (1855) 7 Op. Atty. Gen. 367.

Right of citizen to enter service of foreign government.—A citizen of one country may enter the military service of a foreign government without compromising the neutrality of his own. Chacon v. Eighty-Nine Bales of Cochineal (C. C. 1821) Fed. Cas. No. 2,568; Juando v. Taylor (D. C. 1818) Fed. Cas. No. 7,558.

Persons leaving country to enlist and transportation thereof.—It being lawful for individuals to go abroad to enlist, they may go in any number and in any way they see fit, by regular lines of steamers, by chartering a vessel, or in any other manner, either separately or associated; provided, always, that they do not go as a military expedition, or set on foot or begin within our jurisdiction a military expedition or enterprise, to be carried on from this country, or provide or prepare the means therefor. U. S. v. O'Brien (C. C. 1896) 75 Fed. 900.

It is not a crime under the statutes to leave this country with intent to enlist in foreign military service. U. S. v. Kazinski (D. C. 1855) Fed. Cas. No. 15,508.

It is not a crime to transport persons out of this country with their consent, who intend to enlist in foreign military service. Id.

To constitute a crime under the statute, such persons must be hired or retained to go abroad with intent to be so enlisted. Id.

It is not a crime or offense against the United States, under the neutrality laws, for individuals to leave the country with intent to enlist in foreign military service; nor is it an offense to transport persons out of the United States, and land them in foreign coun-

tries, when such persons intend to enlist in foreign armies. U. S. v. Wiborg (D. C. 1896) 73 Fed. 159, judgment modified Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 163 U. S. 632, 41 L. Ed. 289.

Engaging person to go beyond limits of country to enlist.—It is an offense under Act April 20, 1818, to engage a person to go beyond the limits of the United States to enlist in the service of a foreign country, where there is an intention that a consideration should be paid therefor. U. S. v. Hertz (C. C. 1855) Fed. Cas. No. 15,357.

Enlistment of seamen in American port.—The enlistment of seamen or others for marine service on Mexican steamers in the port of New York, they not being Mexicans transiently within the United States, is a clear violation of the second section of Act April 20, 1818, c. 88, to preserve and vindicate the neutrality of the United States, and the persons enlisted, as well as the officers enlisting them, are liable to the penalties thereby incurred. (1844) 4 Op. Atty. Gen. 336.

Native American naturalized under laws of France and serving on French vessel.—A native American who has become naturalized under the laws of France still remains subject to indictment in the United States courts for serving on a French privateer engaged in committing hostilities against a power at peace with the United States. Williams' Case (C. C. 1799) Fed. Cas. No. 17,708.

Enlistment for service of colony in rebellion.—Quære, whether a colony in a state of rebellion is embraced by Act 1794, prohibiting the enlistment of soldiers, etc., within the limits of the United States to enter the service of any foreign prince or state. Chacon v. Eighty-Nine Bales of Cochineal (C. C. 1821) Fed. Cas. No. 2,568.

A colony in rebellion is within the law of nations relating to the rights of neutrals, without regard to its status as a state. Id.

Conspiracy to violate statute.—Defendants held, on the facts guilty of conspiracy to violate this section. U. S. v. Blair-Murdock Co. (D. C. 1915) 228 Fed. 77.

Cited without definite application, U. S. v. Hart (C. C. 1896) 74 Fed. 724, 726; U. S. v. Nunez (C. C. 1896) 82 Fed. 599, 600.

§ 10175. (Crim. Code, § 11.) Arming vessels against friendly powers; punishment; forfeiture of vessel, etc.

Whoever, within the territory or jurisdiction of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or whoever issues or delivers a commission within the territory or jurisdiction of the United States for any vessel, to the intent that she may be so employed, shall be fined not more than ten thousand dollars and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited; one half to the use of the informer and the other half to the use of the United States.

R. S. § 5283. Act March 4, 1909, c. 321, § 11, 35 Stat. 1090.

Notes of Decisions

1. Offense under statute in general.
2. Intent as element of offense.
3. Attempt defined.
4. Independent states.
5. New government.
6. Recognition of belligerency.
7. Vessels belonging to citizens sailing out of our ports.
8. Equipment of vessels in neutral port.
9. Building war vessels.
10. Sale of vessels to belligerents.
11. Necessity of fitting out and arming in United States.
12. Expedition in separate parts meeting on sea and proceeding to hostile acts.
13. Conversion of merchant ship into war vessel.
14. Vessels receiving and carrying arms and munitions.
15. Transportation of arms and munitions to other vessels.
16. Foreign insurgent vessel receiving cargo of munitions.
17. Landing contraband cargo at point not blockaded.
18. Captives made by vessels violating law.
19. Prosecutions and forfeiture proceedings under statute.
20. Informers.

1. Offense under statute in general.—As to what constitutes an illegal outfit to cruise against a belligerent power at peace with the United States, see The Phœbe Anne (1796) 3 Dall. 319, 1 L. Ed. 618; Den Onzekeren (1796) 3 Dall. 285, 296, 1 L. Ed. 605.

A capture made by a vessel fitted out and armed in an American port, in contravention of the statutes of neutrality, and proceeding thence on a cruise, cannot be justified, whether the vessel was with or without a commission. The Santa Maria (1822) 20 U. S. (7 Wheat.) 490, 5 L. Ed. 505.

To constitute the offense against this section the vessel must not only have been fitted out with intent to be employed against a friendly nation, but actually armed for that purpose. U. S. v. Skinner (C. C. 1818) Fed. Cas. No. 16,309.

Until it appears by information and conviction thereunder that a privateer has been fitted out in our country in violation of its laws, the courts will not violate the obligation of neutrality by seizing and restoring prizes made by such privateer. The Maria Josepha (C. C. 1819) Fed. Cas. No. 9,078.

If the owner of a vessel provides and furnishes her, knowing that she is to be used for the transportation to a foreign country of an organized body of men, intending to act together in a concerted military way, and with arms, he is guilty of a violation of the statute. U. S. v. O'Brien (C. C. 1896) 75 Fed. 900.

What equipments in our ports amount to a breach of neutrality. Moodie v. The Betty Carthcart (D. C. 1795) Fed. Cas. No. 9,742.

Where a privateer was illegally fitted out and commissioned in this country by the French minister, but was afterwards dismantled and her register canceled, then sold to a foreigner, and fitted out and commissioned in a foreign port, held, that her proceedings under the latter commission were not in violation of the neutrality laws. Williamson v. The Betsy (D. C. 1795) Fed. Cas. No. 17,750.

This section is designed to prevent hostile expeditions altogether by the seizure and forfeiture of the vessel engaged in them, and not to set a price by releasing the vessel on bond, upon the violation of international obligations; and no interpretation of the admiralty rules should be permitted which would admit of that result. The Mary N. Hogan (D. C. 1883) 17 Fed. 813.

The offense under this section is confined to cases in which the vessel shall be fitted out with intent that she shall be employed to cruise or commit hostilities, and it does not forbid giving aid and comfort to either belligerent, and is not directed against commercial adventures or peaceable aid, however important, rendered by our citizens so long as such aid arises indirectly only through commercial dealings, and in the ordinary channels of trade. City of Mexico (D. C. 1885) 24 Fed. 33, 36.

The terms "furnishing" and "fitting out" have no legal or technical meaning requiring a construction different from the ordinary acceptation in maritime and commercial parlance. The City of Mexico (D. C. 1886) 28 Fed. 148.

A vessel may at the same time transport a military enterprise and a cargo of arms and munitions of war, and, while the transportation of the latter is lawful, that of the former is unlawful. U. S. v. Murphy (D. C. 1898) 84 Fed. 609.

2. Intent as element of offense.—It is not necessary that the intention should be carried into execution in order to constitute the offense. U. S. v. Quincy (1832) 6 Pet. 445, 463, 8 L. Ed. 458.

Defendant's intention is a question for the jury. Id.

It is necessary that the intention with respect to the employment of the vessel should be formed before she leaves the United States. Id.

To bring an American vessel within this section, it must be shown that the employment of the vessel in the prohibited service was pursuant to an intention formed within the limits of the United States; and the formation of such intention after she has left the jurisdiction of the United States, and while she is on the high seas, cannot be construed, because of her nationality, to be within such limits. U. S. v. The Laurada (C. C. A. 1900) 98 Fed. 983.

To constitute an offense, under this section, it is not necessary that the vessel should be armed or manned for the purpose of committing hostilities before she leaves the United States, if it is the intention that she be so fitted subsequently. The City of Mexico (D. C. 1886) 28 Fed. 148.

The crime necessary to be shown in order to secure a forfeiture of a vessel, under this section, consists of an act done within the limits of the United States, with the intent that the vessel in connection with which the act is done shall be employed in the service of some foreign prince or state, or colony, district, or people, as a cruiser or committer of hostilities against the subjects, citizens, or property of some foreign prince or state, or colony, district, or people with whom the United States are at peace. The intent described in the statute is a necessary ingredient of the offense created by the statute, in the absence of which no crime is committed or forfeiture incurred. The Conserva (D. C. 1889) 38 Fed. 431.

It is necessary to a forfeiture that the intent that the vessel shall commit hostilities against the subjects or property of a friendly foreign power shall be formed within the limits of the United States and shall be of a fixed and unconditional nature. If the intent originates on the high seas after the vessel leaves our borders,

no forfeiture accrues. U. S. v. The Laurada (D. C. 1898) 85 Fed. 760.

The act makes no difference between the degrees of intent with which a vessel shall be fitted out; any intent to commit hostilities against a nation with which the nation fitting her out is at war is within its prohibitions. (1849) 5 Op. Atty. Gen. 92.

3. **Attempt defined.**—See U. S. v. Quincy (1832) 6 Pet. 445, 463, 8 L. Ed. 458.

4. **Independent states.**—The parts of the island of St. Domingo respectively under the government of Petion and Christophe are not independent states, within the meaning of Act June 5, 1794, and therefore it is not illegal to fit out a vessel for the purpose of assisting the one against the other. Hoyt v. Gelston (N. Y. 1818) 13 Johns. 141.

5. **New government.**—The provisions of the statute do not apply to any new government unless it has been acknowledged by the United States or by the government of the country to which such new state belonged. Gelston v. Hoyt (1818) 3 Wheat. 246, 323, 4 L. Ed. 381.

6. **Recognition of belligerency.**—This section, by forbidding the fitting out and arming of a vessel with intent that she shall be employed in the service of any foreign prince or state "or of any colony, district, or people," includes any insurgent or insurrectionary body of people acting together and conducting hostilities, though their belligerency has not been recognized. U. S. v. The Three Friends (1897) 17 Sup. Ct. 495, 497, 166 U. S. 1, 41 L. Ed. 897, reversing (D. C. 1897) 78 Fed. 175.

Under a libel seeking the forfeiture of a vessel under this section the vessel cannot be condemned as piratical on the ground that she is in the employ of an insurgent party, which has not been recognized by our government as having belligerent rights. U. S. v. The Itata (1893) 56 Fed. 505, 5 C. C. A. 608, following U. S. v. Weed (1866) 72 U. S. 62, 18 L. Ed. 531, and The Watchful (1867) 73 U. S. 91, 18 L. Ed. 763, and affirming judgment (D. C. 1892) 49 Fed. 646.

Recognition of belligerency may be express, as by proclamation, implied by acts of war, such as blockade, or tacit by acquiescence in the exercise of belligerent rights. A refusal to acquiesce in the decree of a foreign state closing its own ports to commerce by municipal decree, such ports being in possession of armed rebels, unless such decree were also supported by an effective blockade, is a recognition by implication of "a state of war," and of mutual belligerent rights, sufficient to prevent subsequent condemnation of rebel vessels as piratical. The Ambrose Light (D. C. 1885) 25 Fed. 408.

Where, on the evidence, the most that can be said is that a vessel was fitted out with intent to send her to the port of Samana, San Domingo, where she might, in certain contingencies, be employed to sally forth in the service of a faction in the island of Hayti, under one Hyppolite, to cruise or commit hostilities against an organization controlled by one Legitime, neither of which factions had been recognized as a belligerent power by the government of the United States, a proceeding cannot be maintained to forfeit the vessel, under this section as the fact must be shown that the government against which the vessel is to commit hostilities has been recognized by the United States. The Conserva (D. C. 1889) 38 Fed. 431.

7. **Vessels belonging to citizens sailing out of our ports.**—The law does not prohibit vessels belonging to citizens of the United States from sailing out of our ports. U. S. v. Quincy (1832) 6 Pet. 445, 463, 8 L. Ed. 458.

8. **Equipment of vessels in neutral port.**—Equipment for war in a neutral port does not take place merely by alteration of two ports in repairing the waist of a vessel previously armed. Moodie v. The Brothers (D. C. 1795) Fed. Cas. No. 9,743.

It is no breach of neutrality on the part of a belligerent to equip vessels of war in a neutral port, unless the act be interdicted. Juando v. Taylor (D. C. 1818) Fed. Cas. No. 7,558.

9. **Building war vessels.**—A vessel built and partly equipped in New York for warlike purposes was sold to a foreigner who carried her to a foreign port where she was completely equipped and commissioned, and on a subsequent cruise a prize was taken. Held, that there was no violation of our neutrality. Moodie v. The Alfred (1796) 3 U. S. (3 Dall.) 307, 1 L. Ed 614.

The building of two schooners of war in New York for the Mexican government, and being about to be furnished with guns and the usual military equipments, is clearly within this section. (1818) 3 Op. Atty. Gen. 739.

These vessels having been built expressly for the service of Mexico, which is waging war against Texas, the persons are liable to the penalties of the act and the vessels to forfeiture. Id.

If such vessels, however, were not delivered, nor the property changed, within our jurisdiction, but were sent out of the port under control of our own citizens unarmed, and every possible precaution was taken to insure pacific conduct on the high seas, the doctrine above laid down, though re-

affirmed, does not as fully apply to the case now presented as was supposed from the first statement of the case. (1842) 3 Op. Atty. Gen. 741.

Judicial proceedings should not be instituted by the United States, under this section, against certain gun boats building in New York for the Spanish government, and which, there is reason to believe, are to be employed by that government against Cuba. The provisions of this section examined, and shown to be inapplicable, in view of all the circumstances, to the case considered. (1869) 13 Op. Atty. Gen. 177.

10. Sale of vessels to belligerents.—See, also, notes under § 10173, ante.

The sale of a vessel, fitted for a privateer, to the subject of a belligerent, which the purchaser subsequently equipped in a port of his own country, is not a breach of our neutrality act. The Alfred (1796) 3 Dall. 307, 1 L. Ed. 614.

Mere carrying on of negotiations by the owners of a ship in this country with foreign agents, with knowledge that, if a sale were effected, the vessel would be employed against a nation with whom the United States are at peace, held not a breach of the law, the negotiations having failed. U. S. v. The Meteor (C. C. 1868) Fed. Cas. No. 15,760.

A vessel sent by her owners to a neutral port to find a market for her, without previous understanding with a belligerent, may be sold there to such belligerent, without violating the neutrality laws. Id.

The purchase and fitting out a war steamer by the German government in the port of New York whilst a state of war exists between that government and Denmark, and which is adapted for cruising and committing hostilites against the property or subjects of the latter, is contrary to the provisions of this section. (1849) 5 Op. Atty. Gen. 92.

11. Necessity of fitting out and arming in United States.—Actual fitting out and arming in the United States is not necessary to subject to forfeiture a vessel in part prepared for hostilities therein. The Meteor (D. C. 1866) Fed. Cas. No. 9,498.

It is not necessary to a forfeiture of a vessel under this section that the furnishing, fitting out, or arming of her for the prohibited purpose should be completed within the limits of the United States. It is sufficient that, by prearrangement within the limits of the United States, the vessel having been procured here, the furnishing, fitting out, or arming is to be effected or completed after she has gone beyond those limits. U. S. v. The Laurada (D. C. 1898) 85 Fed. 760.

12. Expedition in separate parts meeting on sea and proceeding to hostile acts.—An expedition organized and dispatched from our ports, in separate parts, to meet at a common rendezvous on the high seas, and thence proceed to acts of hostility against a friendly power, is within the prohibition of this section. U. S. v. The Mary N. Hogan (D. C. 1883) 18 Fed. 529.

13. Conversion of merchant-ship into war vessel.—The conversion of a merchant ship into a vessel of war to commit hostilities against a friendly nation is an original fitting out of a vessel with such intent, within the meaning of the statute. U. S. v. Guinet (C. C. 1795) Fed. Cas. No. 15,270, 2 Dall. 321, 328, 1 L. Ed. 398.

14. Vessels receiving and carrying arms and munitions.—This section does not cover the case of a vessel which receives arms and munitions of war in this country with intent to carry them to a party of insurgents in a foreign country, but not with intent that they shall constitute any part of the fittings or furnishings of the vessel herself. U. S. v. The Itata (1893) 56 Fed. 505, 5 C. C. A. 608, affirming (D. C. 1892) 49 Fed. 646.

This section, in prescribing a punishment for any person who is in any way concerned in "furnishing, fitting out, or arming" any vessel with intent that she shall be employed in the service of any foreign state or people, to cruise or commit hostilities against any foreign state or people with whom the United States are at peace, does not cover the act of purchasing arms and munitions of war and putting them on board a vessel sent to receive them, with intent that they shall be carried to a party of insurgents in a foreign country, to be used in carrying on war against the government thereof, but which are not designed to constitute any part of the fittings or furnishings of the vessel herself. U. S. v. Trumbull (D. C. 1891) 48 Fed. 99.

The carrying of arms by a United States vessel for the use of a belligerent, to a port in its possession, is not against our municipal law or the law of nations, but merely subjects vessel and goods to search and seizure by the other belligerent. This section prohibits warlike or hostile voyages only, and not commercial ventures. The City of Mexico (D. C. 1885) 24 Fed. 33.

15. Transportation of arms and munitions to other vessels.—The steam tug Morgan was purchased and repaired at New York, to be sent to the waters of Hayti and used there to commit hostilities in aid of the late insurrectionists against the government of Hayti, with which the United States are at peace. Shortly before she was to sail, two cannons, with naval carriages, sundry boxes of Winchester rifles and Springfield muskets, with ammunition, and 100 kegs of gunpowder, were purchased by the purchasers of the Morgan and put

on board a schooner at New York, which had cargo for Richmond, with orders, on being hailed with concerted signals, to put these munitions off somewhere near the Virginia capes, on any steamer giving the concerted signals. The proofs showed that the Morgan was to be the steamer to take these munitions off the schooner. The Morgan, when about to set out from New York, was seized by the United States marshall on the charge of attempting to violate the neutrality laws of the United States, and failed to be at the Virginia capes to receive the said munitions. The schooner, accordingly, proceeded on her voyage to Richmond, and on her arrival there the munitions were seized under a libel in admiralty for forfeiture, under this section. Held, on the proofs, that the munitions were liable to forfeiture. U. S. v. Two Hundred and Fourteen Boxes of Arms, Ammunition, and Munitions of War (D. C. 1884) 20 Fed. 50.

Under this section no forfeiture can be claimed of a vessel which is only employed to transport arms and munitions of war to a vessel fitting out to pursue the forbidden warlike enterprises. U. S. v. The Robert and Minnie (D. C. 1891) 47 Fed. 84.

16. Foreign insurgent vessel receiving cargo of munitions.—The steamship Itata, a vessel belonging to a foreign insurgent party, but not being a vessel of war, came into the territory of the United States, and there received on board a cargo of munitions of war purchased there by an agent of the insurgents. The cargo was not for the equipment of the Itata, but was to be transported to her country, for the use there of the said insurgents. Held, that the vessel was not liable, nor was her cargo liable, to forfeiture, under this section, for violation of the neutrality laws. U. S. v. The Itata (D. C. 1892) 49 Fed. 646, following U. S. v. Trumbull (D. C. 1891) 48 Fed. 99, and judgment affirmed (1893) 56 Fed. 505, 5 C. C. A. 608.

17. Landing contraband cargo at point not blockaded.—The landing of a cargo contraband of war on the shore of the country of one belligerent at a point not blockaded, is not an act of hostility against the other belligerent. The Florida (D. C. 1871) Fed. Cas. No. 4,887.

18. Captures made by vessels violating law.—Prizes made by armed vessels which have violated the statutes for preserving the neutrality of the United States will be restored if brought into the ports of the United States. The Gran Para (1822) 7 Wheat. 471, 486, 5 L. Ed. 501.

A vessel armed and fitted out in violation of the statutes of neutrality of the United States may not justify a capture. The Santa Maria (1822) 7 Wheat. 490, 494, 5 L. Ed. 505.

Captures made by a vessel in violation of the laws of the United States for the preservation of neutrality will be restored when brought within the territory of the United States. The Monte Allegre (1822) 7 Wheat. 520, 522, 5 L. Ed. 513.

Belligerent captures by privateers armed and equipped within the United States in violation of the neutrality of the United States may be restored to the injured belligerent, if brought within the jurisdiction of the federal courts. Chacon v. Eighty-Nine Bales of Cochineal (C. C. 1821) Fed. Cas. No. 2,568.

19. Prosecutions and forfeiture proceedings under statute.—An indictment charging the offense in the words of the act is sufficient. U. S. v. Quincy (1832) 6 Pet. 445, 463, 8 L. Ed. 458.

A vessel libeled for forfeiture for violation of the neutrality laws, in that she was fitted out and armed to be employed in the service of a body of Cuban insurgents to commit hostilities against the subjects of the king of Spain, should not, in the exercise of a sound discretion, be released on bond, pending the continuance of the insurrection, prior to the determination of the cause. U. S. v. The Three Friends (1897) 17 Sup. Ct. 495, 166 U. S. 1, 41 L. Ed. 897, reversing decree (D. C. 1897) 78 Fed. 175.

Under this statute no prior personal conviction of an offender is necessary to warrant a decree of forfeiture in rem against the vessel. Id.

A libel of forfeiture against a vessel for violating the neutrality laws charged, in one article, that she was "heavily laden with supplies, rifles, cartridges, * * * and other munitions of war, including one large 12-pound Hotchkiss gun." In the following article it was charged that the vessel was "fitted out and armed by being heavily laden with supplies, rifles, cartridges," etc., "with intent," etc. Held that, while this libel was lacking in legal precision, yet, taken as a whole, it was sufficient as against objections first urged on appeal. U. S. v. The Three Friends (1898) 85 Fed. 424, 29 C. C. A. 244.

An answer to a libel of forfeiture for violation of the neutrality laws construed, and held not to contain an admission that the vessel was fitted out and armed within the jurisdiction of the United States, as averred in the libel. Id.

Proceedings for the enforcement of the neutrality laws are necessarily under control of the United States, and a proceeding against a vessel, seized on complaint of an informer for violation of this section, cannot be continued, if the United States disavows and declines to ratify the seizure. Olivier v. Hyland (1911) 186 Fed. 843, 108 C. C. A. 576.

In a prosecution for fitting out a vessel to cruise against a friendly nation, there was evidence that defend-

ant, who claimed to be merely an interpreter for the owner, carried orders from the latter to the ship carpenter, told the pilot at what time guns should be taken on board his boat to be carried to the vessel, and had in his possession an account stating charges for supplies of cannon ball, muskets, and commissions for services, and the whole matter was conducted in a secret and mysterious way. Held, that this justified a finding that he was actually concerned in the fitting out of the vessel. U. S. v. Guinet (C. C. 1795) Fed. Cas. No. 15,270, 2 Dall. 321, 329, 1 L. Ed. 398.

Sufficiency of evidence to justify finding that defendant was actually concerned in the fitting out of a vessel with intent to commit hostilities against a friendly nation. U. S. v. Guinet (C. C. 1795) Fed. Cas. No. 15,270.

When it is claimed that defendant fitted out a privateer in his country, contrary to Act of June, 1794 (1 Stat. 381), it must appear affirmatively, to convict him, that the equipment was within the United States, that defendant caused such equipment to be made, or was knowingly concerned in it, and that the intent of the equipment was to commit hostilities on nations with whom the United States were at peace. U. S. v. Owners of the Unicorn (D. C. 1796) Fed. Cas. No. 15,979a.

A French citizen transiently within the United States cannot be criminally prosecuted for piracies and robberies committed by the captain of a privateer owned by him, upon neutral vessels. Id.

In libels of forfeiture it is sufficient to describe the offense and the method of its commission in the words of the statute creating it. The manner or agency of arrest need not be averred, except in prize cases. U. S. v. Arms and Ammunitions (D. C. 1856) Fed. Cas. No. 14,466a.

A vessel alleged to have been fitted out and armed in violation of the neutrality laws will be condemned, where the government's evidence raises a well-grounded suspicion. which claimants fail to explain. The Meteor (D. C. 1866) Fed. Cas. No. 9,498.

Proof that the vessel was fitted out and armed, or that there was an attempt to fit and arm her, with the unlawful intent to cruise against a neutral nation, is sufficient, without identifying the persons engaged therein. Id.

On a libel for forfeiture of a vessel for a violation of neutrality laws (Act 1818), the question of ownership of the vessel is not material. Id.

Admissibility of executive documents as proof of a state of war between foreign nations, and of their consular officers, etc., on a libel of forfeiture for breach of the neutrality laws. Id.

Where the steam tug M. N. H. was seized for forfeiture under this section and section 7775, ante, on a libel charging, upon responsible authority, that she had been fitted out for, and was about to depart upon, a hostile expedition against Hayti, and was registered under a false certificate of ownership, and application was made by the alleged owner, under rule 11, for appointment of appraisers for the purpose of bonding the vessel, held, that rule 11 was not designed for such a case, and that the vessel should not be released on bond, and the application for appraisers was denied. The Mary N. Hogan (D. C. 1883) 17 Fed. 813.

Evidence held sufficient to show that the firearms and ammunition shipped on a vessel were subject to forfeiture under this section. U. S. v. Two Hundred and Fourteen Boxes of Arms, Ammunition, and Munitions of War (D. C. 1884) 20 Fed. 50, 51, 52.

The United States having filed two libels against the same vessel—the one in prize, the other for forfeiture under this section—the government cannot be required to elect to proceed upon one and abandon the other. The City of Mexico (D. C. 1886) 28 Fed. 148.

Where the evidence shows that a vessel is chartered by the consul of a foreign government to carry a cargo of arms, deliverable as per bill of lading to the representatives of that government, she cannot be seized, under this section, for being fitted out and armed to aid warring factions in another foreign government, though there is slight evidence that the arms may ultimately be employed for such purpose. The Carondelet (D. C. 1889) 37 Fed. 799.

The evidence showed that a vessel was fitted out for the purpose of proceeding from New York to Samana, in a condition incapable of being used to commit hostilities against any one, to be there delivered to the government of the Dominican republic. Held that, for the use to which she might thereafter be put by the government of the Dominican republic, that government was responsible, and not the United States, and that a well-founded suspicion that the government of the Dominican republic would use the vessel to violate its neutral obligations was not sufficient to justify a finding in this case that the fitting out done in New York was done with the intent to use her to commit hostilities, which, under the statute, is the gist of the offense. The Conserva (D. C. 1889) 38 Fed. 431.

A consul of a foreign government, who is the only representative present of his government, has the right to intervene, and claim a vessel belonging to such government, against which a libel has been filed to secure her forfeiture. Id.

A proceeding under this section is a simple suit in admiralty, where the decree will be simply that the libel be dismissed or the vessel condemned;

and no decree of restitution is necessary. Id.

20. Informers.—In a proceeding to enforce the forfeiture of a vessel for violation of the neutrality laws, the fact that, after a decree of forfeiture, the case was allowed to remain open for further hearing on the question of who were entitled to a moiety of the proceeds as informers, and that only one person filed a petition making a claim, does not deprive others appearing on the original evidence to be entitled to share as informers. The City of Mexico (D. C. 1887) 32 Fed. 105.

An "informer" is one who gives information leading directly to seizure and condemnation regardless of the questions of evidence furnished or interest taken in the prosecution. Id.

Neither a consular officer who furnishes the government authorities with a statement of the facts regarding the sailing and the objects and intentions of a vessel, and does all in his power to thwart or prevent her voyage, and after her seizure furnishes assistance of much value in obtaining evidence, nor a detective employed by such consular officer to obtain accurate information, and upon whose information such officer acts, are informers, so as to entitle them to the informer's moiety, where such acts and information do not result in the seizure of the vessel, and it does not appear that any party active in the seizure had any information from such consular officer or detective, or orders or instructions from those they had informed. Id.

United States naval officers, and a consular agent who conveyed information received by them, leading to the seizure of a vessel, to other official authorities, but gave no information except what had been received in the regular discharge of their duty, are not informers entitled to an informer's share of the proceeds of the condemned vessel. Id.

Where the testimony showed that the entire crew of a vessel, which was afterwards seized and forfeited, met the consular agent upon his leaving the ship, and demanded an audience, and made a statement of their suspicions, and the facts on which they were based, and protested against proceeding on the voyage, at which meeting the chief mate took a prominent part, but no steps were taken by the consular agent looking to the seizure of the vessel, but an arrangement was made to proceed on the voyage; that, after the departure of the consular agent, the crew held another meeting, and drew up a formal written protest, setting up the facts before stated, and refusing to proceed on the voyage under any circumstances, which protest was not in the handwriting of the mate, and was signed by all the crew; that, upon the receipt of this protest, the consul began the first official interference in anticipation of seizure, took the crew ashore, and took the sworn testimony of each of the crew upon the charges preferred by them against the officers and passengers of the vessel, at which hearing other members of the crew took as prominent a part as did the mate; that, after this investigation, a man of war was sent for and the seizure made,—held, that the entire crew, and not the mate, were the informers, so as to entitle them to the informer's moiety. Id.

Where a vessel is forfeited and sold, and one half of the proceeds is paid to the United States, the other half remaining in the custody of the court, the latter half will not be paid to the United States, even after the lapse of many years, where it does not appear that it will not be needed to satisfy a judgment for some claimant as informer; and it is immaterial that section 6799, ante, provides for refunding moneys "received and covered into the treasury before the payment of legal and just charges against the same." U. S. v. The Resolute (D. C. 1889) 40 Fed. 543.

Even if no other claimant ever appears, such fund is not the property of the United States, under the statute. Id.

Libel instituted by an informer against a vessel for forfeiture thereof for violating this section was criminal in its nature, maintainable only in the name of the United States, either express or implied, and primarily for her use and benefit; and hence the Attorney General may intervene and move to dismiss the libel, regardless of the rights of the informer. The Venus (D. C. 1910) 180 Fed. 635.

Cited without definite application, Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 1133, 163 U. S. 632, 41 L. Ed. 289; U. S. v. McCarthy (C. C. 1883) 18 Fed. 87, 88; U. S. v. Hart (C. C. 1896) 74 Fed. 724, 726; U. S. v. Nunez (C. C. 1896) 82 Fed. 599, 600.

§ 10176. (Crim. Code, § 12.) Augmenting force of foreign armed vessel; punishment for.

Whoever, within the territory or jurisdiction of the United States, increases or augments, or procures to be increased or augmented, or knowingly is concerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state,

or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be fined not more than one thousand dollars and imprisoned not more than one year.

R. S. § 5285. Act March 4, 1909, c. 321, § 12, 35 Stat. 1090.

Notes of Decisions

See, also, notes under § 10178, post.

Augmenting force in general.—The substitution of new for old gun carriages is not such an illegal augmentation of the forces of a foreign vessel as will forfeit her right to a prize subsequently captured from a belligerent power at peace with the United States. Geyer v. Michel (1796) 3 U. S. (3 Dall.) 285, 1 L. Ed. 605.

Allowing a foreign privateer to make necessary repairs in one of our ports, and to replace her guns, taken out while such repairs were made, is not such a violation of our neutrality as will vitiate a subsequent capture from a belligerent power at peace with the United States, where such repairs are permitted by a prior treaty. Moodie v. The Phœbe Anne (1796) 3 U. S. (3 Dall.) 319, 1 L. Ed. 618.

In case of an illegal augmentation of the force of a belligerent cruiser in our ports by enlisting men, it is incumbent on a claimant to show that the persons enlisted were subjects of the belligerent state or belonging to its service, and then transiently within the United States. The Santissima Trinidad (1822) 20 U. S. (7 Wheat.) 283, 5 L. Ed. 454.

Raising or lowering gun carriages on a vessel of war, or replacing rotten with sound timbers, is an offense, within Act June 5, 1794, § 4. U. S. v. Grassin (C. C. 1811) Fed. Cas. No. 15,248.

The repair of Mexican war steamers in the port of New York, together with the augmenting of their force by adding to the number of their guns, or by changing those originally on board for those of larger caliber, or by the addition of any equipment solely applicable to war, is a violation of the statute. (1844) 4 Op. Atty. Gen. 336.

But the repair of their bottoms, copper, &c., does not constitute any increase or augmentation of force within the meaning of the act, and the steamers themselves are not subject to seizure by any judicial process under it. Id.

Liability of officers of vessels of other nations.—Commanders and officers of vessels of other nations found to have violated the statute in question are amenable to the criminal jurisdiction of our courts, and may be prosecuted. (1844) 4 Op. Atty. Gen. 336.

Restitution of prize because of augmenting force.—Under Act June, 1794, relating to the enlistment within the territory of the United States of persons to serve as soldiers and marines on board vessels of war, the district courts of the United States have jurisdiction to restore to the original Spanish owner (in amity with the United States) his property captured by a French vessel, whose force has been increased in the United States if the prize be brought intra præsidia. The Alerta v. Moran (1815) 9 Cranch, 359, 365, 3 L. Ed. 758.

Where restitution of captured property is claimed on the ground that the force of the cruiser making the capture was augmented within the United States by enlisting men, the burden of proving such enlistment is on the claimant, and, that fact being proved, it is incumbent on the captors to show by proof that the persons so enlisting were subjects or citizens of the prince or state under whose flag the cruiser sails, transiently within the United States, in order to bring the case within the provision of section 2 of Act June 5, 1794, c. 226, and of Act April 20, 1818, c. 83. The Estrella (1819) 4 Wheat. 298, 305, 4 L. Ed. 574.

An augmentation of force in our ports is a breach of neutrality, and of the law of nations, and of the United States; and will occasion a restitution of the prize if brought within our jurisdiction. British Consul v. The Nancy (D. C. 1799) Fed. Cas. No. 1,898.

Prizes made by armed vessels, either equipped originally, or whose force has been augmented, in the United States, will be restored if brought within their jurisdiction. Juando v. Taylor (D. C. 1818) Fed. Cas. No. 7,558.

Evidence on trial of offense.—On a trial on indictment under Act June 5, 1794, § 5, the president's message to congress, and other documents transmitted therewith, are inadmissible to show the existence of a war at the time the acts were charged to have been committed. U. S. v. Smith (C. C. 1806) Fed. Cas. No. 16,342a.

Cited without definite application, Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 1133, 163 U. S. 632, 41 L. Ed. 289; U. S. v. Trumbull (D. C. 1891) 48 Fed. 94, 95; Id., 99, 103.

§ 10177. (Crim. Code, § 13.) Organizing military expedition against friendly power; punishment for.

Whoever, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, shall be fined not more than three thousand dollars and imprisoned not more than three years.

R. S. § 5286. Act March 4, 1909, c. 321, § 13, 35 Stat. 1090.

Notes of Decisions

1. Duty of government as to military expeditions.
2. Statute commented on.
3. Statute as creating two offenses.
4. Meaning of "expedition" and "enterprise."
5. Beginning or setting expedition on foot in general.
6. Providing and preparing means for expedition.
7. Military character of expedition.
8. Necessity of hostile intention.
9. Overt or definite act.
10. Persons liable.
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12. Necessity of expedition starting for destination.
13. Necessity of expedition being consummated with deviation of course.
14. Expedition originating in United States or abroad.
15. Expedition against nation with which war is inevitable.
16. Expedition against friendly power at peace.
17. Purchasing arms and ammunition and placing them on board vessel.
18. Shipping and transportation, and leaving country to enlist in foreign service.
19. Venue of offense.
20. Indictment.
21. Evidence.
22. Questions for jury.

See notes under § 10174, ante, and §§ 10178 and 10181, post.

1. Duty of government as to military expeditions.—The duty of the United States, when a state of war is declared or recognized by another country, is of its own motion to use diligence to discover and prevent within its borders the formation or departure of any military expedition intended to carry on or take part in such war. (1895) 21 Op. Atty. Gen. 267.

2. Statute commented on. — See Charge to Grand Jury, Neutrality Laws (C. C. 1866) Fed. Cas. No. 18,264.

3. Statute as creating two offenses.—This section creates two offenses: (1) Setting on foot, within the United States, a military expedition, to be carried on against any power, etc., with whom the United States are at peace; (2) providing the means for such an expedition. U. S. v. Hart (D. C. 1897) 78 Fed. 868, judgment affirmed Hart v. U. S. (1898) 84 Fed. 799, 28 C. C. A. 612.

4. Meaning of "expedition" and "enterprise."—The word "enterprise," as used in this section means an undertaking of hazard; an arduous attempt. U. S. v. Ybanez (C. C. 1892) 53 Fed. 536.

5. Beginning or setting expedition on foot in general.—The carrying on from the United States of an expedition against a neutral power is an offense, though the association originated in another country. Ex parte Needham (C. C. 1817) Fed. Cas. No. 10,080.

Any combination of individuals to carry on an expedition is "setting it on foot," within the meaning of the statute, and the contribution of money or anything else which shall induce such combination may be a beginning of the enterprise. Charge to Grand Jury, Neutrality Laws (C. C. 1851) Fed. Cas. No. 18,267.

The phrase "set on foot," as used in this section, means to arrange; place in order; set forward; put in the place of being ready. U. S. v. Ybanez (C. C. 1892) 53 Fed. 536.

The word "begin," as used in this section, means to do the first act; to enter on. Id.

6. Providing and preparing means for expedition.—See, also, notes post.

This section applies to the providing or preparing of means of transportation for such an expedition or enterprise. Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 1133, 163 U. S. 632, 41 L. Ed. 289, modifying judgment U. S. v. Wiborg (D. C. 1896) 73 Fed. 159.

One who provides the means for transporting a military expedition on any part of its journey, with knowledge of its ultimate destination and unlawful character, is punishable under R. S. § 5286 (embodied herein). Hart v. U. S. (1898) 84 Fed. 799, 28 C. C. A. 612, affirming U. S. v. Hart (D. C. 1897) 78 Fed. 868.

Providing means for carrying a known military expedition to an island over which the United States has jurisdiction, as one stage of its journey, with knowledge of its final destination, is an offense under the statute. Id.

To constitute the offense of beginning or setting on foot a military expedition against a friendly power, within this section, it is not necessary that the expedition shall be actually set on foot. It is sufficient if such preparations are made for it as show an intent to set it on foot. Charge to Grand Jury, Neu-

trality Laws (C. C. 1838) Fed. Cas. No. 18,265.

To "provide or prepare the means for any military expedition or enterprise," within the meaning of this section such preparation must be made as shall aid the expedition. The contribution of money, clothing for the troops, provisions, arms, or any other contribution which shall tend to forward the expedition or add to the comfort or maintenance of those engaged in it, is a violation of this provision. Charge to Grand Jury, Neutrality Laws (C. C. 1838) Fed. Cas. No. 18,265; Id. (C. C. 1851) Fed. Cas. No. 18,267; Id. (C. C. 1859) Fed. Cas. No. 18,268.

If the means provided were to be used only on the occurrence of a future contingent event, or if they were to be used at a time and under circumstances when their use would not violate the law, there is no offense. U. S. v. Lumsden (C. C. 1856) Fed. Cas. No. 15,641.

To provide the means for such an expedition implies that such means shall be actually furnished and brought together for the criminal purpose. Id.

The captain and mate of a United States vessel, who, knowing the character of their cargo and its intended purpose, transported arms from a port within the United States to a foreign port, together with men and stores to be used in a military expedition against a people at peace with the United States, are guilty of violating this section. U. S. v. Rand (D. C. 1883) 17 Fed. 142.

Whether the master of a vessel, which took on board, from a tug off the coast of New Jersey, 30 or 35 men, and at the same times boxes of arms and ammunition, and then set sail for Cuba, provided or prepared the means for a military expedition or enterprise, within this section, depends on whether they (not being a military organization when they came aboard) were, with the knowledge of the master, after coming on board, armed, and given military drill and instruction, and put into a state of efficiency for warlike operations. U. S. v. Hughes (D. C. 1896) 75 Fed. 267.

To convict of providing means for a military expedition, etc., it must be proved (1) that a military expedition was organized in this country, and (2) that defendant, in the district of his trial, provided means for it with knowledge of its character. U. S. v. Hart (D. C. 1897) 78 Fed. 868, judgment affirmed Hart v. U. S. (1898) 84 Fed. 799, 28 C. C. A. 612.

Providing the means of transportation for a known military enterprise to be carried on from the United States against Spanish rule in Cuba is an offense, under this section. U. S. v. Murphy (D. C. 1898) 84 Fed. 609.

Furnishing money to be used on behalf of the people of another country in a struggle for independence, provided it is not to be used in organizing and fitting out with arms and ammunitions of war expeditions into and against any foreign country or its commerce, is not in contravention of the neutrality laws. Bailey v. O'Mahony (1871) 33 N. Y. Super. Ct. (1 Jones & S.) 239, 10 Abb. Prac. (N. S.) 270.

7. Military character of expedition.—It was proper for the court to charge that any combination of men organized in the United States to go to Cuba, to make war upon its government, provided with arms and ammunition (the United States being at peace with Cuba) constituted a military expedition; and that it was not necessary that the men should be drilled, put in uniform, or prepared for efficient service; but that it was sufficient that they should have combined and organized in the United States to go to Cuba, and make war on a foreign government, and should have provided themselves with the means of doing so. Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 163 U. S. 632, 41 L. Ed. 289, affirming U. S. v. Wiborg (D. C. 1896) 73 Fed. 159.

Under this section the military character of an expedition against a nation at peace with the United States may be determined by the designation of officers or leaders, the organization of men in regiments or companies or otherwise, and the purchase of military stores; but no particular number of men is necessary to complete the crime, nor is it necessary that such an expedition should actually set out, for the crime is completed by the mere organization, or any other step in the inception thereof. U. S. v. Ybanez (C. C. 1892) 53 Fed. 536.

In order to constitute a military expedition, within the meaning of this section, it is not necessary that the men shall be drilled, put in uniform, or prepared for efficient service, nor that they shall have been organized, according to the tactics, as infantry, artillery, or cavalry; but it is sufficient that they shall have combined or organized, within the United States, to go to the foreign territory and make war on the foreign government, either as an independent body, or in connection with others, and have provided themselves with the means of doing so; and such provision, as by arming, etc., is itself probably not essential. U. S. v. Wiborg (D. C. 1896) 73 Fed. 159, judgment modified Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 163 U. S. 632, 41 L. Ed. 289.

A military expedition, in the meaning of the statute, comprehends any combination of men, organized in this country, however imperfectly, and provided with arms and ammunition, to go to a foreign country, and make war on its government; and it is immaterial whether the expedition intends to make war as an independent body, or in combination with others in the foreign country. U. S. v. Hart (D. C. 1897) 78

Fed. 868, judgment affirmed Hart v. U. S. (1898) 84 Fed. 799, 28 C. C. A. 612.

A combination of a number of men in the United States, with a common intent to proceed in a body to a foreign territory, and engage in hostilities, either by themselves or in co-operation with others, against a power with whom the United States are at peace, constitutes a military expedition, when they actually proceed from the United States, whether they are then provided with arms, or intend to secure them in transit. It is not necessary that all the persons shall be brought in personal contact with each other in the United States, or that they shall be drilled, uniformed, or prepared for efficient service. U. S. v. Murphy (D. C. 1898) 84 Fed. 609.

8. Necessity of hostile intention.—To constitute the offense of beginning, setting on foot, or providing the means for a military expedition against a nation with whom the United States are at peace, under Act April 20, 1818, § 6, there must be a hostile intention connected with the act of beginning or setting on foot the expedition. U. S. v. O'Sullivan (D. C. 1851) Fed. Cas. No. 15,975.

When connected with such hostile intent the crime is completed either by beginning or setting on foot an expedition, or providing or procuring the means therefor. Id.

9. Overt or definite act.—The overt act is not an invasion of a foreign country, but taking the incipient steps in the enterprise, such as providing the means for the expedition, furnishing munitions of war or money, enlisting men, and, in short, doing anything and everything that is necessary to the commencement and prosecution of the enterprise. Charge to Grand Jury, Neutrality Laws (C. C. 1851) Fed. Cas. No. 18,266; Id. (C. C. 1851) Fed. Cas. No. 18,267.

The offense of beginning or setting on foot, or providing or preparing the means for, a military expedition against a friendly state, under this section, is not complete without some overt or definite act. U. S. v. Lumsden (C. C. 1856) Fed. Cas. No. 15,641.

Mere words spoken or written, though indicative of the most determined purpose to do the forbidden acts, will not constitute an offense under the statute. Id.

10. Persons liable.—Mates of a foreign vessel sailing from a United States port, who at the time of sailing did not know that the vessel was to carry an expedition in violation of the neutrality law, and did not learn thereof until they met beyond the three-mile limit another vessel containing men and arms, are not guilty of the offense. Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 163 U. S. 632, 41 L. Ed. 289, modifying judgment U. S. v. Wiborg (D. C. 1896) 73 Fed. 159.

11. Knowledge and approbation of the President.—The fact that defendant set on foot a military expedition, in violation of Act June 5, 1794, § 5, with the knowledge and approbation of the President is no justification, as the president has no authority to set on foot a military expedition against a nation with which the United States are at peace. U. S. v. Smith (C. C. 1806) Fed. Cas. No. 16,342.

12. Necessity of expedition starting for destination.—To constitute the offense, it is not necessary that the expedition should start for its destination. U. S. v. O'Sullivan (D. C. 1851) Fed. Cas. No. 15,975.

13. Necessity of expedition being consummated with deviation of course.—An expedition, to be within Act June 5, 1794, § 5, need not to have been consummated without deviation of course. It is sufficient if it was begun and the means prepared to be carried on from the United States, though the vessel, at the identical time of sailing, was not in complete readiness for hostile engagements. U. S. v. Smith (C. C. 1806) Fed. Cas. No. 16,342a.

14. Expedition originating in United States or abroad.—It is an offense against the act passed 1794 (1 Stat. 381) to concert an expedition from the United States to commit hostilities against a power at peace with the United States; and it is unimportant that such association originated beyond seas, if the expedition was carried on from hence. Ex parte Needham (C. C. 1817) Fed. Cas. No. 10,080.

It is unimportant whether the persons engaged in such a purpose engage the whole vessel to themselves, or depart from the United States as passengers. Id.

Upon an indictment charging defendants with beginning or setting on foot or providing means for a military expedition or enterprise from this country against Spain in aid of Cuban insurgents by the steamer Bermuda, where the steamer was arrested before she sailed, after taking on board about 60 men neither armed, equipped, nor officered, and no proof except the doubtful testimony of one witness belonging to the party of any other intent on the part of the men except to go to Cuba and join the army after arrival there, the jury were instructed: (1) That it is no offense for individuals, singly or in company, and in any way they choose, to go abroad for the mere purpose of enlisting in a foreign army, provided they do not enlist in, or set on foot here, or prepare any military expedition or enterprise; (2) that such an expedition or enterprise, to come within the statute as one "carried on from this country," must consist of some body of persons designing to act to-

gether in a military way, and possess at the start from this country some element of a military character beyond the mere intent to enlist individually after arrival in Cuba; (3) that it is not necessary that it should possess all the elements of a military body at the start, but it is sufficient if there was a combination of men for that purpose, with the intent that it should become so before reaching the scene of action; (4) that it is not unlawful to transport peaceably and by an unarmed vessel a body of men as individuals to Cuba who wish to enlist there, and such transportation does not constitute a providing of the means for a military expedition or enterprise, unless there is some enlistment or combination or agreement of the men to act in some way as a military body, or the use of some military force is contemplated, if necessary, in order to reach the insurgent army. U. S. v. Hart (C. C. 1896) 74 Fed. 724.

It is not an offense against the laws of the United States to transport to a foreign country men intending to enlist in foreign armies, and munitions of war, provided the persons transported have not combined and organized themselves, in the United States, to make war on a foreign government. U. S. v. Wiborg (D. C. 1896) 73 Fed. 159, judgment modified Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 163 U. S. 632. 41 L. Ed. 289.

It is lawful for men, many or few, to go from this country as individuals, even by the same vessel, and though that vessel also carries arms as merchandise, for the purpose of joining a body of insurgents to fight against a foreign government. U. S. v. Hart (D. C. 1897) 78 Fed. 868, judgment affirmed Hart v. U. S. (1898) 84 Fed. 799, 28 C. C. A. 612.

15. Expedition against nation with which war is inevitable.—The setting on foot or providing the means of a military expedition against a nation with which the United States are at peace is an offense, notwithstanding it appear that war is inevitable, unless the prosecution of the expedition depended upon its taking place. U. S. v. Burr (C. C. 1807) Fed. Cas. No. 14,-694a.

A citizen cannot make the election, or anticipate his government's making the election, to consider as an act of war the taking possession by another nation of contested territory, arising out of a dispute as to boundaries. Id.

16. Expedition against friendly power at peace.—Act June 5, 1794, extends to warlike expeditions from this country, though not intended to aid one belligerent against another, but directed against a friendly power at peace with all the world. U. S. v. O'Sullivan (D. C. 1851) Fed. Cas. No. 15,974; Id. (D. C. 1851) Fed. Cas. No. 15,975.

17. Purchasing arms and ammunition and placing them on board vessel.—When a party of insurgents, already organized and carrying on war against the government of a foreign country, send a vessel to procure arms and ammunition in the United States, the act of purchasing such arms and ammunition, and placing them on board the vessel, is not within the scope of this section, prescribing a punishment for every person who, within the limits or jurisdiction of the United States, begins or sets on foot, or provides or prepares the means for, any military expedition or enterprise, "to be carried on from thence." U. S. v. Trumbull (D. C. 1891) 48 Fed. 99.

18. Shipping and transportation, and leaving country to enlist in foreign service.—See, also, notes under § 10174, ante.

It is no offense against the laws of the United States to transport, from this to a foreign country, arms, ammunition, and materials of war, either alone or together, in the same ship, with men who intend to enlist, provided they are not a part of or in aid of any military expedition or enterprise set on foot in this country. In such case the persons transported and the shipper and transporter only run the risk of capture, and the seizure of such arms and munitions by the foreign power against which the arms are intended to be used. U. S. v. O'Brien (C. C. 1896) 75 Fed. 900.

The transportation of goods for commercial purposes only and the carriage of persons separately, though their individual design may be to enlist in a foreign strife, are not prohibited by our law if the transportation is without any features of a military character. Indications of a military operation or of a military expedition are concert and unity of action, organization of men to act together, the presence of weapons, and some form of command or leadership. U. S. v. Nunez (C. C. 1896) 82 Fed. 599.

This section does not prohibit the shipping of arms, ammunition, or military equipments to a foreign country, nor forbid one or more individuals, singly or in unarmed association, from leaving the United States to join in any military operations being carried on between other countries or different parties in the same country. U. S. v. Pena (D. C. 1895) 69 Fed. 983.

It is not an offense against the laws of the United States to transport arms, ammunition, and munitions of war from the United States to a foreign country, whether they are to be used in war or not, and the shipper or transporter only runs the risk of capture, seizure, etc. U. S. v. Wiborg (D. C. 1896) 73 Fed. 159, judgment modified Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 163 U. S. 632, 41 L. Ed. 289.

Defendants, who are officers of a for-

eign vessel, charged with violation of this section, in aiding a military expedition against a foreign state by transporting it to its destination, cannot be convicted if it appears that the persons transported were taken on board the vessel at sea, beyond the jurisdiction of the United States, unless it is shown that the defendants left the shores of the United States under an agreement to provide the means of transporting the expedition and to transport it. Id.

It is not a crime or offense against the United States, under the neutrality laws, for individuals to leave the country with intent to enlist in foreign military service; nor is it an offense to transport persons out of the United States, and land them in foreign countries, when such persons intend to enlist in foreign armies. Id.

A defendant charged with a violation of this section, in aiding a military expedition against a foreign state by transporting it to its destination, cannot be convicted unless he is shown to have known that the persons transported constituted a military expedition. Id.

Proof that a vessel transported from Aspinwall to the coast of Cuba men, arms, and munitions of war, destined to aid the Cuban insurgents, is insufficient, by itself, to warrant proceedings against such vessel for violation of the neutrality law of the United States. (1871) 13 Op. Atty. Gen. 541.

19. Venue of offense.—If the officers of a foreign vessel, sailing from a United States port, which, after passing the three-mile limit, took aboard men and arms for an expedition in violation of the neutrality law, had prepared for sailing, and had taken aboard extra boats while in port, with knowledge of the proposed expedition, they were guilty of the crime in the district from which they sailed. Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 1133, 163 U. S. 632, 41 L. Ed. 289, modifying judgment U. S. v. Wiborg (D. C. 1896) 73 Fed. 159.

20. Indictment.—Sufficiency of indictment for setting on foot and preparing the means for a military expedition against a foreign country with which the United States were at peace. U. S. v. O'Sullivan (D. C. 1851) Fed. Cas. No. 15,974.

21. Evidence.—Any legal testimony which shows the expedition in question to be military, or to have been designed against the dominions of the nation, as charged, is admissible. U. S. v. Burr (C. C. 1807) Fed. Cas. No. 14,-694.

The acts of accomplices, except so far as they prove the character or object of the expedition in question, are not admissible in evidence. Id.

In a prosecution under this section, written and printed evidence, though containing no proof of an overt act, is admissible as confessions and declarations, subject to the rule that the parts favorable to defendants must be considered, as well as those implying guilt. U. S. v. Lumsden (C. C. 1856) Fed. Cas. No. 15,641.

Evidence that defendant admitted that a certain person was associated with him in the plan to invade a foreign territory is sufficient to render admissible statements of such person to show the extent of the plan, and whether it was legal. U. S. v. Workman (D. C. 1807) Fed. Cas. No. 16,764.

Evidence that the vessel of which defendant was captain stopped outside Sandy Hook, took on arms and men; that the men were drilled during the voyage, and were secretly landed at night on the coast of Cuba—is sufficient to justify holding the defendant for trial. U. S. v. Hughes (D. C. 1895) 70 Fed. 972.

22. Questions for jury.—A body of men went on board a tug loaded with boxes of arms, and were taken by it 30 or 40 miles out to sea, when they met a steamer outside the 3-mile limit, by prior arrangement. They boarded her, taking the boxes with them, which they opened, distributing the arms among themselves. They drilled to some extent on board, and were apparently officered; and, as preconcerted, they disembarked near the coast of Cuba, to effect an armed landing thereon. Held, that the jury had a right to find that this was a military expedition or enterprise, within the meaning of the neutrality law. Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 163 U. S. 632, 41 L. Ed. 289, modifying judgment U. S. v. Wiborg (D. C. 1896) 73 Fed. 159.

Whether the men and munitions of war for which the accused furnished transportation constituted a "military expedition," in the meaning of the statute, or the men were traveling as individuals, without organization or concert of action, and the arms and munitions were carried as articles of legitimate commerce, and whether the accused had guilty knowledge of the facts constituting the military expedition, if it were such, are questions for the jury, under proper instructions, when from the evidence a conclusion adverse to the accused may rationally be reached. Hart v. U. S. (1898) 84 Fed. 799, 28 C. C. A. 612, affirming judgment U. S. v. Hart (D. C. 1897) 78 Fed. 868.

The fact that men intending to enlist, and arms and munitions designed to be used, against a foreign power, are carried in the same ship, and landed in such foreign country, and that the men there handle and carry the arms and munitions, is not of itself absolutely conclusive of a military expedition; it being possible that the men may intend to act merely as individuals and simply as porters of the arms. In such case the existence of a military expedition is one of fact for the jury.

U. S. v. O'Brien (C. C. 1896) 75 Fed. 900.

Whether secrecy and mystery in the arrangements and departure of the vessel are evidences of criminality, or otherwise, is a question for the jury alone. U. S. v. Hart (D. C. 1897) 78 Fed. 868, judgment affirmed Hart v. U. S. (1898) 84 Fed. 799. 28 C. C. A. 612.

Cited without definite application, U. S. v. Trumbull (D. C. 1891) 48 Fed. 94, 95; The Three Friends (D. C. 1897) 78 Fed. 175, 180, 182; U. S. v. Murphy (D. C. 1897) 82 Fed. 893, 894.

§ 10178. (Crim. Code, § 14.) Enforcement by courts; employment of land or naval forces.

The district courts shall take cognizance of all complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof. In every case in which a vessel is fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel is increased or augmented, or in which any military expedition or enterprise is begun or set on foot, contrary to the provisions and prohibitions of this chapter; and in every case of the capture of a vessel within the jurisdiction or protection of the United States as before defined; and in every case in which any process issuing out of any court of the United States is disobeyed or resisted by any person having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, it shall be lawful for the President, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such vessel, with her prizes, if any, in order to enforce the execution of the prohibitions and penalties of this chapter, and the restoring of such prizes in the cases in which restoration shall be adjudged; and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territory or jurisdiction of the United States against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.

R. S. § 5287. Act March 4, 1909, c. 321, § 14, 35 Stat. 1090.

Notes of Decisions

1. Punishment of offenses by indictment.
2. Presentation of grand jury as sufficient ground of suspicion.
3. Arrest and incarceration of Mexican by military authorities.
4. Seizure of vessel or property by military officers.
5. Plea justifying seizure.
6. Interference with judiciary in proceedings under statute.
7. Determination on preliminary examination of question as to military expedition.
8. Affidavit as justifying commitment for setting expedition on foot.
9. Evidence of breach of neutrality by arrested vessel.
10. Restoration of captured property.
11. Authority to arrest and detain suspected person.

See, also, notes under § 10177, ante.

1. Punishment of offenses by indictment.—Acts of hostility committed by American citizens against such as are in amity with us, being in violation of the treaty and against the public peace, are offenses against the United States so far as they were committed within the territory or jurisdiction thereof, and as such are punishable by indictment in the district or circuit courts. Acts of the kind occurring in a foreign country are not within the cognizance of our courts. (1795) 1 Op. Atty. Gen. 58.

2. Presentation of grand jury as sufficient ground of suspicion.—The presentation of a grand jury, charged with the duty of inquiring into the existence of the organization whose object was the invasion of the territory of a friendly power, that they believed such organization to exist, but could get no evidence, because witnesses refused to testify on the ground that their answers might criminate them, held sufficient ground of suspicion. U. S. v. Quitman (C. C. 1854) Fed. Cas. No. 16,111.

3. Arrest and incarceration of Mexican by military authorities.—An order directing the arrest of a Mexican alien by the military authorities in the United States and his incarceration without trial, while an attempt was being made to secure evidence that he was endeavoring to violate the neutrality

laws, held void, and that he was entitled to his discharge on habeas corpus. Ex parte Orozco (D. C. 1912) 201 Fed. 106.

4. Seizure of vessel or property by military officers.—See, also, notes under § 10181, post.

Property may be seized by the commanding officer of a military force ordered out to prevent the violation of the neutrality act of 1838, with a view to detaining the same until it should be proceeded against in the manner directed by law. Stoughton v. Dimick (C. C. 1855) Fed. Cas. No. 13,500.

An officer in the army, with orders to execute the neutrality act of March 10, 1838, has authority to arrest a vessel containing arms and munitions of war intended to be carried to insurgent subjects of Great Britain, although the vessel itself is not about to pass the frontier. Stoughton v. Dimick (1855) 29 Vt. (3 Williams) 535.

5. Plea justifying seizure.—A plea justifying a seizure under the president's instructions must aver that the naval or military force was employed for that purpose, and that the seizor belonged to the force. Gelston v. Hoyt (1818) 3 Wheat. 246, 330, 4 L. Ed. 381.

6. Interference with judiciary in proceedings under statute.—The executive has no right to interfere with the judiciary in proceedings against persons charged with being concerned in hostile expeditions against friendly nations. (1895) 21 Op. Atty. Gen. 267.

7. Determination on preliminary examination of question as to military expedition.—The question whether a military expedition against a nation with which the United States were at peace was really to depend upon war being declared will not be determined upon a preliminary examination. U. S. v. Burr (C. C. 1807) Fed. Cas. No. 14,694a.

8. Affidavit as justifying commitment for setting expedition on foot.—Sufficiency of affidavit giving translation of letter and cipher, taken in connection with declarations of accused to justify commitment for setting on foot a military expedition against a nation with which the United States were at peace. U. S. v. Burr (C. C. 1807) Fed. Cas. No. 14,692a.

9. Evidence of breach of neutrality by arrested vessel.—Evidence to acquit or condemn, in the case of a vessel arrested for breach of the neutrality laws, must, in the first instance, come from the vessel taken, the persons on board, and the examination on oath of the officers. Moodie v. The Betty Carthcart (D. C. 1795) Fed. Cas. No. 9,742.

10. Restoration of captured property.—The district courts of the United States have jurisdiction to restore to the original Spanish owners, in amity with the United States, property captured by a French vessel whose force was increased in the United States in violation of the neutrality of the United States, if the prize be brought infra præsidia; it being the duty of the neutral nation in such case to restore the property to its owner. The Alerta v. Blas Moran (1815) 13 U. S. (9 Cranch) 359, 3 L. Ed. 758.

In absence of an act of Congress on the subject, the federal courts would have authority under the general law of nations to decree restitution of property captured in violation of their neutrality, under a commission issued within the United States or under an armament or augmentation of the armament, or crew, of the captured vessel within the same. The Estrella (1819) 17 U. S. 298, 311, 4 L. Ed. 574.

Where restitution of captured property is claimed upon the ground that the force of the cruiser making the capture has been augmented within the United States, by enlisting men, the burden of proving such enlistment is thrown upon the claimant; and, that fact being proved, it is incumbent on the captors to show by proof that the persons so enlisted were subjects or citizens of the prince or state under whose flag the cruiser sails, transiently within the United States, in order to bring the case within the proviso of Act June 5, 1794, c. 226, § 2, and of Act April 20, 1818, c. 83. Id.

If a captured vessel be brought, or comes, infra præsidia of a neutral nation, that nation may ascertain whether a trespass has been committed on its own neutrality by the vessel which has made the capture. Id.

A cruiser, commissioned under authority of Carthagena, in war with Spain, captured on the high seas as prize a vessel belonging to the subjects of Spain, and put a prize crew on board. The captured vessel was afterwards taken by a private armed vessel of the United States, and the cargo taken out and brought into the United States for adjudication as the property of their enemy. Held, that the property should be restored to the Carthagena prize master, since where a captured prize is brought innocently within our jurisdiction, it will be restored to the state from which it was forcibly taken by the act of our own citizens. The Neustra Senora de la Caridad (1819) 17 U. S. (4 Wheat.) 497, 4 L. Ed. 624.

The existence of a war between two countries being recognized by our government, the duty of our courts is,

where the property of either belligerent is brought innocently within our jurisdiction, to leave things as we find them, or to restore them to the state from which they have been forcibly removed by our citizens. Id.

Where a claim is tried to a vessel captured in violation of neutrality, and the case is continued for further proof, and on the coming in of the proof it is shown that the vessel was not subject to capture, though she was furnished with defective papers, the court will decree restitution of the vessel, but decree all costs of the suit against claimant. The Venus (1820) 18 U. S. (5 Wheat.) 127, 5 L. Ed. 50.

Whenever a capture is made by any belligerent in violation of our neutrality, if the prize come voluntarily within our jurisdiction, it shall be restored to the original owners, but jurisdiction in cases of violation of neutrality is not carried beyond authority to decree restoration of the specific property, with costs and expenses, during the pending of the judicial proceedings. La Amistad de Rues (1820) 18 U. S. (5 Wheat.) 385, 389, 5 L. Ed. 115.

Where restitution of property taken as prize is claimed by the original owners in our courts, on the ground of the illegal armament of the captor in our ports, the burden of proof rests on the claimants; and, to justify a restitution, the violation of neutrality must be clearly made out. Id.

A vessel captured by an armed vessel fitted out in a port of the United States, in violation of our neutrality, will be restored to the original owners, and the claim of an alleged bona fide purchaser in a foreign port rejected. The La Conception (1821) 19 U. S. (6 Wheat.) 235, 5 L. Ed. 249; The Fanny (1824) 22 U. S. (9 Wheat.) 658, 6 L. Ed. 184.

On a claim for a vessel as captured in violation of neutrality laws, evidence considered, and held to show that there was a bona file sale of the ship, which demanded a restitution of the vessel seized. The Monte Allegre (1822) 18 U. S. (7 Wheat.) 520, 5 L. Ed. 513.

Prizes made by armed vessels, which have violated the statutes for preserving the neutrality of the United States, will be restored if brought into our ports. The Santissima Trinidad (1822) 20 U. S. (7 Wheat.) 283, 5 L. Ed. 454; The Gran Para (1822) 20 U. S. (7 Wheat.) 471, 5 L. Ed. 501.

An offense against our neutrality does not adhere to the vessel under every change of circumstance; but if an offense be committed during the cruise for which the vessel was originally equipped, and a colorable termination of which only has been made, the delictum is not purged. The Gran Para (1822) 20 U. S. (7 Wheat.) 471, 5 L. Ed. 501.

An augmentation of force in a neutral territory, or an illegal outfit, does not affect captures made after the original cruise is terminated. The Santissima Trinidad (1822) 20 U. S. (7 Wheat.) 283, 5 L. Ed. 454.

Property captured in violation of the neutrality of the United States will be restored to its former owners, if claimed by the original wrongdoer, though it may have come back to his possession after a regular condemnation as prize. The Arrogante Barcelones (1822) 20 U. S. (7 Wheat.) 496, 5 L. Ed. 507.

A bona fide purchaser, in a foreign port, without notice, of a vessel captured in violation of our neutrality, and restored by our courts to the original owners, is entitled to be repaid the freight paid by him on the goods captured; and an innocent carrier of such goods, they having been transshipped in a foreign port, is entitled to freight out of the goods. The Fanny (1824) 22 U. S. (9 Wheat.) 658, 667, 6 L. Ed. 184.

The United States, having captured a vessel for alleged violation of neutrality laws, delayed bringing her in for condemnation for 175 days, and continued to use her in military and naval service under a charter party which stipulated that it should be void if the vessel was confiscated, and by which the United States agreed to pay $200 a day for the use of her. Held, upon a decree of restitution, that, the United States having submitted to the jurisdiction, a judgment for damages for demurrage could properly be rendered against it, and that claimant was fairly entitled to $200 per diem from the seizure until the vessel was actually surrendered for adjudication, and also to her value in money, with interest to the decree of restitution. U. S. v. The Nuestra Senora De Regla (1883) 108 U. S. 92, 2 Sup. Ct. 287, 27 L. Ed. 662.

Though the question of prize or no prize belongs exclusively to the courts of the captor, a neutral will restore a prize wrongfully taken by one of the belligerents in violation of the rights of the neutral. Chacon v. Eighty-Nine Bales of Cochineal (C. C. 1821) Fed. Cas. No. 2,568.

Though the capture of an English vessel by a French vessel within the coastline jurisdiction of the United States during the existence of hostilities between France and England is an offense against the United States as a neutral power, yet, as it is not necessary to bring the captured vessel within the territory of the captors in order to vest the right of property in the captors, admiralty will not entertain jurisdiction of a libel filed by the British owners of the captured vessel for the restoration thereof, as redress of the

offense against the United States should be left in the first instance to the executive department of the government. Moxon v. The Fanny (D. C. 1793) Fed. Cas. No. 9,895.

The capture of a vessel from a belligerent, by an American citizen, under a foreign commission, is unlawful, and the court will decree a restitution. Talbot v. Janson (1795) 3 U. S. (3 Dall.) 133, 1 L. Ed. 540; Jansen v. The Vrow Christina Magdalena (D. C. 1794) Fed. Cas. No. 7,216.

It is unlawful for an American vessel, commanded by an American citizen, to cruise in concert with a foreign privateer, and if a capture is made by the former with the aid of the latter, restitution will be awarded. Id.

The capture of a vessel of a nation at peace under a treaty with the United States, made by an armed vessel illegally fitted out in the ports of the United States, and commanded by an American citizen, though he sets up the right of expatriation, being unlawful, restitution will be restored by the district court, if brought into its jurisdiction. Id.

Fitting out a privateer by American citizens in one of our ports, to cruise against a belligerent power at peace with the United States, is unlawful, and our courts will award restitution of a prize taken by her. Id.

II. Authority to arrest and detain suspected person.—This section held not to authorize the president to use the military power in time of peace to arrest without a warrant and imprison without the benefit of a trial a person within the United States merely suspected of intention to organize an expedition in aid of a revolution in his own country with which the United States is at peace. Ex parte Orozco (D. C. 1912) 201 Fed. 106.

Cited without definite application, Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 1133, 163 U. S. 632, 41 L. Ed. 289.

§ 10179. (Crim. Code, § 15.) Compelling foreign vessels to depart.

It shall be lawful for the President, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, she ought not to remain within the United States.

R. S. § 5288. Act March 4, 1909, c. 321, § 15, 35 Stat. 1091.

Cited without definite application, Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 1133, 163 U. S. 632, 41 L. Ed. 289.

§ 10180. (Crim. Code, § 16.) Bonds from armed vessels on clearing.

The owners or consignees of every armed vessel sailing out of the ports of, or under the jurisdiction of, the United States, belonging wholly or in part to citizens thereof, shall, before clearing out the same, give bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including her armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

R. S. § 5289. Act March 4, 1909, c. 321, § 16, 35 Stat. 1091.

Notes of Decisions

Power to require bond.—A federal judge has power, on just grounds of suspicion, to require a bond to observe the neutrality laws. U. S. v. Quitman (C. C. 1854) Fed. Cas. No. 16,111.

Cited without definite application, U. S. v. Quincy (1832) 6 Pet. 445, 466, 8 L. Ed. 458; Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 1133, 163 U. S. 632, 41 L. Ed. 289.

§ 10181. (Crim. Code, § 17.) Detention by collectors of customs.

The several collectors of the customs shall detain any vessel manifestly built for warlike purposes, and about to depart the United States, or any place subject to the jurisdiction thereof, the cargo of which principally consists of arms and munitions of war, when the number of men shipped on board, or other circumstances, render it probable that such vessel is intended to be employed by the owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people

with whom the United States are at peace, until the decision of the President is had thereon, or until the owner gives such bond and security as is required of the owners of armed vessels by the preceding section.

R. S. § 5290. Act March 4, 1909, c. 321, § 17, 35 Stat. 1091.

Notes of Decisions

Authority to detain vessels.—Collector's authority to detain vessels defined. U. S. v. Quincy (1832) 6 Pet. 445, 463, 8 L. Ed. 458.

It is not enough to justify a collector of customs in refusing clearance to a vessel and her cargo, under this section, that it is the purpose of her intended voyage to transport arms and munitions of war for the use of an insurrectionary party in a country with which the United States are at peace. Hendricks v. Gonzalez (1895) 67 Fed. 351, 14 C. C. A. 659.

The neutrality act of 1838 authorized collectors and other officers therein named to seize and detain vessels about to pass the frontier for a place within a foreign state or colony coterminous with the United States when they had reason to believe that such vessels were to be employed in a military expedition or operation against such state or colony. Held, that the term "frontier" meant a tract of country contiguous to the boundary line, and it was not material whether such vessels were actually intended to be passed across the boundary line into the foreign territory. Stoughton v. Mott (1843) 15 Vt. 162.

Wrongful detention and action therefor.—Where an officer seized a vessel and goods, under the law of congress passed March 10, 1838, and neglected to procure a warrant from the district court, within 10 days, to justify the detention, as required by that act, held, that the detention, after 10 days, was wrongful, and that an action could be sustained in the state courts for such wrongful detention. Stoughton v. Mott (1841) 13 Vt. 175.

Evidence of illegal seizure.—A sentence of restitution in the district court of the United States of a vessel seized by a collector is conclusive evidence, in an action of trespass brought by the owner against the collector, that the seizure was illegal. Hoyt v. Gelston (N. Y. 1816) 13 Johns. 141.

Cited without definite application, Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 1133, 163 U. S. 632, 41 L. Ed. 289; U. S. v. Hughes (D. C. 1895) 70 Fed. 972, 975.

§ 10182. (Crim. Code, § 18.) Construction of this chapter; transient aliens; prosecutions for treason or piracy not affected.

The provisions of this chapter shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States and enlists or enters himself on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people who is transiently within the United States to enlist or enter himself to serve such foreign prince, state, colony, district, or people on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people. Nor shall they be construed to prevent the prosecution or punishment of treason, or of any piracy defined by the laws of the United States.

R. S. § 5291. Act March 4, 1909, c. 321, § 18, 35 Stat. 1091.

Cited without definite application, Wiborg v. U. S. (1896) 16 Sup. Ct. 1127, 1133, 163 U. S. 632, 41 L. Ed. 289.

§ 10182a. (Res. March 4, 1915, No. 14.) Withholding clearance from vessel; departing, etc., without clearance punishable, and vessel to be forfeited; employment of land and naval forces to carry out provisions authorized; extent of application of provisions.

That, from and after the passage of this resolution, and during the existence of a war to which the United States is not a party, and in order to prevent the neutrality of the United States from being violated by the use of its territory, its ports, or its territorial waters as the base of operations for the armed forces of a belligerent, contrary

to the obligations imposed by the law of nations, the treaties to which the United States is a party, or contrary to the statutes of the United States, the President be, and he is hereby, authorized and empowered to direct the collectors of customs under the jurisdiction of the United States to withhold clearance from any vessel, American or foreign, which he has reasonable cause to believe to be about to carry fuel, arms, ammunition, men, or supplies to any warship, or tender, or supply ship of a belligerent nation, in violation of the obligations of the United States as a neutral nation.

In case any such vessel shall depart or attempt to depart from the jurisdiction of the United States without clearance for any of the purposes above set forth, the owner or master or person or persons having charge or command of such vessel shall severally be liable to a fine of not less than $2,000 nor more than $10,000, or to imprisonment not to exceed two years, or both, and, in addition, such vessel shall be forfeited to the United States.

That the President of the United States be, and he is hereby, authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this resolution.

That the provisions of this resolution shall be deemed to extend to all land and water, continental or insular, within the jurisdiction of the United States. (38 Stat. 1226.)

This was a joint resolution entitled "Joint resolution to empower the President to better enforce and maintain the neutrality of the United States," cited above.

CHAPTER THREE

Offenses against the Elective Franchise and Civil Rights of Citizens

Sec.
10183. Conspiracy to injure, etc., persons in the exercise of civil rights; punishment for.
10184. Depriving citizens of civil rights under color of State laws, etc.; punishment for.
10185. Conspiring to prevent officer from performing duties; punishment for.
10186. Unlawful presence of troops at polls; punishment for.
10187. Intimidating voters by Army or Navy officers, etc.; punishment for.
10188. Army or Navy officers prescribing qualifications of voters.
10189. Interfering with election officers by Army or Navy officers, etc.
10190. Additional punishment; suffrage by officers, etc., not impaired.

§ 10183. (Crim. Code, § 19.) Conspiracy to injure, etc., persons in the exercise of civil rights; punishment for.

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

R. S. § 5508. Act March 4, 1909, c. 321, § 19, 35 Stat. 1092.

Notes of Decisions

1. Constitutionality and validity.
2. Relation of section 10201 with offenses under this section.
3. Violation of statute in general.
4. Meaning of word "citizen."
5. Citizens protected.

6. Meaning of "rights" and "privileges" in general.
7. Right or privilege to vote.
8. Public employment.
9. Freedom from slavery or involuntary servitude.
10. Protection against violence.
11. Speedy and public trial.
12. Right to testify.
13. Right to inform officer of violation of law.
14. Right to lease and cultivate land.
15. Perfection of title to public land.
16. Defenses and bar to prosecution.
17. Indictment or information.
18. Evidence.
19. Instructions and questions for jury.
20. Conviction of conspiracy where felony is not proved, and vice versa.
21. Punishment.

See, also, notes under Const. Amend. 15, § 1. See, also, § 1686, ante, and notes thereunder.

1. Constitutionality and validity.—This section is constitutional and valid. The Ku-Klux Cases (1884) 4 Sup. Ct. 152, 153, 110 U. S. 651, 28 L. Ed. 274; U. S. v. Waddell (1884) 112 U. S. 76, 5 Sup. Ct. 35, 28 L. Ed. 673 (on certificate from [C. C. 1883] 16 Fed. 221); U. S. v. Lackey (D. C. 1900) 99 Fed. 952; U. S. v. Morris (D. C. 1903) 125 Fed. 322.

Congress may protect a citizen in the exercise of rights conferred by the constitution necessary to the welfare of the government, and may enact R. S. § 5508 (embodied herein), and section 5520, punishing persons conspiring to prevent by force or threat any lawful voter from casting his vote for presidential electors or members of congress. The Ku-Klux Cases (1884) 4 Sup. Ct. 152, 159, 110 U. S. 651, 28 L. Ed. 274.

R. S. § 5508 (embodied herein), and section 5509 are constitutional. Motes v. U. S. (1900) 20 Sup. Ct. 993, 995, 178 U. S. 458, 44 L. Ed. 1150.

Const. Amend. 14, § 5, authorizes congress to adopt such legislation as is necessary to control and counteract state abridgment of constitutional rights and privileges of citizens, and the Enforcement Act of 1870 (R. S. § 2004 et seq., and section 5506 et seq. [this compilation, §§ 3966, 10183, et seq.]) and the Civil Rights Act of 1875 (ante, § 3926 et seq.) apply only to such rights as are granted by and dependent on the federal constitution and laws of the United States. U. S. v. Sanges (C. C. 1891) 48 Fed. 78, 87, writ of error dismissed (1892) 12 Sup. Ct. 609, 144 U. S. 310, 36 L. Ed. 445.

This section is a lawful exercise of the authority of Congress, but the guaranty is dependent on the constitution and laws of the United States and treaties, and does not protect any other right. U. S. v. Moore (C. C. 1904) 129 Fed. 630.

In the exercise of the powers given by the fourteenth and fifteenth amendments to the Constitution Congress has passed several acts embodied in R. S. §§ 2004, 5507-5509 (see this compilation, §§ 3966, 10183). U. S. v. Lackey (D. C. 1900) 99 Fed. 952, 955, reversed (1901) 107 Fed. 114, 46 C. C. A. 189, 53 L. R. A. 660.

2. Relation of section 10201 with offenses under this section.—R. S. § 5440, post, § 10201, has no connection with such an offense as R. S. § 5508 (embodied herein), relates to. U. S. v. Patrick (C. C. 1893) 54 Fed. 338, 349.

3. Violation of statute in general.—The offenses provided for by this statute do not consist in the mere banding or conspiring of two or more persons together, but in their banding or conspiring with the intent or for any of the purposes specified, and to bring a case under the operation of this statute it must appear that the right, the enjoyment of which the conspirators intended to hinder or prevent was one granted or secured by the constitution or laws of the United States. U. S. v. Cruikshank (1875) 92 U. S. 542, 548, 23 L. Ed. 588.

Private individuals who take a prisoner from the custody of state officers and murder him to prevent his trial do not thereby deprive him of any right secured by the constitution and laws in violation of the fourteenth amendment, and they are not indictable under these sections for conspiracy to injure the prisoner. U. S. v. Powell (1909) 29 Sup. Ct. 690, 212 U. S. 564, 53 L. Ed. 653.

It makes no difference in guilt if the motive of one joining a conspiracy was not illegal at the time of joining, if he was afterwards aware of its illegality, and still remained a member. U. S. v. Mitchell (C. C. 1871) Fed. Cas. No. 15,790.

Where a person has procured a decree of the United States circuit court quieting his title to land, and enjoining certain persons from interfering with his possession, and has instituted contempt proceedings against them for violating such injunction, a conspiracy among them to intimidate or injure him on account of such proceedings is indictable and punishable in the federal courts, under this section. U. S. v. Lancaster (C. C. 1891) 44 Fed. 896, 10 L. R. A. 333.

When a conspiracy is directed against a citizen in the exercise of a federal right or privilege with the intent to prevent the exercise of such right or privilege, there is an interference with national authority, and the criminal acts done pursuant thereto are within the statute, and come within the legitimate cognizance of the federal courts. U. S. v. Patrick (C. C. 1893) 54 Fed. 338, 346.

R. S. § 5447, post, § 10233, relates to assaults, resistances, or interferences by an individual, and to the use of deadly or dangerous weapons with

intent to commit bodily injury, or to deter or prevent the person authorized from discharging his duty, and it does not deal with the case of conspiracy and the actual commission of personal or bodily injury, and is entirely consistent with R. S. § 5508 (embodied herein), and section 5509, which only extend the same principle to crimes actually committed pursuant to a conspiracy to prevent the exercise of the authority conferred by law. Id.

There is a deprivation of equal protection of the laws where the officers of the law, with knowledge of the public outrages and crimes committed by defendants, willfully failed to employ legal means to bring the offenders to trial because of the color of their victims. U. S. v. Blackburn (D. C. 1874) Fed. Cas. No. 14,603.

4. Meaning of word "citizen."—The word "citizen," as it occurs in this section, is used in its strict sense, as contrasted with "alien," and not as synonymous with "resident," "inhabitant," or "person." Baldwin v. Franks (1887) 120 U. S. 678, 7 Sup. Ct. 656, 763, 30 L. Ed. 766, reversing judgment In re Baldwin (C. C. 1886) 27 Fed. 187.

5. Citizens protected.—This section was not intended for the sole protection of the civil rights of citizens of African descent, depending entirely on the federal Constitution and laws passed in accordance therewith, but protected all citizens in the civil rights guaranteed and secured to them by the Constitution and laws of the United States. Felix v. U. S. (1911) 186 Fed. 685, 108 C. C. A. 503.

6. Meaning of "rights" and "privileges" in general.—This section presupposes that the right or privilege involved has been secured by the constitution and laws of the United States. U. S. v. Sanges (C. C. 1891) 48 Fed. 78, 84, writ of error dismissed (1892) 12 Sup. Ct. 609, 144 U. S. 310, 36 L. Ed. 445.

The words "rights" and "privileges" are used in this section to include that which one has a legal claim to do, and mean "legal power," "authority," "immunity granted by authority," "the investure with special or peculiar rights," with the qualification that the right or privilege must be derived from or secured by the federal Constitution or laws. U. S. v. Patrick (C. C. 1893) 54 Fed. 338, 348.

R. S. § 5508 (embodied herein), and section 5509 are confined to rights or privileges created and secured by the Constitution, and can never extend to offenses affecting rights or privileges of citizens, which exist by state authority alone. Id.

7. Right or privilege to vote.—Repeal by Act Feb. 8, 1894, of all sections of R. S. tit. 70, c. 7, relating to offenses against elective franchise, did not withdraw offenses of election officers from operation of R. S. § 5508 (embodied herein). Guinn v. U. S. (1915) 35 Sup. Ct. 926, 238 U. S. 347, 59 L. Ed. 1340; U. S. v. Mosley (1915) 35 Sup. Ct. 904, 238 U. S. 383, 59 L. Ed. 1355.

The one-year limitation prescribed by Civ. Code La. art. 3536, for actions for damages, and not the five-year limitation prescribed by R. S. § 1047, ante, § 1712, against penalties and forfeitures, must govern a civil action for an assault committed in attempting to prevent plaintiff from voting, contrary to title 24 of the Revised Statutes (this compilation, tit. 24), securing equal rights to citizens, in view of the provisions of R. S. §§ 1979-1981, 5508, 5510 (this compilation, §§ 3932-3934, 10183, 10184), which provide criminal proceedings and punishment for the public wrong, and actions in law or equity for the redress of any private injury, without prescribing any specific limitation for such actions. O'Sullivan v. Felix (1914) 34 Sup. Ct. 596, 233 U. S. 318, 58 L. Ed. 980.

The right to have one's vote at an election for member of Congress counted is as open to protection by Congress as is the right to vote itself. U. S. v. Mosley (1915) 35 Sup. Ct. 904, 238 U. S. 383, 59 L. Ed. 1355.

A conspiracy of state election officers to omit returns from certain precincts at election of Congressmen from their count and from their return is indictable under Cr. Code, March 4, 1909, § 19. Id.

State election officials, who conspire to deprive legal citizens of their right to vote under Const. Amend. 15, are indictable under this section. Guinn v. U. S. (1915) 35 Sup. Ct. 926, 238 U. S. 347, 59 L. Ed. 1340.

This section is not appropriate legislation for the enforcement of the fifteenth constitutional amendment, both because it relates to the acts of individuals, and not of a state, and because it is broader in its terms than the legislation authorized by the amendment; and it will not sustain an indictment for conspiring to prevent a citizen from voting at a purely state or municipal election on account of his race or color, whether the defendants are charged as individuals, or as officers of the state. Karem v. U. S. (1903) 121 Fed. 250, 57 C. C. A. 486, 61 L. R. A. 437.

The right of a qualified voter to vote for a member of Congress is a right secured by the Constitution and laws of the United States within this section. Id.

The right or privilege to vote at an election for a member of the House of Representatives of the United States is a right or privilege secured by the Constitution of the United States, and such right is therefore within the

ing of this section. Felix v. U. 1911) 186 Fed. 685, 108 C. C. A.

is section covers a conspiracy to ive a citizen of his right to vote i congressional election and thereinjure him, within the ordinary aning of the word "injure," and a spiracy to deprive illiterate negro ters of their right to vote by preing the ballots in such a way as to ake it difficult to vote for their candidate for Congress is punishable. U. S. v. Stone (D. C. 1911) 188 Fed. 836.

Under Const. art. 1, § 2, Const. Amend. 17, and Act June 4, 1914, the right to vote for Representatives and Senators and to serve on election boards at the election of such officers are rights secured by the Constitution and laws of the United States within this section. U. S. v. Aczel (D. C. 1915) 219 Fed. 917.

8. **Public employment.**—An office is a public employment, and in the performance of its functions the citizen selected to represent the sovereign is in the exercise of both a private right or privilege and public duty, and a conspiracy to hinder, oppress, and injure him in the discharge of such functions cannot be regarded as directed solely against the official in his representative character, but must be considered as also against the citizen exercising or enjoying the right or privilege of accepting public employment and engaging in the administration of its functions. U. S. v. Patrick (C. C. 1893) 54 Fed. 338.

9. **Freedom from slavery or involuntary servitude.**—The right to freedom from slavery or involuntary servitude, except as a punishment for crime, is one secured to every person within the jurisdiction of the United States by the thirteenth constitutional amendment; and a conspiracy to deprive any citizen of such right is indictable under this section. Smith v. U. S. (1907) 157 Fed. 721, 85 C. C. A. 353, writ of certiorari denied (1908) 28 Sup. Ct. 569, 208 U. S. 618, 52 L. Ed. 647.

If two or more persons conspire to effect by false accusations their purpose of hiring, or enabling another to hire, a person after he is convicted of crime and put to hard labor, they are guilty, under R. S. § 5508 (embodied herein), if such accused person is a citizen of the United States, of a conspiracy to deprive him of the free exercise or enjoyment of a right or privilege secured to him by the Constitution of the United States. Peonage Cases (D. C. 1903) 123 Fed. 671.

10. **Protection against violence.**—The right of a citizen of the United States, in the custody of a United States marshal under a lawful commitment, to answer for an offense against the United States, to be protected against lawless violence, is a right "secured to him by the constitution or laws of the United States," within the meaning of this section. Logan v. U. S. (1892) 12 Sup. Ct. 617, 623, 144 U. S. 263, 36 L. Ed. 429.

11. **Speedy and public trial.**—When a citizen of the United States is committed to the custody of the United States marshal or to a state jail by process issuing from one of the courts of the United States, to be held, in default of bail, to await his trial, on a criminal charge, within the exclusive jurisdiction of the national courts, such citizen has a right, under the constitution and laws of the United States, to a speedy and public trial; and persons who conspire to deprive citizens of such rights are offenders under R. S. § 5508 (embodied herein), and if in the commission of such offense murder is committed by them, are liable to be tried and punished in the United States courts for such murder under R. S. § 5509. U. S. v. Logan (C. C. 1891) 45 Fed. 872.

12. **Right to testify.**—The right to testify before a federal grand jury without interference from private individuals is not one conferred by the constitution of the United States, within the meaning of R. S. § 5508 (embodied herein), and section 5509. U. S. v. Sanges (C. C. 1891) 48 Fed. 78, distinguishing Ex parte Yarbrough (1884) 110 U. S. 653, 4 Sup. Ct. 152, 28 L. Ed. 274; U. S. v. Waddell (1884) 112 U. S. 76, 5 Sup. Ct. 35, 28 L. Ed. 673; Same v. Lancaster (C. C. 1891) 44 Fed. 896, 10 L. R. A. 333.

13. **Right to inform officer of violation of law.**—It is the constitutional right of every private citizen of the United States to inform a marshal or his deputy of a violation of the internal revenue laws, and a conspiracy to injure, oppress, or intimidate him in the free enjoyment of this right, or because of his having exercised it, is punishable under this section. In re Quarles (1895) 15 Sup. Ct. 959, 961, 158 U. S. 532, 39 L. Ed. 1080.

14. **Right to lease and cultivate land.**—A conspiracy between two or more persons to prevent negro citizens from exercising the right to lease and cultivate land, because they are negroes, is a conspiracy to deprive them of a right secured to them by the Constitution and laws of the United States, within the meaning of this section. U. S. v. Morris (D. C. 1903) 125 Fed. 322.

15. **Perfection of title to public land.**—During the period that a settler on public lands is required by the laws of the United States to reside upon the land in order to perfect his title thereto, he is in the enjoyment of a right guaranteed to him by those laws, and a conspiracy to deprive him of that

right is a conspiracy to deprive him of a right guaranteed by the constitution and laws of the United States, and a crime, under this section. U. S. v. Waddell (C. C. 1883) 16 Fed. 221, determined on certificate (1884) 5 Sup. Ct. 35, 112 U. S. 76, 28 L. Ed. 673.

16. Defenses and bar to prosecution.—An acquittal of murder after a regular trial in a state court having full jurisdiction in the premises is a bar to so much of an indictment for conspiring criminally in violation of R. S. § 5508 (embodied herein), and section 5509, as seeks by charging defendants with the commission of such murder, to enforce the provision of said section 5509, that if, in carrying out such conspiracy, an offense against the state has been committed, the punishment provided for by the state for such offense shall be imposed. U. S. v. Mason (1909) 29 Sup. Ct. 480, 482, 213 U. S. 115, 53 L. Ed. 725.

On a prosecution for conspiracy to deprive colored citizens of the equal protection and privileges of the laws, it is no defense that such colored persons were charged by defendants or other with illegal acts or crimes. U. S. v. Blackburn (D. C. 1874) Fed. Cas. No. 14,603.

17. Indictment or information.—An indictment held not to present a case within this section. U. S. v. Cruikshank (1875) 92 U. S. 542, 543, 23 L. Ed. 588.

An information charging that one L. made a homestead entry on land; that, while residing on and cultivating said land for the purpose of perfecting his right to the same, defendants conspired to prevent him from exercising his rights, went upon said land in disguise, and with force and arms drove him from the same, charges an offense under this section. U. S. v. Waddell (1884) 5 Sup. Ct. 35, 36, 112 U. S. 76, 28 L. Ed. 673, certifying and determining cases (C. C. 1883) 16 Fed. 221.

An indictment under this section charging a conspiracy to prevent a person from entering upon a tract of public land and establishing a settlement thereon, which fails to describe the acts constituting the conspiracy, to describe the land or to aver that it was public land subject to entry, is insufficient. Haynes v. U. S. (1900) 101 Fed. 817, 42 C. C. A. 34.

An indictment under this section which charges that defendants conspired to injure, etc., certain named persons, male citizens of Kentucky over 21 years of age, "in the free exercise and enjoyment of a right and privilege secured to them," is bad as indefinite, in that it fails to state what particular right and privilege is meant, though it continues with a recital that defendants were officers of an election precinct, conspired together "for the purposes aforesaid," and "to carry out and effect the object of the same" failed to open the polls promptly, and by a tardy discharge of their duties and frequent absences prevented the persons named from voting. McKenna v. U. S. (1904) 127 Fed. 88, 62 C. C. A. 88.

In an indictment under this section for conspiracy to deprive a citizen of a right secured to him by the Constitution or laws of the United States, it is not necessary to aver any overt act, and any averment in such an indictment of acts done must necessarily be referred to the charge of conspiracy as describing or particularizing such charge. Smith v. U. S. (1907) 157 Fed. 721, 85 C. C. A. 353, writ of certiorari denied (1908) 28 Sup. Ct. 569, 208 U. S. 618, 52 L. Ed. 647.

An indictment which charges the accused, in the language of this section, with having conspired to injure and intimidate a citizen named in the free exercise of a right secured by the Constitution and laws, and avers that such right was the right to the free exercise and enjoyment of freedom from involuntary servitude, and that the conspiracy was to be effected by arresting, guarding, and compelling him by threats and intimidation to work against his will for the defendants, sufficiently describes the offense, and need not exclude the defendants from the operation of the exception in the thirteenth constitutional amendment by an averment that such person was not held in servitude as a punishment for crime. Id.

To convict for conspiracy under R. S. § 5508 (embodied herein), and section 5520, it is not necessary to find that the conspiracy charged was formed against the voter named in the indictment alone. U. S. v. Butler (C. C. 1877) Fed. Cas. No. 14,700.

A decree settling the title to land is a judicial and conclusive determination by the federal court that it had jurisdiction of the subject-matter and of the parties to the suit; and hence an indictment, which alleges that defendants conspired to prevent the complaining witness from enforcing the decree of the federal court, is not defective by reason of its failure to specially allege that the complaining witness is a citizen of a different state from defendants. U. S. v. Lancaster (C. C. 1890) 44 Fed. 885, 10 L. R. A. 233.

Neither is the indictment defective by reason of its failure to set out the decree which the complaining witness sought to enforce, or to specifically describe the federal statute which defendants violated by the formation of the conspiracy. Id.

Since R. S. § 5508 (embodied herein), defines and punishes a conspiracy against the civil rights of a citizen, and R. S. § 5509, provides for an additional punishment for a felony committed in pursuance thereof, an indictment which unites a count for conspiracy with an-

other count for murder committed in pursuance thereof is not bad for misjoinder. Id.

R. S. § 1977, ante, § 3925, declaring that all persons within the jurisdiction of the United States shall have the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other, will not support an indictment for a conspiracy by private individuals to injure and oppress a citizen for testifying before a federal grand jury, in the absence of allegations that such citizen was a person of color, or that the acts were committed because of his color and previous condition of servitude. U. S. v. Sanges (C. C. 1891) 48 Fed. 78, writ of error dismissed (1892) 12 Sup. Ct. 609, 144 U. S. 310, 36 L. Ed. 445.

An indictment under this section for conspiracy to "injure, oppress, threaten, or intimidate any citizen" in the free exercise of any right or privilege secured by the constitution or laws of the United States must aver that the persons conspired against were citizens, and it is insufficient merely to allege that they were officers conspired against in the discharge of their official duties. U. S. v. Patrick (C. C. 1892) 53 Fed. 356.

Revenue officers in search for spirits concealed to evade taxation, for the purpose of making seizure thereof, are exercising a right secured to them by the federal laws, and an indictment alleging the killing by defendants of such officers while exercising such right, and while defendants were engaged in a conspiracy to injure or oppress such officers, sufficiently charges the offense prescribed by R. S. § 5509, providing for the punishment of a felony committed in the act of violating R. S. § 5508 (embodied herein). U. S. v. Patrick (C. C. 1893) 54 Fed. 338.

Where an indictment charged that defendants conspired to injure, oppress, threaten, and intimidate B., a citizen of the United States, in the free exercise of his privilege of contracting and being contracted with, his right of personal security and personal liberty, and the overt act charged was the seizing of B., the placing of handcuffs on him, and compelling him, by force and against his will, to enter into a pretended contract to work for a long period of time for the defendant, the indictment did not state an offense within the jurisdiction of the federal courts, under this section; the citizen's right to personal liberty and security being within the primary jurisdiction of the state. U. S. v. Eberhart (C. C. 1899) 127 Fed. 254.

Under this section an indictment charging one with having conspired to injure, oppress, threaten, and intimidate a United States marshall and his posse, and to deprive them of their constitutional right to arrest him on legal process, and resulting in the killing of the deputy marshall, is not objectionable as charging defendant with both conspiracy and murder. U. S. v. Davis (C. C. 1900) 103 Fed. 457.

An indictment is sufficient, under this section, which charges the defendants with conspiring to injure, oppress, threaten, and intimidate certain colored men in the exercise of their right to vote, to which they were legally entitled, on account of their race and color, and need not charge, in terms, that the right injured was the right not to be discriminated against on account of race, color, or previous condition of servitude. U. S. v. Lackey (D. C. 1900) 99 Fed. 952.

An indictment charging a conspiracy to deprive negro voters of their right to vote at a congressional election, in violation of this section, need not allege the names of the negro voters whom defendants intended to injure. U. S. v. Stone (D. C. 1911) 188 Fed. 836.

An indictment, alleging that accused aided and abetted two persons named who conspired to deprive citizens of their right to vote at a congressional election by printing the ballots for the other two with knowledge of their purpose, is sufficient as against a demurrer. Id.

18. Evidence.—In a prosecution for conspiracy under R. S. § 5508 (embodied herein), and section 5509, the alleged purpose of which was to prevent the arrest of defendant and others for violating the revenue laws, and including the crime of murder in aggravation thereof, a neighbor of defendant was allowed to testify that at the time when the officers attempted defendant's arrest, and a deputy marshal was killed, defendant had a still, which at one time was east of his house, and then on the west side thereof. Another witness testified that he frequently visited defendant's house before the deputy was killed, and bought whisky of him; that he let defendant know he wanted it, and would lay his money down in a certain place, and after going back would find a bottle of whisky there and the money gone. Deputy marshals were allowed to testify that on a visit which they made to defendant's place a year or two before the occurrence in question they found whisky in jugs concealed about the premises, and that, on attempting to continue their search down a ravine leading from defendant's house, the latter and another appeared with guns, and compelled them to turn back. Held, that this evidence was properly admitted to prove the object and purpose of the conspiracy, and explain defendant's motive in entering into it, and in resisting the officers by firing on them and killing one of their number.

Davis v. U. S. (1901) 107 Fed. 753, 46 C. C. A. 619.

Where, in a prosecution for conspiracy under R. S. § 5508 (embodied herein), and section 5509, the evidence shows a detail of circumstances in which the alleged conspirators are involved, separately or collectively, and which is clearly referable to a preconcert of the actors, and there is a moral probability that they would not have occurred as they did without such preconcert, it is sufficient, if it satisfies the jury beyond a reasonable doubt. Id.

Evidence held to sustain a conviction of defendants for violation of the Civil Rights Law, by conspiring to prevent colored persons from voting on account of their race and color. Guinn v. U. S. (1915) 228 Fed. 103, 142 C. C. A. 509.

Evidence held properly excluded in a prosecution for violation of this section by conspiring to prevent colored persons from voting at a congressional election. Id.

A conspiracy to deprive colored citizens of the equal protection and privileges of the law is proved by evidence that the colored people of a certain township were entitled to a public school, and that defendants conspired by illegal means to deprive such colored persons, as a class, and on account of their color, of such school by intimidation. U. S. v. Blackburn (D. C. 1874) Fed. Cas. No. 14,603.

19. Instructions and questions for jury.—No error was committed in instructing the jury in a prosecution of state election officials under this section for conspiring to deprive legal citizens of their right to vote that the 1910 amendment of Const. Okl. art. 3, § 4a, was repugnant to Const. Amend. 15. Guinn v. U. S. (1915) 35 Sup. Ct. 926, 238 U. S. 347, 59 L. Ed. 1340.

In a prosecution under R. S. § 5508 (embodied herein), and section 5509, for conspiracy, the alleged purpose of which was to prevent the arrest of defendant and others for violating the revenue laws, including a charge of murder in aggravation thereof, the court, having particularly in mind the period within which the conspiracy might have been formed prior to its execution, charged that it would be sufficient to establish it if defendant knew that the United States officials were coming for his lawful apprehension and arrest, and that then and there he and those associated with him, or any one or more of them, and named as his coconspirators in the indictment, determined to resist the proposed or threatened arrest by force of arms, if necessary, or by flight; or if previously to that, at a time more or less remote, defendant and the alleged conspirators, any one or more of them, knew that the officers were coming wherever he might be, with lawful process to arrest defendant, and determined that they would resist, by his flight and their assistance to that end, or by force of arms, if necessary. Held, that the jury must have understood that the conspiracy, to be within the statute, must have included an agreement to resist the arrest of accused by force of arms, if the attempt to effect his escape by flight should fail, and that, thus construed, the instruction was not erroneous. Davis v. U. S. (1901) 107 Fed. 753, 46 C. C. A. 619.

On the trial of defendants charged with conspiracy to deprive a person named of his rights under the Constitution and laws of the United States by subjecting him to involuntary servitude, there was evidence that one of the defendants went to Memphis, Tenn., and there hired 15 or more negroes to go with him to his place in Missouri to work in a mill, promising liberal wages. On their arrival in the night, they were met at the station by another of the defendants with hacks and taken to a farm 12 miles distant, where they were searched for weapons, and then placed in a cabin under the guard of others of the defendants, armed with repeating rifles and revolvers. They were kept under such guards night and day, and worked on the farm in clearing and ditching, were subjected to brutal punishments, and few, if any, received the promised wages. Some who succeeded in escaping were brought back by some of defendants armed with guns. Each of the defendants convicted participated in some way in such transactions, either as owner of the farm, overseer, or guards. Held, that such evidence was sufficient to warrant the submission of the case to the jury, and to support a finding of conspiracy as charged. Smith v. U. S. (1907) 157 Fed. 721, 85 C. C. A. 353, writ of certiorari denied (1908) 28 Sup. Ct. 569, 208 U. S. 618, 52 L. Ed. 647.

20. Conviction of conspiracy where felony is not proved, and vice versa.—R. S. § 5508 (embodied herein), and section 5509 do not contemplate two distinct offenses against the United States; the conspiracy only being of federal cognizance, and made punishable, and the other crime being merely an aggravation thereof, so that if the conspiracy is not proved there can be no conviction for the felony. Davis v. U. S. (1901) 107 Fed. 753, 46 C. C. A. 619.

Although one charged with conspiracy to intimidate citizens in the exercise of their civil rights, in violation of this section, and with murder as the result of such conspiracy, be acquitted of the murder, he may yet be punished for the conspiracy, if that charge is established. U. S. v. Davis (C. C. 1900) 103 Fed. 457.

21. Punishment.—A sentence to imprisonment for life for conspiracy accompanied with murder in violation of R. S. § 5508 (embodied herein), and

section 5509 was not in excess of the authority of the circuit court, although the verdict of the jury did not indicate the punishment as required by the state statute in case of murder, since Act Jan. 15, 1897 (section 10504, post), abolishing the penalty in such cases, provided for life imprisonment. Motes v. U. S. (1900) 20 Sup. Ct. 993, 995, 178 U. S. 458, 44 L. Ed. 1150.

Cited without definite application. Mackin v. U. S. (1886) 6 Sup. Ct. 777, 779, 117 U. S. 348, 29 L. Ed. 909; In re Lancaster (1890) 11 Sup. Ct. 117, 137 U. S. 393, 34 L. Ed. 713; Wiley v. Sinkler (1900) 21 Sup. Ct. 17, 19, 179 U. S. 58, 45 L. Ed. 84; Riggins v. U. S. (1905) 26 Sup. Ct. 147, 149, 199 U. S. 547, 50 L. Ed. 303; Hodges v. U. S. (1906) 27 Sup. Ct. 6, 7, 11, 16, 17, 203 U. S. 1, 51 L. Ed. 65; Rakes v. U. S. (1909) 29 Sup. Ct. 244, 245, 212 U. S. 55, 53 L. Ed. 401; Lackey v. U. S. (1901) 107 Fed. 114, 117, 119, 46 C. C. A. 189, 53 L. R. A. 660 (writ of certiorari denied [1901] 21 Sup. Ct. 925, 181 U. S. 621, 45 L. Ed. 1032); Wright v. U. S. (1901) 108 Fed. 805, 48 C. C. A. 37 (writ of certiorari denied [1901] 21 Sup. Ct. 924, 181 U. S. 620, 45 L. Ed. 1031); U. S. v. Patterson (C. C. 1893) 55 Fed. 605, 638; Ex parte Riggins (C. C. 1904) 134 Fed. 404 (reversed [1905] 26 Sup. Ct. 147, 199 U. S. 547, 50 L. Ed. 303); Brawner v. Irvin (C. C. 1909) 169 Fed. 964.

§ 10184. (Crim. Code, § 20.) Depriving citizens of civil rights under color of State laws, etc.; punishment for.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

R. S. § 5510. Act March 4, 1909, c. 321, § 20, 35 Stat. 1092.

Notes of Decisions

Statute as penal.—This section is a penal statute, the infringement of which will not give rise to a civil action for damages. Brawner v. Irvin (C. C. 1909) 169 Fed. 964.

Effect as to limitations as to action for assault to prevent voting.—The one-year limitation prescribed by Civ. Code La. art. 3536, for actions for damages, and not the five-year limitation prescribed by R. S. § 1047, ante, § 1712, against penalties and forfeitures, must govern a civil action for an assault committed in attempting to prevent plaintiff from voting, contrary to title 24 of the Revised Statutes (this compilation, tit. 24), securing equal rights to citizens, in view of the provisions of R. S. §§ 1979–1981, 5508, 5510 (this compilation, §§ 3932–3934, 10183, 10184), which provide criminal proceedings and punishment for the public wrong, and actions in law or equity for the redress of any private injury, without prescribing any specific limitation for such actions. O'Sullivan v. Felix (1914) 34 Sup. Ct. 596, 233 U. S. 318, 58 L. Ed. 980.

Depriving colored child of right to attend school.—To warrant conviction for depriving a colored child of the right to attend the public school, defendant must have excluded such child under color of a law, statute, or custom of a state, and on account of his color. U. S. v. Buntin (C. C. 1882) 10 Fed. 730.

Special schools may be provided for colored children, but they must be reasonably accessible, and must afford substantially equal educational advantages with those provided for white children. Id.

Indictment for conspiracy to violate statute.—An indictment, charging a violation of section 10201, post, punishing a conspiracy to commit the offense punishable by this section, which alleges that a state law requires that the official ballots in a designated part of the state shall be arranged in alphabetical order with a designation of the political party, and that sample ballots must be posted before the election, and that in other parts of the state the supervisors of election may arrange the names of the candidates in any order without party designation and without furnishing sample ballots, that the Legislature in enacting the law intended to give the supervisors of election of the counties where the negro population is large the opportunity to so arrange the ballots as to deprive negro voters of the right to vote, and that defendants by the form of the ballots adopted made it extremely difficult for negro voters to vote their choice at a congressional election, etc., is sufficient as against a demurrer, though it does not allege that the state statute is, on its face, directed against negro voters, and does not disclose an intent to discriminate against negro voters. U. S. v. Stone (D. C. 1911) 188 Fed. 836.

Defense to indictment under statute.—That defendant acted in good faith

and under advice of counsel is no defense to an indictment under this section. U. S. v. Buntin (C. C. 1882) 10 Fed. 730.

That the defendant acted in good faith in excluding a colored child from a public school, and under the advice of counsel, is no defense, although such evidence would address itself strongly to the discretion of the court in mitigation of punishment. Id.

Evidence.—In a prosecution under this section for depriving a colored child of the right to attend a public school, evidence of the good character of defendant is immaterial. U. S. v. Buntin (C. C. 1882) 10 Fed. 730.

Cited without definite application, Civil Rights Cases (1883) 3 Sup. Ct. 18, 25, 109 U. S. 3, 27 L. Ed. 835; Mackin v. U. S. (1886) 6 Sup. Ct. 777, 779, 117 U. S. 348, 29 L. Ed. 909; Hodges v. U. S. (1906) 27 Sup. Ct. 6, 7, 11, 203 U. S. 1, 51 L. Ed. 65; In re Parrott (C. C. 1880) 1 Fed. 481, 520; U. S. v. Jackson (C. C. 1885) 25 Fed. 548, 549; U. S. v. Cobb (D. C. 1890) 43 Fed. 570, 571.

§ 10185. (Crim. Code, § 21.) Conspiring to prevent officer from performing duties; punishment for.

If two or more persons in any State, Territory, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, Territory, District, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than five thousand dollars, or imprisoned not more than six years, or both.

R. S. § 5518. Act March 4, 1909, c. 321, § 21, 35 Stat. 1092.

Notes of Decisions

Exercise of official right or privilege.—R. S. § 5518 (embodied herein), is in perfect harmony with R. S. § 5508, ante, § 10183, and R. S. § 5509, and tends to show that Congress intended by such sections to include the case of a citizen in the exercise of a right or privilege appertaining to official station or function. U. S. v. Patrick (C. C. 1893) 54 Fed. 338, 350.

Performance of duty by revenue officer.—A conspiracy is the corrupt agreeing together of two or more persons to do, by concerted action, something unlawful, either as a means or an end; and one who conspires with others to injure by force, or threaten or intimidate, a revenue officer, while searching for an illicit distillery, or to prevent him from continuing the discharge of his duty with respect thereto, is punishable under this section. U. S. v. Johnson (C. C. 1885) 26 Fed. 682.

Variance between indictment and proof.—Where the indictment charges that the conspiracy is to injure and hinder a certain deputy collector of internal revenue in the discharge of his duties, by firing at him, and the proof shows that the firing was directed at the posse to which he belonged, and of which he was in command, he being present, there is no variance. U. S. v. Johnson (C. C. 1885) 26 Fed. 682.

Acquittal of conspiracy as bar to trial for other offense.—Where defendants were indicted for disturbing the peace of the family of a person named, the fact that one of the defendants had been acquitted of conspiring to injure the same person on account of his lawful discharge of his official duties, under this section, is no bar to the trial, as the two offenses differed in character, in their essential facts, and in the evidence necessary to establish them. Wilcox v. U. S. (1908) 161 Fed. 109, 88 C. C. A. 273.

Where an assault and battery had been committed on an officer, an acquittal, under an indictment under this section charging a conspiracy to commit the assault and battery, was not a bar to a prosecution for disturbing the peace and quiet of a family in whose presence the assault and battery was committed. Wilcox v. U. S. (Ind. T. 1907) 103 S. W. 774.

Cited without definite application, Mackin v. U. S. (1886) 6 Sup. Ct. 777, 779, 117 U. S. 348, 29 L. Ed. 909; Wright v. U. S. (1901) 108 Fed. 805, 48 C. C. A. 37, writ of certiorari denied (1901) 21 Sup. Ct. 924, 181 U. S. 620, 45 L. Ed. 1031.

§ 10186. (Crim. Code, § 22.) Unlawful presence of troops at polls; punishment for.

Every officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, who orders,

brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held in any State, unless such force be necessary to repel armed enemies of the United States, shall be fined not more than five thousand dollars and imprisoned not more than five years.

R. S. § 5528. Act March 4, 1909, c. 321, § 22, 35 Stat. 1092.

Cited without definite application,
Mackin v. U. S. (1886) 6 Sup. Ct. 777, 779, 117 U. S. 348, 29 L. Ed. 909.

§ 10187. (Crim. Code, § 23.) Intimidating voters by Army or Navy officers, etc.; punishment for.

Every officer or other person in the military or naval service of the United States who, by force, threat, intimidation, order, advice, or otherwise, prevents, or attempts to prevent, any qualified voter of any State from freely exercising the right of suffrage at any general or special election in such State shall be fined not more than five thousand dollars and imprisoned not more than five years.

R. S. § 5529. Act March 4, 1909, c. 321, § 23, 35 Stat. 1092.

Cited without definite application,
Mackin v. U. S. (1886) 6 Sup. Ct. 777, 779, 117 U. S. 348, 29 L. Ed. 909.

§ 10188. (Crim. Code, § 24.) Army or Navy officers prescribing qualifications of voters.

Every officer of the army or navy who prescribes or fixes, or attempts to prescribe or fix, whether by proclamation, order, or otherwise, the qualifications of voters at any election in any State shall be punished as provided in the preceding section.

R. S. § 5530. Act March 4, 1909, c. 321, § 24, 35 Stat. 1092.

Cited without definite application,
Mackin v. U. S. (1886) 6 Sup. Ct. 777. 779, 117 U. S. 348, 29 L. Ed. 909.

§ 10189. (Crim. Code, § 25.) Interfering with election officers by Army or Navy officers, etc.

Every officer or other person in the military or naval service of the United States who, by force, threat, intimidation, order, or otherwise, compels, or attempts to compel, any officer holding an election in any State to receive a vote from a person not legally qualified to vote, or who imposes, or attempts to impose, any regulations for conducting any general or special election in a State different from those prescribed by law, or who interferes in any manner with any officer of an election in the discharge of his duty, shall be punished as provided in section twenty-three.

R. S. § 5531. Act March 4, 1909, c. 321, § 25, 35 Stat. 1092.

Cited without definite application,
Mackin v. U. S. (1886) 6 Sup. Ct. 777, 779, 117 U. S. 348, 29 L. Ed. 909.

§ 10190. (Crim. Code, § 26.) Additional punishment; suffrage by officers, etc., not impaired.

Every person convicted of any offense defined in the four preceding sections shall, in addition to the punishment therein prescribed, be disqualified from holding any office of honor, profit, or trust under the United States; but nothing therein shall be construed to prevent any officer, soldier, sailor, or marine from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote.

R. S. § 5532. Act March 4, 1909, c. 321, § 26, 35 Stat. 1093.

Cited without definite application,
Mackin v. U. S. (1886) 6 Sup. Ct. 777, 779, 117 U. S. 348, 29 L. Ed. 909.

CHAPTER FOUR

Offenses against the Operations of the Government

Sec.
10191. Forging, etc., letters patent; punishment for.
10192. Forging bonds, bids, public records, etc.; transmitting forged, etc., papers; punishment for.
10193. Forging deeds, powers of attorney, etc.; transmitting forged, etc., papers; punishment for.
10194. Having false, etc., papers in possession; punishment for.
10195. Officer making false acknowledgments; punishment for.
10196. Falsely pretending to be United States officer; punishment for.
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§ 10191. (Crim. Code, § 27.) Forging, etc., letters patent; punishment for.

Whosoever shall falsely make, forge, counterfeit, or alter any letters patent granted or purporting to have been granted by the President of the United States; or whoever shall pass, utter, or publish, or attempt to pass, utter, or publish as genuine, any such forged, counterfeited, or falsely altered letters patent, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

R. S. § 5416. Act March 4, 1909, c. 321, § 27, 35 Stat. 1094.

Cited without definite application, U. S. v. Crecilius (D. C. 1888) 34 Fed. 30, 32; U. S. v. Lehman (D. C. 1889) 39 Fed. 768, 770.

§ 10192. (Crim. Code, § 28.) Forging bonds, bids, public records, etc.; transmitting forged, etc., papers; punishment for.

Whoever shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid, or assist in the false making, altering, forging, or counterfeiting, any bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing for the purpose of defrauding the United States; or shall utter or publish as true, or cause to be uttered or published as true, or have in his possession with the intent to utter or publish as true, any such false, forged, altered, or counterfeited bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing, for the purpose of defrauding the United States, knowing the same to be false, forged, altered, or counterfeited; or shall transmit to, or present at, or cause or procure to be transmitted to, or presented at, the office of any officer of the United States, any such false, forged, altered, or counterfeited bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered, or counterfeited, for the purpose of defrauding the United States, shall be fined not more than one thousand dollars, or imprisoned not more than ten years, or both.

R. S. §§ 5418, 5479. Act March 4, 1909, c. 321, § 28, 35 Stat. 1094.

Notes of Decisions

1. Offense in general.
2. Invalid instrument as basis of forgery.
3. False or forged affidavits in general.
4. Homestead applications and affidavits.
5. Proof of pre-emption claim.
6. Proof of timber culture entry.
7. Application to civil service commission.
8. Certificate of residence.
9. Writing used in entering goods at custom house.
10. Military land warrant.
11. Insertion of false item in blank receipt.
12. Forgery of note to deceive bank examiner.
13. Alteration of engineer's license.
14. Indictment.
15. Evidence.

See, also, § 10317 et seq., post, and notes thereunder.

1. Offense in general.—The offense defined in the act of April 5, 1866 (R. S. § 5418 [embodied herein]), consists in

the false and fraudulent making, altering, forging, or counterfeiting of any bid, proposal, guaranty, or any instrument or document named in the statute, and does not consist in the making of a false or fraudulent instrument or document. In the first case the crime is forgery, while in the latter it would be perjury; and this distinction must regulate the allegations and proof in each case. U. S. v. Wentworth (C. C. 1882) 11 Fed. 52.

It is not lawful for an official to accept an office and then use false means and methods to obtain money for carrying it on, as by certifying charges for boat services, the expenses of janitor's fees, carriage hire, ice, gas, etc., in order to obtain money from one department for services which had been rendered in another, and for the payment of which the government has made no provision. U. S. v. Houghton (D. C. 1882) 14 Fed. 544.

The false writing spoken of in R. S. § 5421, post, § 10193, which provides that every person "who utters or publishes as true, or causes to be uttered or published as true, any * * * false, forged, altered, or counterfeited * * * writing, with intent to defraud the United States," shall be imprisoned, etc., includes one false in respect of the facts embodied therein, as well as one forged or counterfeited. U. S. v. Spaulding (1882) 3 Dak. 85, 13 N. W. 357.

2. Invalid instrument as basis of forgery.—See, also, notes post.

Where a false instrument is so absolutely invalid that it cannot defraud or injure under any circumstances, it may not form the basis of the charge of forgery, or of transmitting it to an officer to defraud the United States. Neff v. U. S. (1908) 165 Fed. 273, 91 C. C. A. 241.

3. False or forged affidavits in general.—A notary public has no authority to administer an oath such as is required by the statute, to a deputy surveyor, and to take and certify his affidavit, in regard to the manner in which he had fulfilled a contract for surveying, to be used in procuring pay for such services. U. S. v. Hall (1889) 9 Sup. Ct. 663, 131 U. S. 50, 33 L. Ed. 97.

Nor has a commissioner of the circuit court authority to administer such an oath. U. S. v. Reilly (1889) 9 Sup. Ct. 664, 131 U. S. 58, 33 L. Ed. 75.

One presenting accounts to the government cannot be convicted under R. S. §§ 5418, 5479 (embodied herein), for forging the name of a justice of the peace to the affidavit attached thereto, unless it be done to defraud the United States. Staton v. U. S. (1898) 88 Fed. 253, 31 C. C. A. 521.

A forged affidavit received in evidence by the officers of a land office in the trial to a claim to land may deceive them and defraud the United States, and hence may become the basis of a conviction under R. S. § 5418 (embodied herein), because a patent issued upon it could not be collaterally attacked, and the United States would be estopped from avoiding it by a direct attack after the title passed to an innocent purchaser. If the land was beyond the jurisdiction of the land department, the transmission of such an affidavit to its officers could not defraud the United States or form the basis of a conviction. Neff v. U. S. (1908) 165 Fed. 273, 278, 91 C. C. A. 241.

Where under any contingency a false affidavit may have the effect to deceive and defraud, it is sufficient to found a conviction of forgery. Id.

An affidavit is sufficient as a basis of conviction for forgery if it is apparently valid on its face, though extrinsic facts may exist that will render it void or ineffective if genuine. Id.

It is not indispensable to a conviction for transmitting a forged affidavit to an officer to defraud the United States, or to a conviction of forgery, or of uttering a forged instrument, that the affidavit, the forgery, or the uttering shall be sufficient, without other evidence or acts, to win the controversy or to accomplish the object of the wrongful act, but it is sufficient that it may aid to bring about such a result. Id.

The regulations of June 30, and September 1, 1880, by which the land department of the United States in conjunction with the state of Oregon undertook, by means of agents, to examine the character of the lands claimed by the state under the swamp-land grant, superseded the regulation of the commissioner of the general land office of March 13, 1875, providing that when selections are made by state agents they are to be forwarded to the United States surveyor general, with evidence of the swampy character of the land; and thereafter no affidavit could be legally used before the commissioner or secretary of the interior on the question, other than those of the agents employed to make examination; and therefore affidavits of a private person could not have been legally used to defraud the United States, under R. S. § 5418 (embodied herein), relating to the offense of forgery with intent to defraud the government. U. S. v. Barnhart (D. C. 1887) 33 Fed. 459.

4. Homestead applications and affidavits.—The forgery of homestead applications and affidavits, with intent to thereby obtain title to public lands of the United States, constitutes an offense, under R. S. § 5418 (embodied herein), although the land was described as "in township 24 south of range 1 east," without naming the meridian, where in fact all the townships in the state are numbered from the same meridian, and the description was therefore sufficient to identify the lands to

the officers acting on the papers, and such papers were capable of effecting the intended fraud. U. S. v. McKinley (C. C. 1903) 127 Fed. 166.

5. **Proof of pre-emption claim.**—The making of an affidavit on final proof of a pre-emption claim containing false statements is not a crime, under R. S. § 5479 (embodied herein), which provides that, "if any person shall falsely make, alter, forge, * * * any bond, * * * affidavit, or other public writing, for the purpose of defrauding the United States, * * * he shall be punishable," etc.; such statute referring to the false making of an instrument purporting to be the act of another, which it is not. U. S. v. Cameron (1882) 3 Dak. 132, 13 N. W. 561.

6. **Proof of timber culture entry.**—A forged affidavit regarding a material fact erroneously received in evidence by the officers of the local land office in the trial of a claim to land within their jurisdiction may deceive the United States so as to form a basis for a conviction under R. S. § 5418 (embodied herein), because a patent issued on it by the Land Department will not be subject to collateral attack and the United States will be estopped in recovering it, even by direct attack after the title had passed to an innocent third party. Neff v. U. S. (1908) 165 Fed. 273, 91 C. C. A. 241.

Where land and a claim to the same were beyond the jurisdiction of the Land Department, the transmission of a forged affidavit regarding the material fact connected with such land to the officers of the Land Department could not defraud the United States nor form a basis for conviction under R. S. § 5418 (embodied herein). Id.

A forged affidavit which appeared on its face to have been taken more than 10 days after the date named in the notice of the taking of final proofs for a timber culture entry which was transmitted to the officers of the local land office by defendant and was received and approved by them as a part of the proof was sufficient to form the basis for a conviction of forgery under R. S. § 5418 (embodied herein). Id.

A forged affidavit which was sufficient to aid in making final proofs of a timber culture entry, but insufficient in itself to make the proof, was enough to form a basis for a conviction under R. S. § 5418 (embodied herein). Id.

7. **Application to civil service commission.**—An applicant for a government clerkship filed a sworn application in the form required for an examination by the civil service commission, and was afterwards notified by postal card to appear for examination at a time stated. By previous arrangement, another person, impersonating the applicant, presented himself for examination, and filled out a paper known as the "Declaration Sheet," which contained questions concerning the applicant, and signed the applicant's name thereto. Held, that these two persons were indictable, under R. S. §§ 5440, 5418 (this compilation, §§ 10192, 10201), which denounce respectively the offense of conspiring to commit any offense against the United States or to defraud the United States, and the offense of falsely making, altering, or forging various enumerated papers, including affidavits or other writings, for the purpose of defrauding the United States. U. S. v. Bunting (D. C. 1897) 82 Fed. 883.

The making and swearing to an application to the United States civil service commission for examination for appointment in the civil service, containing willfully false statements is indictable under R. S. § 5479 (embodied herein), declaring it indictable for any person to transmit to or present at the office of any officer of the United States any false affidavit, or other writing knowing it to be false, for the purpose of defrauding the United States. U. S. v. Johnson (1905) 26 App. D. C. 136.

8. **Certificate of residence.**—The making of a blank form of a certificate of residence, such as when filled are issued by the United States to Chinese entitled to remain in the country, is not within R. S. § 5418 (embodied herein), making it a crime to counterfeit any writing for the purpose of defrauding the United States. U. S. v. Ah Won (C. C. 1899) 97 Fed. 494.

9. **Writing used in entering goods at custom house.**—Forgery of writings used in entering goods at the customhouse is punishable under R. S. § 5418 (embodied herein), relating to forgery of certain writings named, or "other writing." U. S. v. Lawrence (C. C. 1875) Fed. Cas. No. 15,572.

10. **Military land warrant.**—A military land warrant is neither an indenture nor a public security, within the meaning of the Crimes Act of March 3, 1825, § 17, relating to forgery. U. S. v. Irwin (C. C. 1851) Fed. Cas. No. 15,445.

11. **Insertion of false item in blank receipt.**—The insertion of a false item in a blank receipt for money, used as a voucher in a disbursing officer's accounts certified by him to be correct, with intent to defraud the United States, is a criminal offense, under R. S. §§ 5418, 5421, 5479 (this compilation, §§ 10192, 10193), whether forgery at common law or not. Howgate v. U. S. (1895) 7 App. D. C. 217.

12. **Forgery of note to deceive bank examiner.**—The forgery of a note for the purpose of deceiving a national bank examiner held not within this statute. Cross v. North Carolina (1889) 10 Sup. Ct. 47, 132 U. S. 131, 33 L. Ed. 287.

13. **Alteration of engineer's license.**—The alteration of a license of an engi-

neer of steam vessels issued under R. S. § 4441, ante, § 8203, is not an offense within R. S. §§ 5418, 5479, or 5423 (this compilation, §§ 10192, 10240). Revocation of the license, under R. S. § 4450, ante, § 8212, seems to be the only punishment provided by law for such case. (1890) 19 Op. Atty. Gen. 649.

14. **Indictment.**—An indictment charging that defendant forged the name of a justice of the peace to accounts presented by him to the government accounting officers, "with intent to defraud the United States," must be regarded as based on R. S. §§ 5418, 5479 (embodied herein), and not on R. S. § 5421, post, § 10193, which denounces the making, altering, forging, etc., of papers, for the purpose of "obtaining or receiving * * * from the United States or any of their officers or agents any sum of money." Staton v. U. S. (1898) 88 Fed. 253, 31 C. C. A. 521.

An indictment for forging a writing with intent to defraud the United States is sufficient to charge the offense, so far as concerns the nature of the instrument, if it is made to appear that it is one by which the government might have been defrauded, and it need not aver the existence of extraneous facts which would or might be necessary to that result. Meldrum v. U. S. (1907) 151 Fed. 177, 80 C. C. A. 545, 10 Ann. Cas. 324, affirming judgment U. S. v. Meldrum (D. C. 1906) 146 Fed. 390.

An indictment which charges the defendant with having feloniously and falsely made and forged and uttered a certain affidavit purporting to be the affidavit of a person named, a pretended settler on unsurveyed public lands, and which sets out the affidavit, in which it is stated that affiant is such settler, has made improvements, etc., and then charges that it was so made by defendant with intent to file the same in the office of a Surveyor General of the United States to be used as a basis for letting a contract for surveying said lands described therein, and with the further intent that it should be transmitted to the General Land Office for the purpose of obtaining the approval of and payment for said survey, charges an offense of forging a writing for the purpose of obtaining, or enabling others to obtain, money from the United States. Id.

In an indictment, under Act March 2, 1831, § 11, for uttering a forged check, it is not necessary to aver that such uttering was "to the prejudice of the right of any other person," or that the check was "a paper writing or printed paper." U. S. v. McCarthy (C. C. 1841) Fed. Cas. No. 15,656.

This question discussed. U. S. v. Larned (C. C. 1833) Fed. Cas. No. 15,566.

In an indictment under R. S. § 5418 (embodied herein), for forging writings used in entering goods at the customhouse, it is unnecessary to aver the existence of the goods mentioned in the writings. U. S. v. Lawrence (C. C. 1875) Fed. Cas. No. 15,572.

An indictment which charges that a genuine pension check drawn by an authorized officer of the United States on an assistant treasurer, directing the payment of money, was altered and forged by the name of the payee being forged and fraudulently placed thereon as his indorsement, and that defendant knowingly and fraudulently uttered and published it as true, with intent thereby to defraud the United States, does not state an offense within R. S. § 5418 (embodied herein), because it does not sufficiently describe any altered, forged, or counterfeited writing, for the purpose of defrauding the United States. U. S. v. Albert (C. C. 1891) 45 Fed. 552.

The rule which requires a setting out of an entire instrument or its tenor in an indictment in the federal courts is limited mainly, if not wholly, to cases of forgery, counterfeiting, and sending threatening letters. U. S. v. Heinze (C. C. 1908) 161 Fed. 425.

It is not a ground for quashing an indictment under R. S. § 5479 (embodied herein), for aiding and procuring one to make a false affidavit for the purpose of procuring a pension, that the affidavit was in fact made before a proper officer, as that section applies also to the offense of using a genuine instrument containing false statements, knowing them to be false, with intent to defraud the United States. U. S. v. Gowdy (D. C. 1889) 37 Fed. 332.

An indictment for making, or procuring to be made, a false affidavit, must allege specifically in what the falsity consists, and connect defendant therewith. U. S. v. Moore (D. C. 1894) 60 Fed. 738; Id. 740.

An indictment under R. S. § 5418 (embodied herein), for transmitting to the office of the commissioner of pensions a false and altered affidavit, with intent to defraud the United States, is fatally defective, where it fails to charge that the affidavit was transmitted with relation to, or in support of, a claim against the United States, or to aver facts from which the court can find that the United States could be prejudiced in any way thereby. U. S. v. Van Leuven (D. C. 1894) 62 Fed. 69.

The insertion of a false item in a blank receipt for money, used as a voucher in a disbursing officer's accounts certified by him to be correct, with intent to defraud the United States, being a criminal offense, under R. S. §§ 5418, 5421, 5479 (this compilation, §§ 10192, 10193), whether forgery at common law or not, an indictment which charges such offense in the words of the statute, and which sets forth the circumstances, is good. Howgate v. U. S. (1895) 7 App. D. C. 217.

Where an indictment under R. S. §

5479 (embodied herein), for falsely making and forging an application to the United States Civil Service Commission for examination for employment in the civil service, charged the accused by implication only with making a false answer to a question in the application, such defect was not cured by verdict, where a demurrer to the count containing it was overruled. U. S. v. Johnson (1905) 26 App. D. C. 136.

Where an indictment under R. S. § 5479 (embodied herein), for falsely making and forging an application to the United States civil service commission for examination for employment in the civil service, charged the accused, by implication only, with making a false answer to a question in the application, a motion by the accused in arrest of judgment is properly granted, even though it may be said that the effect of the charge in the indictment is sufficiently clear to be unmistakable to the ordinary intelligence. Id.

An averment that a note was forged with intent to defraud the United States is necessary to withdraw the forgery from the general jurisdiction of the state courts. State v. White (1888) 101 N. C. 770, 7 S. E. 715.

15. **Evidence.**—On the trial of an indictment charging the defendant with the forgery of a bid for a mail-carrying contract, it was not error to admit in evidence another bid shown by the undisputed evidence to have been forged by the defendant at the same time as the one for which he was indicted. Pirscher v. U. S. (1904) 133 Fed. 526, 67 C. C. A. 660.

Witnesses skilled in handwriting will not be permitted to give their opinion, upon inspection of the papers, whether the forgery was done by defendant. U. S. v. Prout (C. C. 1833) Fed. Cas. No. 16,094.

In an action against defendants for an attempt to defraud the government by procuring pensions on false and fraudulent affidavits, the application for the pension is properly admitted in evidence to show the use to which the false affidavits were to be applied, and to prove the intent. U. S. v. Wentworth (C. C. 1882) 11 Fed. 52.

In order to a conviction of the offense defined in section 5418, R. S. (embodied herein), the jury must be satisfied beyond a reasonable doubt (1) that the time and pay roll described in the indictment was a false, forged, and counterfeit writing; (2) that the same was transmitted to the proper officer of the government by the defendant; and (3) that the false character of the writing was known by the defendant at the time of the sending, and that it was sent with the intent to defraud the United States. U. S. v. Houghton (D. C. 1882) 14 Fed. 544.

Cited without definite application, U. S. v. Davis (1913) 34 Sup. Ct. 112, 231 U. S. 183, 58 L. Ed. 177; Pooler v. U. S. (1904) 127 Fed. 509, 62 C. C. A. 307; U. S. v. Owen (D. C. 1887) 32 Fed. 534, 538; U. S. v. Crecilius (D. C. 1888) 34 Fed. 30, 32; U. S. v. Lehman (D. C. 1889) 39 Fed. 768, 770; U. S. v. Hartman (D. C. 1894) 65 Fed. 490, 491; U. S. v. Haas (D. C. 1906) 167 Fed. 211; Woog v. U. S. (1913) 48 Ct. Cl. 80.

§ 10193. (Crim. Code, § 29.) Forging deeds, powers of attorney, etc.; transmitting forged, etc., papers; punishment for.

Whoever shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid, or assist in the false making, altering, forging, or counterfeiting, any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States, or any of their officers or agents, any sum of money; or whoever shall utter or publish as true, or cause to be uttered or published as true, any such false, forged, altered, or counterfeited deed, power of attorney, order, certificate, receipt, contract, or other writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; or whoever shall transmit to, or present at, or cause or procure to be transmitted to, or presented at, any office or officer of the Government of the United States, any deed, power of attorney, order, certificate, receipt, contract, or other writing, in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, shall be fined not more than one thousand dollars and imprisoned not more than ten years.

R. S. § 5421. Act March 4, 1909, c. 321, § 29, 35 Stat. 1094.

Notes of Decisions

1. Repeal of former statute.
2. Separate offenses under statute.
3. "Papers" within meaning of statute.
4. "Claim" within meaning of statute.

5. Documents or writing supporting or relating to claim.
6. What constitutes forgery in general.
7. False affidavits or certificates in general.
8. False jurat or certificate.
9. False pension affidavit.
10. Forgery of indorsement on pension check.
11. False exportation bond.
12. Insertion of false item in blank receipt.
13. Aiding or assisting in forgery.
14. Procuring false papers with a view to transmission.
15. Transmitting forged papers in support of claim for bounty land.
16. Defrauding government of land warrant.
17. Venue.
18. Indictment.

1. **Repeal of former statute.**—The repealing clause of Act March 2, 1863, saves prosecution under Act March 3, 1823, for offenses previously committed. U. S. v. Kohnstamm (C. C. 1864) Fed. Cas. No. 15,542.

2. **Separate offenses under statute.**—The two acts of transmitting and presenting forged papers, etc., are not separate offenses, under Act March 3, 1823, to punish frauds against the United States. U. S. v. Armstrong (D. C. 1862) Fed. Cas. No. 14,468.

3. **"Papers" within meaning of statute.**—Declarations and affidavits subscribed and sworn to by the signers are "papers" within said act. U. S. v. Bickford (C. C. 1859) Fed. Cas. No. 14,591.

4. **"Claim" within meaning of statute.**—The word "claim" in R. S. § 5421 (embodied herein), which prescribes a penalty for presenting any writing in support of any "claim" with intent to defraud the United States, knowing the same to be false, includes a claim to exercise the right of pre-emption, or a claim of right to bounty lands, and the claim to thereby acquire from the United States government title to the public lands. United States v. Spaulding (1882) 3 Dak. 85, 13 N. W. 357.

5. **Documents or writing supporting or relating to claim.**—False and fraudulent documents made and used in support of a fraudulent claim under sections 4592 and 4602, ante, to a soldier's additional homestead right, whether forged or counterfeited or not, are embraced within the provision of R. S. § 5421 (embodied herein). U. S. v. Davis (1913) 34 Sup. Ct. 112, 231 U. S. 183, 58 L. Ed. 177.

To constitute the offense of knowingly presenting a false paper in support of a claim, with intent to defraud the United States (Act March 3, 1823, § 1), it is not necessary that the claim be in favor of the accused. U. S. v. Kohnstamm (C. C. 1864) Fed. Cas. No. 15,542.

Act March 3, 1823, § 1, applies only to instruments altered or forged for the purpose of obtaining moneys from the United States, their officers or agents. U. S. v. Reese (C. C. 1866) Fed. Cas. No. 16,138.

The offense denounced by this section obviously is the making of a forged writing in aid of a claim against the United States with the purpose and intent of thereby obtaining for the claimant or some other person a sum of money from the United States. The forged writing must have such direct relation of the object to be accomplished as to evince an intent or purpose on the part of the forger to thereby obtain money. The gist of the offense is as much the wrongful obtaining of the money as the forgery of the means to do so. Both of these elements must concur to constitute the offense. The forged writing must obviously be the means whereby the money was intended to be secured. U. S. v. Swan (D. C. 1904) 131 Fed. 140, 141.

Preliminary sworn application for purchase of land under Timber and Stone Act is not a writing in support of or in relation to a claim, within this section. U. S. v. Byron (D. C. 1915) 223 Fed. 798.

6. **What constitutes forgery in general.**—Any addition to a genuine paper, or any alteration of it in an essential particular, so as to give it a different meaning, is a forgery. U. S. v. Osgood (C. C. 1839) Fed. Cas. No. 15,971a.

7. **False affidavits or certificates in general.**—The offense defined in this section includes the making of an affidavit or certificate which is genuine itself, but contains false statements. U. S. v. Hartman (D. C. 1894) 65 Fed. 490.

8. **False jurat or certificate.**—To forge the name of a magistrate to the jurat of an affidavit is a forgery of the affidavit. U. S. v. Osgood (C. C. 1839) Fed. Cas. No. 15,971a.

The making by a notary public of a jurat or certificate, containing false statements, to an affidavit in support of a pension claim, does not constitute an offense under this section. U. S. v. Glasener (D. C. 1897) 81 Fed. 566.

9. **False pension affidavit.**—The making, or procuring to be made, an affidavit with the false statements that the pension claimant and identifying witnesses appeared before the notary, and that the alleged affiants subscribed their names and were sworn in his presence, where all its signatures are genuine, and no part has been altered, forged, or counterfeited, is not indictable under this section. U. S. v. Moore (D. C. 1894) 60 Fed. 738; Id. 740.

10. **Forgery of indorsement on pension check.**—The words "other writing," as used in Act March 3, 1823, making it a crime to forge certain writings with intent to defraud the United States, does not cover a forged indorsement on a genuine check drawn by a pension agent upon a depositary of

the United States. U. S. v. Wilson (D. C. 1874) Fed. Cas. No. 16,732.

11. False exportation bond.—The crime of forgery, under Act March 3, 1823, § 1, does not include a false bond given on the exportation of distilled spirits under Act June 30, 1864, § 61. U. S. v. Barney (C. C. 1866) Fed. Cas. No. 14,524.

12. Insertion of false item in blank receipt.—The insertion of a false item in a blank receipt for money, used as a voucher in a disbursing officer's accounts certified by him to be correct, with intent to defraud the United States, being a criminal offense, under R. S. §§ 5418, 5421, 5479 (this compilation, §§ 10192, 10193), whether forgery at common law or not, an indictment which charges such offense in the words of the statute, and which sets forth the circumstances, is good. Howgate v. U. S. (1895) 7 App. D. C. 217.

The insertion of a false item in a blank receipt for money, used as a voucher in a disbursing officer's accounts certified by him to be correct, with intent to defraud the United States, is a criminal offense, under R. S. §§ 5418, 5421, 5479 (this compilation, §§ 10192, 10193), whether forgery at common law or not. Id.

13. Aiding or assisting in forgery.—Aiding or assisting in forging papers with intent to defraud the government consists in the commission of any act having a tendency to forward or facilitate a forgery committed by another. U. S. v. Osgood (C. C. 1839) Fed. Cas. No. 15,971a.

To trace a name with a pencil, afterwards filled up with another in ink, or to take measures to prevent surprise or detection while the forgery is being committed, would be such an act. Id.

14. Procuring false papers with a view to transmission.—It is an offense, under such act, to procure false papers with a view of their transmission by another; and the actual transmission by the prisoner need not be shown. U. S. v. Bickford (C. C. 1859) Fed. Cas. No. 14,591.

15. Transmitting forged papers in support of claim for bounty land.—It is an offense under Act March 3, 1823, to transmit false papers for the purpose of obtaining from the government a bounty land warrant. U. S. v. Bickford (C. C. 1859) Fed. Cas. No. 14,591.

It is a felony to transmit to the pension office forged papers in support of a claim for bounty land. Act March 3, 1823, § 1. U. S. v. Wilcox (C. C. 1859) Fed. Cas. No. 16,691.

16. Defrauding government of land warrant.—An indictment for defrauding the United States of a land warrant will not lie, under Act 1823, c. 38. U. S. v. Myler (D. C. 1850) Fed. Cas. No. 15,849.

17. Venue.—The offense is committed in Vermont, where the papers are transmitted from there to Washington city. U. S. v. Bickford (C. C. 1859) Fed. Cas. No. 14,591.

18. Indictment.—A count based on this section is not bad for duplicity because it charges that defendant did "make, counterfeit, forge, and cause to be made, counterfeited, and forged, a certain false affidavit," etc., for the purpose of defrauding the United States by obtaining pension money, etc. Crain v. U. S. (1896) 16 Sup. Ct. 952, 954, 162 U. S. 625, 40 L. Ed. 1097.

An indictment for an offense against the statute of March 3, 1823 (3 Stat. 771, § 1), for sending a false writing and affidavit to the pension office, must set out all the ingredients of the offense with certainty and precision, and with sufficient particularity, that the court may know from the indictment whether he is to be tried for sending a writing and affidavit not genuine in its execution, or one genuine in its execution but false in statement, and the particular statements which are false, and that they are material, or judgment will be arrested on motion. United States v. Corbin (C. C. 1882) 11 Fed. 238.

In an indictment for forgery, under R. S. § 5414, post, § 10318, for the forgery of an indorsement on a draft of the United States, it should be distinctly charged that the genuine draft, with the forged indorsement, constituted together a forged obligation of the United States, and an indictment which avers that the draft itself constituted the obligation which was forged, when further averments show that the forgery consisted in the false making of the indorsement is repugnant, and does not properly lay the offense; nor is it good, under R. S. § 5421 (embodied herein), because it does not lay the charge on the indorsement itself, under the requirements thereof. De Lemos v. U. S. (1899) 91 Fed. 497, 33 C. C. A. 655.

An indictment for the forgery of an obligation of the United States with intent to defraud, which charges in a single count an intent to defraud both the United States and a soldier in the army, the instrument charged to have been forged purporting to be a certificate of deposit issued by the United States to a soldier, does not charge two offenses, one under R. S. § 5414, post, § 10318, and the other under R. S. § 5421 (embodied herein). Neall v. U. S. (1902) 118 Fed. 699, 706, 56 C. C. A. 31.

An indictment charging that defendant, "ostensibly, for the service, but falsely and without authority, caused, and procured to be issued from the navy department of the United States" a certain requisition, set forth in the indictment, cannot be supported as an indictment for forgery. U. S. v. Wat-

kins (C. C. 1829) Fed. Cas. No. 16,649.

An indictment for obtaining money by false pretenses, one of which is stated to be an erasure in an account rendered to defendant, cannot be supported as an indictment for forgery. Id.

An indictment for fraud must aver all the facts which constitute the fraud. It is not sufficient to aver that an act was fraudulently done, or was done with intent to commit a fraud. Id.

A count describing the deceptive means by which defendant procured the placing of public money in the hands of a navy agent, and also the means by which defendant obtained such money for his own use from such agent, does not charge two separate offenses. Id.

Under Act Feb. 26, 1853, an indictment may join several counts for offenses under Act March 3, 1823, for transmitting false papers for the purpose of obtaining bounty land warrants. U. S. v. Bickford (C. C. 1859) Fed. Cas. No. 14,591.

On a prosecution under Act March 3, 1823 (3 Stat. 771) R. S. § 5421, as originally enacted, for knowingly transmitting false papers to the pension office, a prisoner is not entitled to have a copy of the indictment furnished to him at the expense of the government. Id.

An indictment for transmitting such forged papers is sufficient if it show that the purpose was to obtain the allowance of the claim, though they were not sufficient for that purpose. U. S. v. Wilcox (C. C. 1859) Fed. Cas. No. 16,691.

An indictment which charges that a genuine pension check drawn by an authorized officer of the United States on an assistant treasurer, directing the payment of money, was altered and forged by the name of the payee being forged and fraudulently placed thereon as his indorsement, and that defendant knowingly and fraudulently uttered and published it as true, with intent thereby to defraud the United States, does not state an offense within R. S. § 5421 (embodied herein), because it does not sufficiently describe any falsely made, altered, forged, or counterfeited writing for the purpose of obtaining or receiving, or to enable any other person to obtain or receive, directly or indirectly, from the United States or their officers, any sum of money. U. S. v. Albert (C. C. 1891) 45 Fed. 552.

An indictment charging defendant with procuring a false affidavit to be presented to the pension office in a pension case with intent to defraud the United States alleges but a single offense,—an offense under R. S. § 5421 (embodied herein), punishing the making or procuring of false papers, etc., generally, with intent to defraud the United States,—though it also includes the offense of procuring a false affidavit in pension case, under section 9079, ante, without regard to such intent, for which, under section 1701, ante, the defendant could be convicted, as an included charge, on failure to prove the intent alleged. U. S. v. Hansee (C. C. 1897) 79 Fed. 303.

The rule which requires a setting out of an entire instrument or its tenor in an indictment in the federal courts is limited mainly, if not wholly, to cases of forgery, counterfeiting, and sending threatening letters. U. S. v. Heinze (C. C. 1908) 161 Fed. 425.

An indictment under this section merely charging, in the words of the statute, that defendant, with intent to defraud the United States, did utter and publish as true a certain falsely altered certificate of the board of surgeons, in the matter of the pension claim of a person named, is fatally defective, in that it fails to show how or to whom the certificate was published, or that it was published to obtain, or aid in obtaining, money from the United States, or could result in defrauding the United States. U. S. v. Kessel (D. C. 1894) 62 Fed. 59.

An indictment under this section averring in substance that defendant transmitted to the commissioner of pensions a falsely altered certificate made by the board of surgeons in relation to a claim for pension of a named person, is bad, in that it fails to show that such certificate was transmitted in support of, or in relation to, any specified account or claim pending in a named department, bureau, or office. Id.

This section covers three offenses: First, the making of any forged or counterfeit deed or other writing for the purpose of obtaining any sum of money from the United States or any of its officers; second, the uttering of any such forged or counterfeit paper with intent to defraud the United States, knowing it to have been so forged; third, the transmitting or presenting to any office or officer of the government any such writing, with knowledge that it is false or forged, with intent to defraud the United States. Held, that such offenses are separate and distinct, and that proof that a defendant forged papers purporting to transfer the right to an additional homestead, which is a vendible right, and sold and delivered the same to another for a consideration paid to him, and without any agreement or understanding with the purchaser with respect to the use to be made of them, would not support an indictment under the third subdivision of the section, for transmitting such papers or procuring them to be transmitted to a land office with intent to defraud the United States. U. S. v. Fout (D. C. 1903) 123 Fed. 625.

Cited without definite application, Kellogg v. U. S. (1900) 103 Fed. 200, 201, 43 C. C. A. 179; Bridgeman v. U. S. (1905) 140 Fed. 577, 72 C. C. A. 145; Sena v. U. S. (1906) 147 Fed.

485, 78 C. C. A. 27; Dolan v. U. S. (1909) 133 Fed. 440, 69 C. C. A. 274; Jones v. U. S. (C. C. 1888) 35 Fed. 561, 566 (reversed [1889] 9 Sup. Ct. 669, 131 U. S. 1, 33 L. Ed. 90); U. S. v. Wood (C. C. 1903) 127 Fed. 171; U. S. v. Van Leuven (D. C. 1894) 62 Fed. 69, 70.

§ 10194. (Crim. Code, § 30.) Having false, etc., papers in possession; punishment for.

Whoever, knowingly and with intent to defraud the United States, shall have in his possession any false, altered, forged, or counterfeited deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of enabling another to obtain from the United States, or from any officer or agent thereof, any sum of money, shall be fined not more than five hundred dollars, or imprisoned not more than five years, or both.

R. S. § 5422. Act March 4, 1909, c. 321, § 30, 35 Stat. 1094.

Notes of Decisions

See notes under the preceding section.

§ 10195. (Crim. Code, § 31.) Officer making false acknowledgments; punishment for.

Whoever, being an officer authorized to administer oaths or to take and certify acknowledgments, shall knowingly make any false acknowledgment, certificate, or statement concerning the appearance before him or the taking of an oath or affirmation by any person with respect to any proposal, contract, bond, undertaking, or other matter, submitted to, made with, or taken on behalf of, the United States, and concerning which an oath or affirmation is required by law or regulation made in pursuance of law, or with respect to the financial standing of any principal, surety, or other party to any such proposal, contract, bond, undertaking, or other instrument, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both.

Act March 4, 1909, c. 321, § 31, 35 Stat. 1094.

§ 10196. (Crim. Code, § 32.) Falsely pretending to be United States officer; punishment for.

Whoever, with intent to defraud either the United States or any person, shall falsely assume or pretend to be an officer or employee acting under the authority of the United States, or any Department, or any officer of the Government thereof, and shall take upon himself to act as such, or shall in such pretended character demand or obtain from any person or from the United States, or any Department, or any officer of the Government thereof, any money, paper, document, or other valuable thing, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both.

R. S. § 5438. Act April 18, 1884, c. 26, 23 Stat. 11. Act March 4, 1909, c. 321, § 32, 35 Stat. 1095.

Notes of Decisions

1. Statute as encroaching on functions of state.
2. Offenses created by statute.
3. False representation as to office having no legal existence.
4. Consummation of fraud as essential to offense.
5. False personation as gist of offense.
6. Obtaining "valuable things."
7. Pretending to be employed.
8. Jurisdiction, and venue.
9. Indictment.
10. Evidence.

1. Statute as encroaching on functions of state.—This section providing for punishment of one falsely assuming, with intent to defraud, to be a United States officer, does not encroach on functions of the state to protect its own citizens. U. S. v. Barnow (1915) 36 Sup. Ct. 19.

2. Offenses created by statute.—Act April 18, 1884, c. 26, declares that any person who, with intent to defraud either the United States or any person, falsely assumes or pretends to be an officer or employé acting under the authority of the United States, or any officer of the government thereof, and who shall take unto himself to act as such, or who shall, in such pretended character, demand or obtain from any person, or from the United States, or

any department or any officer of the government thereof, any money or other valuable thing, shall be deemed guilty, etc. Held, that such statute created two offenses; the first of which included as an essential element the use of such assumed position to extort money or property by wrongfully asserting a pretended claim of the United States, and the second comprehending the extortion of money not under the guise of asserting a claim due to the United States, but including the holding out of the offender as an officer for the purpose of giving him such credit as will entitle him to successfully demand money from another for his private use, with intent to defraud. U. S. v. Taylor (D. C. 1901) 108 Fed. 621.

This section held to define two offenses, one falsely impersonating an officer or employé of the United States and acting to defraud the United States or some person, and the other, falsely impersonating an officer or employé, and demanding or obtaining money or valuable thing with intent to defraud. U. S. v. Rush (D. C. 1912) 196 Fed. 579.

3. False representation as to office having no legal existence.—A false representation as to an office having no legal existence is within this section. U. S. v. Barnow (1915) 36 Sup. Ct. 19.

4. Consummation of fraud as essential to offense.—Consummation of fraud with consequent injury is not essential to the offense denounced by this section, punishing false personation of a federal officer. U. S. v. Barnow (1915) 36 Sup. Ct. 19.

5. False personation as gist of offense.—A statute provides that every person, who, with intent to defraud either the United States or any other person, pretends to be an officer or employé of the United States, and who in such pretended character shall demand or obtain from any person any money or other valuable thing, shall be deemed guilty, etc. Held, that the gist of the offense is false personation of an officer of the United States, and that the section is not limited to the extortion of money or property from another by the assertion of a claim for money or property due or owing the United States which the defendant in his pretended official capacity represents it is his duty to collect. Littell v. U. S. (1909) 169 Fed. 620, 95 C. C. A. 148.

6. Obtaining "valuable things."—A month's lodging is a valuable thing, within the meaning of Act April 18, 1884, c. 26, 23 Stat. 11, providing against the obtaining of any "valuable thing by impersonating" a United States officer. U. S. v. Ballard (D. C. 1902) 118 Fed. 757.

Act April 18, 1884, c. 26, 23 Stat. 11, provides that "every person who with intent to defraud * * * falsely assumes * * * to be an officer or employé acting under the authority of the United States," and in such pretended character demands or obtains "any money * * * or other valuable thing, shall be deemed guilty," etc. Held, that the statute covers the obtaining some valuable thing by means of fraudulent standing or credit secured by holding one's self out as such officer. Id.

7. Pretending to be employé.—Defendant, while stopping at prosecutor's hotel as a guest, falsely represented himself to prosecutor as a secret service operative in the employ of the government, and exhibited to prosecutor a metal badge inscribed, "Secret Service, U. S." Ten months thereafter defendant returned and represented himself as a traveling salesman, spending several days at the hotel. Prosecutor believed defendant to be a Freemason, and took special care of him during sickness on that account, after which defendant presented a check which he alleged had been signed by his employer in payment of his salary, and obtained $70 thereon from prosecutor. The check was drawn on a bank which did not exist, was returned unpaid, and prosecutor declared that he cashed the check because he continued to believe defendant was a secret service operative. Held, that such facts were insufficient to sustain a conviction for pretending to be an employé of the United States, and as such knowingly and feloniously obtaining from another a sum of money, etc., prohibited by Act April 18, 1884, c. 26, 23 Stat. 11. U. S. v. Farnham (D. C. 1904) 127 Fed. 478.

Where prosecutor was induced to purchase certain books by defendant's misrepresentations that he was an employé of the United States, prosecutor having obtained exactly what he bargained for, and not having been defrauded, defendant was not guilty of impersonating a federal employé in violation of the statute. Id.

8. Jurisdiction and venue.—Constitutional rights of person accused of falsely pretending, with intent to defraud, contrary to this section, to be an officer of the United States, are not infringed by trial in District Court of Southern District of New York, where personation was by telephone to a person in that district. Lamar v. U. S. (1916) 36 Sup. Ct. 255.

Jurisdiction of federal District Court over a prosecution under this section for falsely pretending, with intent to defraud, to be a federal officer, is not defeated because the indictment may not charge a crime. Id.

The United States courts do not have exclusive jurisdiction of the offense of obtaining money under the false pretense of being a pension agent.

Pearce v. State (1897) 22 So. 502, 115 Ala. 115.

9. **Indictment.**—Indictment charging false personation, with intent to defraud, of an officer of the United States contrary to this section, is not insufficient because nature of fraud was not set forth. Lamar v. U. S. (1916) 36 Sup. Ct. 255.

An indictment charging that defendants, with intent to defraud one I., unlawfully and feloniously did falsely assume and pretend to be officers and employés acting under the authority of the United States, to wit, revenue officers and employés, and in such pretended character did fraudulently demand and obtain from I. a sum of money, to wit, $200, etc., sufficiently stated the offense described by Act April 18, 1884, c. 26, 23 Stat. 11, prohibiting the impersonation of a United States officer, etc. U. S. v. Brown (C. C. 1902) 119 Fed. 482.

An indictment charging that defendant feloniously, and with intent to defraud H., did falsely assume and pretend to be an officer acting under the authority of the United States treasury department, and did then and there feloniously, and with intent to defraud said H., take upon himself to act as such officer, and as a part of the same sentence including the charge, "and did then and there, in such assumed and pretended character as such officer, demand and receive the sum of $10," was demurrable for duplicity. U. S. v. Taylor (D. C. 1901) 108 Fed. 621.

An indictment under R. S. § 5438 (embodied herein), for conspiracy to defraud the government of the United States by obtaining the allowance and payment of a false and fraudulent claim, which charges as the overt act the presentation of such claim, must state the particular facts showing the fraudulent character of the claim, and a general averment in the language of the statute that it was fraudulent is not sufficiently specific. U. S. v. Greene (D. C. 1902) 115 Fed. 343.

An indictment in following the words of the statute alleged that the defendant "did demand and obtain" a certain thing of value. Held, that it was not necessary in order to sustain the indictment to prove that he both demanded "and" obtained. U. S. v. Ballard (D. C. 1902) 118 Fed. 757.

An indictment charging the defendant with defrauding another by personating a United States officer held not to allege fraud by the defendant. U. S. v. Barnow (D. C. 1915) 221 Fed. 140, judgment reversed (1915) 36 Sup. Ct. 19, 239 U. S. 74, 60 L. Ed. 155.

An indictment under this section charging the defendant with personating an employé of the United States, where no such employé or employment existed, charges no crime. Id.

10. **Evidence.**—Evidence held to warrant a finding that prosecutrix relied on defendant's representations that he was an officer of the United States in extending credit to him and in loaning him money. Littell v. U. S. (1909) 169 Fed. 620, 95 C. C. A. 148.

§ 10197. (Crim. Code, § 33.) False personation of holder of public stocks, pensioner, etc.; punishment for.

Whoever shall falsely personate any true and lawful holder of any share or sum in the public stocks or debt of the United States, or any person entitled to any annuity, dividend, pension, prize money, wages, or other debt due from the United States, and, under color of such false personation, shall transfer or endeavor to transfer such public stock or any part thereof, or shall receive or endeavor to receive the money of such true and lawful holder thereof, or the money of any person really entitled to receive such annuity, dividend, pension, prize money, wages, or other debt, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

R. S. § 5435. Act March 4, 1909, c. 321, § 33, 35 Stat. 1095.

§ 10198. (Crim. Code, § 34.) False demand on fraudulent power of attorney; punishment for.

Whoever shall knowingly or fraudulently demand or endeavor to obtain any share or sum in the public stocks of the United States, or to have any part thereof transferred, assigned, sold, or conveyed, or to have any annuity, dividend, pension, prize money, wages, or other debt due from the United States, or any part thereof, received, or paid by virtue of any false, forged, or counterfeited power of attorney, authority, or instrument, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

R. S. § 5436. Act March 4, 1909, c. 321, § 34, 35 Stat. 1095.

§ 10199. (Crim. Code, § 35.) Presenting false claims; punishment for; unlawful purchase of public property; punishment for.

Whoever shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, shall make or use, or cause to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; or whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States or willfully to conceal such money or other property, shall deliver or cause to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. And whoever shall knowingly purchase or receive in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service, any arms, equipments, ammunition, clothes, military stores, or other public property, whether furnished to the soldier, sailor, officer, or person, under a clothing allowance or otherwise, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall be fined not more than five hundred dollars, and imprisoned not more than two years.

R. S. § 5438, as amended, Act May 30, 1908, c. 235, 35 Stat. 555. Act March 4, 1909, c. 321, § 35, 35 Stat. 1095.

Notes of Decisions

1. Constitutionality.
2. Repeal of statute.
3. Making or presenting false claims.
4. Purchasing or receiving in pledge from soldiers or sailors.
5. Felony or misdemeanor.
6. Limitations.
7. Indictment, proof, and variance.
8. Evidence.
9. Punishment.
10. Damages and forfeiture for violation of statute.

See notes under §§ 1973, 2326, 6411, and 6941, ante, and § 10,201, post.

1. Constitutionality.—This section, which authorizes the imposition of a maximum fine of $500 and imprisonment for not more than two years upon a civilian for knowingly purchasing or receiving in pledge any public property from a soldier, is not unconstitutional. Ontai v. U. S. (1911) 188 Fed. 310, 110 C. C. A. 288.

2. Repeal of statute.—R. S. § 5438 (embodied herein), was not repealed by R. S. § 4746, ante, § 9079. Edgington v. U. S. (1896) 17 Sup. Ct. 72, 164 U. S. 361, 41 L. Ed. 467.

3. Making or presenting false claims.—A notary public has no authority to administer an oath such as is required by the statute, to a deputy surveyor, and to take and certify his affidavit, in regard to the manner in which he fulfilled a contract for surveying, to be used in procuring pay for such services. U. S. v. Hall (1889) 9 Sup. Ct. 663, 131 U. S. 50, 33 L. Ed. 97.

Nor has a commissioner of the circuit court authority to administer such

an oath. U. S. v. Reilly (1889) 9 Sup. Ct. 664, 131 U. S. 58, 33 L. Ed. 75.

To constitute a crime under R. S. § 5438 (embodied herein), by presenting for payment a claim against the United States or a department thereof "knowing such claim to be false, fictitious, or fraudulent," it is not essential that the bill, voucher, or other thing used as the basis for the claim should in and of itself contain fraudulent or fictitious statements or entries, but whether the claim is genuine and honest, or false, fictitious, or fraudulent, must be determined in view of all the facts and circumstances surrounding it; and the offense is committed by presenting for payment a claim originally valid, but which the person presenting it knows has been paid, and is no longer a subsisting and just demand, or one which, although valid, he knows he is not authorized to receive payment on. Dimmick v. U. S. (1902) 116 Fed. 825, 54 C. C. A. 329, affirming judgment U. S. v. Dimmick (D. C. 1901) 112 Fed. 350, and writ of certiorari denied (1903) 23 Sup. Ct. 850, 189 U. S. 509, 47 L. Ed. 923.

Under the statutory provisions and the rules and regulations of the Indian Department, which require all accounts and vouchers for claims and disbursements connected with Indian affairs to be transmitted to the Commissioner of Indian affairs for administrative examination, approval, and allowance, or correction or rejection, and to be by him passed to the proper accounting officer of the Treasury Department for settlement, such Commissioner is an officer required to pass upon, and, if found correct, to approve and allow, the accounts and vouchers of Indian agents, who have authority to make purchases and disbursements, and the transmission to the Commissioner by such an agent of a false and fraudulent voucher for disbursements claimed to have been made, and for which he claims credit in his quarterly account, knowing such voucher to be false, constitutes the presenting of a false claim against the United States, which is made a criminal offense by R. S. § 5438 (embodied herein). Bridgeman v. U. S. (1905) 140 Fed. 577, 72 C. C. A. 145.

The transmission to the commissioner of Indian affairs by an Indian agent of a false and fraudulent voucher for disbursements claimed to have been made, and for which he claims credit in his quarterly account, knowing such voucher to be false, constitutes the presenting of a false claim against the United States. Id.

Declarations and affidavits sworn to and signed are "papers" within the meaning of Act March 3, 1823, which makes it an offense to transmit false papers for the purpose of obtaining any sum or sums of money from the United States. United States v. Bickford (C. C. 1859) Fed. Cas. No. 14,591 [4 Blatchf. 337].

Under Act March 3, 1823 (3 Stat. 771), § 1, making it an offense to knowingly present a false paper in support of a claim against the United States, with intent to defraud the United States, it is not necessary that the claim should be one in favor of the person who presents the false claim in its support. United States v. Kohnstamm (C. C. 1864) Fed. Cas. No. 15,542 [5 Blatchf. 222].

Elements stated of the offense of conspiring to defraud the government by obtaining allowance of false claims and by false affidavits. Act March 2, 1863, §§ 1–3. U. S. v. Jennison (C. C. 1874) Fed. Cas. No. 15,475.

To convict for making false affidavits in support of a fraudulent claim under Act March 2, 1863, it is necessary to prove that the defendant made false statements in an affidavit with knowledge of their falsity and with the intent of aiding another to collect a false claim against the government. Id.

The making and the presenting of false claims against the United States are distinct offenses, under R. S. § 5438 (embodied herein). Ex parte Shaffenburg (C. C. 1877) Fed. Cas. No. 12,696.

A false account made by a marshal within the limits of Colorado, and presented to the court and approved in Colorado, and afterwards presented to the treasury department in Washington, is a complete offense as to the making in Colorado, for which the offender may be there indicted, under R. S. § 5438 (embodied herein). Id.

R. S. § 5438 (embodied herein), relating to the presenting of false claims against the government, includes a false claim presented by a person as a pensioner, demanding money as a pensioner. U. S. v. Coggin (C. C. 1880) 3 Fed. 492.

In such case, where the pension certificate was genuine, but had been fraudulently obtained, each presentation of the certificate constituted a distinct offense within the meaning of the statute. Id.

To support a conviction under R. S. § 5438 (embodied herein), for making or using a false affidavit for the purpose of obtaining the payment or approval of certain claims against the government, it must be shown, not only that the affidavit was false, but also that the claim, the payment of which was sought to be obtained by the use of the affidavit, was false, fictitious, or fraudulent. U. S. v. Miskell (C. C. 1883) 15 Fed. 369.

As R. S. § 5438 (embodied herein), makes it an offense to present for approval to "any person or officer" in

the civil service any fraudulent claim against the United States, it is immaterial, on the prosecution of a deputy marshal for presenting such a claim to the marshal, that the marshal is not expressly authorized by law to approve a deputy's account. The fact that he is required to incorporate the deputy's account into his own, and to swear that the items therein charged are correct and legal, is sufficient to show that he must pass upon it, within the meaning of the statute. U. S. v. Strobach (C. C. 1883) 48 Fed. 902.

R. S. § 5438 (embodied herein), so far as it declares that every person who enters into any agreement, combination, or conspiracy to defraud the government of the United States, or any department or officer thereof, by obtaining, or aiding to obtain, the payment or allowance of any false or fraudulent claim, shall be punished without requiring any act in furtherance of the conspiracy, is modified by R. S. § 5440, as amended by the act of March 17, 1878 (post, § 10201), which declares that if two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner, or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to the penalty specified; so that a mere conspiracy, without some overt act in execution of it, is not an indictable offense. U. S. v. Reichert (C. C. 1887) 32 Fed. 142.

The word "affidavit," as used in R. S. § 5438 (embodied herein), relative to making false affidavits, relates to the form of a false paper, and not to its legal character. U. S. v. Ingraham (C. C. 1892) 49 Fed. 155, judgment affirmed Ingraham v. U. S. (1894) 15 Sup. Ct. 148, 155 U. S. 434, 39 L. Ed. 213.

The word "conspire" in R. S. § 5440, ante, § 10201, means all that the three corresponding synonyms "agreement, combination, or conspiracy" mean in R. S. § 5438 (embodied herein). U. S. v. Patterson (C. C. 1893) 55 Fed. 605, 640.

Act March 3, 1823, was intended only for the punishment of those charged with defrauding the government of sums of money, and a person cannot be indicted under that act for defrauding the United States of a land warrant. United States v. Myler (D. C. 1850) Fed. Cas. No. 15,849.

Making a claim against the government within R. S. § 5438 (embodied herein), punishing the making of false or fraudulent claims, consists in asking or demanding payment for services. U. S. v. Bittinger (D. C. 1875) Fed. Cas. No. 14,599.

Any person who makes or causes to be made, or presents or causes to be presented, any false claim against the United States, knowing the same to be false, or who, for the purpose of aiding another to obtain the payment of a false claim, by making or using, or causing to be made or used, any false bill, account, claim, certificate, affidavit, or deposition, knowing the same to be false, may be punished under the provisions of R. S. § 5438 (embodied herein). U. S. v. Hull (D. C. 1882) 14 Fed. 324.

The section above cited is not limited in its operation to false claims presented by the accused on his own behalf, but applies as well to such claims presented by an attorney, agent, officer, or other person presenting or aiding in the collection of a false claim, knowing it to be false. Id.

One is guilty, under R. S. § 5438 (embodied herein), who presents a claim which he believes to be true and just, but which he seeks to substantiate by affidavits, certificates, or depositions of persons who to his knowledge depose or certify to material facts of which they know nothing. U. S. v. Jones (D. C. 1887) 32 Fed. 482.

R. S. § 5440, post, § 10201, provides that, "if two or more persons conspire, either to commit any offense against the United States, or to defraud the United States in any manner, or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable," etc. R. S. § 4002, ante, § 7483, provides that railway companies shall be paid for carrying the mails upon a basis of the average weight carried; such weight to be ascertained by actually weighing the mail carried during a certain number of days, to be fixed by the postmaster general. Held, that an indictment charging railway officials with conspiring to deceive the postal officers and defraud the United States by sending over the line a large amount of old newspapers, etc., in order to increase the mails at a time when they were being weighed, is sufficient under section 5440, since it describes a conspiring to commit the "offense against the United States" which is defined by R. S. § 5438 (embodied herein), providing a punishment for any persons combining to defraud the United States by "obtaining, or aiding to obtain, the payment of any false or fraudulent claim." U. S. v. Newton (D. C. 1891) 48 Fed. 218.

The entering into any agreement or combination to obtain or aid in the obtaining payment of a false or fraudulent claim of the United States is declared by R. S. § 5438 (embodied herein), to be a criminal defrauding of the United States. Id.

The court of claims is not an officer, "civil or military," within the meaning of R. S. § 5438 (embodied herein), prohibiting persons from presenting for payment or approval any false or

fraudulent claim to any person or officer in the civil, military, or naval service of the United States. U. S. v. Moore (D. C. 1879) 3 MacArthur, 226.

Act March 3, 1891, c. 539, creates the court of private land claims (section 14), authorizes it to render judgment against the United States for the value of lands which the United States may have granted or sold belonging to a claimant, and provides that such judgment shall be a charge on the treasury of the United States. Held, that a fraudulent claim presented to the court of private claims is within R. S. § 5438 (embodied herein). In re Peraltareavis (1895) 8 N. M. 27, 41 Pac. 538.

4. Purchasing or receiving in pledge from soldiers or sailors.—The circumstance that in re-enacting R. S. § 5438, in this section of the criminal code congress added the words "whether furnished to the soldier, sailor, officer or person under a clothing allowance or otherwise" is a mere matter of precaution in view of conflicting decisions on the subject as to the status of articles issued to soldiers or sailors under their clothing allowance. Lobosco v. U. S. (1911) 183 Fed. 742, 106 C. C. A. 476.

Under sections 1973 and 6941, ante, prohibiting the purchase, sale, pledge, loan, or gift by a soldier of any of his clothing, arms, military outfit and accouterments, the government in supplying the soldier or recruit with equipments suitable and necessary for the discharge of his military duties retains title to the same; it being regarded as public property, whether remaining in a public depot or in the possession of the individual soldier, and this notwithstanding the soldier is allowed to retain such articles of clothing as he has then in use on the expiration of his term of service. Id.

Sections 1973 and 6941, ante, prohibit the barter, sale, or exchange or purchase of the clothing, arms, military outfit, and accouterments of a soldier or sailor, and R. S. § 5438 (embodied herein), declares that every person who knowingly purchases or receives in pledge for any obligation or indebtedness of any soldier, officer, or sailor or other person called into or employed in the military or naval service, any arms, equipments, ammunition, clothes, military stores, or other public property, such person not having the lawful right to pledge or sell same, shall be imprisoned, etc. Held, that the offense denounced is committed if the person purchases clothing or equipment knowingly from a soldier or sailor employed in military service; the government not being required to show, in addition, that defendant had knowledge that the soldier or sailor selling the articles in question did not have the lawful right to do so. Id.

Under this section, making it an offense for any person to knowingly purchase or receive in pledge from a soldier or sailor any arms, equipment, ammunition, clothing, stores, or other public property, it is not material that the clothing purchased by accused from certain marines was not a part of their equipment, but was furnished to them under their clothing allowance. Id.

Clothing furnished to a soldier by the United States under a clothing allowance does not become his private property which he has a right to dispose of while in the service, but is "public property" within this section, which makes it a criminal offense to knowingly purchase or receive in pledge from any soldier "any arms, equipments, ammunition, clothes, military stores, or other public property, whether furnished to the soldier * * * under a clothing allowance or otherwise, such soldier * * * not having the lawful right to pledge or sell the same." Ontai v. U. S. (1911) 188 Fed. 310, 110 C. C. A. 288.

In that provision of R. S. § 5438 (embodied herein), which makes it a criminal offense if any one "knowingly" purchases or receives in pledge from any soldier clothes or other public property, such soldier not having the lawful right to pledge or sell the same, the word "knowingly" applies only to the question whether a person purchasing or receiving such property in pledge knew, or should have known from facts which put him on inquiry, that the person offering the same was a soldier. U. S. v. Koplik (C. C. 1907) 155 Fed. 919.

It is not a defense to a prosecution, under such statute, for receiving property in pledge from a soldier still in the service, that such property consisted of clothing which he had paid for out of his clothes allowance, or which had been charged against it. Id.

R. S. § 5438 (embodied herein), applies to persons who knowingly purchase or receive in pledge any of the kinds of property described therein from a soldier, officer, or sailor in the service of the United States. The elements of the crime are guilty knowledge and the actual purchasing of and receiving in pledge the kind of property named and receiving it from a person in the military service of the United States. All those things are necessary to be proven in order to make it a criminal case. The guilty knowledge that is the necessary element of the crime is not knowledge that the act is unlawful, but knowledge must be knowledge of the facts, knowledge that the property offered for sale is the military stores or property of the United States. U. S. v. Smith (C. C. 1907) 156 Fed. 859, 861.

In a prosecution under R. S. § 5438 (embodied herein), for knowingly purchasing in pledge from a soldier, arms,

clothing or other public property, the jury may consider the possession of such property by defendant as prima facie evidence that it was sold or pledged to him, but not as prima facie evidence that it was taken by him with guilty knowledge. Id.

The seventeenth article of war (section 2326, ante), provides that any soldier who sells, or through neglect loses or spoils, his horse, arms, clothing, or accouterments shall be punished as a court-martial shall adjudge. Section 6941, ante, declares that clothes, arms, military outfits, and accouterments furnished by the United States to any soldier shall not be sold, bartered, exchanged, pledged, loaned, or given away, and that no person not a soldier or duly authorized officer of the United States who has possession of any such clothes, etc., shall have any right, title, or interest therein, but the same may be seized and taken wherever found. Held, that clothing issued to soldiers while in the military service remained the property of the United States, within R. S. § 5438 (embodied herein), providing that every person who knowingly purchases or receives in pledge from any soldier any clothes, equipment, or other public property, which the person selling or pledging the same has no right to sell, shall be imprisoned, etc. U. S. v. Hart (D. C. 1906) 146 Fed. 202.

The title to clothing issued to soldiers remains in the United States, and such clothing when issued is public property under R. S. § 5438 (embodied herein), making it a criminal offense for any person to knowingly purchase or receive in pledge from a soldier any public property. Id.

The receiving in pledge, by a civilian from a soldier, of clothing issued to the latter during the term of his enlistment, does not constitute a penal offense, within R. S. § 5438 (embodied herein). U. S. v. Michael (D. C. 1907) 153 Fed. 609.

Clothing issued to a soldier becomes his individual property and ceases to belong to the United States, and a person receiving it in pledge from a soldier is not criminally liable under R. S. § 5438 (embodied herein); the sole punishment for the act being the seizure of the articles of which he is pledgee under this section. Id.

5. Felony or misdemeanor.—The offense created by this section may in one view be regarded as a felony, and in another view as a misdemeanor; the penalty being imprisonment at hard labor for from one to five years, or a fine of $1,000 to $5,000. U. S. v. Goggin (C. C. 1880) 1 Fed. 49.

The offenses described in R. S. §§ 4746, 5438 (this compilation, §§ 9079, 10199), are not felonies; and a party indicted therefor is not entitled, under R. S. § 819, ante, § 1264, to challenge more than three jurors. U. S. v. Daubner (D. C. 1883) 17 Fed. 793.

6. Limitations.—Section 1708, ante, providing for limitations of three years, is applicable to the offense mentioned in R. S. § 5438 (embodied herein). Greene v. U. S. (1907) 154 Fed. 401, 85 C. C. A. 251, certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

Section 3 of the act of March 2, 1863, this section as originally enacted to prevent and punish frauds upon the government, contemplated two proceedings, one civil and the other criminal, of which the former is subject to the limitation prescribed by the seventh section of that act (section 6415, ante), and the latter to that prescribed by the thirty-second section of the act of April 30, 1790 (chapter 9). (1872) 14 Op. Atty. Gen. 54.

7. Indictment, proof, and variance.—Under section 1690, ante, it is proper to join in one indictment a count for willfully and unlawfully presenting a fraudulent claim against the United States, and a second count for willfully and unlawfully using a false affidavit in the presentation of the fraudulent claim against the United States. Ingraham v. U. S. (1894) 155 U. S. 434, 15 Sup. Ct. 148, 39 L. Ed. 213.

An indictment for a misdemeanor is not bad because it uses the participial form, as by charging that defendant committed the offense "by then and there executing and presenting" a false voucher to obtain payment of a pension. Pooler v. U. S. (1904) 127 Fed. 509, 62 C. C. A. 307.

An indictment for purchasing of a soldier "his arms" can only be sustained by showing that the soldier was in lawful possession of the arms, or had a special bailment of them. U. S. v. Brown (C. C. 1816) Fed. Cas. No. 14,669.

Money lawfully in the hands of an officer of the United States, and for which he is accountable, is money of the United States, and may be so charged in an indictment. U. S. v. Watkins (C. C. 1829) Fed. Cas. No. 16,649.

The offense under R. S. § 5438 (embodied herein), is not sufficiently charged in the words of the statute; but the facts constituting it must be alleged with such particularity as to apprise the accused with reasonable certainty of the nature of the accusation against him. U. S. v. Green (C. C. 1879) Fed. Cas. No. 15,257.

An indictment under R. S. § 5438 (embodied herein), should aver the fraud with sufficient particularity to enable the defendant to prepare his defense, and plead the judgment as a bar to a subsequent prosecution. U. S. v. Goggin (C. C. 1880) 1 Fed. 49, 53.

An indictment charging fraud should aver the fraud with sufficient particu-

larity to enable defendant to prepare his defense, and plead the judgment as a bar to a subsequent prosecution. Id.

The indictment should charge that the claim was made for payment or approval. U. S. v. Ambrose (C. C. 1880) 2 Fed. 764.

It is sufficient to charge a presentation of the claim to the first auditor of the treasury, and it is not necessary that the different items of the account should be in separate counts for each false item, but all may be included in one count. Id.

An averment that the accused, claiming to be a deputy marshal of the United States, presented a claim against the government of the United States, "purporting to have been for services rendered and payments made by said deputy marshal" in a criminal proceeding mentioned, before a certain United States commissioner, sufficiently shows that the services were performed and payments made for the United States, in the defendant's capacity as deputy United States marshal. U. S. v. Strobach (C. C. 1883) 48 Fed. 902.

An averment that such claim, alleged to have been presented to "G. T., the late marshal," etc., was a claim "in favor of the said G. T., the then late marshal," etc., does not render the indictment bad for repugnancy, since the court will take judicial notice that the accounts of deputy marshals are habitually presented to the government in the marshal's name, and the money therefor is paid to him, and by him paid to his deputies. Id.

Under R. S. § 5438 (embodied herein), denouncing the offense of knowingly presenting for payment or approval to any officer in the civil, military, or naval service of the United States any false or fraudulent claim against the United States, an indictment averring the presentation of such a claim to "G. T., then late marshal of the United States, he being then and there an officer in the civil service of the United States," is not insufficient or repugnant since a marshal, after the expiration of his term, is still an officer for the purpose of serving process then in his hands, and for settling his accounts with the government. Id.

An indictment charging the defendant with making a false deposition in order to enable another to obtain payment of a fraudulent pension claim, in violation of R. S. § 5438 (embodied herein), need not allege that the false deposition was ever used, or attempted to be used, or set out in full the commission or authority of the notary who administered the oath to the deposition, or aver that the claim had been presented and was pending before the government at the time the deposition was made. U. S. v. Rhodes (C. C. 1887) 30 Fed. 431.

In an indictment charging a conspiracy to procure the allowance of a false and fraudulent claim for compensation for a survey of land claimed to have been made by defendant, a description of the property alleged to have been surveyed, and for which the fraudulent claim is charged to have been presented, should be made in ordinary language. Abbreviations of words employed by men of science or in the arts will not answer, without full explanation of their meaning in ordinary language. U. S. v. Reichert (C. C. 1887) 32 Fed. 142.

Where an indictment alleges as part of the conspiracy that a false, fictitious, and fraudulent claim was to be presented to the United States surveyor general for allowance and payment, it should also allege that such officer was authorized to allow and approve the claim, and for the omission of this allegation the indictment is defective. Id.

An indictment under R. S. § 5438 (embodied herein), is not bad for duplicity because it charges in the same count both the making and the presenting of a false claim against the United States; the gist of the offense being the obtaining, or attempting to obtain, money from the United States by means of a fraudulent claim, and the acts charged being but different steps in the commission of such offense, although either alone is made punishable. Bridgeman v. U. S. (1905) 140 Fed. 577, 72 C. C. A. 145.

An indictment, under R. S. § 5438 (embodied herein), for presenting a false claim against the United States, which charges that defendant, as Indian agent, transmitted to the Commissioner of Indian Affairs, with his accounts, a false voucher purporting to be a receipt for money paid out by him, knowing that the same was false and fictitious, in that he had not paid such money, sufficiently alleges wherein the claim was false to apprise the defendant of what he is required to meet. Id.

An indictment under R. S. § 5438 (embodied herein), which charges that defendant, for the purpose of obtaining the approval of a certain claim against the United States, did use a certain false voucher, described, which contained false and fictitious statements, well knowing the same to be false and fictitious, charges every element of the offense as defined in the statute, and need not allege to whom the voucher was presented, nor the manner of its use. Id.

An indictment for presenting a false claim or voucher against the United States sufficiently describes such claim or voucher, where it sets out the substance of the same with such particularity as to make any judgment in the case a bar to any subsequent prosecution for the same offense. Id.

An indictment which charges a willful attempt by defendant to obtain money

from the United States by presenting a false, fictitious, and fraudulent claim, the false, fictitious, and fraudulent character of which was known to him necessarily imports an intent to defraud the government, and such intent need not be specifically alleged. Id.

An indictment for making a false voucher for the purpose of obtaining payment of a false and fraudulent claim against the United States sufficiently alleges the place of the crime, where it charges that it was committed at a certain Indian agency named, which is alleged to have been within the state and district where the indictment was found. Id.

A count in an indictment under R. S. § 5438 (embodied herein), charging the use of a false voucher for the purpose of obtaining the approval of a claim against the United States, is not bad because it does not aver in express words that the claim itself was false and fraudulent, where it shows that the voucher is the same described in a preceding count as constituting the claim, and which is there alleged to have been false and fraudulent to defendant's knowledge. Id.

An allegation in an indictment for making and presenting a false claim against the United States of the date when the same was made and presented is not an essential part of the description of the offense, and the fact that the paper introduced in support of the charge bears a different date does not constitute a fatal variance. Id.

An indictment for the offense of presenting to any officer "in the civil, military, or naval service of the United States," a false claim is sufficiently certain in alleging that such claim was presented to the "third auditor of the treasury department of the United States." It need not allege that he is an officer in the civil service of the United States. U. S. v. Ingraham (C. C. 1892) 49 Fed. 155, judgment affirmed Ingraham v. U. S. (1894) 15 Sup. Ct. 148, 155 U. S. 434, 39 L. Ed. 213.

An indictment under this section for knowingly making or presenting for approval to any officer of the United States any false, fictitious, or fraudulent claim is not bad for duplicity because it charges that the accused "made and presented" such a claim. U. S. v. Franklin (C. C. 1909) 174 Fed. 161.

In an indictment under R. S. § 5438 (embodied herein), for making and presenting to an officer for approval a false, fictitious, and fraudulent claim against the United States, which sets out the claim, showing it to be an itemized account, averments that certain sums charged therein "should have been" certain smaller sums stated sufficiently shows wherein the claim is false and fraudulent. Id.

An indictment, under R. S. § 5438 (embodied herein) for making and presenting to an officer for approval, a false, fictitious, and fraudulent claim against the War Department of the United States for supplies furnished the cadet mess at West Point, which describes such officer as a brigadier general in the army and superintendent of the Military Academy at West Point, and alleges that he was an officer authorized to approve such claim, held, on demurrer, to sufficiently show such authority. Id.

An indictment which charges that the defendant made, and caused to be made, the false voucher, certificate, or claim, and that he "presented and caused to be presented," is not bad for duplicity because the statute employed the disjunctive "or" instead of "and." U. S. v. Hull (D. C. 1882) 14 Fed. 324.

On indictment under R. S. § 5438 (embodied herein), making it criminal to prefer against the government a demand known to be false, fictitious, or fraudulent, defendant was charged with attempting to obtain pay and bounty by falsely representing herself to be the widow of a soldier killed during the war. Held, that it must appear that defendant was not the widow of such soldier, and that she made her demand knowing this; but otherwise, if the claim, though groundless, was made in good faith, and in the belief that she had been the wife of the soldier and was his widow, and entitled to the pay and bounty due him at his death. U. S. v. Route (D. C. 1887) 33 Fed. 246.

An indictment charged that defendant, a deputy marshal, having a warrant for the arrest of a violator of the United States statutes, served the same, and, for the purpose of obtaining approval and payment of a false and fictitious claim against the government, caused to be made a false and fictitious account, affidavit, and voucher as to the number of miles traveled by him, and as to the employment of a guard in such service, and as to the number of meals furnished the prisoner. The account was set out in full, as were also the guard's receipt for fees, and the receipt of the person furnishing the meals. The account was alleged to be false, and the fictitious items were designated specifically, and it was alleged that defendant knew them to be false. Held, that the specific acts constituting the offense of making the false account were set out with sufficient particularity. U. S. v. Wallace (D. C. 1889) 40 Fed. 144.

The omission to allege the name of any officer to whom the account was to be presented is a fatal defect to such an indictment. Id.

It is insufficient to allege that an account due from the United States to C., the United States marshal, was presented to C., as the marshal could not audit or pay a claim against the government, due to himself. Id.

An indictment under R. S. § 5438

(embodied herein), for conspiracy to defraud the government of the United States by obtaining the allowance and payment of a false and fraudulent claim, which charges as the overt act the presentation of such claim, must state the particular facts showing the fraudulent character of the claim, and a general averment in the language of the statute that it was fraudulent is not sufficiently specific. U. S. v. Greene (D. C. 1902) 115 Fed. 343.

A count in an indictment for conspiracy to defraud the United States, which charges as an overt act done in pursuance of the conspiracy the knowing and willful presentation and payment of false and fraudulent claims, against the United States, is not insufficient because it does not specify the particulars in which such claims were fraudulent; the only purpose of such count being to show that the unlawful agreement was carried into actual operation. Id.

On an indictment for presenting a false claim against the United States for back pay of a deceased soldier, claimed by the defendant to be his brother, the allegation of the indictment was that the brother was named "Major Dabney," and enlisted under the name of "George Bowen," whereas the proof was that defendant claimed to be the brother of George Bowen, who served under the name of Major Dabney. Held, that the variance was immaterial and the defendant properly convicted. U. S. v. Bowen (D. C. 1879) 3 MacArthur, 64.

8. **Evidence.**—On an indictment for presenting a fraudulent claim against the United States, under R. S. § 5438 (embodied herein), and using a false affidavit on such presentation, the affidavit is admissible in evidence without formal proof that the justice of the peace before whom it was taken had duly qualified as such justice. Ingraham v. U. S. (1894) 15 Sup. Ct. 148, 155 U. S. 434, 39 L. Ed. 213, affirming judgment U. S. v. Ingraham (C. C. 1892) 49 Fed. 155.

On the trial of a defendant charged with having, as Indian agent, made and presented a false claim and voucher against the United States, knowing the same to be false and fictitious, testimony that it was a custom or practice of other Indian agents to sign and forward their accounts and vouchers as the same were prepared by the clerks, without reading them, was irrelevant, and properly excluded. Bridgeman v. U. S. (1905) 140 Fed. 577, 72 C. C. A. 145.

Since in a prosecution for knowingly purchasing clothing from certain marines in the government service, in alleged violation of this section, prohibiting any person from knowingly making such purchases, etc., the government was required to prove guilty knowledge, evidence of the commission of other similar offenses by accused than those charged in the indictment was admissible. Lobosco v. U. S. (1911) 183 Fed. 742, 106 C. C. A. 476.

To warrant a conviction under R. S. § 5438 (embodied herein), for knowingly purchasing or receiving in pledge from a soldier in the military service of the United States arms, clothing, or other public property, such soldier not having the lawful right to sell or pledge the same, it must be proven beyond a reasonable doubt that defendant actually purchased or received in pledge from a soldier the property described in the indictment with knowledge that the seller or pledgor was at the time a soldier in the service of the United States, and that the property was military property such as the government issues, but it is not necessary to prove that the soldier had no lawful right to sell or pledge such property because the same is expressly prohibited by sections 1973 and 6941, ante, and the jury may in a proper case give effect to the provisions of such sections making possession of such property by a civilian presumptive evidence that the same was sold, bartered, or pledged in violation of such prohibition. U. S. v. Smith (C. C. 1907) 156 Fed. 859.

In a criminal prosecution for purchasing any of the United States supplies from a soldier, the burden is not on the United States to show that the soldier had no right to sell the property, as this section explicitly provides that he shall not sell such property. Id.

Evidence reviewed in the charge to the jury on trial of consolidated indictments and counts severally charging conspiracy to defraud the United States between contractors for public work and the government engineer officer in charge of the same, the presentation of fraudulent claims against, and embezzlement from, the United States. U. S. v. Greene (D. C. 1906) 146 Fed. 803, judgment affirmed Greene v. U. S. (C. C. A. 1907) 154 Fed. 401, 85 C. C. A. 251, writ of certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

9. **Punishment.**—The imposition by this section of a maximum fine of $500 and imprisonment for not more than two years upon a civilian for knowingly purchasing or receiving in pledge any public property from a soldier, is not unconstitutional as providing for an excessive fine or a cruel and unusual punishment. Ontai v. U. S. (1911) 188 Fed. 310, 110 C. C. A. 288.

10. **Damages and forfeiture for violation of statute.**—See, also, § 6411 et seq., ante, and notes thereunder.

An action brought by a private prosecutor under R. S. §§ 3490–3494, ante, §§ 6411–6415, to recover damages and forfeiture for a violation of R. S. § 5438 (embodied herein), is what was known at common law as a popular or

qui tam action, and is under the full and exclusive control of such prosecutor subject to the restriction of his right to discontinue the same contained in R. S. § 3491, and his interest or share in any judgment obtained therein is his absolute private property, and the United States cannot compromise, remit, or release the same by pardon or otherwise. U. S. v. Griswold (D. C. 1885) 24 Fed. 361, 365, affirmed (U. C. 1887) 30 Fed. 762, 763.

Cited without definite application, U. S. v. Perrin (1889) 9 Sup. Ct. 681, 682, 131 U. S. 55, 33 L. Ed. 88; Carter v. McClaughry (1902) 22 Sup. Ct. 181, 192, 183 U. S. 365, 46 L. Ed. 236; U. S. v. Goggin (C. C. 1880) 1 Fed. 49; In re Cortes (C. C. 1890) 42 Fed. 47, 48 (affirmed [1890] 10 Sup. Ct. 1031, 136 U. S. 330, 34 L. Ed. 464); U. S. v. Patterson (C. C. 1893) 55 Fed. 605, 639; In re Langan (C. C. 1903) 123 Fed. 132, 134; U. S. v. Jones (D. C. 1887) 32 Fed. 569; U. S. v. Wallace (D. C. 1891) 46 Fed. 569; U. S. v. Adler (D. C. 1892) 49 Fed. 733, 734; U. S. v. Van Leuven (D. C. 1894) 62 Fed. 62, 63; U. S. v. Greene (D. C. 1900) 100 Fed. 941, 948; U. S. v. Patterson (D. C. 1912) 201 Fed. 697; Boschke v. U. S. (1909) 44 Ct. Cl. 397; Woog v. U. S. (1913) 48 Ct. Cl. 80.

§ 10200. (Crim. Code, § 36.) Embezzling arms, stores, etc.

Whoever shall steal, embezzle, or knowingly apply to his own use, or unlawfully sell, convey, or dispose of, any ordnance, arms, ammunition, clothing, subsistence, stores, money, or other property of the United States, furnished or to be used for the military or naval service, shall be punished as prescribed in the preceding section.

R. S. § 5439. Act March 4, 1909, c. 321, § 36, 35 Stat. 1096.

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Clothing issued to inmates of soldiers home as subject of offense.—See § 10,214, ante, and notes thereunder.

Inmates of the National Military Home at Dayton, Ohio, are not in the military service of the United States, and clothing issued to them is not used in such service. So held on demurrer to an indictment, under this section, charging the defendant with applying to his own use an overcoat which had been issued to an inmate of such home. U. S. v. Murphy (C. C. 1881) 9 Fed. 26.

Indictment.—The property embezzled must be identified in the indictment with particularity; a mere averment that it was a certain amount being insufficient. Moore v. U. S. (1895) 16 Sup. Ct. 294, 295, 160 U. S. 268, 40 L. Ed. 422.

Evidence.—Where, on a trial for larceny from the United States of two kegs and several cans of paint taken from a fort, it appears that one of the kegs produced in court is so lettered as to indicate government ownership and bears the number 402, and an officer of the quarter-master's department stationed at the fort testifies to having received from an army depot an invoice bearing that number of two kegs and several cans of paint and he identifies the lettered keg produced by the fact that the number on it corresponds with the number on the invoice, the testimony of the officer that the lettered keg belongs to the United States is competent, especially where it appears that he is specially qualified to testify as to the significance of the marking. Jackson v. U. S. (1909) 34 App. D. C. 1.

Cited without definite application, U. S. v. Lewis (1906) 26 Sup. Ct. 229, 231, 200 U. S. 1, 50 L. Ed. 343; In re Langan (C. C. 1903) 123 Fed. 132, 134.

§ 10201. (Crim. Code, § 37.) Conspiring to commit offense against United States; punishment for all parties.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both.

R. S. § 5440, as amended, Act May 17, 1879, c. 8, 21 Stat. 4. Act March 4, 1909, c. 321, § 37, 35 Stat. 1096.

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I. OFFENSES UNDER STATUTE IN GENERAL

1. Construction of statute in general.—This section must be strictly construed. U. S. v. Robbins (D. C. 1907) 157 Fed. 999.

2. Nature and elements of offense in general.—This statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of government. Haas v. Henkel (1910) 30 Sup. Ct. 249, 254, 216 U. S. 462, 54 L. Ed. 569, 17 Ann. Cas. 1112.

R. S. § 5440 (embodied herein), should be construed as declaring not only against conspiracies to commit offenses, but also to conspiracies to defraud the United States, and to punish such conspiracies when supplemented by an overt act, though the wrong has not become effectual in its purpose. Curley v. U. S. (1904) 130 Fed. 1, 64 C. C. A. 369, writ of certiorari denied (1904) 25 Sup. St. 787, 195 U. S. 628, 49 L. Ed. 351.

It is the duty of the government to prove guilty knowledge of accused. Stirlen v. U. S. (1910) 183 Fed. 302, 105 C. C. A. 514, certiorari denied

(1911) 31 Sup. Ct. 721, 220 U. S. 617, 55 L. Ed. 611.

The offense consists not in the mere agreement, but in the existence of a conspiracy and the doing of an act to affect the object of the conspiracy. Breese v. U. S. (1914) 203 Fed. 824, 122 C. C. A. 142.

It is not criminal to conspire to do that which the law does not prohibit, but. recognizes may be lawfully done without prejudice or injury to the United States or the state. Fain v. U. S. (1913) 209 Fed. 525, 126 C. C. A. 347.

Under R. S. § 5440 (embodied herein), as it relates to conspiracy to defraud the United States, the offense consists of the unlawful scheme upon which the minds of conspirators have met, together with any act to effect the object of the conspiracy. Houston v. U. S. (1914) 217 Fed. 852, 133 C. C. A. 562.

The act of one conspirator is the act of all. Jung Quey v. U. S. (1915) 222 Fed. 766, 138 C. C. A. 314.

A concert of action and of intent, though there was no pecuniary consideration or a definite absolute contract between the parties, is sufficient to constitute a conspiracy to defraud the United States, under this section. U. S. v. Allen (C. C. 1868) Fed. Cas. No. 14,432.

If the jury find that a conspiracy existed, and that accused was a party to it, it is sufficient if the object of the conspiracy was to effect one of the purposes alleged. U. S. v. Mitchell (C. C. 1871) Fed. Cas. No. 15,790.

This section prohibits a conspiracy to defraud the United States, not only by committing an offense described in other sections of the original act, but in any manner whatever. U. S. v. Dennee (C. C. 1877) Fed. Cas. No. 14,948; U. S. v. Whalan (D. C. 1868) Fed. Cas. No. 16,669.

The crime defined in this section includes every case of conspiracy to defraud the United States by depriving or devesting it of any property, money, or thing otherwise than as the law requires or allows. U. S. v. Thompson (C. C. 1886) 29 Fed. 86, 89.

To constitute a conspiracy to defraud the United States, within R. S. § 5440 (embodied herein), it is not necessary that there should have been a purpose to defraud the United States of a thing of pecuniary value, or that the conspiracy should have been successful, or that the conspirators received pecuniary advantage therefrom. U. S. v. Bradford (C. C. 1905) 148 Fed. 413, judgment affirmed Bradford v. U. S. (1907) 152 Fed. 616, 81. C. C. A. 606, writ of certiorari denied Bradford v. U. S. (1907) 27 Sup. Ct. 795, 206 U. S. 563, 51 L. Ed. 1190.

Where a conspiracy is formed to defraud the United States in any manner, in violation of R. S. § 5440 (embodied herein), the offense is complete when the conspiracy is formed, and the conspirators are subject to prosecution whenever one or more of them has done any act in the furtherance of the unlawful scheme devised and agreed on; it being, therefore, sufficient that the conspiracy, when formed, was attended with corrupt motives and was for a corrupt purpose. U. S. v. Moore (C. C. 1909) 173 Fed. 122.

The agreement of combination is the offense, but performance of the act to effectuate it is necessary to make it indictable under the statute. U. S. v. Sacia (D. C. 1880) 2 Fed. 754, 757.

It is not necessary that the conspiracy should originate with the person charged. Id.

The gist of a conspiracy is the unlawful confederacy to do an unlawful act, or a lawful act for an unlawful purpose, and the offense is complete when the confederacy is made. U. S. v. Watson (D. C. 1883) 17 Fed. 145.

It is manifest that to constitute a criminal offense under this section the object of the conspiracy must be to commit some offense against the United States, that is, to do some act made a crime by the laws thereof, or to defraud the United States; and something must be done by one or more of the conspirators to effect the object of the agreement. The definition of this offense would be "an agreement between two or more persons to do some act which by the laws of the United States is a crime, and the doing of some act, by one or more of those who had so agreed, in furtherance of or to effect the object of the agreement." In re Wolf (D. C. 1886) 27 Fed. 606, 611.

This section is not limited in its operation to conspiracies to defraud the United States of its "revenue," but applies to all conspiracies to deprive the United States of any property or dues by means of misrepresentation or concealment of material facts. U. S. v. Owen (D. C. 1887) 32 Fed. 534.

The common design being the essence of the charge, it is sufficient if two or more persons in any manner, positively or tacitly, come to a mutual understanding to accomplish a common and unlawful design. U. S. v. Cassidy (D. C. 1895) 67 Fed. 698.

To constitute the offense of conspiring to defraud under R. S. § 5440 (embodied herein), it is not essential that the conspiracy should have been to commit an act in violation of a criminal statute. U. S. v. Stone (D. C. 1905) 135 Fed. 392.

This section must be construed as standing alone, and covers all conspiracies to commit an act which is made a criminal offense by the laws of the United States; and the fact that the overt act charged to have been committed may constitute a substantive offense on the part of one or more of the accused under the statute which they conspired to violate does not relieve them from liability to prosecution for the conspiracy at least where

such offense is also a misdemeanor. U. S. v. Thomas (D. C. 1906) 145 Fed. 74.

Under this section the gist of the offense is conspiracy, combination, or agreement to effect an unlawful end, which offense is completed only on some one or more of the parties doing an act to effect the object of the conspiracy, termed an "overt act." U. S. v. Richards (D. C. 1906) 149 Fed. 443.

Under this section it is sufficient that it be the conspirator's purpose to commit a willful fraud on the law, or some statutory requirement pertinent to be observed, in view of the present controlling conditions; and it is not necessary that there should be a conspiracy to do an act that is an offense or crime by some statute of the general government, or to deprive the United States of its property or some property right. U. S. v. Raley (D. C. 1909) 173 Fed. 159.

The certainty required in the definition of an offense may be accomplished by the use of words or terms of settled meaning, or which indicate offenses well known to and defined by the common law; and this has been accomplished in this section by the use of the terms "conspiracy" and "defraud." Crawford v. U. S. (1907) 30 App. D. C. 1.

As to prosecutions for conspiracy to evade payment of customs duties, see § 5524, ante.

3. Connection with offense under section 10183.—R. S. § 5440 (embodied herein), has no connection with such an offense as R. S. § 5508, ante, § 10183, relates to. U. S. v. Patrick (C. C. 1893) 54 Fed. 338, 349.

See, also, notes post as to particular offenses.

4. Application to District of Columbia.—This section applies to the District of Columbia. In re Wolf (D. C. 1886) 27 Fed. 606, 612.

See, also, notes post as to "Common-law offenses," "Perjury and subornation thereof," and "Bucketing and bucket shopping in the District of Columbia."

5. "Conspire" and "conspiracy" defined.—A conspiracy is a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal, by criminal or unlawful means. Pettibone v. U. S. (1893) 148 U. S. 203, 13 Sup. Ct. 542, 37 L. Ed. 419; The Mussel Slough Case (C. C. 1881) 5 Fed. 680; U. S. v. Cassidy (D. C. 1895) 67 Fed. 698; Same v. Sacia (D. C. 1880) 2 Fed. 754; Same v. Wootten (D. C. 1887) 29 Fed. 702.

A conspiracy is a combination of two or more persons by some concerted action to accomplish some criminal or unlawful purpose, and it is not necessary to prove that defendants actually agreed in terms upon a design to be pursued by common means, but where they pursued the same objects with a view to its attainment, the jury may conclude that they were engaged in a conspiracy to effect it. The Mussel Slough Case (C. C. 1881) 5 Fed. 680, 681.

A conspiracy is where two or more persons confederate or combine to do an unlawful act. U. S. v. Smith (C. C. 1869) Fed. Cas. No. 16,322; Same v. Babcock (C. C. 1876) Fed. Cas. No. 14,487.

Both the agreement or combination to do an unlawful act, and an act done by one or more in pursuance thereof, are necessary to constitute the offense. U. S. v. Nunnemacher (C. C. 1876) Fed. Cas. No. 15,902.

But such agreement does not constitute the offense unless followed by an act done by one or more of the parties to carry the object of the conspiracy into execution. U. S. v. Goldberg (C. C. 1876) Fed. Cas. No. 15.223.

To constitute a conspiracy under this section, there must have been an agreement between the parties, a unity of design and purpose, and an overt act committed by one for the purpose of effecting the object of the conspiracy. U. S. v. Hamilton (C. C. 1876) Fed. Cas. No. 15,288; Same v. Hutchins (C. C. 1876) Fed. Cas. No. 15,430.

A conspiracy means that, on the part of two or more persons, there was a common purpose, supported by a concerted action, to defraud; that each had the intent to do it; that it was common to each of them; and that each understood the others as having that purpose. U. S. v. Frisbie (C. C. 1886) 28 Fed. 808.

The word "conspire" in this section means all that the three corresponding synonyms "agreement, combination, or conspiracy" mean in section 10199. U. S. v. Patterson (C. C. 1893) 55 Fed. 605, 640.

Conspiracy is proved when the jury is satisfied that two or more entered into an agreement to accomplish a common and unlawful design, followed by some act to carry it into execution. U. S. v. Barrett (C. C. 1894) 65 Fed. 62.

A conspiracy consists of a combination between two or more to do a criminal or unlawful act, or a lawful act by criminal or unlawful means, including, as an element, a corrupt motive. U. S. v. Moore (C. C. 1909) 173 Fed. 122.

The elements of a criminal conspiracy under R. S. § 5440 (embodied herein), are: (1) An object to be accomplished which must be either the commission of an offense against the United States or to defraud the United States; (2) a plan or scheme embodying means to accomplish the object; (3) an agreement or understanding between two or more persons whereby they become definitely committed to co-operate for the accomplishment of the object by the

means embodied in the scheme, or by any effectual means; and (4) an overt act by one or more of the conspirators to effect the object of the conspiracy. U. S. v. Munday (C. C. 1911) 186 Fed. 375, judgment reversed (1911) 32 Sup. Ct. 53, 222 U. S. 175, 56 L. Ed. 149.

Conspiracy, under Act March 2, 1867, is a combination between two or more persons by agreement, expressed or implied, to effect the illegal purpose, regardless of the manner in which it is to be done. U. S. v. Rindskopf (D. C. 1874) Fed. Cas. No. 16,165.

A conspiracy is an agreement or combination between two or more persons to effect an unlawful purpose. U. S. v. Sacia (D. C. 1880) 2 Fed. 754, 757.

By the common law a conspiracy is an agreement between two or more persons to do some unlawful act, or to do a lawful act in an unlawful manner. The agreement itself constitutes the offense, whether an act is done in furtherance of the object or not. U. S. v. Watson (D. C. 1883) 17 Fed. 145.

"Conspiracy," as defined by this section means an unlawful agreement to do some act which by some law of the United States has been made a crime. This is what is meant by agreeing to commit an offense against the United States. In re Wolf (D. C. 1886) 27 Fed. 606.

A conspiracy is a combination formed by two or more persons to effect an unlawful end; said persons acting under a common purpose to accomplish the end desired. U. S. v. Howell (D. C. 1892) 56 Fed. 21.

The statutes of the United States do not define what a conspiracy is, or create any new offense. They merely recognize the crime of conspiracy as known to the common law, and the courts must go to the common law to determine what it is. U. S. v. McCord (D. C. 1895) 72 Fed. 159.

A conspiracy is formed when two or more persons in any manner, or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a crime or unlawful purpose. U. S. v. Cole (D. C. 1907) 153 Fed. 801.

To constitute a conspiracy to defraud within this section, the object of the combination must be to accomplish, by concerted action, a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful by criminal or unlawful means. U. S. v. Keitel (D. C. 1907) 157 Fed. 396, order reversed (1908) 29 Sup. Ct. 123, 211 U. S. 370, 53 L. Ed. 230.

6. Meaning of terms "fraud" and "defraud."—The term "defraud," as used in R. S. § 5440 (embodied herein), should not be construed as limited only to frauds respecting property rights, but to include the deprivation of a right by deception or artifice. Curley v. U. S. (1904) 130 Fed. 1, 64 C. C. A. 369, writ of certiorari denied (1904) 25 Sup. Ct. 787, 195 U. S. 628, 49 L. Ed. 351.

"Fraud," within this section, is not limited in fraud against property of the United States, but includes fraud against its rights of government. Haas v. Henkel (C. C. A. 1909) 166 Fed. 621, order affirmed (1910) 30 Sup. Ct. 249, 216 U. S. 462, 54 L. Ed. 569, 17 Ann. Cas. 1112.

The term "defraud," as used in R. S. § 5440 (embodied herein), should not be construed as limited to frauds respecting property rights, but includes the deprivation of any right by deception or artifice; the act being intended to secure the wholesome administration of the laws and affairs of the United States in the interests of the government. U. S. v. Moore (C. C. 1909) 173 Fed. 122.

To defraud the United States, within the meaning of this section, does not necessarily mean to do the United States a pecuniary injury; and any willful or corrupt misconduct on the part of an official of the Post Office Department, that operates to impair the administration of the affairs of that department, works a wrong to the United States and does them some substantial injury, within the meaning of that section. Such injury may be pecuniary in its nature, or one of general damage, not of a specific character, susceptible of certain ascertainment and pecuniary compensation. Tyner v. U. S. (1904) 23 App. D. C. 324.

7. Offense against United States in general.—The words "offenses against the United States" in this section have the same meaning as the words "offenses against the laws of the United States" in the original act of March 2, 1867 (14 Stat. 484, c. 169) the change being merely one of phraseology made by the revision commission, and such section denounces conspiracies to commit offenses created by any of the statutes of the United States. Thomas v. U. S. (1907) 156 Fed. 897, 84 C. C. A. 477, 17 L. R. A. (N. S.) 720.

The words "any offense against the United States" in this section have been construed to include any offense made a crime by the laws of the United States. Radin v. U. S. (1911) 189 Fed. 568, 111 C. C. A. 6.

The offense to be committed must be a statutory one. Heike v. U. S. (1911) 192 Fed. 83, 112 C. C. A. 615, certiorari granted (1912) 32 Sup. Ct. 527, 223 U. S. 730, 56 L. Ed. 633, affirmed (1913) 33 Sup. Ct. 226, 227 U. S. 131, 57 L. Ed. 450, Ann. Cas. 1914C, 128.

To constitute conspiracy against the United States, the object of the unlawful agreement must be the commission of some offense against the United States in the sense only that it must be some act made an offense by the laws of the United States. U. S. v. Lyman (D. C. 1911) 190 Fed. 414.

8. **Common-law offenses.**—While it is the general rule that there are no common-law offenses against the United States, such rule does not apply to the District of Columbia; and, the common law being in force in the District of Columbia when R. S. § 5440 (embodied herein), was enacted, which makes it an indictable offense to conspire to commit any offense against or to defraud the United States in any manner and for any purpose, any common-law offense not repealed, superseded, or plainly inconsistent with existing legislation or necessarily obsolete is an offense against the United States within the meaning of that section. Tyner v. U. S. (1904) 23 App. D. C. 324.

An indictment held to charge a common-law conspiracy, punishable under Code of Laws 1901 D. C. § 910, not a conspiracy against the United States, punishable under this section. Harrison v. Moyer (D. C. 1915) 224 Fed. 224.

9. **Defrauding individual.**—A conspiracy to defraud an individual, even though the mails be made use of for the purpose, does not fall within the terms of this section. What is here provided for is a conspiracy of two or more either to commit an offense against the United States or to defraud it. U. S. v. Clark (D. C. 1902) 121 Fed. 190.

10. **Felony or misdemeanor.**—As at common law a conspiracy to commit a misdemeanor or felony was only a misdemeanor, so conspiracy under this section, not being declared a felony, is also merely a misdemeanor. Berkowitz v. U. S. (1899) 93 Fed. 452, 35 C. C. A. 379.

The offense defined in R. S. § 5440 (embodied herein), was not a felony, and a conviction thereunder would not disqualify the offender to vote or hold office. Gaudy v. State (1880) 10 Neb. 243, 4 N. W. 1019.

11. **Infamous crime.**—Conspiracy to commit an offense against the United States, punishable under this section by fine and imprisonment of not more than two years, is an infamous crime, within the fifth amendment, providing that no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury. Mackin v. U. S. (1886) 6 Sup. Ct. 777, 117 U. S. 348, 29 L. Ed. 909, certifying and determining questions (C. C. 1885) 23 Fed. 334.

The crime denounced by this section is not an infamous crime within Const. Amend. 5. U. S. v. Burgess (D. C. 1882) 9 Fed. 896.

The offense of conspiracy to defraud the United States, under R. S. § 5440 (embodied herein), is infamous, and can only be tried on indictment. U. S. v. Wells (D. C. 1908) 163 Fed. 313.

12. **Distinct offense.**—A person cannot escape liability for conspiracy against the United States because he may have committed the substantive offense at which the conspiracy aims. Heike v. U. S. (1913) 33 Sup. Ct. 226, 227 U. S. 131, 57 L. Ed. 450, affirming judgment (1911) 192 Fed. 83, 112 C. C. A. 615.

An indictment under R. S. § 5440 (embodied herein), charging a defendant with conspiring to utter as true false naturalization certificates, in violation of R. S. § 5424, post, § 10244, charges an offense different from that under the latter section; and hence an acquittal on the indictment for such conspiracy is not a bar to a subsequent prosecution for the offense of uttering, etc. Berkowitz v. U. S. (1899) 93 Fed. 452, 35 C. C. A. 379.

This statute created the offense of conspiracy. Reilley v. U. S. (1901) 106 Fed. 896, 46 C. C. A. 25, reversed (1903) 23 Sup. Ct. 334, 188 U. S. 375, 47 L. Ed. 508.

A defendant may be prosecuted under R. S. § 5440 (embodied herein), for a conspiracy to violate a criminal or penal statute of the United States, notwithstanding the fact that the punishment prescribed for the offense created by such statute is less than that prescribed for conspiracy; the conspiracy in itself being a distinct and substantive offense. Thomas v. U. S. (1907) 156 Fed. 897, 84 C. C. A. 477, 17 L. R. A. (N. S.) 720.

The offense of conspiracy, under this section, consists in the conspiracy alone, and not in both the conspiracy and the acts done to effect its object. U. S. v. Black (1908) 160 Fed. 431, 87 C. C. A. 383.

The conspiracy is the essence of the crime, while the act done is a mere concrete indication of the conspiracy, and there must be an act done to effect the object thereof. Daly v. U. S. (1909) 170 Fed. 321, 95 C. C. A. 107.

This section makes a conspiracy to commit an offense against the United States a distinct offense, and a defendant may be convicted thereunder, although the proof shows that the substantive offense to which the conspiracy related was in fact committed. Robinson v. U. S. (1909) 172 Fed. 105, 96 C. C. A. 307.

A misdemeanor, which is the object of a conspiracy, is not merged in the latter offense, which is also a misdemeanor, nor is the offense of conspiracy merged in the consummated misdemeanor. Steigman v. U. S. (1915) 220 Fed. 63, 135 C. C. A. 631.

Contention that government should not prosecute for conspiracy to commit offense, when it has proof of the commission of the offense itself, held one to be addressed to Congress, and not to the courts. Mitchell v. U. S. (C. C. A. 1916) 229 Fed. 357.

While the offense under this section

consists alone in the conspiracy, yet that offense is not punishable unless one or more of the conspirators did some act to affect the object of the conspiracy. U. S. v. Milner (C. C. 1888) 36 Fed. 890, 891.

The offense known as "conspiracy" is complete when the unlawful conspiracy, combination, or agreement is made to do, or procure the doing of, an unlawful act, and a criminal act done in pursuance of the conspiracy is not necessary to justify a conviction for the crime of conspiracy itself. U. S. v. Lancaster (C. C. 1891) 44 Fed. 896, 10 L. R. A. 333.

A conspiracy to commit an offense against the United States, made in itself a criminal offense by this section is not merged in the completed offense, where the two offenses are of the same grade and the punishment substantially the same. U. S. v. Scott (C. C. 1905) 139 Fed. 697, judgment affirmed Scott v. U. S. (1908) 165 Fed. 172, 91 C. C. A. 206.

The agreement or combination is the offense, but the performance of the alleged act to effectuate it is necessary to make it indictable under the statute. U. S. v. Sacia (D. C. 1880) 2 Fed. 754.

A mere conspiracy is not an offense, but in addition to a conspiracy one or more of the parties must do some act to effect its object. U. S. v. Patterson (D. C. 1912) 201 Fed. 697.

That conspirators, in doing acts to execute the conspiracy, actually commit the crime which they conspired to commit, is no defense to the charge of conspiracy. U. S. v. Rogers (D. C. 1915) 226 Fed. 512.

13. Offense as continuous.—Some affirmative action to defeat the purpose of a continuing conspiracy to defraud the United States, contrary to this section, must be taken by a conspirator to prevent the overt act of an associate from continuing him in the conspiracy. Hyde v. U. S. (1912) 32 Sup. Ct. 793, 803, 225 U. S. 347, 56 L. Ed. 1114, Ann. Cas. 1914A, 614, affirming judgment (1910) 35 App. D. C. 451.

The offense defined by this section is a continuing one so long as it was in process of execution, as manifested by overt acts in pursuance thereof. U. S. v. Brace (D. C. 1907) 149 Fed. 874.

14. Overt acts.—The union in the unlawful purpose does not constitute the crime of conspiracy to defraud the United States, within this section, which requires not only the unlawful conspiracy, but that some party must do an act to effect its object. Hyde v. U. S. (1912) 32 Sup. Ct. 793, 798, 225 U. S. 347, 56 L. Ed. 1114, affirming judgment (1910) 35 App. D. C. 451.

While no overt act was required to constitute a conspiracy at common law, a conspiracy to defraud the United States, denounced by R. S. § 5440 (embodied herein), is not effected until an overt act is committed by one or more of the conspirators. Jones v. U. S. (1908) 162 Fed. 417, 89 C. C. A. 303, writ of certiorari denied (1908) 29 Sup. Ct. 685, 212 U. S. 576, 53 L. Ed. 657.

A conspiracy to commit an offense against the United States, if followed by an overt act, is a crime. Marrin v. U. S. (1909) 167 Fed. 951, 93 C. C. A. 351, certiorari denied (1911) 32 Sup. Ct. 523, 223 U. S. 719, 56 L. Ed. 629.

Under this section, where one or more of the conspirators do some act to effect the object of the conspiracy, it is not enough that the conspiracy be directed to the attainment of some unlawful object, but it must be directed to the attainment of such an object as brings the conspiracy within the class made criminal, and, when that object is attained, "the object of the conspiracy" is effected, and there can be no further overt act. Lonabaugh v. U. S. (1910) 179 Fed. 476, 103 C. C. A. 56, reversing judgment U. S. v. Lonabaugh (D. C. 1907) 158 Fed. 314.

Certain acts charged to have been committed by conspirators in furtherance of a conspiracy held not mere part and parcel of the formation of the conspiracy but to constitute overt acts, proof of any one of which was sufficient to sustain a conviction. Donaldson v. U. S. (1913) 208 Fed. 4, 125 C. C. A. 316.

Conspiracy denounced by R. S. § 5440 (embodied herein), is distinguishable from the common-law offense in that it requires an overt act, which when committed completes the offense, without reference to the ultimate success of the conspiracy. Ryan v. U. S. (C. C. A. 1914) 216 Fed. 13.

One overt act is all that is required to complete the offense of conspiracy, and the act of one conspirator is the act of all. Jung Quey v. U. S. (1915) 222 Fed. 766, 138 C. C. A. 314.

Where the existence of an unlawful conspiracy is proved, an overt act by one of the parties thereto becomes the act of all, and they are all alike guilty. U. S. v. Butler (C. C. 1877) Fed. Cas. No. 14,700; U. S. v. Noblom (C. C. 1878) Fed. Cas. No. 15,896.

To constitute a conspiracy under this section, there must be some act committed by one of the parties to the conspiracy to effect its object. U. S. v. Thompson (C. C. 1886) 29 Fed. 86; U. S. v. Breese (C. C. 1909) 173 Fed. 402.

The overt act essential to conviction for conspiracy cannot succeed the completion of the contemplated crime. U. S. v. Ehrgott (C. C. 1910) 182 Fed. 267.

At common law the crime of conspiracy was complete, when two or more persons combined for the purpose of committing an unlawful act, and it was not necessary to allege or prove an overt act. Under this section, however, there must not only be the unlawful combination, but one of the parties

must do some act for the purpose of effecting its object. The crime consists in putting the corrupt agreement into active operation, and so long as it is in operation the offense is a continuing one. U. S. v. Brace (D. C. 1906) 149 Fed. 874, 877.

The gist of the offense under this section is conspiracy, combination, or agreement to effect an unlawful end, which offense is completed only on some one or more of the parties doing an act to effect the object of the conspiracy, termed an "overt act." U. S. v. Richards (D. C. 1906) 149 Fed. 443.

An overt act, required to constitute conspiracy, must be a subsequent independent act, following the complete agreement or conspiracy, and done to carry into effect the object of the original combination. Id.

Where the overt act alleged as a part of a conspiracy to defraud the United States took place after the conspiracy had been consummated, it was ineffective as an overt act to constitute such offense. Ex parte Black (D. C. 1906) 147 Fed. 832.

To constitute an indictable conspiracy there must be some overt act, which must tend to carry out the object of the conspiracy, or in some way effectuate it, and if the conspiracy ceases without an overt act it would not constitute an offense, though when consummated it is the conspiracy rather than the overt act which constitutes the crime. U. S. v. McLaughlin (D. C. 1908) 169 Fed. 302.

Where defendants were charged with having conspired to defraud several corporations engaged in selling merchandise, etc., by mail, by means of catalogues, and it was alleged that the scheme to defraud was to be effected by the use of the post office by soliciting from such corporations catalogues and samples requesting price lists and estimates on spurious bills of lumber by falsely representing that defendants were desirous of purchasing such materials, etc., letters and postal cards sent through the mails by which defendants requested catalogues, prices, samples, and estimates, but in none of which was there any representation that the signer or any of the defendants intended to purchase such materials from the addressees, were insufficient to constitute an overt act required to make out a criminal conspiracy. Id.

A conspiracy consists in the unlawful combination, and, but for the necessity of alleging an overt act, is committed when the combination is entered into, without anything further being done to effect the object. U. S. v. Raley (D. C. 1909) 173 Fed. 159.

Where defendants conspired to obtain Umatilla reservation lands by procuring false applications to purchase, defendant's act in procuring some person to make an application to purchase, and a false oath accompanying it, would constitute a sufficient overt act. Id.

To bring a case within this section, making it a crime to conspire to commit an offense against the United States where one or more of the parties "do any act to effect the object of the conspiracy," the conspirator must himself do the act or authorize it to be done, and a mere failure on his part to prevent another from doing it is not sufficient. U. S. v. McClarty (D. C. 1911) 191 Fed. 518.

Acts alleged to have been done in furtherance of a conspiracy to defraud the United States held to constitute overt acts committed within the jurisdiction of the court. U. S. v. Burke (D. C. 1914) 218 Fed. 83.

This section modifies the common-law offense of conspiracy by requiring, not only an unlawful conspiracy, but also an overt act. U. S. v. Linton (D. C. 1915) 223 Fed. 677.

To the statutory offense of conspiring to defraud defined by this section an overt act, forming a step towards execution, being essential, may be the sole basis of local jurisdiction. Tillinghast v. Richards (D. C. 1915) 225 Fed. 226.

The commission of conspiracy is not complete until one or more of the conspirators does some overt act or acts in execution or furtherance of the conspiracy, which acts may be innocent or criminal. U. S. v. Rogers (D. C. 1915) 226 Fed. 512.

15. Success of conspiracy.—To constitute a violation of R. S. § 5440 (embodied herein), by conspiring to defraud the government of public lands subject to entry under Timber and Stone Act of June 3, 1878, § 1 (ante, § 4671), it is not essential that a patent for the lands be issued and delivered; a violation of the section not depending upon the success of the conspiracy, and becoming complete when the final step was taken by the conspirators in inducing fraudulent entries and the issuance of certificates of purchases. U. S. v. Black (1908) 160 Fed. 431, 87 C. C. A. 383.

Under this section it is not necessary that the alleged conspiracy should have been successful. U. S. v. Newton (D. C. 1892) 52 Fed. 275.

16. Pecuniary loss to government.—It is not necessary, to sustain an indictment under this section, which makes it an offense to conspire "to defraud the United States in any manner or for any purpose," that the consummation of the conspiracy would have caused pecuniary loss to the government, where the defendants are its officers or employés. McGregor v. U. S. (1904) 134 Fed. 187, 69 C. C. A. 477.

A conspiracy to defraud an individual, even though the mails be made use of for the purpose, does not fall within the terms of this section. What is there provided for is a conspiracy of two or more either to commit an of-

fense against the United States or to defraud it. U. S. v. Clark (D. C. 1902) 121 Fed. 190.

A conspiracy to secure for a person not duly elected to Congress the compensation payable to a congressman, is a conspiracy to inflict a property loss on the government, if such loss is necessary to the offense prohibited by this section. U. S. v. Aczel (D. C. 1915) 219 Fed. 917.

17. Identity of conspiracy.—Identity of conspiracy is not destroyed by the connection at a subsequent time of new parties therewith. U. S. v. Nunnemacher (C. C. 1876) Fed. Cas. No. 15,902.

18. Rights of government subsequently created.—R. S. § 5440 (embodied herein), applies with equal force to rights of the United States created subsequent to its passage, as well as those previously existing. Curley v. U. S. (1904) 130 Fed. 1, 64 C. C. A. 639, writ of certiorari denied (1904) 25 Sup. Ct. 787, 195 U. S. 628, 49 L. Ed. 351.

19. Contemplated fraud depending on passage of future act.—This section does not extend to a case where the contemplated fraud was to depend entirely upon the passage of a future act of congress to make it effective. U. S. v. Crafton (C. C. 1877) Fed. Cas. No. 14,881.

20. Persons liable.—A woman may conspire to commit an offense against the United States within this section, though the object of the conspiracy is her own transportation in interstate commerce for purposes of prostitution, contrary to Act June 25, 1910 (ante, § 8812 et seq.). U. S. v. Holte (1915) 35 Sup. Ct. 271, 236 U. S. 140, 59 L. Ed. 504, L. R. A. 1915D, 281.

One who comes into a conspiracy after it has been formed, with knowledge of its existence, and with a purpose of forwarding its designs, is equally as guilty as though he had participated in its original formation. Thomas v. U. S. (1907) 156 Fed. 897, 84 C. C. A. 477, 17 L. R. A. (N. S.) 720.

Individuals could be guilty of conspiracy to conceal assets of a bankrupt corporation, even if it could not be charged as a conspirator. Roukous v. U. S. (1912) 195 Fed. 353, 115 C. C. A. 255, modifying judgment U. S. v. Young & Holland Co. (C. C. 1909) 170 Fed. 110, and writ of certiorari denied Roukous v. U. S. (1912) 32 Sup. Ct. 840, 225 U. S. 710, 56 L. Ed. 1267.

Courts are not authorized to hold as a matter of law that one who aids and abets another in the commission of an offense is a conspirator. Louie v. U. S. (1914) 218 Fed. 36, 134 C. C. A. 58.

Each member of a conspiracy is responsible for every act of every other member, done by common consent in furtherance of the illegal purposes, and also for such acts, though not consented to beforehand, if assented to afterwards. U. S. v. Mitchell (C. C. 1871) Fed. Cas. No. 15,790.

Where a party of men combine with intent to do an unlawful thing, and in the prosecution of that unlawful intent one of the party goes a step further than the others and does acts which the others do not themselves perform, all are responsible for what the one does. It is essential, however, that there should be a concert of action,—an agreement to do some unlawful thing. U. S. v. Kane (C. C. 1885) 23 Fed. 748.

A combination to induce the officers of a common carrier corporation subject to the provisions of the interstate commerce act, and its locomotive engineers, to refuse to receive, handle, and haul interstate freight from another like common carrier in order to injure the latter, is a combination or conspiracy to commit the misdemeanor described by section 10 of the interstate commerce act, and, if any person engaged in it does an act in furtherance thereof, all combining for the purpose are guilty of criminal conspiracy, as denounced by this section. Toledo, A. A. & N. M. Ry. Co. v. Pennsylvania Co. (C. C. 1893) 54 Fed. 730, 19 L. R. A. 387, appeal dismissed Ex parte Lennon (1893) 14 Sup. Ct. 123, 150 U. S. 393, 37 L. Ed. 1120.

Where two or more persons combine with the intent to do an unlawful thing, and, in the prosecution of the unlawful enterprise, commit some crime not originally contemplated, all are equally guilty, under the law. U. S. v. Sweeney (C. C. 1899) 95 Fed. 434.

A corporation may be liable criminally for the crime of conspiracy. U. S. v. MacAndrews & Forbes Co. (C. C. 1906) 149 Fed. 823.

Any one who, after a conspiracy is formed, and who knows of its existence, joins therein, becomes a party thereto from that time. U. S. v. Cassidy (D. C. 1895) 67 Fed. 698, citing U. S. v. Babcock (C. C. 1876) Fed. Cas. No. 14,487.

All persons working together in furtherance of the common design are members of the conspiracy, although the part any one is to take is subordinate, or is to be executed at a remote distance. Id.

Where a railroad company and a shipper agreed to give and receive rebates, contrary to Interstate Commerce Act, held, that both could be prosecuted, under R. S. § 5440 (embodied herein), for conspiring to violate the laws of the United States. U. S. v. Grand Trunk Ry. Co. of Canada (D. C. 1915) 225 Fed. 283.

When two or more persons combine for the purpose of interfering with the passage of a train carrying the mail, and one or more of the parties does any act to effect such object, all of the parties are liable to a criminal prosecution for conspiracy under R. S. §

5440 (embodied herein). (1894) 21 Op. Atty. Gen. 9.

21. Misconduct in office in general.—Assuming that the common law as it existed in Maryland when the District of Columbia was ceded exists in the District, and that it makes misconduct in office a criminal offense, it is not an offense against the United States as a distinct sovereign in such sense that an indictment will lie under this section for conspiracy to commit such offense in the District, especially against a person who is not a resident thereof. U. S. v. Haas (D. C. 1906) 167 Fed. 211.

Official misconduct in office, being an offense under the common law, is an offense in the District of Columbia, and is an offense against the United States, whether it is an offense against the United States when committed by federal officers in any of the states or territories; and it is immaterial that such offense was a misdemeanor at common law, while the conspiracy to commit it, by reason of the character of the penalty prescribed by R. S. § 5440 (embodied herein), becomes an infamous offense. Tyner v. U. S. (1904) 23 App. D. C. 324.

22. Corrupt administration of laws.—An indictment charging that defendants did conspire, combine, confederate, and agree together to defraud the United States, by corruptly and for their own gains administering and procuring the administration of Act March 3, 1901, c. 853, 31 Stat. 1133, appropriating money to survey public lands, in a manner contrary to the true intent and purpose thereof, and wasteful of the money so appropriated and apportioned, prejudicial to the welfare and interest of the United States and the public service thereof, did not charge a conspiracy to defraud the government of its money or property, but charged a conspiracy to defraud the United States by corruptly administering an act of Congress. U. S. v. Moore (C. C. 1909) 173 Fed. 122.

A conspiracy to defraud the United States by corruptly administering an act of Congress, contrary to the true intent and policy thereof, constitutes an indictable offense under this section. Id.

23. Publication of incorrect agricultural reports.—A conspiracy to cause the publication of incorrect monthly agricultural reports concerning the cotton crop of the current year constituted a "conspiracy to defraud" prohibited by R. S. § 5440 (embodied herein). Haas v. Henkel (C. C. 1909) 166 Fed. 621, order affirmed (1910) 30 Sup. Ct. 249, 216 U. S. 462, 54 L. Ed. 569, 17 Ann. Cas. 1112.

24. Advance information of agricultural reports.—A conspiracy to obtain advance information of government agricultural reports and statistics before official publication did not constitute a "conspiracy to defraud" prohibited by R. S. § 5440 (embodied herein). Haas v. Henkel (C. C. 1909) 166 Fed. 621, order affirmed (1910) 30 Sup. Ct. 249, 216 U. S. 462, 54 L. Ed. 569, 17 Ann. Cas. 1112.

An indictment which charges a confederated effort to deprive the national government of the right and privilege of proper service in the Department of Agriculture by corrupting an employé of such department, and inducing him to secretly furnish advance information of crop conditions, contrary to the rules of the department, and to issue false reports to the public as to such conditions, charges a conspiracy to defraud the United States under R. S. § 5440 (embodied herein). U. S. v. Haas (C. C. 1908) 163 Fed. 908.

An agreement between a clerk or employé in the Department of Agriculture and others pursuant to which such clerk furnished to the others advance information of the contents of a report to be afterward made public by the department regarding the condition of the cotton crop, based on which information the outsiders speculated in the market for the benefit of all parties to the agreement, does not constitute a conspiracy to defraud the United States within the meaning of this section. U. S. v. Haas (D. C. 1906) 167 Fed. 211.

The giving out of information by a clerk or employé of a department of the United States government in respect to a matter which it was understood should be kept secret, although for private gain, is not a crime against the United States unless made so by law. Id.

25. Inducing approval of defective life preservers.—The provision of this section which makes it a criminal offense to conspire "to defraud the United States in any manner or for any purpose," is not limited in its application to conspiracies to deprive the United States of money or property, but should be broadly construed to protect the government in its rights, privileges, operations, and functions against all fraudulent operations; and an indictment is good thereunder which avers facts sufficiently showing that defendants conspired to deceive inspectors of the United States in the exercise of their official functions by fraudulently inducing them to approve life preservers which did not in fact comply with the requirements of the federal law, and that they committed overt acts pursuant to such conspiracy. U. S. v. Stone (D. C. 1905) 135 Fed. 392.

26. Importation of alien contract laborers.—Assisting the importation of alien contract laborers is an "offense against the United States," within the meaning of R. S. § 5440 (embodied herein), since Congress, in making it a misdemeanor, by Act Feb. 20, 1907,

c. 1134, § 4, 34 Stat. 900, to assist the immigration of such persons, has made such action a crime, indictable as such, although, by section 5 of that act, it has provided a remedy in the nature of a civil action for the recovery of a penalty for a violation of the act. U. S. v. Stevenson (1909) 30 Sup. Ct. 37, 38, 215 U. S. 200, 54 L. Ed. 157.

No valid objection to construing R. S. § 5440 (embodied herein), providing for the criminal punishment of persons conspiring to commit an offense against the United Staes as embracing assisting the importation of alien contract laborers, in violation of Act Feb. 20, 1907, § 4 (section 4248, ante), can be founded upon the fact that a greater punishment may thereby be affixed to the conspiracy to commit the offense than is provided for the offense itself. Id.

27. Violation of Chinese exclusion law.—Accused, lured by United States officers to undertake to bring Chinese across the Mexican border, held not guilty of a conspiracy to commit a criminal act under R. S. § 5440 (embodied herein). Woo Wai v. U. S. (1915) 223 Fed. 412, 137 C. C. A. 604.

Under an indictment charging a conspiracy to aid and abet the landing from certain vessels named of Chinese laborers not entitled to enter United States, it is immaterial whether any Chinese laborers were in fact landed as a result of the alleged conspiracy, if the criminal agreement was entered into, and any of the overt acts alleged were committed. U. S. v. Wilson (D. C. 1894) 60 Fed. 890.

28. Offenses by bank officers and others in connection therewith.—A conspiracy between the directors of a banking association to misapply its moneys by procuring the declaration of a dividend greater than the net profits, in violation of R. S. § 5204, ante, § 9766, is not a criminal offense. U. S. v. Britton (1883) 108 U. S. 199, 2 Sup. Ct. 531, 27 L. Ed. 698.

While it is a settled rule of criminal law that an indictment for conspiracy will not lie where a plurality of agents is logically necessary to complete the crime which it was the object of the conspiracy to commit, such rule does not apply to an indictment under R. S. § 5440 (embodied herein), for a conspiracy between the defendant, who had no official connection with a national bank, and an officer of such bank to violate section 9770, ante, by causing a check of defendant drawn on the bank to be certified by such officer when defendant did not have a sufficient amount on deposit to pay the same. Chadwick v. U. S. (1905) 141 Fed. 225, 72 C. C. A. 343.

Something more than a mere certification of a check in excess of a deposit is necessary to make the offense punishable under this section, and a wrongful intent is of the essence, and the act of certification must be willful, and there must be an evil design, and a wrongful purpose. Id.

Since, under section 9772, ante, making it an offense to misapply the funds of a national bank, that offense can only be committed by an officer or agent of the bank, under a count of an indictment for conspiracy to misapply funds of the national bank, it is sufficient to show an agreement to commit that offense made between either the cashier or the vice president of the bank and the defendants for whose benefit the money is alleged to have been withdrawn. Prettyman v. U. S. (1910) 180 Fed. 30, 103 C. C. A. 384.

Conspiracy to misapply funds of National bank defined. Id.

Under the act of March 2, 1867, it is an offense for an officer of a national bank to conspire with another, not an officer, to abstract or embezzle the funds thereof; and an indictment charging the two with a conspiracy to commit such offense is good. U. S. v. Martin (C. C. 1870) Fed. Cas. No. 15,728.

An indictment alleging the conspiracy to defraud the United States in the exercise of its governmental and fiscal functions, by deliberately giving false information regarding the financial condition of a national bank, the fraud resulting in lessening the power of the federal government by failure to maintain in efficient condition one portion of the national fiscal system, stated an offense against the United States; it being possible to have a conspiracy to defraud by merely deceiving a governmental officer, though neither the government nor the officer was deprived thereby of money or money value. U. S. v. Morse (C. C. 1908) 161 Fed. 429.

It is not a defense to a prosecution for conspiracy between officers of a national bank to embezzle, abstract, or willfully misappropriate its funds by means of excessive loans or overdrafts for their benefit that the Comptroller of the Currency did not do all he might have done to compel a correction of such irregularities. U. S. v. Breese (C. C. 1909) 173 Fed. 402.

A charge under R. S. § 5440 (embodied herein), of conspiracy between officers of a national bank to embezzle, abstract, or willfully misapply its funds in violation of section 9772, ante, is supported by evidence that, acting together with a common understanding, defendants largely overdrew their respective accounts with the bank, to such an extent that they were wholly unable to meet the same, as they must have known, and that, to cover up such overdrafts, by a common understanding they placed worthless notes in the bank with the intent and result of injuring and defrauding the bank. Id.

The most formal vote of the directors of a national bank cannot authorize the embezzlement, abstraction, or willful misapplication of its funds by an officer,

and will not constitute a defense to conspiracy to commit such offense. Id.

29. Offenses under bankruptcy law.—An indictment will not lie under R. S. § 5440 (embodied herein), for a conspiracy to effect the concealment by a bankrupt of property from his trustee, in violation of section 9613, ante, where the trustee himself is charged as one of the conspirators, and the averments of the indictment show that there was, in fact, no concealment of property from him, and no purpose that there should be such concealment. Johnson v. U. S. (1907) 158 Fed. 69, 85 C. C. A. 399, 14 Ann. Cas. 153.

Under R. S. § 5440 (embodied herein), an indictment will lie for a conspiracy that a bankrupt shall knowingly and fraudulently conceal from his trustee property belonging to his estate, which is made a criminal offense by section 9613, ante, and such conspiracy may be entered into prior to the bankruptcy, in contemplation of bankruptcy; and defendants may be convicted, although it is not alleged nor proved that a trustee was actually appointed, where the evidence warrants a finding that the conspiracy was so successfully carried out that, when the bankruptcy proceedings were instituted, the bankrupt's property had all been removed beyond the jurisdiction of the court, so that the appointment of a trustee would have been a useless formality. Radin v. U. S. (1911) 189 Fed. 568, 111 C. C. A. 6.

An indictment for conspiracy to conceal assets of a bankrupt in violation of section 9613, ante, was not objectionable because there was no existing bankruptcy when the conspiracy originated. Roukous v. U. S. (1912) 195 Fed. 353, 115 C. C. A. 255, modifying judgment U. S. v. Young & Holland Co. (C. C. 1909) 170 Fed. 110, and writ of certiorari denied Roukous v. U. S. (1912) 32 Sup. Ct. 840, 225 U. S. 710, 56 L. Ed. 1267.

Conspirators for a fraudulent concealment of assets in future bankruptcy proceedings held liable as for concealment from the trustee, whether that particular injury was intended or not. Roukous v. U. S. (1912) 195 Fed. 353, 115 C. C. A. 255, modifying judgment U. S. v. Young & Holland Co. (C. C. 1909) 170 Fed. 110, and writ of certiorari denied Roukous v. U. S. (1912) 32 Sup. Ct. 840, 225 U. S. 710, 56 L. Ed. 1267.

Under this section persons may commit an offense by conspiring with a bankrupt to conceal his goods. Tapack v. U. S. (C. C. A. 1915) 220 Fed. 445.

Under R. S. § 5440 (embodied herein), a person who conspires with the bankrupt to commit the acts made criminal by R. S. § 5132, subds. 7, 10, may be indicted. U. S. v. Bayer (C. C. 1876) Fed. Cas. No. 14,547.

An indictment will lie under R. S. § 5440 (embodied herein), for conspiracy to conceal from the trustee of one of the defendants in bankruptcy, property belonging to his estate in bankruptcy, in violation of section 9613, ante, which makes it a criminal offense for any person "while a bankrupt" to conceal property of his estate from his trustee; and such indictment is not demurrable because the date of the conspiracy and concealment is laid prior to the bankruptcy proceedings where it is charged as a part of the conspiracy that a plan was formed to bring about such proceedings pursuant to which the property was removed and concealed, purposely omitted from the bankrupt's schedules, and kept concealed from the trustee after his appointment. U. S. v. Cohn (C. C. 1906) 142 Fed. 983.

30. Violence to prisoners.—The fact that members of a conspiracy to offer violence to prisoners under arrest are in charge of them as deputy marshals or guard does not lessen their guilt. U. S. v. Logan (C. C. 1891) 45 Fed. 872, judgment reversed Logan v. U. S. (1892) 12 Sup. Ct. 617, 144 U. S. 263, 36 L. Ed. 429.

31. Allowing prisoner to escape.—Under Cr. Code, §§ 37, 138, an indictment charging that petitioner conspired with his official custodian and another to permit petitioner to escape held to state an offense against the United States. Ex parte Lyman (D. C. 1913) 202 Fed. 303.

32. Obstructing or impeding administration of justice.—A conspiracy to corruptly obstruct and impede the due administration of justice in a court of the United States in a civil action between private parties in violation of R. S. § 5399, post, § 10305, is a conspiracy to commit an offense against the United States within the meaning of R. S. § 5440 (embodied herein), and is indictable thereunder. Wilder v. U. S. (1906) 143 Fed. 433, 74 C. C. A. 567, writ of certiorari denied (1907) 27 Sup. Ct. 787, 204 U. S. 674, 51 L. Ed. 674.

33. Perjury and subornation thereof.—A conspiracy by two or more to procure the commission of perjury, which embraces an unsuccessful attempt, is punishable under this section, even though an attempt by one person to suborn another to commit perjury may not be so punishable. Williamson v. U. S. (1908) 28 Sup. Ct. 163, 170, 207 U. S. 425, 52 L. Ed. 278.

The precise persons to be suborned, or the time and place of such suborning, need not be agreed upon in the minds of the conspirators, in order to constitute the crime of conspiracy to suborn perjury in proceedings for the purchase of public land under the timber and stone act. Id.

Defendant and others conspired to defraud entrymen on public lands of the location fees, and, in order to induce them to enter the lands, M. represent-

ed to them that he was the agent of a fictitious corporation of whom a fictitious person was president, which corporation desired to purchase the land, and would do so from the entrymen, either for a specified amount, or in accordance with an estimate of timber thereon. Pursuant to such conspiracy, defendants induced the entrymen to sign and swear to entry affidavits declaring that the entrymen were purchasing the land for their own benefit, and not for speculation, and that they had no contract or agreement to transfer the same after they had contracted to convey the land to such corporation. Held that, since M. would have been personally liable on such contracts under the rule that one who holds himself out as an agent of a nonexisting principal is personally liable, the affidavits were in fact false and constituted perjury, though there was no intention on defendant's part at any time to carry them out or purchase the land. Nickell v. U. S. (1908) 161 Fed. 702, 88 C. C. A. 562, judgment affirmed on rehearing (1909) 167 Fed. 741, 93 C. C. A. 229, writ of certiorari denied (1909) 29 Sup. Ct. 699, 214 U. S. 517, 53 L. Ed. 1064.

Since a crime against the United States is committed by any person who violates either Code D. C. § 818, making it an offense wrongfully to accuse any woman of unchastity, or section 858, denouncing perjury, an indictment for conspiracy to commit either of those crimes charges an offense under this section. Fletcher v. U. S. (1914) 42 App. D. C. 53, 511, citing U. S. v. Cella (1911) 37 App. D. C. 423.

The crime of conspiracy to commit perjury, under this section and Code D. C. § 858, denouncing perjury, is charged by an indictment reciting the pendency of a divorce suit in the Supreme Court of the District of Columbia, and averring that the defendant in the indictment conspired to charge the plaintiff in the divorce suit with adultery by securing false and fraudulent evidence against her, with the intent to use the same in the divorce suit; and therefore the indictment cannot be regarded as based upon section 910, Code, providing that any person convicted of any criminal offense not covered by the provisions of any section of the District Code, or of any law of the United States not locally inapplicable to the District of Columbia, shall be punished as specified. Id.

34. **Bribery.**—R. S. § 1781, post, § 10282, makes it a criminal offense for a member of Congress to take, receive, "or agree to receive" any money, property, or other valuable consideration for procuring or aiding to procure any office from the government, and also a like offense for any person to offer, give, "or agree to give" any money or other consideration to any member of Congress for procuring or aiding to procure such office. Held, that an agreement between a member of Congress and another, the one to receive a bribe for aiding to procure an office and the other to pay the same, constitutes a substantive offense under said section by each of the parties thereto, and cannot be made the basis of an indictment under R. S. § 5440 (embodied herein), for a conspiracy to commit an offense against the United States. U. S. v. Dietrich (C. C. 1904) 126 Fed. 664.

A conspiracy to procure, by bribery, the making of a false certificate by the board of examining surgeons, whereby the commissioner of pensions may be induced to allow a fraudulent increase of pension, is a conspiracy to defraud the United States, within the meaning of this section. U. S. v. Van Leuven (D. C. 1894) 62 Fed. 62.

Persons, one of whom was to purchase merchandise for the United States, for doing which he was to be paid a bribe, held indictable for conspiracy to defraud the United States, under R. S. § 5440 (embodied herein). U. S. v. Burke (D. C. 1915) 221 Fed. 1014.

35. **Aiding, abetting, or assisting escape.**—Since it is made an offense by federal statute for any person directly or indirectly to aid, abet, or assist another person to escape, and conspiracy to commit such an offense is a separate crime, an indictment, alleging that accused, together with other named persons, conspired to commit an offense against the United States, to wit, to aid, abet, and assist himself to escape from an officer, was not fatally defective on the theory that, inasmuch as there was no law making it an offense for a prisoner to escape or attempt to escape, he could not be guilty of aiding, abetting, or assisting himself to do so. U. S. v. Lyman (D. C. 1911) 190 Fed. 414.

36. **False claims and false affidavits.**—Elements stated of the offense of conspiring to defraud the government by obtaining allowance of false claims and by false affidavits. Act March 2, 1863, §§ 1-3. U. S. v. Jennison (C. C. 1874) Fed. Cas. No. 15,475.

R. S. § 5438 (embodied herein), so far as it declares that every person who enters into any agreement, combination, or conspiracy to defraud the government of the United States, or any department or officer thereof, by obtaining, or aiding to obtain, the payment or allowance of any false or fraudulent claim, shall be punished without requiring any act in furtherance of the conspiracy, is modified by R. S. § 5440, as amended by the act of March 17, 1878 (embodied herein) which declares that if two or more persons conspire either to commit any of-

fense against the United States, or to defraud the United States in any manner, or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to the penalty specified; so that a mere conspiracy, without some overt act in execution of it, is not an indictable offense. U. S. v. Reichert (C. C. 1887) 32 Fed. 142.

An applicant for a government clerkship filed a sworn application in the form required for an examination by the civil service commission, and was afterwards notified by postal card to appear for examination at a time stated. By previous arrangement, another person, impersonating the applicant, presented himself for examination, and filled out a paper known as the "Declaration Sheet," which contained questions concerning the applicant, and signed the applicant's name thereto. Held, that these two persons were indictable, under R. S. §§ 5440, 5418 (this compilation, §§ 10192, 10201), which denounce respectively the offense of conspiring to commit any offense against the United States or to defraud the United States, and the offense of falsely making, altering, or forging various enumerated papers, including affidavits or other writings, for the purpose of defrauding the United States. U. S. v. Bunting (D. C. 1897) 82 Fed. 883.

37. **False pretenses.**—Any conspiracy to obtain money by false pretenses in the District of Columbia is a conspiracy to commit an offense against the United States. In re Wolf (D. C. 1886) 27 Fed. 606.

38. **Falsely impersonating another at civil service examination.**—Defendant H., desiring to procure appointment as a letter carrier, a position in the classified civil service of the United States, unlawfully agreed with defendant C. that the latter should falsely impersonate H. at a civil service examination, and do all acts required by the examiners, and sign H.'s name to the examination papers to be delivered to C. for examination while he should impersonate H. C., in pursuance of such conspiracy, gained entrance to the examination, and falsely signed H.'s name to a declaration sheet which was required to be in the handwriting and on the honor of the applicant. Held, that such facts constituted a conspiracy to defraud the United States, prohibited by R. S. § 5440 (embodied herein). Curley v. U. S. (1904) 130 Fed. 1, 64 C. C. A. 369, affirming judgment U. S. v. Curley (C. C. 1903) 122 Fed. 738, and writ of certiorari denied (1904) 25 Sup. Ct. 787, 195 U. S. 628, 49 L. Ed. 351.

39. **Execution of straw bail.**—In a prosecution for conspiracy to defraud the United States by the execution of straw bail, it was not necessary that the government should prove that the accused did not appear on the day required, since the government was defrauded when the accused were released on the strength of a recognizance, apparently good, but worthless in fact. Radford v. U. S. (1904) 129 Fed. 49, 63 C. C. A. 491.

40. **Violation of census law.**—Persons who conspire to commit the acts made misdemeanors by section 13 of the Census Act (Act March 1, 1899) with another person capable of committing the offenses defined therein may be punished under this section, though they themselves are incapable of committing the offenses defined in section 13. U. S. v. Stevens (D. C. 1890) 44 Fed. 132.

41. **Bucketing and bucket shopping in District of Columbia.**—A conspiracy to violate the "bucket shop" law (Act March 1, 1909, c. 233, 35 Stat. 670) of the District of Columbia is an offense against the United States, within R. S. § 1014, ante, § 1674, providing for the removal of offenders against the United States, and R. S. § 5440 (embodied herein), relating to conspiracies to commit offenses against the United States. U. S. v. Campbell (D. C. 1910) 179 Fed. 762.

It is an offense against the United States to violate the provisions of the Act March 1, 1909, c. 233, 35 Stat. 670, prohibiting bucketing and bucket shopping and abolishing bucket shops in the District of Columbia, and requiring prosecutions thereunder to be in the name of the District of Columbia; and therefore a conspiracy to commit such an offense is indictable in the name of the United States, under R. S. § 5440 (embodied herein), relating to the crime of conspiracy against the United States. U. S. v. Cella (1911) 37 App. D. C. 423, writ of certiorari denied Cella v. U. S. (1912) 32 Sup. Ct. 526.

42. **Frauds or offenses as to revenue.**—An indictment will lie, under R. S. § 5440 (embodied herein), for conspiracy to remove distilled spirits on which the tax had not been paid, in violation of section 6038, ante, although it is charged that the purpose of the conspiracy was accomplished. Scott v. U. S. (1908) 165 Fed. 172, 91 C. C. A. 206, affirming judgment U. S. v. Scott (C. C. 1905) 139 Fed. 697.

Both the collector who issues the permit and the one who removes spirits from a bonded warehouse, without payment of tax, in pursuance of a conspiracy to defraud the government, are guilty of a misdemeanor. Act March 2, 1867, § 30. In re Calicott (C. C. 1868) Fed. Cas. No. 2,311.

A conspiracy to conceal or destroy papers relating to imported merchandise (R. S. § 5443, post, § 10232), sent

by the consignor to the consignee, showing its fraudulent entry, is punishable under R. S. § 5440 (embodied herein). U. S. v. De Grieff (C. C. 1879) Fed. Cas. No. 14,936.

It is no defense to an indictment under this section for conspiracy by defendants, who were importers, and an officer of the customs revenue service, to defraud the United States by effecting the entry of goods by payment of less than the legal duty, by means of false invoices to be approved by such officer, that if the practice prescribed by the statute had been followed the object of the alleged conspiracy could not have been accomplished, because such officer was not authorized to pass on the correctness of the invoices, where the indictment avers that he was charged with such duty by the practice prevailing at the port, and that defendants, by taking advantage of such practice, in fact accomplished the purpose of the conspiracy. In such case it is immaterial whether the practice was legal or illegal. U. S. v. Rosenthal (C. C. 1903) 126 Fed. 766, judgment affirmed Browne v. U. S. (1905) 145 Fed. 1, 76 C. C. A. 31, writ of certiorari denied (1906) 26 Sup. Ct. 755, 200 U. S. 618, 50 L. Ed. 623.

Where, in a trial of a member of a firm for conspiracy to defraud the customs revenue, there was proof that his firm was concerned in such conspiracy, held that it is not mere partnership in the firm, nor relation to some acts, that the law required to be done in the course of passing goods through the custom house, that is demanded to show guilty connection with the conspiracy; it must inevitably appear that such connection was used, or such relation assumed, for the purposes of subserving the conspiracy. U. S. v. Cohn (C. C. 1904) 128 Fed. 615, judgment affirmed Browne v. U. S. (1905) 145 Fed. 1, 76 C. C. A. 31, writ of certiorari denied (1906) 26 Sup. Ct. 755, 200 U. S. 618, 50 L. Ed. 623.

Section 5665, ante, provides that any owner or importer of merchandise on which the duties have not been paid on giving satisfactory security and obtaining a permit may re-export the same without the payment of duty under inspection of the proper officers. Held, that since such section contemplates, not only that the goods be deposited on ship within the time limited after their removal, but also requires that the shipment shall be under the continued inspection of the customs officers, and Act June 10, 1890, c. 410, § 9, 26 Stat. 135, makes it a crime for any owner or importer to make or attempt to make any entry of goods without payment of duty, and one contemplates a crime who means to deposit, conceal, or withdraw goods removed from a warehouse for exportation and to introduce them unconditionally into the country effecting a surreptitious entry by which the duties would become due instanter, an indictment charging a conspiracy to effect such result sufficiently charged a crime. U. S. v. Ehrgott (C. C. 1910) 182 Fed. 267.

To prove a conspiracy to remove whisky without paying the tax, it is only necessary to show that defendants were acting in concert, or with a mutual understanding, to effect the removal without inspection and branding according to law. U. S. v. Sulzberger (D. C. 1868) Fed. Cas. No. 16,415.

Purpose of employés, agents, or officers of corporation to evade payment of tax on oleomargarine, due from the corporation, held to supply intent to defraud, essential to conspiracy to defraud the United States. U. S. v. Orr (D. C. 1915) 223 Fed. 220.

43. Plundering wrecked vessel.—A conspiracy to plunder a wrecked vessel within the admiralty and maritime jurisdiction of the United States is an offense against the United States, within the meaning of R. S. § 5440 (embodied herein); that act being a crime within R. S. § 5358, post, § 10470. U. S. v. Sanche (C. C. 1881) 7 Fed. 715.

44. Offenses as to elections.—R. S. § 5440 (embodied herein), and sections 5511, 5512, 5515, confer authority to punish a conspiracy to prevent or interfere with the security and protection of elections held for representatives and delegates to Congress, by proceedings in the federal courts, and these statutes and the statutes of Indiana make it a criminal offense for an inspector of elections or other election officer at an election for a member of Congress, to whom is committed the safe-keeping and delivery to the board of canvassers of the poll books, tally sheets, and certificates of the votes, to fail or omit to perform the duty of safe-keeping and delivery. Ex parte Coy (1888) 8 Sup. Ct. 1263, 1268, 127 U. S. 731, 32 L. Ed. 274.

A conspiracy of state election officers to omit returns from certain precincts at election of Congressmen from their count and from their return is indictable under section 10183, ante. U. S. v. Mosley (1915) 35 Sup. Ct. 904, 238 U. S. 383, 59 L. Ed. 1355.

To sustain a conviction for a conspiracy to procure persons to go into another county to vote illegally, it need not be shown that illegal votes were actually cast or offered, or that any person went into the other county to vote illegally. U. S. v. Wrape (C. C. 1879) Fed. Cas. No. 16,767.

R. S. §§ 5511–5515, making it an offense against the United States for any officer, state or national, of an election at which a representative or delegate to congress is voted for, to violate any duty in regard to such election imposed on him by state or federal law, does not embrace any act which has exclusive reference to the election of state or county officers; and the alteration, by officers of such an

election, of the statement upon the tally sheets of the vote for certain local officers, in pursuance of a conspiracy, is not an offense against the United States. Ex parte Perkins (C. C. 1887) 29 Fed. 900.

45. Violation of neutrality laws.—Defendants held, on the facts, guilty of conspiracy to violate Cr. Code, § 10, ante, § 10174, by "hiring or retaining" persons to go beyond the limits of the United States with intent to be enlisted as soldiers in a foreign service. U. S. v. Blair-Murdock Co. (D. C. 1915) 228 Fed. 77.

46. Violation of interstate commerce law.—Where defendants were indicted for conspiracy to commit an offense against the United States, to wit, the transportation of explosives on passenger cars or trains in interstate commerce, in violation of post, § 10402 et seq., and the carriage as averred was the subject of the conspiracy in any measure, the violation of such act would be sufficient to form the basis of conspiracy within this section, regardless of the fact that the ultimate purpose was the destruction of "open shop" steel constructions in the United States, an object not within federal cognizance. Ryan v. U. S. (C. C. A. 1914) 216 Fed. 13.

Where a conspiracy to transport nitroglycerin in passenger trains and cars in interstate commerce was alleged to have been entered into December 1, 1906, the overt acts having been committed beginning January 20, 1908, and extending to August 27, 1911, it was immaterial that dynamite was not named in the enactments in force at the inception of the conspiracy, or that R. S. § 5353, post, § 10402, had been amended in the meantime; the carriage of nitroglycerin having been prohibited by Act July 3, 1866, and continuously since that time. Id.

If the common carrier company against whom a combination to induce the officers of a common carrier corporation subject to the provisions of the interstate commerce act, and its locomotive engineers, to refuse to receive, handle, and haul interstate freight from another like common carrier, is directed, is injured by acts done in furtherance of it, it has a cause of action for its loss against all of those engaged in the conspiracy. Toledo, A. A. & N. M. Ry. Co. v. Pennsylvania Co. (C. C. 1893) 54 Fed. 730, 19 L. R. A. 387.

A combination of locomotive engineers, which will have the effect to defeat the provisions of the interstate commerce law, inhibiting discriminations in the transportation of freight and passengers, and further to restrain the commerce of the country, will be obnoxious to the penalties prescribed in this section. Waterhouse v. Comer (C. C. 1893) 55 Fed. 149, 19 L. R. A. 403.

A combination for the purpose of compelling railway companies to break their contracts with the owner of certain cars, for the use thereof by them, is an unlawful conspiracy. Thomas v. Cincinnati, N. O. & T. P. Ry. Co. (C. C. 1894) 62 Fed. 803.

A combination by employés to compel their employers, by threats of quitting and by actually quitting their service, to withdraw from a mutually profitable relation with a third person having no effect on the character or reward of the employés' services, for the purpose of injuring such third person, is a boycott, and an unlawful conspiracy. Id.

Where two or more men wrongfully agree among themselves, either for the purpose of creating sympathy in a threatened strike, or for any other purpose, to cause trains carrying interstate commerce to be stopped, or to discharge their employés or refuse to employ new men, so as to stop such trains, they are guilty of conspiracy. U. S. v. Debs (C. C. 1894) 63 Fed. 436.

A conspiracy to prevent a railroad company from performing its duties as defined by Interstate Commerce Act, §§ 3, 10, is a conspiracy within this section to violate the laws of the United States. Wabash R. Co. v. Hannahan (C. C. 1903) 121 Fed. 563.

Where an indictment, under R. S. § 5440 (embodied herein), for a conspiracy to commit the offense created by section 10 of the interstate commerce law, as amended by Act March 2, 1889, charges a conspiracy between lumber merchants and their servants and an employé of a railroad company to procure less than the established rates by falsely weighing the lumber shipped, such weighing being done by the railroad employé, the jury, in order to convict, must find an agreement between two or more of defendants for the purpose named, and also, as an overt act, the actual false weighing of lumber by such employé. U. S. v. Howell (D. C. 1892) 56 Fed. 21.

Where the evidence shows one continuous agreement or intention to secure such underrate, proof of a single overt act in furtherance of it is sufficient to make out the offense; and proof of separate overt acts will not show more than one offense where the agreement is continuous. Id.

Under an indictment for conspiracy to obtain an unlawful discrimination in rates, the shippers of lumber may be convicted if their servants procured an unlawful discrimination in rates, provided they knew of such unlawful acts, permitted them to continue, and received, directly or indirectly, the benefit of them; for it was their duty to see that the law was not violated by their subordinates by reason of their own negligence. Id.

An agreement between two or more

persons that the employés of railroads carrying mails and interstate commerce should quit, and that all others should, by threats or violence, be prevented from taking their places, constitutes a criminal conspiracy to obstruct interstate commerce. In re Charge to Grand Jury (D. C. 1894) 62 Fed. 828.

An indictment will lie under this section for conspiracy to commit an offense in violation of Hepburn Act June 29, 1906, § 1 (section 8563, ante), against an agent of a railroad company and others, to whom by agreement he issued interstate free passes, and who pursuant to such agreement sold the same in violation thereof, and the agent cannot defend on the ground that his principal had no knowledge of the fact, and therefore committed no offense under that section. U. S. v. Clark (D. C. 1908) 164 Fed. 75.

47. **Obstructing mails.**—A conspiracy to obstruct the mail in violation of R. S. § 3995, post, § 10371, is a violation of R. S. § 5440 (embodied herein), as a conspiracy to commit an offense against the United States. U. S. v. Stevens (C. C. 1877) Fed. Cas. No. 16,392.

Employés, if acting without any illegal purpose, may quietly and peaceably leave the service of their employer by concerted action at a given time, so long as they do not violate any contract to remain longer. Id.

It is unlawful for employés whose employment is at an end to combine to induce others to quit the same service at the same time, but before their employment has expired. Id.

A combination of railway employés, where the members intend to stop all mail trains as well as other trains, and do delay many, in violation of R. S. § 3995, post, § 10371, punishing any one willfully and knowingly obstructing or retarding the passage of the mails, is an unlawful conspiracy, though the obstruction is effected by merely quitting employment. Thomas v. Cincinnati, N. O. & T. P. Ry. Co. (C. C. 1894) 62 Fed. 803.

Where two or more men wrongfully agree among themselves, either for the purpose of creating sympathy in a threatened strike, or for any other purpose, to cause trains carrying mail to be stopped, or to discharge their employés or refuse to employ new men so as to stop such trains, they are guilty of conspiracy. U. S. v. Debs (1894) 63 Fed. 436; In re Charge to Grand Jury (D. C. 1894) 62 Fed. 828.

An agreement between two or more persons that the employés of railroads carrying mails and interstate commerce should quit, and that all others should, by threats or violence, be prevented from taking their places, constitutes a criminal conspiracy to obstruct the mails. In re Charge to Grand Jury (D. C. 1894) 62 Fed. 828.

Railway employés cannot combine to quit work in order to compel their employer to withdraw from contractual relations with a third party, for the purpose of injuring such third party. U. S. v. Cassidy (D. C. 1895) 67 Fed. 698.

48. **Fraud as to mails.**—Under Act March 3, 1879, §§ 10, 11, 14 (sections 7304–7306, ante), defining second-class mail matter, and fixing the rate of postage on publications of the second class, when sent from the office of publication, including sample copies, or when sent from a news agency to actual subscribers thereto, at two cents per pound or fraction thereof, provided that nothing in the statute shall be construed so as to admit to the second-class rate regular publications designed primarily for advertising purposes, for free circulation, or for circulation at nominal rates, Act March 3, 1885 (section 7358, ante), changing the rate to one cent per pound, and Act June 9, 1884 (section 7361, ante), fixing the rate on periodicals of the second class when sent by others than the publishers or news agents at one cent for each four ounces or fractional part thereof, an indictment for conspiracy to defraud the United States by securing for papers sent out in addition to the regular circulation the one cent a pound rate instead of the one cent for four ounce rate is insufficient, where it does not allege that the papers were designed primarily for advertising purposes or for free circulation or for circulation at nominal rates. U. S. v. Atlanta Journal Co. (C. C. 1911) 185 Fed. 656.

An indictment charged a conspiracy to defraud the United States by mailing old newspapers for the purpose of fraudulently increasing the weight of mail matter. Held, that if such mailing was done by defendant's servants or agents, as such, and not as parties to, or members or abettors of, the common design, they will not be deemed co-conspirators, nor will such mailing amount to an overt act. U. S. v. Newton (D. C. 1892) 52 Fed. 275.

In view of R. S. § 5440 (embodied herein), and section 7483, ante, an indictment charging railway officials with conspiring to deceive the postal officers and defraud the United States by sending old newspapers through the mails to increase the mails when they were being weighed is sufficient under R. S. § 5440. Id.

On the trial of one indicted for conspiring to defraud the United States by mailing old newspapers for the purpose of fraudulently increasing the weight of mail matter (transported over a railway post route during a period fixed by the postal authorities for weighing such mail matter, as a

basis for ascertaining the additional compensation to be paid the railway company), it is not necessary, to justify a verdict of guilty, that the conspiracy should have been formed and in full existence prior to the weighing of such fraudulent mail matter. It is sufficient if the defendant and any other person at any time during the weighing formed a common design to defraud the government in connection with such weighing, and that then the defendant or such other person committed an overt act in connection therewith. Id.

49. Procuring special rate of postage.—A scheme whereby the publishers of a newspaper attempt to procure the special rate of postage to publishers of one cent a pound, instead of the transient rate of four cents a pound, by deceiving the post office employés as to the circulation of the paper, does not constitute a conspiracy to defraud the United States where the paper is entitled under the law to the one cent a pound rate for its entire issue. U. S. v. Atlanta Journal Co. (C. C. 1911) 185 Fed. 656.

50. Increasing postmaster's salary by purchase of stamps.—A conspiracy to increase the gross receipts of a post office upon which the postmaster's salary is to be fixed by the purchase of large quantities of stamps to be used in mailing matter outside of such post office is one to defraud the United States. U. S. v. Foster (1914) 34 Sup. Ct. 666, 233 U. S. 515, 58 L. Ed. 1074, reversing judgment (D. C. 1913) 211 Fed. 206.

A conspiracy to increase the gross receipts of a postoffice upon which the postmaster's salary is to be fixed by the unlawful sale and purchase at that office of large quantities of stamps for use in mailing matter outside the delivery of such office, is one to defraud the United States, especially where the postmaster of the office where the stamps are to be used receives a fixed salary. U. S. v. Foster (1914) 34 Sup. Ct. 666, 233 U. S. 515, 58 L. Ed. 1074, reversing (D. C. 1913) 211 Fed. 206.

51. Use of mails to defraud.—R. S. § 5480, post, § 10385, prohibits the mailing or taking from the post office of a letter pursuant to a scheme to defraud, and R. S. § 5440 (embodied herein), declares that if two or more persons conspire to commit any offense against the United States, and one or more of such persons do any act to effect the object of such conspiracy, all the parties to the conspiracy shall be liable, etc. Held, that where accused and others conspired to further a scheme to defraud through the Post Office Department, each overt act of mailing a letter pursuant to such scheme or withdrawing a letter from the post office warranted a charge of conspiracy to commit such offense, so that an indictment therefor would not shield from a subsequent indictment for another conspiracy of the same person to commit another and additional offense, though of the same kind. Francis v. U. S. (1907) 152 Fed. 155, 81 C. C. A. 407, modifying judgment U. S. v. Francis (D. C. 1906) 144 Fed. 520, and writ of certiorari denied (1907) 27 Sup. Ct. 797, 206 U. S. 565, 51 L. Ed. 1191.

The use of the mails in a scheme to defraud is made a crime by R. S. § 5480, post, § 10385, and it is the depositing in or the taking out of a letter pursuant to such scheme that constitutes the offense, and a conspiracy to commit the offense is a confederating together of two or more persons to carry out a scheme of that kind in that way. Marrin v. U. S. (1909) 167 Fed. 951, 93 C. C. A. 351, certiorari denied (1911) 32 Sup. Ct. 523, 223 U. S. 719, 56 L. Ed. 629.

To establish conspiracy under this section to commit violation of section 10385, post, punishing the use of mails to promote frauds, the government must prove an intent to defraud and a defrauding by use of the mails. Farmer v. U. S. (1915) 223 Fed. 903, 139 C. C. A. 341.

A scheme to induce persons to purchase stock under the false representation that they were purchasing treasury stock held within R. S. §§ 5440, 5480, embodied in Cr. Code, §§ 37, 215 (this compilation, §§ 10201, 10385). Myers v. U. S. (1915) 223 Fed. 919, 139 C. C. A. 399.

Where one was tried for conspiring to use the mails to carry out a scheme to defraud, under R. S. § 5440 (embodied herein), making it an offense to conspire to commit an offense against the United States, and under R. S. § 5480, post, § 10385, making it an offense to use the mails to carry out a scheme to defraud, it was sufficient for the government to show that written or printed matter about the scheme charged was mailed to one of the three persons named in the indictment as the persons defendant planned to defraud, and that copies of the same printed matter were sent through the mails to a mailing list throughout the United States. U. S. v. Marrin (D. C. 1908) 159 Fed. 767, judgment affirmed Marrin v. U. S. (1909) 167 Fed. 951, 93 C. C. A. 351, writ of certiorari denied (1911) 32 Sup. Ct. 523, 223 U. S. 719, 56 L. Ed. 629.

In a prosecution for using the post office in furtherance of a scheme to defraud, in violation of section 10385, post, it is not necessary that the scheme to defraud contemplated the

use of the post office in its execution; while such requirement is necessary to a conviction under R. S. § 5480 (post, § 10385). Ex parte King (D. C. 1912) 200 Fed. 622.

52. **Fraud or offense as to public lands.**—A conspiracy to obtain school lands from the states of California and Oregon in the names of fictitious or disqualified persons by the use of forged affidavits, assignments, and other documents, and to relinquish them to the United States under Act June 4, 1897, c. 2, 30 Stat. 36, in exchange for other public lands, cannot escape condemnation under R. S. § 5440 (embodied herein), forbidding conspiracies to defraud the United States, on the theory that the United States, having received the school lands in lieu of the other lands patented, has not been defrauded, even assuming that the United States stands in the position of a bona fide purchaser in respect to the school lands. Hyde v. Shine (1905) 25 Sup. Ct. 760, 761, 199 U. S. 62, 50 L. Ed. 90, affirming judgment U. S. v. Hyde (D. C. 1904) 132 Fed. 545; Dimond v. Shine (1905) 25 Sup. Ct. 766, 199 U. S. 88, 50 L. Ed. 99, distinguished in U. S. v. Conklin (1910) 177 Fed. 55, 62, 100 C. C. A. 473.

A conspiracy to obtain title to coal lands of the United States, in clear violation of the prohibition of the coal land laws against making more than one entry, is embraced by this provision. U. S. v. Keitel (1908) 29 Sup. Ct. 123, 130, 211 U. S. 370, 53 L. Ed. 230, reversing order (D. C. 1907) 157 Fed. 396; Same v. Herr (1908) 29 Sup. Ct. 134, 211 U. S. 404, 53 L. Ed. 251; Id. (1908) 29 Sup. Ct. 135, 211 U. S. 406, 53 L. Ed. 252.

A conspiracy to induce entrymen who have made application under the timber and stone act (Act June 3, 1878, c. 151, as amended by Act Aug. 4, 1892, c. 375) to agree to convey after patent is not one to defraud the United States "in any manner or for any purpose," within this section. U. S. v. Biggs (1909) 29 Sup. Ct. 181, 184, 211 U. S. 507, 53 L. Ed. 305, affirming judgment (D. C. 1907) 157 Fed. 264; Same v. Freeman (1909) 29 Sup. Ct. 185, 211 U. S. 525, 53 L. Ed. 311; Same v. Sullenberger (1909) 29 Sup. Ct. 186, 211 U. S. 522, 53 L. Ed. 311.

Persons conspiring to acquire fraudulently, school lands of the states of California and Oregon, and to corrupt officers of the General Land Office to facilitate their selection under Act June 4, 1897, in exchange for other public lands, cannot urge, to escape conviction under R. S. § 5440 (embodied herein), that the titles obtained from the state were valid, except as to the particular state which had given the title, and which alone could assail it. Hyde v. U. S. (1912) 32 Sup. Ct. 793, 807, 225 U. S. 347, 56 L. Ed. 1114, affirming judgment (1910) 35 App. D. C. 451.

A conspiracy to defraud the United States of the possession of public lands by means of fraudulent homestead entries is within this section, although there is no purpose to carry the preliminary entries to final entry and patent. Stearns v. U. S. (1907) 152 Fed. 900, 82 C. C. A. 48.

To constitute a violation of R. S. § 5440 (embodied herein), by conspiring to defraud the government of public lands subject to entry under Timber and Stone Act of June 3, 1878, § 1 (section 4671, ante), it is not essential that a patent for the lands be issued and delivered; a violation of the section not depending on the success of the conspiracy, and becoming complete when the final step was taken by the conspirators in inducing fraudulent entries and the issuance of certificates of purchase. U. S. v. Black (1908) 160 Fed. 431, 87 C. C. A. 383.

Under Stone and Timber Act (Act June 3, 1788, § 1 [section 4671, ante]), making such lands subject to entry as are available chiefly for timber but unfit for cultivation, an entryman having made an affidavit that he sought to purchase the land for his own benefit and not for speculation could not escape punishment for conspiracy on the ground that his pre-existing contract of sale related to the timber only. Nickell v. U. S. (1908) 161 Fed. 702, 88 C. C. A. 562, judgment affirmed on rehearing (1909) 167 Fed. 741, 93 C. C. A. 229, writ of certiorari denied (1909) 29 Sup. Ct. 699, 214 U. S. 517, 53 L. Ed. 1064.

To obtain land of the government open to entry under its homestead laws by means of false proof in respect to the entryman's residence or improvements thereon, or for the use or benefit of another, is not only a fraud in fact, but a fraud on the homestead law, a conspiracy to commit which constituted a violation of R. S. § 5440 (embodied herein), making it a crime for two or more persons to conspire to defraud the United States "in any manner or for any purpose." Jones v. U. S. (1908) 162 Fed. 417, 89 C. C. A. 303, writ of certiorari denied (1908) 29 Sup. Ct. 685, 212 U. S. 576, 53 L. Ed. 657.

In a prosecution for conspiracy to procure fraudulent homestead entries of government land, if a conspiracy is shown, and persons were procured to make entries in pursuance thereof, who did not in fact intend to live on the land, it is not essential to conviction that it should be proved that defendants had actual knowledge of such intention. Richards v. U. S. (1909) 175 Fed. 911, 99 C. C. A. 401.

Where defendants employed dummies to make coal entries on public lands under sections 4659 and 4662, ante, for the benefit of a corporation to be formed, and the defendants committed an

overt act in furtherance of such arrangement, they were properly charged with conspiracy. U. S. v. Wells (1912) 192 Fed. 870, 113 C. C. A. 194, writ of certiorari denied Wells v. U. S. (1912) 32 Sup. Ct. 842, 225 U. S. 714, 56 L. Ed. 1269.

In a prosecution for conspiracy to obtain excessive coal entries under section 4659, ante, by means of dummy entrymen, it was not essential to the government's case that the entrymen be shown to have been coconspirators. Id.

Notwithstanding a desert land entry may be assigned, the desert land act, and the act March 3, 1891, require a bona fide entry with an intention to improve the land; and hence an indictment charging a conspiracy to cause to be made false, fraudulent, and fictitious entries of such land stated an offense under R. S. § 5440 (embodied herein). Chaplin v. U. S. (1912) 193 Fed. 879, 114 C. C. A. 93, writ of certiorari denied (1912) 32 Sup. Ct. 838, 225 U. S. 705, 56 L. Ed. 1266.

The act of the purchaser of a homestead relinquishing in withholding it from filing is not an interference with the due administration of the law, or a defrauding of the United States, such as may sustain a charge of conspiracy, in violation of R. S. § 5440 (embodied herein). Fain v. U. S. (1913) 209 Fed. 525, 126 C. C. A. 347.

An erroneous statement regarding a fact in a pleading or affidavit in a contest of a homestead entry cannot sustain a charge of conspiring to defraud the United States in violation of this section. Id.

A conspiracy by two persons to enter a certain tract of land in the name of one of them, under the United States timber-culture act, with the money of the other, for the purpose of selling and disposing of the location, for the benefit of the party furnishing the money, to any one who might desire to enter the same, is not a conspiracy to defraud the United States of its title to or dominion over said land; but it may be a conspiracy to defraud the United States of the possession thereof for an indefinite period. U. S. v. Thompson (C. C. 1886) 29 Fed. 86, 89.

Persons may be guilty of conspiracy to defraud the United States by obtaining title to public mineral lands by means of a homestead entry, since a patent to such lands so obtained would not be void. U. S. v. Peuschel (D. C. 1902) 116 Fed. 642.

Where a conspiracy contemplated fraudulent entries on definite tracts of public land under the stone and timber act, and in order to accomplish the same the co-operation of 16 persons to act as entrymen was required, and one of the conspirators obtained such persons, an alleged overt act charged to consist of the payment of $200 to defendant, who was one of the 16, in order to induce him to make a fraudulent entry and transfer of the lands to the conspirators, was an act which pertained to the conspiracy itself, and was therefore insufficient. Ex parte Black (D. C. 1906) 147 Fed. 832; U. S. v. Richards (D. C. 1906) 149 Fed. 443.

Act June 14, 1878, § 2, 20 Stat. 113, c. 191, provides that no final certificate shall be given or patents issued for land entered under a timber culture claim until eight years after the date of the entry, and if at the expiration of such time, or at any time within five years thereafter, the entryman or his heirs or legal representatives shall prove the planting and cultivation of the necessary quantity of trees, etc., they shall receive a patent to the land. Land Department rules 32 and 33 provide for the determination of suspended claims based on homestead and timber culture entries where there has been a substantial compliance with the law in good faith, but there had been a failure to make final proof within the time fixed therefor, resulting from ignorance of the law, mistake, sickness, or other uncontrollable obstacle. Held that, where a timber culture entry was not forfeited by the Land Department for the entryman's failure to make final proof within five years next succeeding the expiration of eight years after the entry, it did not become absolutely void, but was merely suspended, and was therefore sufficient to sustain a prosecution for conspiracy for combining to obtain title to the land by false and fraudulent proof. U. S. v. Burkett (D. C. 1907) 150 Fed. 208.

Defendants entered into a conspiracy to defraud the United States of title to and the possession of large tracts of coal land by procuring others to enter the land in separate parcels as cash purchasers; defendants furnishing the money, and the entrymen holding the land in secret trust for defendants. Held that, the gist of the conspiracy being the intent to give such entries a false appearance for the purpose of misleading the United States, it constituted a conspiracy to defraud the United States, prohibited by R. S. § 5440 (embodied herein), though defendants did not stand in such a position to the government as to require a disclosure of the true facts. U. S. v. Robbins (D. C. 1907) 157 Fed. 999.

A conspiracy to induce the Land Department of the United States by fraudulent means to dispose of public lands in a way not authorized by the statutes is one to defraud the United States, within the meaning of this section, although it receives payment for the lands and suffers no pecuniary loss, and, if accompanied by an overt act, is indictable thereunder. U. S. v. Lonabaugh (D. C. 1907) 158 Fed. 314, judgment reversed Lonabaugh v. U. S. (1910) 179 Fed. 476, 103 C. C. A. 56.

Defendants entered into an agree-

ment, the purpose of which was to obtain title to a large tract of coal lands from the United States and to vest such title in a company organized by them for the purpose. Pursuant to such agreement, they procured third persons to make individual entries under the statute which were secured by false testimony. Defendants furnished the money to pay for the lands, and, when final receipts were obtained, they took the same, paid small sums to the entrymen, and took deeds from them to the company. Held, that such agreement was a conspiracy to defraud the United States, within the meaning of R. S. § 5440 (embodied herein). Id.

A conspiracy to secure the title to coal lands from the United States through a homestead entry may constitute a conspiracy to defraud the United States, within this section, although such lands are not subject to lawful homestead entry, where the title is secured by means of false proofs. Id.

53. Settlement on Indian lands and return thereto after removal.—A conspiracy to make settlement on Indian lands and to return to the Indian country, after being removed therefrom, is not an indictable offense, within the meaning of this section or one that can be prosecuted by criminal proceedings. U. S. v. Payne (D. C. 1884) 22 Fed. 426.

II. PROSECUTION AND PUNISHMENT

54. Double jurisdiction of offense.—The doing of the overt act prescribed by R. S. § 5440 (embodied herein), as necessary to the conspiracy to defraud, renders applicable, where the place of the act and of the entry into the unlawful combination were in different federal districts, provisions of R. S. § 731, ante, § 1024, creating a double jurisdiction where the offense is begun in one district and completed in another. Hyde v. U. S. (1912) 32 Sup. Ct. 793, 799, 225 U. S. 347, 56 L. Ed. 1114, Ann. Cas. 1914A, 614, affirming judgment (1910) 35 App. D. C. 451.

55. Collateral attack on judgment of state court.—A prosecution for conspiracy to defraud the United States, averred to have been effected in part by procuring the appointment of an administrator by a state court which was without jurisdiction, is not a collateral attack upon the judgment of such court; nor, even if so, would such judgment be a bar to the prosecution, since a collateral attack may be made in a criminal case when its purpose is to punish a crime committed by means of the decree, judgment, or record attacked. U. S. v. Bradford (C. C. 1905) 148 Fed. 413, judgment affirmed Bradford v. U. S. (1907) 152 Fed. 616, 81 C. C. A. 606, writ of certiorari denied (1907) 27 Sup. Ct. 795, 206 U. S. 563, 51 L. Ed. 1190.

56. Number of prosecutions under statute.—There can be but one prosecution for conspiracy in violation of this section, regardless of the number of overt acts committed in pursuance thereof. U. S. v. Brace (D. C. 1907) 149 Fed. 874.

57. Compromise of prosecution.—In an action on a distiller's bond for breach of section 6038, ante, a compromise of prosecutions under sections 6021, ante, and R. S. § 5440 (embodied herein), for removal of the same liquor is a complete defense. U. S. v. Chouteau (1880) 102 U. S. 603, 26 L. Ed. 246.

Where an assessor of internal revenue was indicted upon the provisions of this section and of sections 97 and 98 of the act of July 20, 1868 (sections 5888, 5889, ante), for having entered into a corrupt arrangement with certain distillers to defraud the government, and before trial proposed terms of compromise to the Commissioner of Internal Revenue, under section 102 of the last-mentioned act (section 5952, ante), it was held, that the case did not come within the purview of the latter section. (1872) 14 Op. Atty. Gen. 43.

58. Defenses in general.—It is no defense to a criminal prosecution for conspiracy to commit an offense against the United States that defendant acted in his professional capacity as an attorney. Baird v. U. S. (1912) 196 Fed. 778, 116 C. C. A. 73.

59. Limitations.—A conspiracy to defraud the government of duties on imports in violation of this section is not a crime arising under the revenue laws subject to the limitation of ante, § 1710, but is subject to the limitation of ante, § 1708. U. S. v. Hirsch (1879) 100 U. S. 33, 34, 25 L. Ed. 539.

A conspiracy to acquire fraudulently school lands from the states of California and Oregon, and to corrupt the officers of the General Land Office to facilitate their selection, under Act June 4, 1897, in exchange for other public lands, continues, so far as limitations are concerned, so long as any overt acts are done in furtherance of the conspiracy. Hyde v. U. S. (1912) 32 Sup. Ct. 793, 802, 225 U. S. 347, 56 L. Ed. 1114, Ann. Cas. 1914A, 614, affirming judgment (1910) 35 App. D. C. 451.

Disclosure by a government employé of continuing conspiracy to which he was a party, to defraud the United States out of its public lands, contrary to this section, does not prevent subsequent overt acts of any of his associates from continuing him in the conspiracy so far as the statute of limitations is concerned, if, after the first disclosure, he acquiesced in the later acts. Id.

Conspiracy to use the mails to defraud, within this section, which the indictment alleges was designed to be and was in fact continuous, continues, so

far as the limitations are concerned, so long as the overt acts are done by any of the conspirators. Brown v. Elliott (1912) 32 Sup. Ct. 812, 815, 225 U. S. 392, 56 L. Ed. 1136.

Conspiracy to commit against the United States, contrary to Cr. Code § 37, an act criminal under Bankr. Act July 1, 1898, is not an offense arising under that act within section 29d, limiting prosecutions, but is governed by section 1708, ante, limiting prosecutions for offenses not capital. U. S. v. Rabinowich (1915) 35 Sup. Ct. 682, 238 U. S. 78, 59 L. Ed. 1211.

A prosecution for conspiracy to defraud the United States under this section is maintainable if instituted within three years of the commission of the last, or of any overt act. Bradford v. U. S. (1907) 152 Fed. 617, 81 C. C. A. 607.

Section 1708, ante, is applicable to offenses described in R. S. § 5440 (embodied herein). Greene v. U. S. (1907) 154 Fed. 401, 411, 85 C. C. A. 251, certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

A prosecution for a conspiracy and overt act in pursuance thereof committed more than three years before the filing of the indictment is barred by limitations, but subsequent overt acts committed under the old conspiracy within three years will sustain a prosecution for the conspiracy. Ware v. U. S. (1907) 154 Fed. 577, 84 C. C. A. 503, 12 L. R. A. (N. S.) 1053, 12 Ann. Cas. 233, writ of certiorari denied (1907) 28 Sup. Ct. 255, 207 U. S. 588, 52 L. Ed. 353.

An overt act committed by one of alleged co-conspirators within three years, under a conspiracy between him and the defendant formed and followed by an overt act more than three years before the filing of the indictment, without the defendant's consent or agreement within the three years to the continued existence and execution of the conspiracy, is incompetent to establish its existence and his participation therein within three years. Id.

Proof of the formation by defendant and others more than three years before the indictment of such a conspiracy as that charged in the indictment and of an overt act thereunder prior to the three years is insufficient to sustain the charge of conspiracy within the three years, but other evidence of the existence of the conspiracy and of defendant's conscious participation in it within three years is competent evidence for the jury. Id.

Where an alleged conspiracy to defraud the United States, denounced by this section, contemplated various overt acts and the consequent continuance of the conspiracy beyond the commission of the first one, each overt act gave a new, separate, and distinct effect to the conspiracy, and constituted another crime, so that a prosecution was not barred by limitations until three years after the commission of the last overt act alleged. Jones v. U. S. (1908) 162 Fed. 417, 89 C. C. A. 303, writ of certiorari denied (1908) 29 Sup. Ct. 685, 212 U. S. 576, 53 L. Ed. 657.

Where an alleged conspiracy to defraud the United States, denounced by R. S. § 5440 (embodied herein), contemplated various overt acts and the consequent continuance of the conspiracy beyond the commission of the first one, each overt act gave a new, separate, and distinct effect to the conspiracy, and constituted another crime, so that a prosecution was not barred by limitations until three years after the commission of the last overt act alleged. Jones v. U. S. (1908) 162 Fed. 417, 89 C. C. A. 303, writ of certiorari denied (1908) 29 Sup. Ct. 685, 212 U. S. 576, 53 L. Ed. 657.

Where an alleged conspiracy to defraud the United States contemplated various overt acts, and the consequent continuance of the conspiracy beyond the commission of the first one, each overt act gives a new, separate, and distinct effect to the conspiracy, and constitutes another crime, and a prosecution is not barred until three years after the last overt act averred in the indictment. Jones v. U. S. (1910) 179 Fed. 584, 103 C. C. A. 142.

While under this section the gravamen of the offense is the conspiracy, the period of conspiracy must be computed from the date of the overt act rather than the formation of the conspiracy, and, where there are successive overt acts, the period of limitations must be computed from the date of the last of them to which there is appropriate allegation and proof. Lonabaugh v. U. S. (1910) 179 Fed. 476, 103 C. C. A. 56, reversing judgment U. S. v. Lonabaugh (D. C. 1907) 158 Fed. 314.

Where defendants devised a scheme to defraud, consisting of plans for the sale of corporate stock by false representations to be carried out by means of correspondence through the post office, the conspiracy was a continuing offense, and a prosecution therefor was not barred until three years from the last overt act. Wilson v. U. S. (1911) 190 Fed. 427, 111 C. C. A. 231.

Where a conspiracy to defraud the United States of public lands contemplated various overt acts, a prosecution begun within three years of the last overt act was not barred by section 1708, ante. Hedderly v. U. S. (1912) 193 Fed. 561, 569, 114 C. C. A. 227.

The essence of the offense made punishable by this section is not the devising of a scheme or artifice to defraud, but the using of the mails in pursuance of such a scheme and a

prosecution thereunder is not barred by limitation because the scheme may have been devised more than three years prior to the indictment, where the overt acts were committed within that time. Mitchell v. U. S. (1912) 196 Fed. 874, 116 C. C. A. 436.

Where, in a prosecution for conspiracy to commit a crime against the United States in violation of Cr. Code, §§ 37, 232, et seq., the indictments charged the first overt act as of January 20, 1908, and the last August 27, 1911, and were filed February 6, 26, 1912, the prosecution was not barred by limitations. Ryan v. U. S. (C. C. A. 1914) 216 Fed. 13.

Where a conspiracy to defraud the United States was formed more than three years prior to the indictment, and acts in pursuance thereof were done both prior to and within the three years' prosecution therefor under R. S. § 5440 (embodied herein), it is not barred by the limitation imposed by section 1708, ante. Houston v. U. S. (1914) 217 Fed. 852, 133 C. C. A. 562.

Limitations held not to run against prosecution for conspiracy to defraud the United States in connection with sale of zinc to it until payment of check therefor or giving of credit by the bank of deposit. Meyer v. U. S. (1915) 220 Fed. 800, 135 C. C. A. 564.

A prosecution for conspiracy to commit an offense arising under the bankruptcy act is governed by the general limitation of three years contained in section 1708, ante. Rabinowitz v. U. S. (1915) 222 Fed. 846, 138 C. C. A. 272.

R. S. § 5440 (embodied herein), punishing conspiracies to commit any offense against the government, or to defraud it, is a part of the revenue laws, and prosecutions thereunder are limited to five years (R. S. § 1046, ante, § 1710). U. S. v. Dustin (C. C. 1872) Fed. Cas. No. 15,012; Same v. Fehrenback (C. C. 1875) Id. 15,083.

An overt act being necessary to sustain a prosecution for conspiracy to defraud the United States, under this section, the statute of limitations does not begin to run against such a prosecution until the commission of an overt act; and since every such overt act is a renewal of the conspiracy, a prosecution may be instituted within three years after the commission of any overt act, although more than that length of time may have elapsed since the conspiracy was first formed or the first of such acts was committed thereunder. U. S. v. Bradford (C. C. 1905) 148 Fed. 413, judgment affirmed Bradford v. U. S. (1907) 152 Fed. 616, 81 C. C. A. 606, writ of certiorari denied (1907) 27 Sup. Ct. 795, 206 U. S. 563, 51 L. Ed. 1190.

The crime defined in this section, prescribing punishment "if two or more persons conspire either to commit any offense against the United States, or to defraud the United States, and one or more of such parties do any act to effect the object of the conspiracy," is composed of the conspiracy and an act done in pursuance thereof; and, as soon as the one is formed and the other committed, the crime is consummated, and the statute of limitations begins to run against a prosecution therefor. Subsequent acts committed pursuant to the conspiracy do not render it a continuing crime. U. S. v. Owen (D. C. 1887) 32 Fed. 534.

A conspiracy to defraud the United States, within R. S. § 5440 (embodied herein), is not "a crime arising under the revenue laws," and therefore the persons charged therewith cannot be prosecuted therefor, under sections 1709 and 1710, ante, unless they be indicted within three years next after the alleged commission thereof. Id.

A conspiracy to defraud the United States by making unlawful entries of public lands cannot, for the purpose of avoiding the statute of limitations, be split up into different conspiracies for each section of land entered or for each overt act done; nor can it be held that there is a new conspiracy by the parties to the original conspiracy, whenever a new party is brought into the scheme, so as to make the statute of limitations begin to run from that time. U. S. v. McCord (D. C. 1895) 72 Fed. 159.

Where an indictment charged that defendant and others did, on the 18th day of April 1904, unlawfully, etc., conspire together to commit an offense against the United States, and the evidence established that defendant came into the conspiracy in October, 1902, while the indictment was found June 15, 1905, the offense was not barred by the three-years' limitation. U. S. v. Francis (D. C. 1906) 144 Fed. 520, judgment modified Francis v. U. S. (1907) 152 Fed. 155, 81 C. C. A. 407, writ of certiorari denied (1907) 27 Sup. Ct. 797, 206 U. S. 565, 51 L. Ed. 1191.

Where an alleged conspiracy to defraud the United States out of public lands was formed in September, 1902, and the necessary affidavits to consummate the fraud were filed on the 7th and 8th of October, 1902, the filing of such affidavits constituted an overt act, which started limitations against a prosecution for conspiracy, which was barred on October 8, 1905, under section 1708, ante, limiting prosecutions for federal offenses to three years after the offense shall have been committed. Ex parte Black (D. C. 1906) 147 Fed. 832.

The crime denounced by this section consists in putting a corrupt agreement into active operation, and hence limitations run from the date of the last overt act committed for the purpose of completing the object of the

conspiracy. U. S. v. Brace (D. C. 1907) 149 Fed. 874.

Where a conspiracy to defraud the United States of public lands was originally formed in one federal district, but was carried out by means of false and fraudulent entries of such lands in another district, made with the knowledge and consent of all the conspirators, each of such overt acts constituted a renewal of the conspiracy in the latter district, and the offense may be prosecuted in either district. Arnold v. Weil (D. C. 1907) 157 Fed. 429.

Defendants entered into an agreement, the purpose of which was to obtain title to a large tract of coal lands from the United States, and to vest such title in a company organized by them for the purpose. Pursuant to such agreement, they procured third persons to make individual entries under the statute which were secured by false testimony. Defendants furnished the money to pay for the land, and, when final receipts were obtained, they took the same, paid small sums to the entrymen, and took deeds from them to the company. Held, that the offense of conspiracy to defraud the United States within the meaning of this section, which such acts constituted, was not complete until the final receipts held by defendants were surrendered and patents obtained, from which time only the statute of limitations began to run. U. S. v. Lonabaugh (D. C. 1907) 158 Fed. 314, judgment reversed Lonabaugh v. U. S. (1910) 179 Fed. 476, 103 C. C. A. 56.

An indictment under this section, for conspiracy to defraud which sets out a number of overt acts on different dates, is either bad for duplicity, as charging more than one conspiracy or, if held to charge a single continuing conspiracy, the offense was consummated when the first overt act was committed, and from that date the statute of limitations began to run. U. S. v. Biggs (D. C. 1907) 157 Fed. 264, judgment affirmed (1909) 29 Sup. Ct. 181, 211 U. S. 507, 53 L. Ed. 305.

60. Venue.—If a conspiracy is entered into within the jurisdiction of the trial court, the indictment will lie there, though an overt act is shown to have been committed in another jurisdiction, or even in a foreign country. Hyde v. Shine (1905) 25 Sup. Ct. 760, 761, 199 U. S. 62, 50 L. Ed. 90.

The requirement of Const. Amend. 6 that the criminal prosecution shall be had in the state and district where the crime is committed is satisfied by laying the venue of the trial of an indictment for conspiracy to defraud the United States, contrary to R. S. § 5440 (embodied herein), at the place where an overt act was performed. Hyde v. U. S. (1912) 32 Sup. Ct. 793, 798, 225 U. S. 347, 56 L. Ed. 1114, Ann. Cas. 1914A, 614, affirming judgment (1910) 35 App. D. C. 451.

Where conspirators had been doing business together in the judicial district in which they were tried prior to and at the time of the crime, and there was no evidence that they had been together outside of the district, the jury could find the conspiracy to have been in that district. Marrash v. U. S. (1909) 168 Fed. 225, 93 C. C. A. 511.

A charge of conspiracy to commit an offense against the United States, under this section, may be prosecuted in any district where an overt act was committed. Robinson v. U. S. (1909) 172 Fed. 105, 96 C. C. A. 307.

Facts held to warrant an inference that the conspiracy to defraud the United States by making excessive coal entries in the names of dummy entrymen was formed in Wyoming, and that the defendants were properly triable in that state. U. S. v. Wells (1912) 192 Fed. 870, 113 C. C. A. 194, writ of certiorari denied, Wells v. U. S. (1912) 32 Sup. Ct. 842, 225 U. S. 714, 56 L. Ed. 1269.

A conspiracy to do an unlawful act, formed in one district, and in part executed there, is punishable in that district, though it was consummated in other parts of the United States. U. S. v. Noblom (C. C. 1878) Fed. Cas. No. 15,896.

Persons who had not been in Wyoming until after consummation of an alleged conspiracy to defraud the government by unlawfully obtaining public coal lands, and who had not been in direct or indirect communication with any one there, should not be removed to that state for trial on that charge, since any offense by them was committed elsewhere. Ireland v. Henkle (C. C. 1910) 179 Fed. 993.

An indictment charged a conspiracy to defraud the United States by mailing old newspapers for the purpose of fraudulently increasing the weight of mail matter. Held, that if the fraudulent mailing was committed within the judicial district charged in the indictment, it is immaterial where the alleged conspiracy was formed, or whether or not the parties thereto, or either of them, were ever within such district. U. S. v. Newton (D. C. 1892) 52 Fed. 275.

It is not necessary to the conviction of persons charged with a conspiracy that they should have resided within the jurisdiction of the court trying the indictment at the time the conspiracy was formed, if the conspiracy was entered into, and had its headquarters, in that jurisdiction. U. S. v. Howell (D. C. 1892) 56 Fed. 21.

Where a conspiracy to defraud the United States of public lands was originally formed in one federal district, but was carried out by means of false and fraudulent entries of such lands in another district, made with the knowl-

edge and consent of all the conspirators, each of such overt acts constituted a renewal of the conspiracy in the latter district, and the offense may be prosecuted in either district. Arnold v. Weil (D. C. 1907) 157 Fed. 429.

Persons charged as conspirators to commit a federal offense held properly tried where an act was committed by co-conspirators. United States v. Reddin (D. C. 1912) 193 Fed. 798.

Under this section an indictment alleging conspiracy to violate the White Slave Traffic Act, and setting out overt acts done within jurisdiction of the court, is good, notwithstanding Const. Amend. 6, as to venue in criminal cases, though conspiracy was formed in a foreign country. United States v. Linton (D. C. 1915) 223 Fed. 677.

61. Commissioner's charges for drawing complaints.—Where the court below has allowed a commissioner's charges in excess of three folios for drawing complaints, its action will not be disturbed, the complaints in question being under R. S. 5440 (embodied herein), for conspiracy, R. S. § 2461, ante, § 4980, for cutting timber on the public lands, and R. S. §§ 5392, 5393, post, §§ 10295, 10296, for perjury and subornation of perjury. U. S. v. Barber (1891) 11 Sup. Ct. 751, 140 U. S. 177, 35 L. Ed. 398, reversing Barber v. U. S. (D. C. 1887) 35 Fed. 886.

62. Indictment and information—Form, requisites, and sufficiency in general.—As to consolidation of indictments, see § 1690, ante, and notes thereunder.

An indictment for conspiracy, under this section, must sufficiently charge the conspiracy, and cannot be aided by the averment of acts done in pursuance of the conspiracy. U. S. v. Britton (1883) 108 U. S. 199, 2 Sup. Ct. 531, 27 L. Ed. 698.

Indictments for conspiracy to defraud the United States under this section considered, and held sufficient for the purposes of a proceeding for the removal of the defendant from another district for trial and to establish probable cause in such proceeding. Green v. MacDougall (1905) 26 Sup. Ct. 748, 199 U. S. 601, 50 L. Ed. 328, affirming order U. S. v. Green (D. C. 1905) 136 Fed. 618.

Clauses in indictment charging a conspiracy to commit an offense against the United States cannot be resorted to in aid of averments of the clause setting forth the conspiracy. Joplin Mercantile Co. v. U. S. (1915) 35 Sup. Ct. 291, 236 U. S. 531, 59 L. Ed. 705, affirming judgment (1914) 213 Fed. 926, 131 C. C. A. 160.

In an indictment under this section for conspiring to defraud, it is sufficient to charge an unlawful combination and agreement as actually made, and, in addition, to describe any act by one of the parties, as an act relied on to show the agreement in operation, without showing how such act would tend to effect the object, or that the object was actually effected. U. S. v. Benson (1895) 70 Fed. 591, 17 C. C. A. 293.

An indictment under R. S. § 5440 (embodied herein), * * * is sufficient where it charges that the defendants named "unlawfully did conspire to defraud the United States," etc., followed by a statement of the nature and purpose of the conspiracy and the acts done to effect its object. The use, in connection with the verb "conspire," of other words or phrases of similar import, such as "combine," "confederate," "agree together," or "agree between and among themselves," while usual and proper in indictments for conspiracy, is not essential, since such words add nothing to the meaning expressed by the word "conspire," as defined by lexicographers and as used in the statute, and their omission, if a defect, is one of form only, which does not tend to the prejudice of the defendants, and must therefore be disregarded, under R. S. § 1025, ante, § 1691. Wright v. U. S. (1901) 108 Fed. 805, 48 C. C. A. 37, writ of certiorari denied (1901) 21 Sup. Ct. 924, 181 U. S. 620, 45 L. Ed. 1031.

An indictment charging accused with conspiring to devise a scheme to defraud persons unknown to the grand jury is not insufficient because the names are not stated in the indictment, if it contains a true averment that they are unknown. Miller v. U. S. (1904) 133 Fed. 337, 66 C. C. A. 399.

It is not a valid objection to an indictment charging accused with conspiring to defraud persons unknown to the grand jury that it shows on its face that defendants were also guilty of the offense, with which they are not charged in the indictment, of conspiring to defraud persons known to the grand jury. Id.

The first part of a count in an indictment set forth that certain persons "unlawfully did conspire" to defraud the United States, the conspiracy "to be effected in the manner following; that is to say"—and the following part stated the details of the alleged conspiracy. Held, that the latter part is not to be construed as a videlicet separate from the charge of the indictment, but that the whole sentence may be considered as the charging part. Browne v. U. S. (1905) 145 Fed. 1, 76 C. C. A. 31, affirming judgments (C. C. 1903) U. S. v. Rosenthal (C. C. 1903) 126 Fed. 766, and Same v. Cohn (C. C. 1904) 128 Fed. 615, and writ of certiorari denied (1906) 26 Sup. Ct. 755, 200 U. S. 618, 50 L. Ed. 623.

While a charge of conspiracy to defraud the United States under this section which wholly omits some essential element of the offense, cannot be aided by the statement of acts done to effect

its object, this does not prevent reference to such statement for the purpose of ascertaining the sense in which terms are used in charging the conspiracy. Stearns v. U. S. (1907) 152 Fed. 900, 82 C. C. A. 48.

An indictment charging a conspiracy, in violation of this section, held good. Hedderly v. U. S. (1912) 193 Fed. 561, 114 C. C. A. 227.

An indictment under this section for conspiracy to defraud the United States held sufficient. Houston v. U. S. (1914) 217 Fed. 852, 133 C. C. A. 562.

An indictment for conspiracy to do an unlawful act need not aver the means agreed upon whereby the conspiracy was to be carried into effect. U. S. v. Dennee (C. C. 1877) Fed. Cas. No. 14,948.

The crime of conspiracy to defraud the United States is materially different from the offense of conspiracy as it existed at common law, and every ingredient of the offense must be clearly alleged. U. S. v. Walsh (C. C. 1878) Fed. Cas. No. 16,636.

If an indictment under this section charges conspiracy by two or more persons, but is an indictment of one only, it is good on demurrer. Id.

It is not sufficient to charge a conspiracy to defraud the United States in the general language of R. S. § 5440 (embodied herein). In re Benson (C. C. 1893) 58 Fed. 962, applying U. S. v. Hess (1888) 8 Sup. Ct. 571, 124 U. S. 483, 31 L. Ed. 516.

It is no objection to an indictment for conspiracy that the agreement constituting the conspiracy is laid in the words of the statute. U. S. v. White (C. C. 1909) 171 Fed. 775.

An indictment under this section, making it an offense to conspire either to commit any offense against the United States or to defraud the United States, must charge the act constituting the offense with reasonable certainty, and not by mere inference. U. S. v. Atlanta Journal Co. (C. C. 1911) 185 Fed. 656.

To constitute a good information or indictment, under this section, it must charge that the conspiracy was to do some act made a crime by the laws of the United States, and must state with sufficient certainty the offense intended to be committed, and must then state some act done by one of the conspirators towards effecting the object of the conspiracy. U. S. v. Watson (D. C. 1883) 17 Fed. 145.

This section makes it a crime to conspire to defraud the United States in any manner, and a count in an indictment is not demurrable because it charges a conspiracy to defraud, without setting forth the means by which the fraud is to be consummated. U. S. v. Gordon (D. C. 1884) 22 Fed. 250.

To constitute a good indictment under this section, it must charge that the conspiracy was to do some act made a crime by the laws of the United States, and it must state with such reasonable certainty the acts intended to be effected or carried out by the agreement of the parties, so that it can be seen the object of the conspiracy was a crime against the United States. The conspiracy or agreement and the doing of some act in furtherance of it make up the offense. The object of it, however, is a requisite of the indictment. In re Wolf (D. C. 1886) 27 Fed. 606, 611.

An indictment under this section must charge three things: (1) A conspiracy; (2) either to commit some offense against the United States, or to defraud the United States; (3) the doing of some act to effect the object of the conspiracy. U. S. v. Adler (D. C. 1892) 49 Fed. 736.

In construing an indictment based on R. S. § 5440 (embodied herein), for conspiring to defraud the United States, on demurrer, under the liberal rule required by section 1691, ante, which provides that an indictment shall not be deemed insufficient by reason of any defect of form which shall not tend to the prejudice of the defendant, a statement, in the first count, of the general scheme of the conspiracy, its purpose, and the intended manner of its accomplishment, and of the powers of one of the alleged conspirators as an officer of the United States, must be read into every count, whether it describes a conspiracy or an overt act. U. S. v. Greene (D. C. 1902) 115 Fed. 843.

In an indictment for conspiracy to defraud the United States, it is sufficient that the means be set out with such particularity as to put defendant on notice of what he is to meet. U. S. v. Raley (D. C. 1909) 173 Fed. 159.

Requisites of an indictment under this section for conspiracy to commit an offense against the United States, considered. U. S. v. Wupperman (D. C. 1914) 215 Fed. 135.

Indictment held to charge employés, agents, or officers of corporation with conspiracy to defraud the United States, under this section, and not conspiracy to violate Oleomargarine Act, § 17, ante, § 6229, and hence it was sufficient. U. S. v. Orr (D. C. 1915) 223 Fed. 220.

Indictment for conspiracy to violate a law of the United States need not set out the means to be used, or that they were a part of the agreement, or what each conspirator is to do, or the character of the acts to be performed. U. S. v. Dahl (D. C. 1915) 225 Fed. 909.

63. —— **Motive and Intent.**—An indictment for conspiracy to commit an offense against the United States need not allege that defendants "feloniously" conspired; as felonious intent is not a part of the description of the offense in the statute, and the infamous character of the punishment affixed does

not of itself render the offense a felony. Bannon v. U. S. (1895) 15 Sup. Ct. 467, 468, 156 U. S. 464, 39 L. Ed. 494.

An indictment charging a defendant with a conspiracy to "commit an offense against the United States" must state an agreement to do acts which, if done, would constitute a specific offense; and where an intent is an essential part of such offense, as defined by the statute, such intent must be averred. Green v. MacDougall (1905) 26 Sup. Ct. 748, 199 U. S. 601, 50 L. Ed. 328, affirming order (D. C. 1905) 136 Fed. 618.

In an indictment against a distiller for conspiracy to defraud the United States, it is not essential to state, in addition to an intent to defraud, the facts showing such intent. U. S. v. Ulrici (C. C. 1875) Fed. Cas. No. 16,-594.

Where it is alleged that certain persons confederated to do a lawful act by criminal means, the indictment must charge that the means employed were attended by a corrupt motive. U. S. v. Moore (C. C. 1909) 173 Fed. 122.

In an indictment for conspiracy, the corrupt motive may be alleged, by charging that the object is to accomplish an unlawful act, in which case the intent is made to appear by the charge of a combination to do the unlawful act, or by charging a combination to do the lawful act, or the act innocent in itself by unlawful means, where the intent must appear by allegation of the means. Id.

An indictment under this section for conspiracy to defraud, which sets out the unlawful agreement, need not aver an intent upon the part of the accused to defraud the United States. U. S. v. Stone (D. C. 1905) 135 Fed. 392.

64. —— Time and place of conspiracy or act to effect object.—The exact place of the formation of a conspiracy to use the mails to defraud, denounced by R. S. § 5480, post, § 10385, need not be stated in the indictment which lays the venue in the place where an overt act was committed. Brown v. Elliott (1912) 32 Sup. Ct. 812, 225 U. S. 392, 56 L. Ed. 1136.

The time and place of conspiracy must be alleged in the indictment. U. S. v. Sowers (C. C. 1835) Fed. Cas. No. 16,353.

It is not necessary to set forth the county in which an alleged conspiracy was formed, in violation of Act March 2, 1867 (14 Stat. 484), this section as originally enacted, and it may be rejected as surplusage. U. S. v. Smith (C. C. 1869) Fed. Cas. No. 16,322.

The indictment must allege the time and place of the act done to effect the object of the conspiracy, so as to identify the act, and show that it postdated the conspiracy, and was not merely a part of it. U. S. v. Milner (C. C. 1888) 36 Fed. 890.

An indictment under this section for conspiracy to defraud the United States is not insufficient because it charges that the conspiracy was formed on a date more than three years prior to the time it was found, and sets out overt acts at different times thereafter up to and within the three years, where it is also charged that the conspiracy was in continuous operation and continuously in process of execution at all times down to that of the last overt act specified. U. S. v. Eccles (C. C. 1910) 181 Fed. 906.

Where an indictment for conspiracy in violation of this section alleged the formation of the conspiracy on September 1, 1901, and that on April 10, 1905, within the period of limitation, defendants, in furtherance of the conspiracy and to carry out and effect its object, performed certain overt acts specified, each being alleged to have taken place within three years prior to the indictment, the indictment sufficiently charged that the original conspiracy was continuously in existence, and was not defective as indicating that the overt acts only, and not the conspiracy, had been committed within three years, though it did not in terms allege a new or renewed conspiracy. U. S. v. Barber (D. C. 1907) 157 Fed. 889.

An indictment for a conspiracy, charging that overt acts occurred at places within the jurisdiction of the court, sufficiently charges the venue. U. S. v. Aviles (D. C. 1915) 222 Fed. 474.

Under section 1691, ante, an indictment charging a conspiracy held to sufficiently show the time of the conspiracy. Id.

65. —— Overt acts and success of conspiracy.—An indictment for conspiracy, under this section, must allege some overt act on the part of the defendants as well as the fact of the unlawful agreement. U. S. v. Reichert (C. C. 1887) 32 Fed. 142; Same v. Watson (D. C. 1883) 17 Fed. 145.

An indictment setting forth various acts performed by several of the defendants in furtherance of the conspiracy is not effective as to a defendant as against whom it fails to aver the commission of any such act; the gist of the offense being the unlawful combination, although an overt act by one or more of the parties must be alleged and proved. Bannon v. U. S. (1895) 15 Sup. Ct. 467, 469, 156 U. S. 464, 39 L. Ed. 494.

An indictment under this section charging a conspiracy to defraud the United States by depriving it of the title to certain lands by means of a fraudulent entry under the homestead laws, which avers that the entry was made, and that by means of it the accused obtained possession of the land, and cut the timber thereon, is sufficient, and need not allege that the land was subject to homestead entry. The conspiracy constitutes the offense, and it

need not be shown how the overt act tended to effect its purpose, or that it was successful. Gantt v. U. S. (1901) 108 Fed. 61, 41 C. C. A. 210.

An indictment under this section charging that defendants conspired together to defraud the United States of the title to and possession of large tracts of public lands, and averring overt acts, is sufficient without averring the means employed; the gist of the offense being the unlawful combination. Perrin v. U. S. (1909) 169 Fed. 17, 94 C. C. A. 385; Benson v. Same (1909) 169 Fed. 31, 94 C. C. A. 399.

In an indictment under this section for conspiracy to commit an offense against the United States by bringing Chinamen into the country from Mexico in violation of the statute by means of a certain vessel, the provisioning of such vessel for the outward voyage and the sailing of such vessel from an American port to Mexico for the purpose of accomplishing the purpose of the conspiracy may be averred as overt acts. Daly v. U. S. (1909) 170 Fed. 321, 95 C. C. A. 107.

While the conspiracy denounced by this section is not punishable until the commission of some overt act in pursuance thereof, the offense consists of the conspiracy alone, so that the validity of an indictment thereunder must be tested by averments concerning the conspiracy unaided by those in respect to the overt acts committed thereunder. Dwinnell v. U. S. (1911) 186 Fed. 754, 108 C. C. A. 624.

A demurrer to an indictment for conspiracy held not to challenge the sufficiency of the indictment, so far as it charges a conspiracy as distinguished from allegations of overt acts. Hedderly v. U. S. (1912) 193 Fed. 561, 114 C. C. A. 227.

It is sufficient to allege that the overt acts were done "in pursuance" of the conspiracy. U. S. v. Boyden (C. C. 1868) Fed. Cas. No. 14,632; Same v. Dustin (C. C. 1869) Id. 15,011.

If an overt act in violation of law is charged as in pursuance of a previous conspiracy, it is sufficient. U. S. v. Dustin (C. C. 1869) Fed. Cas. No. 15,-011.

Allegations of the overt act are not required to be as full and minute in an indictment for conspiracy as in an indictment for fraud without any conspiracy. Id.

An indictment under Act March 2, 1867, § 30, is sufficient, if it charges an unlawful combination as actually made, and an act by one of the parties as an act intended to be relied upon to show the agreement in operation, although it does not appear in what manner the act described would tend to effect the object of the conspiracy. U. S. v. Donau (C. C. 1873) Fed. Cas. No. 14,-983.

An indictment for conspiracy to defraud the government must allege an overt act. U. S. v. Blunt (C. C. 1875) Fed. Cas. No. 14,615.

An allegation that defendants tendered an agreement to pay money to certain federal officials, to wit, the officers of court of the United States, acting under the authority of the government of the United States for the Southern division of the Northern district of Alabama, is bad as a description of an act of one or more of the conspirators to effect the object of a conspiracy under this section, being too indefinite to identify either the agreement or the tender, even were it clear whether the agreement was tendered to the officials or to somebody else. U. S. v. Milner (C. C. 1888) 36 Fed. 890.

An allegation that defendants entered into an agreement which was corrupt, and with a bad intent, does not sufficiently describe the act done to effect the object of the conspiracy, since it fails to show whether the agreement was written or oral, active or passive, and leaves uncertain the matter and persons concerned. U. S. v. Milner (C. C. 1888) 36 Fed. 890.

An indictment need not charge the commission of an overt act in furtherance of the conspiracy, but it is sufficient if it charges that the conspiracy was to do some criminal act. U. S. v. Gardner (C. C. 1890) 42 Fed. 829.

In an indictment for conspiracy, the averment of the commission of larceny, which was the object of the conspiracy, sufficiently charges an overt act in furtherance of the conspiracy. Id.

An indictment for conspiracy to defraud the United States by a false invoice is not vitiated by the particularity with which the overt act is set forth, if the conspiracy of itself be sufficient. U. S. v. Stamatopoulos (C. C. 1908) 164 Fed. 524.

An indictment under this section must not only charge the conspiracy, but one or more overt acts. U. S. v. Kissel (C. C. 1909) 173 Fed. 823, reversed (1910) 31 Sup. Ct. 124, 218 U. S. 601, 54 L. Ed. 1168.

Where the information does not contain a sufficient averment of any act done by any one of the conspirators to effect and carry out the object and purpose of the alleged conspiracy, it must be quashed. United States v. Watson (D. C. 1883) 17 Fed. 145.

An indictment charging conspiracy to obstruct the mails is not restricted to the allegation of a single overt act in pursuance thereof, since the gist of the offense is the conspiracy. U. S. v. Debs (D. C. 1895) 65 Fed. 210.

It is not necessary, in charging a conspiracy, under this section, to aver that it succeeded, but the crime is complete when the conspiracy is shown, and that one or more of the parties have done some act to effect the object of the conspiracy. U. S. v. Greene (D. C. 1902) 115 Fed. 343.

An overt act must be alleged in an

indictment for conspiracy as an essential element of that offense. Ex parte Black (D. C. 1906) 147 Fed. 832.

In a prosecution for conspiracy, it is not necessary to charge all the overt acts done or necessary to be done to render the object of the conspiracy effective, or to charge that the unlawful conspiracy proceeded to a successful determination as designed; it being sufficient that the conspiracy, unless interrupted, might have accomplished its unlawful purpose. U. S. v. Burkett (D. C. 1907) 150 Fed. 208.

Where an overt act alleged in an indictment for conspiracy must be qualified by circumstances to make it relevant to the particular conspiracy charged, it should be pleaded with the circumstances which make it relevant. Tillinghast v. Richards (D. C. 1915) 225 Fed. 226.

Where the jurisdiction of the court depends solely upon an overt act alleged in an indictment for conspiracy, it must be alleged with all the certainty of any other jurisdictional fact, and the connection between the overt act and the conspiracy must be made to appear specifically. Id.

Allegations of overt acts that defendants had bought palm oil, etc., held too uncertain to make possible a construction of an indictment for conspiracy to defraud United States by removing oleomargarine from factory untaxed as charging conspiracy to defraud by unlawful or covert manufacture. Id.

An indictment for conspiracy must plainly set out the overt acts, or some of them, and if one was to do the overt act, and the other should aid him, the indictment necessarily and properly charges what each was to do. U. S. v. Rogers (D. C. 1915) 226 Fed. 512.

66. —— **Joinder of parties.**—Officers in the revenue service, who conspire with others to defraud the United States, may be prosecuted therefor, under section 5889, ante, or they may be joined with the individual conspirators in an indictment under R. S. § 5440 (embodied herein). Grunberg v. U. S. (1906) 145 Fed. 81, 76 C. C. A. 51.

When certain persons combine to perform certain acts, and some of them combine with others engaged in totally different acts, though all may have a similar general purpose in view, it is improper to join them in an indictment for conspiracy. Wilson v. U. S. (1911) 190 Fed. 427, 111 C. C. A. 231.

Where there was evidence of the original formation of a single joint conspiracy among the defendants to sell the stock of a corporation by false and fraudulent representations and of an original community of interests and general plan in which all the defendants participated, to a greater or less degree, they were not improperly joined in an indictment because they later formed agencies to sell the stock in different parts of the country, though some of the defendants profited from one agency, some from another, and one from both. Id.

Under R. S. § 5480, post, § 10385, where five persons were joined in six indictments, the five for fraudulent use of the mails under such section, and one for conspiracy under section 5440 (embodied herein), the fact that the conspiracy indictment charged conspiracy against the defendants and divers persons unknown did not prevent its consolidation with the others. Emanuel v. U. S. (1912) 196 Fed. 317, 116 C. C. A. 137.

Though a revenue officer is liable to a greater penalty than other persons, he may be joined in the same indictment with others; but in such case he will be liable in his individual capacity. U. S. v. Boyden (C. C. 1868) Fed. Cas. No. 14,632.

An internal revenue officer, named as such in the indictment, cannot be jointly indicted with a private person for conspiracy to defraud the revenue. U. S. v. McDonald (C. C. 1876) Fed. Cas. No. 15,670.

There is no impropriety in joining in one indictment, under this section, a charge of conspiracy against a private individual, and against a member of a board of examining surgeons appointed by the commissioner of pensions. U. S. v. Van Leuven (D. C.) 62 Fed. 62, distinguishing U. S. v. McDonald (C. C. 1876) Fed. Cas. No. 15,670.

67. —— **Joinder of counts, and reference between counts.**—See, also, notes under § 1690, ante.

Charges against the same defendants for conspiracy to defraud the United States, based on R. S. § 5440 (embodied herein), and for receiving money from their alleged coconspirator for aiding to procure a contract from the government, and for services rendered in relation to the same, based on R. S. § 1781, post, §§ 10280, 10282, and R. S. § 1782, post, § 10283, defendants being clerks in a department, and such charges all relating to the same transaction, may properly be joined in different counts in the same indictment under section 1024. McGregor v. U. S. (1904) 134 Fed. 187, 69 C. C. A. 477.

Under section 1690, ante, counts for using the mails to defraud, in violation of R. S. § 5480 (post, § 10383), and for conspiracy to commit such offense under R. S. § 5440 (embodied herein), where based upon the same transaction, may be joined in one indictment. U. S. v. Clark (D. C. 1903) 125 Fed. 92.

Where the second and subsequent counts of an indictment for conspiracy to defraud the United States out of public lands selected and to be selected charged that the conspiracy was entered into "under circumstances and conditions set forth in the said first count"; that the defendants conspired to defraud the United States out of the title to public lands "by obtaining from

the said United States by means of the false and fraudulent practice described in the said first count," and appropriating such title for their benefit "as in the said first count set forth," and "that, in pursuance of the said unlawful conspiracy," and "to effect the object of the same," the alleged overt act was done; and that the described public lands were selected by the defendants "in pursuance of the same fraudulent practice, and in the manner and by the means in said first count set forth"—the references in such second and subsequent counts to the matter in the first count are sufficiently full to incorporate such matter into them, so as to make unnecessary the repetition of the language of the first count in the succeeding counts. Hyde v. U. S. (1906) 27 App. D. C. 362.

68. —— **Duplicity.**—See, also, notes under § 1690, ante.

The crime of conspiracy to defraud the United States, within this section, is not necessarily complete when the first overt act is committed; but, where it contemplates a series of acts, it is a continuing offense as to all conspirators who have not withdrawn therefrom as long as any act or acts are committed by one or more of them in furtherance of the object thereof; and such acts are not separate and distinct offenses, but a part of the substantive offense, and may be charged in the same count of an indictment, without rendering it bad for duplicity. U. S. v. Eccles (C. C. 1910) 181 Fed. 906.

The charging in a single count of an indictment under this section for conspiracy to commit an offense against the United States, of more than one distinct and separate overt act, is not charging separate and distinct offenses, and does not render the indictment bad for duplicity. Stanley v. U. S. (1912) 195 Fed. 896, 115 C. C. A. 584.

That an indictment under this section for conspiracy shows in charging overt acts that the completed offense charged as the object of the conspiracy was committed does not render it bad for duplicity. Id.

An indictment which charges a single conspiracy to commit distinct offenses is not duplicitous. John Gund Brewing Co. v. U. S. (1913) 206 Fed. 386, 124 C. C. A. 268, modifying opinion (1913) 204 Fed. 17, 122 C. C. A. 331.

An indictment charging a bankrupt and another with conspiracy to conceal property from the bankrupt's trustee, and also alleging such concealment by the bankrupt, is not bad for duplicity. Steigman v. U. S. (1915) 220 Fed. 63, 135 C. C. A. 631.

There is no impropriety in joining in one indictment, under this section, a charge of conspiracy against a private individual, and against a member of a board of examining surgeons appointed by the commissioner of pensions. U. S. v. Van Leuven (D. C. 1894) 62 Fed. 62, distinguishing U. S. v. McDonald (C. C. 1876) Fed. Cas. No. 15,670.

A conspiracy to defraud the United States is punishable under the statute, notwithstanding the fact that the scheme to defraud was originally devised and entered into at a time so remote that a prosecution for acts then done would be barred by limitation, when it was continuous in its operation, and overt acts have been committed thereunder within the period of limitation; and an indictment, which after reciting the original scheme, charges a conspiracy at a later date to apply it, in pursuance of which overt acts were committed, is not objectionable on the ground of duplicity. U. S. v. Greene (D. C. 1902) 115 Fed. 343.

The crime of conspiracy to defraud the United States, within this section, is not necessarily complete when the first overt act is committed; but, where it contemplates a series of acts, it is a continuing offense as to all conspirators who have not withdrawn therefrom as long as any act or acts are committed by one or more of them in furtherance of the object thereof; and such acts are not separate and distinct offenses, but a part of the substantive offense, and may be charged in the same count of an indictment, without rendering it bad for duplicity. U. S. v. Eccles (D. C. 1910) 181 Fed. 906.

An indictment for conspiracy, which charges a single combination or conspiracy to commit several different crimes, is not duplicitous. U. S. v. Aczel (D. C. 1915) 219 Fed. 917.

Indictment for conspiracy against United States held not bad for duplicity in alleging overt acts in and of themselves constituting a crime under section 9772, ante, in view of section 10506, post, making an abettor a principal. U. S. v. Rogers (D. C. 1915) 226 Fed. 512.

An indictment for conspiracy to commit a crime against the government, charging bank teller's abstraction, misapplication, and embezzlement of its funds, and the other defendants with having abetted such acts, was not bad for duplicity, since under section 10506, post, all were principals in the same crime. Id.

69. —— **Description of offense intended to be committed in general.**—An indictment for conspiracy to commit an offense against the United States, under this section, need not describe the offense which was committed or intended to be committed, as the result of the conspiracy, as fully as would be required in an indictment in which it was the substantive crime charged. Ching v. U. S. (1902) 118 Fed. 538, 55 C. C. A. 304, writ of certiorari denied (1903) 23 Sup. Ct. 849, 189 U. S. 509, 47 L. Ed. 923.

An indictment under this section must charge the act constituting the offense with reasonable certainty, and not by

mere inference. U. S. v. Atlanta Journal Co. (C. C. 1911) 185 Fed. 656.

70. —— **Negativing exception in statute.**—An indictment based on this section charging a conspiracy to defraud by causing the violation of another statute subsequently enacted need not negative an exception found in the later statute, which, being entirely separable from the section upon which the indictment is founded, is matter of defense. U. S. v. Stone (D. C. 1905) 135 Fed. 392.

71. —— **Offenses under bankruptcy law.**—An indictment for conspiracy that a corporation as a bankrupt should fraudulently conceal property from its trustee in violation of section 9613, ante, is not insufficient because it charges that the property was removed and concealed prior to the bankruptcy, where it also avers that, with the consent and connivance of defendants, the concealment was continued after the bankruptcy and the appointment of a trustee, and the property was not scheduled by the bankrupt. Cohen v. U. S. (1907) 157 Fed. 651, 85 C. C. A. 113, writ of certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

In an indictment against a bankrupt and others for conspiracy to conceal assets from his trustee in bankruptcy, an averment that a person named was "duly" appointed trustee is sufficient; the matter of appointment being an incidental matter only, and not a vital element of the crime. Kerrch v. U. S. (1909) 171 Fed. 366, 96 C. C. A. 258, writ of certiorari denied (1909) 30 Sup. Ct. 402, 215 U. S. 602, 54 L. Ed. 344.

An indictment under R. S. § 5440 (embodied herein), for conspiracy to conceal property from a trustee in bankruptcy, in violation of section 9613, ante, is insufficient, where it does not use the statutory words "knowingly and fraudulently" in characterizing the offense to which the conspiracy related, or any equivalent therefor. U. S. v. Comstock (C. C. 1908) 162 Fed. 415.

An indictment for conspiracy to purchase goods and go into bankruptcy, and to conceal the goods, in violation of section 9613, ante, punishing concealment of property "while a bankrupt," is not insufficient because the conspiracy was formed and the goods were to be concealed prior to the bankruptcy, where it also avers that it was the intention to continue the concealment thereafter. Alkon v. U. S. (1908) 163 Fed. 810, 90 C. C. A. 116.

In an indictment under this section for conspiracy to conceal property from a trustee in bankruptcy, in violation of Bankr. Act. § 29b (1), an averment that a trustee was appointed is not essential. Steigman v. U. S. (1915) 220 Fed. 63, 135 C. C. A. 631.

Indictment for conspiring to conceal bankrupt's property, in violation of Bankr. Act, § 29b (1), held not defective for failure to use the words "knowingly and fraudulently," in view of R. S. § 1025, ante, § 1691. Tapack v. U. S. (1915) 220 Fed. 445, 137 C. C. A. 39.

An indictment charging a conspiracy to have a bankrupt account for his property by falsely pretending that he had given a valid mortgage thereon to secure a consideration a part of which he should falsely pretend to have been stolen, sets out an offense under this section as a conspiracy to attempt to account for property by fictitious losses. U. S. v. Swett (D. C. 1879) Fed. Cas. No. 16,427.

An indictment against a bankrupt and others, charging a conspiracy to conceal property, does not charge an offense under this section where it shows that the conspiracy was formed and executed prior to the bankruptcy, but does not aver that it was in contemplation of bankruptcy, or that any overt act was committed after the bankruptcy, although it charges a further conspiracy thereafter to continue the concealment. U. S. v. Grodson (D. C. 1908) 164 Fed. 157.

A conspiracy by bankrupts to conceal their property from their trustee formed within 30 days of the filing of the petition in bankruptcy, and followed by actual concealment of the property, is an offense which continues to the date of the refusal to turn over the property to the trustee on his election, and an indictment for conspiracy under this section properly charges the commission of the offense as of such date. U. S. v. Stern (D. C. 1911) 186 Fed. 854, judgment affirmed Stern v. U. S. (1912) 193 Fed. 888, 114 C. C. A. 102.

72. —— **Frauds as to public contracts.**—An indictment of railway officers for conspiring to defraud the United States, by "deceiving the officials" having charge of the mails as to the amount of mail matter carried over the line, need not aver what particular officer was intended to be deceived. U. S. v. Newton (D. C. 1891) 48 Fed. 218.

It was not necessary that the indictment should aver that the contemplated fraud was successful, or the fraudulent mail matter of sufficient weight to entitle the railway company to increased compensation, or that the forwarding of the matter would not be continued beyond the period fixed for weighing the mails. Id.

An indictment under this section for conspiracy to defraud which avers that defendant and an officer of the United States "unlawfully did conspire, combine, confederate, and agree together * * * knowingly to defraud the said United States in the manner following, that is to say," followed by an averment that defendant promised and agreed with said officer to pay him a commission on the price of each and every one of certain articles which should be pur-

chased by the United States by procurement of said officer, fairly imports an assent or agreement on the part of the officer, and is sufficient in such respect to charge conspiracy, although the officer's assent is not directly averred. Green v. McDougall, (1905) 26 Sup. Ct. 748, 199 U. S. 601, 50 L. Ed. 328.

An indictment for a conspiracy to defraud the United States, in violation of this section, which charges a corrupt agreement by which an officer of the United States is, in substance, to have a secret interest in a public contract as to the fulfilling of which by the contractor that officer is to be the judge, is sufficient without averring that the interest was given him or the money paid to him to influence his official conduct upon the very contract in question, or alleging which of the various ways of defrauding the government was in the minds of the conspirators, or that they all were. Crawford v. U. S. (1909) 29 Sup. Ct. 260, 262, 212 U. S. 183, 53 L. Ed. 465, 15 Ann. Cas. 392, reversing judgment (1907) 30 App. D. C. 1.

An indictment charging the conspiracy to consist in "certifying that certain false and fraudulent accounts and vouchers for material furnished for use in the construction of said customhouse and post office, and for labor performed on said building, were true and correct," held bad for uncertainty. U. S. v. Walsh (C. C. 1878) Fed. Cas. No. 16,636.

An indictment for conspiracy to defraud the United States is insufficient, which charges that defendants, knowing the terms of a contract whereby a certain deputy surveyor agreed to survey certain public lands for an agreed compensation, made fictitious surveys and false field notes, and deceived the surveyor general into approving the same and certifying accounts for money payable to the said deputy surveyor, but which does not charge that defendants acquired, or pretended to have acquired, any interest in said contract, or that they personated said deputy surveyor, or that he was a party to the conspiracy, for this fails to show that the scheme could have resulted in defrauding the United States. In re Benson (C. C. 1893) 58 Fed. 962.

An indictment charging that defendant, a contractor, conspired with certain postal officials, one of whom was charged with the duty of procuring supplies through contracts let after advertisements or in open market at reasonable prices, to defraud the United States by having let to him a contract without competition, at exorbitant prices, for articles for which there was no immediate necessity, in pursuance of which conspiracy the articles were purchased from defendant thereafter, and the voucher approved by one of the officials, is sufficient to charge an offense under this section. In re Runkle (C. C. 1903) 125 Fed. 996.

A charge in an indictment that defendants conspired with an engineer officer in charge of government work to defraud the United States by obtaining through such officer contracts by which they were to be paid high prices for inferior work; that large amounts of useless and unnecessary work were to be done and paid for; that such officer was to exercise the powers of his office fraudulently and corruptly in favor of the contractors in such contracts as might be so obtained by the conspirators by approving and accepting the work so fraudulently done,—is supported by averments of overt acts in presenting for payment to such officer a false and fraudulent claim against the United States for work done, pursuant to such conspiracy, and in the approval and payment of such claim by the officer, although it is further averred that such claim and payment were made under a contract antedating the alleged conspiracy, the conspiracy alleged being broader than one for the purpose alone of obtaining a contract and extending to the manner of conducting the work generally, and the obtaining of payment therefor. U. S. v. Greene (D. C. 1902) 115 Fed. 343.

73. —— **Inducing approval of defective life preservers.**—An indictment for conspiracy to defraud the United States, which charged that defendants secretly inserted a piece of iron weighing half a pound in the center of each of a large number of cork blocks made by them, intending that such blocks should be used in making life preservers for the equipment of steamers navigating the ocean and lakes, bays and sounds of the United States, held to sufficiently show that life preservers so made would not fulfill the law and regulations of the United States, which require that every such life preserver shall be made of good, sound cork blocks, and shall contain at least six pounds of good cork, which shall have a buoyancy of at least four pounds to each pound of cork. U. S. v. Stone (D. C. 1905) 135 Fed. 392.

74. —— **Use of mails to defraud.**—An allegation of an indictment that a part of a scheme to defraud, which the defendants conspired to devise, was that the scheme "was to be effected" by opening correspondence by means of the mails with unknown persons, is a sufficient averment of an intent by the accused to use the mails to execute their scheme. Miller v. U. S. (1904) 133 Fed. 337, 66 C. C. A. 399.

Allegation in indictment for conspiracy to defraud the state of South Dakota "and divers persons to the grand jury unknown" in the filing of animal bounty claims under Act S. D. March 3, 1905 (Laws 1905, c. 177), in so far as it charged a scheme to defraud unknown persons might be rejected as

surplusage. Fall v. U. S. (1913) 209 Fed. 547, 126 C. C. A. 369.

Where an indictment charged a conspiracy to devise a scheme to defraud in the sale of corporate stock and to have furthered such scheme by opening correspondence through the mail, it sufficiently charged a conspiracy to commit an offense against the United States. Wilson v. U. S. (1911) 190 Fed. 427, 111 C. C. A. 231.

In an indictment for conspiracy to use the mails to carry out a scheme to defraud, under R. S. § 5440 (embodied herein), making it an offense against the United States, and under section 5480, post, § 10385, making it an offense to use the mails to carry out a scheme to defraud, the names of as many persons defendant planned to defraud may be used in the indictment as the pleader may know, and all mail connected with the scheme, shown to have passed through the post office to any person whether named in the indictment or not, is evidence upon the question of the existence of the scheme. U. S. Marrin (D. C. 1908) 159 Fed. 767, judgment affirmed Marrin v. U. S. (1909) 167 Fed. 951, 93 C. C. A. 351, writ of certiorari denied (1911) 32 Sup. Ct. 523, 223 U. S. 719, 56 L. Ed. 629.

75. —— **False returns to increase postmaster's salary.**—Where an indictment charged a conspiracy by a postmaster and others, the object of which was that the postmaster should make false returns to the First Assistant Postmaster General for the purpose of fraudulently increasing his salary by failing to report, in the gross receipts required to be made monthly, large and irregular sales of postage stamps for use outside the district served by such post office, the fact that no such report of gross receipts as was described in the indictment was required of the postmaster did not render the indictment demurrable, since its allegations on demurrer would be taken as true. U. S. v. Foster (D. C. 1913) 211 Fed. 206.

76. —— **Frauds or offenses as to pensions.**—Where an amount is named in an indictment for presenting a false pension claim, it is not necessary for the jury to find that the whole of it was covered by the wrong perpetrated. It is enough to find that any of it was. U. S. v. Frisbie (C. C. 1886) 28 Fed. 808.

An indictment under R. S. § 5440 (embodied herein), is sufficient when it charges that defendants conspired together to fraudulently obtain a pension for one of them in the name of a dead soldier, and that they knowingly caused to be made and presented to the commissioner of pensions a false affidavit in support of a claim for such pension,—an act made criminal by section 9079, ante. U. S. v. Adler (D. C. 1892) 49 Fed. 736.

In an indictment under this section for conspiracy to defraud the United States by bribing a member of a board of examining surgeons to make a false report to the commissioner of pensions, it is unnecessary to aver that the commissioner had authority to grant pensions, for such authority is given by general statutes, of which the court will take judicial notice. U. S. v. Van Leuven (D. C. 1894) 62 Fed. 62, distinguishing U. S. v. Reichert (C. C. 1887) 32 Fed. 142.

77. —— **Offenses and frauds as to revenue.**—The allegation in an indictment for conspiracy to defraud the customs revenue, that certain acts were done "to the end that" less than the legal amount of duties should be collected by the collector of customs, held sufficient as an allegation of corrupt and fraudulent intent. Browne v. U. S. (1905) 145 Fed. 1, 76 C. C. A. 31, writ of certiorari denied (1906) 26 Sup. Ct. 755, 200 U. S. 618, 50 L. Ed. 623.

An indictment considered, and held to charge the offense of conspiracy to commit an offense under Customs Administrative Act June 10, 1890, § 9. Heike v. U. S. (1911) 192 Fed. 83, 112 C. C. A. 615, affirming judgment U. S. v. Heike (C. C. 1910) 175 Fed. 852, and writ of certiorari granted Heike v. U. S. (1912) 32 Sup. Ct. 527, 223 U. S. 730, 56 L. Ed. 633, and judgment affirmed (1913) 33 Sup. Ct. 226, 227 U. S. 131, 57 L. Ed. 450, Ann. Cas. 1914C, 128.

An indictment charging a conspiracy to receive opium imported contrary to law held sufficiently to allege that the overt acts were knowingly and fraudulently done. Jung Quey v. U. S. (1915) 222 Fed. 766, 138 C. C. A. 314.

In an indictment under Act March 2, 1867, § 30, this section as originally enacted, for a conspiracy to defraud the United States, the subject-matter is sufficiently described as "taxes upon distilled spirits, distilled in the Unit- States, and situated in certain bonded warehouses." U. S. v. Boyden (C. C. 1868) Fed. Cas. No. 14,632.

An indictment charging a conspiracy to defraud the United States of the taxes due upon distilled spirits (Act March 2, 1867, § 30) need not allege the specific mode agreed upon by which the object of the conspiracy was to be carried out. U. S. v. Dustin (C. C. 1869) Fed. Cas. No. 15,011.

Sufficiency of indictment charging a conspiracy to conceal or destroy papers relating to imported merchandise sent by the assignor to the consignee showing its fraudulent entry. R. S. §§ 5440, 5443 (this compilation, §§ 10201, 10232). U. S. v. De Grieff (C. C. 1879) Fed. Cas. No. 14,936.

An indictment for conspiracy to defraud the United States of sums to become due to it as customs duties must

allege, to some extent at least, the means intended to be used to defraud—as that it was by smuggling, or by forged or false invoices, or the like—although the details of the plan need not be set out, since they may not have been known to the grand jury or to the conspirators themselves. U. S. v. Grunberg (C. C. 1904) 131 Fed. 137.

In an indictment in a federal court it is not necessary to allege the tenor of an instrument unless it touches the very pith of the crime itself, as in forgery, or counterfeiting. An indictment for conspiracy to defraud the United States by obtaining the entry of imported merchandise without payment of the legal duty thereon need not allege the tenor of an instrument by means of which, as charged, it was intended to accomplish the fraudulent entry. Id.

An indictment under R. S. § 5440 (embodied herein), for conspiracy to defraud the United States by means of a false invoice, is sufficient which sets forth such a conspiracy, notwithstanding that it does not set forth the consummation of the fraud nor include an allegation that the fraud could have been accomplished, if not detected. U. S. v. Stamatopoulos (C. C. 1908) 164 Fed. 524; U. S. v. Haas (C. C. 1908) 163 Fed. 908.

An allegation of conspiracy to defraud the government of customs duties is sufficiently made in an indictment that alleges conspiracy with respect to merchandise to be imported into the United States without invoicing or entering the same and without paying the duties then and there accruing thereon. U. S. v. White (C. C. 1909) 171 Fed. 775.

Under Act March 3, 1879, c. 180, §§ 10, 11, 14, 20 Stat. 359, sections 7304, 7306, ante, defining second-class mail matter, and fixing the rate of postage on publications of the second class, when sent from the office of publication, including sample copies, or when sent from a news agency to actual subscribers thereto, at two cents per pound or fraction thereof, provided that nothing in the statute shall be construed so as to admit to the second-class rate regular publications designed primarily for advertising purposes, for free circulation, or for circulation at nominal rates, section 7358, ante, changing the rate to one cent per pound, and section 7361, ante, fixing the rate on periodicals of the second class when sent by others than the publishers or news agents at one cent for each four ounces or fractional part thereof, an indictment for conspiracy to defraud the United States by securing for papers sent out in addition to the regular circulation the one cent a pound rate instead of the one cent for four ounce rate is insufficient, where it does not allege that the papers were designed primarily for advertising purposes or for free circulation or for circulation at nominal rates. U. S. v. Atlanta Journal Co. (C. C. 1911) 185 Fed. 658.

An indictment for conspiracy to defraud the United States by the removal of oleomargarine from a factory without payment of the tax need not allege that the defrauding was to be accomplished by deceit, misrepresentation, or concealment. Tillinghast v. Richards (D. C. 1915) 225 Fed. 226.

Under Revenue Act Dec. 17, 1914, §§ 1, 2, 8, ante, §§ 6287g, 6287h, 6287n, an indictment charging defendant with conspiring to have opium in the possession of M. held insufficient, in absence of a charge that M. had it in his possession for any of the purposes for which he would have to register and pay the tax. U. S. v. Jin Fuey Moy (D. C. 1915) 225 Fed. 1003.

78. —— **Larceny.**—An indictment averred that defendant, and S. and H., "together with divers other evil-disposed persons," did conspire to steal certain chattels, "the property of and in the possession of the United States," and that thereafter "the said S., together with the said divers other evil-disposed persons," in execution and furtherance of the said conspiracy, did unlawfully and feloniously steal, etc. Held, that the indictment charged defendant with the conspiracy only, and not with the larceny, and an objection to a conviction for the conspiracy, on the ground that, as it was a misdemeanor only, it was merged in the larceny, which was a felony, could not be sustained. U. S. v. Gardener (C. C. 1890) 42 Fed. 829.

79. —— **Obstructing administration of justice in general.**—An injunction issued out of the United States circuit court, restraining defendants from endeavoring, by force or fraud, to procure a certain master to discharge his servants, or the servants to quit the employment of their master. Defendants were thereafter indicted, under R. S. §§ 5399, 5440 (this compilation, §§ 10305, 10201), for conspiring to obstruct the administration of justice in the federal courts. The indictment charged that defendants conspired to use force and fraud to break up the relation between the master and servants aforesaid, and did so do, pending the existence of such injunction; and, as a legal conclusion from this allegation, it stated that they conspired to obstruct the administration of justice, by the violation of the injunction. The act charged was an offense against the laws of the state, but not against those of the United States. Held, that the indictment was fatally defective, in failing to aver, in terms, that the object of the conspiracy was to obstruct the administration of justice in the federal courts, and to aver that defendants were served with process, or

in any manner notified of the issue of the writ. Mr. Justice Brewer and Mr. Justice Brown dissenting. Pettibone v. U. S. (1893) 13 Sup. Ct. 542, 545, 148 U. S. 197, 37 L. Ed. 419.

An indictment under R. S. § 5440 (embodied herein), for conspiring to commit an offense against the United States by obstructing the due administration of justice in a court of the United States, in violation of R. S. § 5399 (post, § 10305), considered, and held good. Wilder v. U. S. (1906) 143 Fed. 433, 74 C. C. A. 567, writ of certiorari denied (1907) 27 Sup. Ct. 787, 204 U. S. 674, 51 L. Ed. 674.

80. —— Corruption of jurors.—The averment, in an indictment under this section, that defendants conspired to commit the "offense of corruptly endeavoring to influence a petit jury of the circuit court of the United States for the district of Oregon in the discharge of its duty," is insufficient, because it omits any averment of facts constituting the offense for which the conspiracy was formed, by which it can be identified. U. S. v. Taffe (D. C. 1898) 86 Fed. 113.

An allegation in such an indictment that the defendants intended to influence the jury to return a large verdict in a case brought by the United States to condemn a right of way is insufficient, in failing to state facts showing that the effect of what was intended would have been to defraud the United States. Id.

81. —— Perjury or false statements.—An indictment charged that defendants willfully, etc., conspired at a particular time and place within the district to suborn certain named persons at a stated time, before one alleged to be the duly appointed, qualified, and acting register of the land office at R., by applying pursuant to Timber and Stone Act June 3, 1878, c. 151, 20 Stat. 89, ante, § 4672, for certain of the public lands of the United States by swearing to and filing with such land officer a statement required by the act and regulations of the Land Department alleging that the applicant did not apply to purchase for speculation but in good faith and to appropriate to his own exclusive use and benefit, etc.; whereas, in truth the statement was willfully false and intended to be so by each of them, in that it was intended that each should have a distinct agreement with the defendants that the land should be for defendant's benefit. Held, that the indictment was not fatally defective for failure to show that the precise piece or pieces of land to be acquired had been agreed on by the alleged conspirators at the time the conspiracy was formed or for failure to allege the persons to be suborned or the particular time and place of such subornation, but that the indictment sufficiently stated the offense of conspiracy to defraud the United States denounced by R. S. § 5440 (embodied herein). Dwinnell v. U. S. (1911) 186 Fed. 754, 108 C. C. A. 624.

Any doubt as to whether the allegations of an indictment charging a conspiracy to suborn the commission of perjury in proceedings to purchase public land under the timber and stone act embrace a conspiracy to suborn perjury in respect to the making of final proofs, as well as in making the original applications, must be resolved in favor of the accused. Williamson v. U. S. (1908) 28 Sup. Ct. 163, 207 U. S. 425, 52 L. Ed. 278.

Where the facts alleged, in an indictment for conspiracy to commit an offense against the United States by subornation of perjury in proceedings to acquire public lands, necessarily import willfulness on the part of the persons giving such testimony, the failure of the indictment to use the word itself is not fatal. Van Gesner v. U. S. (1907) 153 Fed. 46, 82 C. C. A. 180.

Where an indictment for conspiracy to induce certain persons to commit perjury in the making of public land entries alleged that the acts were knowingly done, and that defendants knew that the entrymen were applying to purchase the lands on speculation, and not in good faith, to appropriate the same to their exclusive use and benefit, the indictment was not fatally defective for failure in terms to allege that such acts were "willfully" committed under section 1691, ante, providing that no indictment found or presented by a grand jury in any District or Circuit Court of the United States shall be deemed insufficient for any defect in matter of form not tending to defendant's prejudice. Nickell v. U. S. (1908) 161 Fed. 702, 88 C. C. A. 562, judgment affirmed on rehearing (1909) 167 Fed. 741, 93 C. C. A. 229, writ of certiorari denied (1909) 29 Sup. Ct. 699, 214 U. S. 517, 53 L. Ed. 1064.

An indictment under R. S. § 5440 (embodied herein), for conspiracy to defraud the United States of public lands and to commit an offense against the United States by suborning entrymen to commit perjury in making oath to homestead affidavits, held sufficient. Richards v. U. S. (1909) 175 Fed. 911, 99 C. C. A. 401.

An indictment charging that defendants unlawfully conspired with another to commit an offense against the United States, by causing the violation of R. S. § 5425 (post, § 10245), in this: That they induced 21 persons named to obtain certificates of citizenship by means of false statements, made with intent to procure such certificates; that such other party, to effect such object, appeared before the district court of the United States and the superior court of the state, and made certain false statements to such courts,

with intent to procure the issuance of such certificates of citizenship under the laws relating to the naturalization of aliens; that such false statements were to the effect that such persons had resided in the state one year at least, which statement was false—does not charge against the defendants any offense against the United States, as an indictment charging a conspiracy to commit an offense against the United States by violation of R. S. § 5425 (post, § 10245), must allege that the persons who should obtain, accept, or receive certificates of citizenship should do so with knowledge that they had been procured by means of false statements, made with the intent to procure or aid in procuring the issue of such certificates. U. S. v. Melfi (D. C. 1902) 118 Fed. 899.

Nor did the indictment charge conspiracy to violate R. S. § 5395, post, § 10248, as to false swearing in naturalization proceedings. Id.

82. —— **Bribery**—An indictment charging a conspiracy with intent to defraud the United States by obtaining the dismissal or discontinuance of certain suits which by law might be brought by the United States, cannot be considered as charging a conspiracy to commit an offense against the United States, to wit, bribery; there being no specific hint of such an offense, except in the allegations of acts done to effect the object of the conspiracy. U. S. v. Milner (C. C. 1889) 36 Fed. 890.

An indictment which charges a confederated effort to deprive the national government of the right and privilege of proper service in the Department of Agriculture by corrupting an employé of such department, and inducing him to secretly furnish advance information of crop conditions, contrary to the rules of the department, and to issue false reports to the public as to such conditions, charges a conspiracy to defraud the United States under this section. U. S. v. Haas (C. C. 1908) 163 Fed. 908.

83. —— **Violation of census law.**—In an indictment for conspiring with a census enumerator to insert a certain number of false and fictitious names in the census schedules, it is sufficient to state a few only of the names alleged to have been so wrongfully inserted by the enumerator, as certainty to a common intent is all that is required in an indictment for conspiracy. U. S. v. Stevens (D. C. 1890) 44 Fed. 132.

84. —— **Violation of election laws.**—This section, when considered in connection with R. S. §§ 5511, 5512, 5513, confers authority to punish by proceedings in the federal courts a conspiracy to prevent or interfere with the security and protection of elections for representatives and delegates to Congress, and in an indictment in a federal court for a conspiracy to induce officers of election to omit the duty of safekeeping and delivering to the board of canvassers the poll books, tally sheets, and certificates of votes, it is not necessary to allege or prove the intention of the conspirators to effect the election of the member of Congress who was voted for at that place, the returns of which were in the same poll books, tally sheets, and certificates with those for state officers. Ex parte Coy (1888) 8 Sup. Ct. 1263, 1268, 127 U. S. 731, 32 L. Ed. 274.

The indictment charged that the defendants were officers of an election held at a certain precinct in the city of New Orleans on the 17th day of November, A. D. 1882, for a member of congress, and that they, "being then and there officers of said election, with intent then and there to affect said election and its result," "did acts unauthorized, in this: that they, being required to keep a list of the persons then and there voting, and to swear to said list as correct, did then and there add to said list." Held good, and that it was unnecessary that there should have been added the words, "which they then and there, as such officers as aforesaid, kept." U. S. v. Bader (C. C. 1883) 16 Fed. 116.

An indictment charging a violation of this section, punishing a conspiracy to commit the offense punishable by section 10184, ante, punishing any one who under color of any law deprives an inhabitant by reason of color or race of any rights secured by the federal Constitution or laws, which alleges that a state law requires that the official ballots in a designated part of the state shall be arranged in alphabetical order with a designation of the political party, and that sample ballots must be posted before the election, and that in other parts of the state the supervisors of election may arrange the names of the candidates in any order without party designation and without furnishing sample ballots; that the Legislature in enacting the law intended to give the supervisors of election of the counties where the negro population is large the opportunity to so arrange the ballots as to deprive negro voters of the right to vote; and that defendants by the form of the ballots adopted made it extremely difficult for negro voters to vote their choice at a congressional election, etc.—is sufficient as against a demurrer, though it does not allege that the state statute is, on its face, directed against negro voters, and does not disclose an intent to discriminate against negro voters. U. S. v. Stone (D. C. 1911) 188 Fed. 836.

A conspiracy to corrupt an election for congressmen and Senators is a conspiracy to defraud the United States, within this section. U. S. v. Aczel (D. C. 1915) 219 Fed. 917.

85. —— **Plundering wrecked vessel.**—An indictment that avers in any form

of language that some act has been done to carry out the agreement is sufficient, whether it appears from the face of the pleading that the act averred would tend to effect the object or not, that being a matter of proof and a question for the jury. Held, therefore, that an averment that one of the alleged conspirators "furnished and loaned" a skiff to be used by the others in plundering a wrecked vessel was within the statute, and sufficient as a pleading. U. S. v. Sanche (C. C. 1881) 7 Fed. 715.

86. —— **Violation of Chinese exclusion law.**—Where an indictment alleged that defendants feloniously conspired with divers other persons, whose names were to the grand jurors unknown, to willfully, etc., aid and abet the landing of unknown Chinese persons in the United States from certain vessels, the names of which were to the grand jurors unknown, from ports or places in the empire of China to the grand jurors unknown, etc., and that, to effect the object of such conspiracy, defendant W. D., whose true name was to the grand jurors, unknown, did bribe one B., deputy sheriff, in charge of certain Chinese persons whose names were unknown, who had been sentenced to deportation, to cause certain other Chinese persons, whose names were to the grand jurors unknown, to be substituted therefor, etc., was not defective for failure to allege the detailed facts stated to be unknown. Wong Din v. U. S. (1905) 135 Fed. 702, 68 C. C. A. 340.

An indictment charging a conspiracy to commit the offense of aiding and abetting the landing of Chinese laborers not entitled to enter the United States, by furnishing them with false and fraudulent evidence of identification, is sufficient under this section. U. S. v. Wilson (D. C. 1894) 60 Fed. 890.

Indictment charging general conspiracy to bring into country Chinese aliens not lawfully entitled to enter need not set forth the names of the persons brought in. U. S. v. Dahl (D. C. 1915) 225 Fed. 909.

An indictment for conspiracy under this section for violation of Chinese Exclusion Act 1882, § 11, as amended, ante, § 4298, held good as against an objection that it did not charge that persons excluded by the act were parties to the conspiracy. Id.

Indictment charging conspiracy under this section to violate Chinese Exclusion Act 1882, § 11, as amended, alleging the conspiracy to violate the act and charging overt acts, held sufficient. Id.

87. —— **Offenses by bank officers and others in connection therewith.**—An indictment, under R. S. § 5440 (embodied herein), against two defendants, charging them with a conspiracy to commit an offense against the United States by making certain false entries in the books of a national bank of which one of the defendants was an officer, in violation of section 9772, ante, is not bad because, in stating the details of the overt act committed by defendants, it is averred that the entries which were made in the books of the bank were made by the hand of the defendant who was not an officer thereof; it being averred that both defendants were present and participated in the carrying out of the plan formed between them to make such entries. Scott v. U. S. (1904) 130 Fed. 429, 64 C. C. A. 631.

Where a count in an indictment against a bank's officers and alleged aiders and abetters charged conspiracy to violate R. S. § 5209, ante, § 9772, prohibiting willful misapplication of funds of a national bank, and that to effect the object of the conspiracy defendant K., one of the parties thereto, drew and accepted a draft, set out, presented it to the bank, and obtained credit for the amount thereof for the drawer of the draft in which company K. was interested, the indictment sufficiently charged that an act was done by one of the parties to the alleged conspiracy to effect the object thereof and sufficiently specified such act to withstand a demurrer. Prettyman v. U. S. (1910) 180 Fed. 30, 103 C. C. A. 384.

An indictment charging the president of a national bank with conspiring with others to commit an offense against the United States by making a false entry in the books of the bank showing its balance in the hands of its reserve bank to be larger than it was in fact, with intent to deceive any agent who might thereafter be appointed by the Comptroller of the Currency to examine the affairs of the bank, does not state an offense under R. S. § 5440 (embodied herein), where the overt act charged to have been committed by defendant consisted in his concealing from the bookkeeper, who actually made the alleged false entries, but who is not charged with being a party to the conspiracy, the issuance of certain drafts which should have been credited to the account of said reserve bank. U. S. v. McClarty (D. C. 1911) 191 Fed. 518.

88. —— **Use of mails to defraud.**—See, also, note ante as to "Joinder of parties."

An indictment for conspiracy to defraud through the mails, under R. S. § 5480, as amended by Act March 2, 1889, post, § 10385, which alleges that defendants conspired in devising a scheme to defraud certain persons, to be carried out by each of the defendants representing himself as a merchant, and using, in correspondence, paper with his pretended business printed thereon; defendants mutually to represent each other, to the persons intended to be defrauded, to be entitled to credit; the scheme to be further effected by order-

ing merchandise from said persons, having no intention to pay for it, but intending to convert it to the use of each and of each other,—states with sufficient clearness the first charge requisite under the section, namely, that the persons charged devised a scheme to defraud. Stokes v. U. S. (1895) 15 Sup. Ct. 617, 619, 157 U. S. 187, 39 L. Ed. 667.

The second requisite of such an indictment, namely, a charge that defendants intended to effect the scheme by opening correspondence with some other person through the post-office department, or by inciting such other person to open communication with them, is sufficiently complied with by an allegation that the post-office establishment of the United States was to be used for the purpose of executing such scheme to defraud, pursuant to said conspiracy, by opening correspondence with said persons, and by inciting said persons to open correspondence with defendants by means of said post-office establishment. Id.

Such allegations, together with allegations that, for the further purpose of executing said conspiracy to defraud, S. (one of defendants) did deposit in the post office at O. a letter addressed to R., at B., ordering merchandise from him, which letter was inclosed in an envelope deposited in the post office at O., as aforesaid, to be conveyed by the post-office establishment to R.; that the letter contained a check on M., a banker, for the amount of the merchandise ordered, payable to R.; that S. never had any funds deposited with M., but the sending of the check was pursuant to the conspiracy, a scheme to defraud R. of his merchandise by not paying, and intending not to pay, therefor, but to convert the same to the use of S. and the other defendants,—sufficiently charge the offense. Id.

An indictment for conspiracy to defraud by the use of the mails, in violation of R. S. § 5480, as amended, post, § 10385, is not bad for repugnancy because it charges in the same count that defendant conspired to defraud "by dealing and pretending to deal" in what is commonly called "green articles" and "spurious Treasury notes." Lehman v. U. S. (1903) 127 Fed. 41, 61 C. C. A. 577.

Facts showing a conspiracy to defraud, an intention to defraud, an intention to use the mails as a part of the scheme, the use of the mails for that purpose, and the scheme itself, are essential to a valid indictment under R. S. § 5440, (embodied herein) to commit the offense described by section 5480, post, § 10385, and must be alleged in the indictment. Cohen v. U. S. (1907) 157 Fed. 651, 85 C. C. A. 113, writ of certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

While, in an indictment, under this section for a conspiracy to use the mails to defraud, a fraudulent purpose must be averred and proved, and where a purpose to defraud two jointly is charged, it must be proved as laid, where the sending of individual letters to parties named is charged in different counts, an averment in general terms of an intent to defraud these parties does not necessarily import that the conspiracy contemplated a joint defrauding of the whole number named; the parties not being jointly interested in the property which it was the aim to secure. Marrin v. U. S. (1909) 167 Fed. 951, 93 C. C. A. 351, affirming judgment U. S. v. Marrin (D. C. 1908) 159 Fed. 767, and writ of certiorari denied (1911) 32 Sup. Ct. 523, 223 U. S. 719, 56 L. Ed. 629.

An indictment for conspiracy to use the mails to defraud, in violation of R. S. § 5480, post, § 10385, considered, and held sufficient. Robinson v. U. S. (1909) 172 Fed. 105, 96 C. C. A. 307.

An indictment, under R. S. § 5440 (embodied herein), for conspiracy to commit an offense under section 5480, post, § 10385, by devising a scheme to defraud intended to be carried out by the use of the mails, must charge a conspiracy to commit acts which, if committed, would constitute an offense under the latter section; but it need not charge separately that defendants specifically conspired to commit each element of the offense. McConkey v. U. S. (1909) 171 Fed. 829, 96 C. C. A. 501.

An indictment, under R. S. § 5440 (embodied herein), for conspiracy to use the mails to defraud, in violation of R. S. § 5480 (post, § 10385), considered, and held to sufficiently describe the offense which defendants conspired to commit. Id.

An indictment for conspiracy to defraud by use of the post office establishment held not defective for failing to allege that it was part of the conspiracy to place or cause to be placed letters and circulars in the United States post office. Emanuel v. U. S. (1912) 196 Fed. 317, 116 C. C. A. 137.

Where, in a trial for conspiring to use the mails in carrying out a scheme to defraud, on an indictment charging a scheme to defraud named persons and others whose names were unknown to grand inquest, there was no showing that any other persons than those named were known to the grand inquest, it must be presumed on writ of error that the indictment in this regard truthfully states the fact. U. S. v. Marrin (D. C. 1908) 159 Fed. 767, judgment affirmed (1909) Marrin v. U. S. (1909) 167 Fed. 951, 93 C. C. A. 351, writ of certiorari denied (1911) 32 Sup. Ct. 523, 223 U. S. 719, 56 L. Ed. 629.

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An indictment held to charge a conspiracy to commit the offense denounced by R. S. § 5480, post, § 10385, of using the mails to defraud. Ex parte King (D. C. 1912) 200 Fed. 622.

Where an indictment for conspiracy to further a scheme to defraud by means of the post office establishment stated an offense under R. S. § 5480 (post, § 10385), it was immaterial that it recited that the facts showed a violation of Cr. Code, § 215. Id.

An indictment for conspiring to defraud by means of the post office establishment held not fatally defective because the intent to defraud was charged in the description, as distinguished from the charging part, of the indictment. U. S. v. Maxey (D. C. 1912) 200 Fed. 997.

An indictment for conspiring to defraud by use of the post office establishment held not fatally defective, because the charging part did not allege that defendants conspired and did commit the offense of attempting to defraud, etc. Id.

89. —— **Obstructing mails.**—An indictment charging defendants with conspiring to "unlawfully, willfully, maliciously and knowingly" delay and obstruct, etc., the passage of a railway car and train, "which said railway car and train were then and there carrying and transporting the mails of the United States," is insufficient to charge a conspiracy to violate R. S. § 3995, post, § 10371, by "knowingly and willfully" obstructing the passage of the mails, since it fails to charge that defendants knew that said car and train were carrying the mails, without which there could be no conspiracy to violate the statute. Salla v. U. S. (1900) 104 Fed. 544, 44 C. C. A. 26.

Where an indictment for conspiracy to knowingly and willfully obstruct the passage of the mails, in violation of R. S. § 5440 (embodied herein), and R. S. § 3995 (post, § 10371), was defective for failure to charge that defendants conspired to "knowingly and willfully" obstruct the mails, the defect was not cured by the allegation that they did "knowingly, unlawfully, and feloniously combine, conspire," etc., to obstruct the mails, or that the part of the indictment charging the overt act alleged that such act was "knowingly and willfully" committed. Conrad v. U. S. (1904) 127 Fed. 798, 62 C. C. A. 478. An indictment for conspiracy to commit the offense described in R. S. § 3995, which failed to allege that defendants conspired to "knowingly and willfully" obstruct or retard the passage of the mails, in the manner set out, was fatally defective. Conrad v. U. S. (1904) 127 Fed. 798, 62 C. C. A. 478.

90. —— **Violation of interstate commerce law.**—The sixth count of the indictment charges that defendants conspired to force the Humboldt Steamship Company to enter into an agreement with defendants to maintain rates and suppress competition among carriers named, under section 3 of the Sherman Anti-Trust Act (Act July 2, 1890, c. 647, 26 Stat. 209, ante, § 8022). Upon demurrer, held, the objection is technical, and, in any event, the count charges sufficient facts to show a violation thereof, and the indictment charging a violation of R. S. § 5440 (embodied herein), may be treated as surplusage. Demurrer overruled. U. S. v. Pacific & A. Ry. & Nav. Co. (1912) 4 Alaska, 530.

In an indictment under this section for a conspiracy to commit an offense against the United States, all facts necessary to constitute the conspiracy, including the overt act, must be averred with all the particularity required in criminal pleadings, but no high degree of particularity is required in describing the offense to which the conspiracy relates which is necessarily defined by the statute. So, where an indictment charged a conspiracy to induce a shipper to receive rebates from railroad companies in violation of the federal statute, it was not essential to aver the names of such railroad companies which were not known to the grand jury. Thomas v. U. S. (1907) 156 Fed. 897, 84 C. C. A. 477, 17 L. R. A. (N. S.) 720.

In an indictment for conspiracy to obtain an unlawful discrimination in rates by underweighing, the allegation that the railroad employé therein named was employed by the railroad to weigh the lumber shipped is material, so far as concerns the overt acts of underweighing therein charged, but it is immaterial whether he was generally employed for the purpose. U. S. v. Howell (D. C. 1892) 56 Fed. 21.

91. —— **False or fraudulent claims.**—A count in an indictment for conspiracy to defraud the United States, which charges as an overt act done in pursuance of the conspiracy the knowing and willful presentation and payment of false and fraudulent claims, against the United States, is not insufficient because it does not specify the particulars in which such claims were

fraudulent; the only purpose of such count being to show that the unlawful agreement was carried into actual operation. U. S. v. Greene (D. C. 1902) 115 Fed. 343.

Section 7483, ante, provides that railway companies shall be paid for carrying the mails upon a basis of the average weight carried; such weight to be ascertained by actually weighing the mail carried during a certain number of days, to be fixed by the postmaster general. Held, that an indictment charging railway officials with conspiring to deceive the postal officers and defraud the United States by sending over the line a large amount of old newspapers, etc., in order to increase the mails at a time when they were being weighed, is sufficient under R. S. § 5440 (embodied herein), since it describes a conspiring to commit the "offense against the United States" defined by R. S. § 5438, ante, § 10199, providing a punishment for any persons combining to defraud the United States by "obtaining, or aiding to obtain, the payment of any false or fraudulent claim." U. S. v. Newton (D. C. 1891) 48 Fed. 218.

92. —— **Introducing liquors into Indian country.**—Indictment charging a conspiracy to introduce liquors into the Indian country held to relate to intrastate shipments only. Joplin Mercantile Co. v. U. S. (1915) 35 Sup. Ct. 291, 236 U. S. 531, 59 L. Ed. 705, affirming judgment (1914) 213 Fed. 926, 131 C. C. A. 160.

Omission of any averment in indictment charging a conspiracy to introduce liquors into the Indian territory, that the conspiracy was to introduce such liquors from without the state, is not a defect in form to be ignored under section 1691, ante. Id.

93. —— **Frauds or offenses as to public lands.**—An indictment under this section charged conspiracy to defraud the United States of public lands by means of false entries under the homestead laws. The description of the overt acts charged included matters subsequent to the "entry" of the lands, in the technical sense of the preliminary application under the homestead laws. Held, that the word "entries" was not to be taken with such technical meaning, but in its popular sense, as meaning the proceedings as a whole. Dealy v. U. S. (1894) 14 Sup. Ct. 680, 682, 152 U. S. 539, 38 L. Ed. 545.

The sufficiency of an indictment charging a conspiracy under R. S. § 5440 (embodied herein), "to defraud the United States out of the possession and use of, and the title, to divers large tracts of public lands of the United States," as against objections based on the lack of description of the lands, the uncertainty of the allegations as to the means to be used to carry out the alleged conspiracy, the failure to give the names of the fictitious or disqualified persons through whom the fraud was effected, the indefiniteness and inconsistency of the allegations, and the improper conclusion, will not be determined on habeas corpus to inquire into a detention to await a warrant for the removal of the accused, under section 1674, ante, to the federal district, where the trial is to be had, but such objections are for the trial court to determine. Hyde v. Shine (1905) 25 Sup. Ct. 760, 764, 199 U. S. 62, 50 L. Ed. 90 (affirming judgment U. S. v. Hyde [D. C. 1904], 132 Fed. 545); Dimond v. Shine (1905) 25 Sup. Ct. 766, 199 U. S. 88, 50 L. Ed. 99.

An indictment under R. S. § 5440 (embodied herein), charging a conspiracy to defraud the United States by depriving it of the title to certain lands by means of a fraudulent entry under the homestead laws, which avers that the entry was made, and that by means of it the accused obtained possession of the land, and cut the timber thereon, is sufficient, and need not allege that the land was subject to homestead entry. The conspiracy constitutes the offense, and it need not be shown how the overt act tended to effect its purpose, or that it was successful. Gantt v. U. S. (1901) 108 Fed. 61, 41 C. C. A. 210.

In an indictment for conspiracy to defraud the United States by means of a false and fraudulent entry of public lands under the homestead law, the word "entry" may properly be used and construed as applying to any or all of the steps necessary to acquire title under such law. Bradford v. U. S. (1907) 152 Fed. 617, 81 C. C. A. 607.

An indictment under this section which charges a conspiracy to defraud the United States of certain of its lands by means of false forged and fraudulent entries thereof under the homestead law, and avers that such lands were "in the district of lands subject to entry under the homestead laws of the United States" at a certain land office, and also in stating the acts done pursuant to such conspiracy charges the filing of applications for homestead entry of certain described "public lands of the United States subject to homestead entry," is not fatally defective, because in charging the conspiracy it does not expressly aver that the lands of which it was the purpose to defraud the United States were public lands, subject to homestead entry. Stearns v. U. S. (1907) 152 Fed. 900, 82 C. C. A. 48.

The objection that an indictment for conspiracy to defraud the United States of certain public lands does not make it altogether clear to what lands the conspiracy related cannot be taken by a motion in arrest of judgment. Id.

Under an indictment charging a violation of R. S. § 5440 (embodied herein), by conspiring to defraud the government of public lands subject to entry

under Timber and Stone Act, § 1, section 4671, ante, an averment of payment, on certain dates within three years of the filing of the indictment, to procure false application, final proof and entry for the lands, does not charge overt acts within section 1708, ante, limiting certain federal prosecutions to three years from the commission of the offense. Any violation of this section was complete before certificates of purchase covering the lands were issued, though such payment was made subsequently. U. S. v. Black (1908) 160 Fed. 431, 87 C. C. A. 383.

An indictment charged that defendants, with others, conspired to obtain from the government certain specified tracts of land open to homestead entry by procuring certain named persons to enter the same by means of false proof in respect to their residence on and improvement of the land, and with respect to the intent with which and the purpose for which the entries were made, and in pursuance of such conspiracy and to effect the object thereof defendants caused and procured C. to make the homestead proof in respect to the land entered by him and the final affidavit required by homestead claimants, including a statement that his family consisted of himself and wife, and that they had resided continuously on the land since first establishing residence thereon, which proof was subscribed by C. and certified by defendant W., and that each of the defendants knew that the proof was false, etc. Held, that the indictment was sufficient. Jones v. U. S. (1908) 162 Fed. 417, 89 C. C. A. 303, writ of certiorari denied (1908) 29 Sup. Ct. 685, 212 U. S. 576, 53 L. Ed. 657.

An indictment under this section charging a conspiracy to defraud the United States by fraudulently obtaining title to and possession of certain described public lands, is not insufficient because it further charges that the purpose was to be accomplished through the state by securing the selection of the lands by the state in lieu of school lands included in a government forest reservation and their fraudulent transfer from the state to defendants, nor because the state was entitled to select such lands under the law. Perrin v. U. S. (1909) 169 Fed. 17, 94 C. C. A. 385; Benson v. Same (1909) 169 Fed. 31, 94 C. C. A. 399.

An indictment under this section for conspiracy to defraud the United States of public lands and to commit an offense against the United States by suborning entrymen to commit perjury in making oath to homestead affidavits, held sufficient. Richards v. U. S. (1909) 175 Fed. 911, 99 C. C. A. 401.

An indictment under this section for conspiracy to defraud the United States of public lands does not charge a conspiracy to do an act not unlawful in itself, because there is no separate statute making it a crime to defraud the United States; but the statute itself makes a conspiracy to defraud the United States a distinct crime, and no further offense need be averred nor proved. Mays v. U. S. (1910) 179 Fed. 610, 103 C. C. A. 168.

An indictment for conspiracy to defraud the United States of public lands by fraudulently obtaining the title to worthless state lands, securing the establishment of a forest reserve including such lands and then exchanging the same for public lands of the United States under the law authorizing such exchange, is not bad because it does not describe the state lands to be so acquired, further than to state the counties in which they are situated, where they had not been obtained and no further description was possible. Id.

An indictment charging a conspiracy to defraud the United States by means of fraudulent entries of desert land held not defective for failure to allege that the entries were in fact made. Chaplin v. U. S. (1912) 193 Fed. 879, 114 C. C. A. 93, writ of certiorari denied (1912) 32 Sup. Ct. 838, 225 U. S. 705, 56 L. Ed. 1266.

An indictment for a conspiracy to defraud the United States by inducing the making of certain desert land entries held not fatally defective for failure to contain certain allegations to show that, if the conspiracy had been carried out, the United States would have been defrauded. Id.

Where the words of the affidavit required to be taken by an applicant for public land are set forth in the statute under which the application is made, it is sufficient, in an indictment for conspiracy to defraud the United States, to refer to or describe it as the affidavit required of such applicant by law. U. S. v. Thompson (C. C. 1886) 29 Fed. 86, 89.

An indictment under this section which charges an intent to defraud the United States by obtaining the dismissal of certain suits which by law might be brought by the United States to recover certain lands "alleged to have been fraudulently and unlawfully obtained" from the United States does not charge a conspiracy to defraud the United States, since the use of the word "alleged" renders the fraud an open question. U. S. v. Milner (C. C. 1888) 36 Fed. 890.

Where an indictment for conspiracy to deprive the government of land by reason of a fraudulent homestead entry alleged that the lands sought to be acquired were "public lands," and that defendants had conspired to defraud the United States out of a portion of such land, it was not demurrable for failure to allege other facts showing that the land was in fact public land

or subject to homestead entry. U. S. v. McKinley (C. C. 1903) 126 Fed. 242.

Where an indictment for conspiracy to defraud the government out of public lands by a fraudulent homestead entry alleged facts showing that the conspiracy in fact succeeded, and that by reason of fraudulent and forged proofs the land sought to be acquired was actually patented by the government in pursuance of such proofs, the indictment was not objectionable for failure to allege that the overt acts of the conspirators in furtherance of the conspiracy were effective in accomplishing its object. Id.

Since it was not necessary to a conviction for conspiracy to deprive the United States of public lands by a fraudulent homestead entry that it should be proved that the conspiracy was with reference to any particular tract of land or to land within the district, it was not necessary that the indictment particularly describe the land affected by the conspiracy. Id.

An indictment for conspiracy under this section charged that petitioner conspired with others to obtain by means of fictitious applications and other false and fraudulent practices from the states of California and Oregon the title to large amounts of school lands owned by said several states, and lying within the boundaries of United States forest reservations, and then to exchange such lands, under the federal statutes providing therefor, for public lands of the United States subject to homestead entry outside of such reservations. Held, that while such acts would constitute a conspiracy to defraud the states, the indictment did not charge a "conspiracy to commit any offense against the United States, or to defraud the United States in any manner," within the meaning of the statute since it appeared from its averments that the United States would obtain title to the school lands by the exchanges contemplated; and that such indictment would not sustain proceedings for the removal of petitioner to the district of the indictment for trial. In re Benson (C. C. 1904) 131 Fed. 968.

An indictment for conspiracy to defraud the United States, alleging that defendants conspired to fraudulently obtain state land within a forest reservation to be exchanged for lieu land, as provided by the forest reserve act, held to state an offense. Ex parte Hyde (C. C. 1904) 194 Fed. 207.

An indictment under this section which charges that defendants knowingly, unlawfully, wickedly, and corruptly conspired to defraud the United States out of its title to certain public lands by means of false, fraudulent, and fictitious entries of the same under the land laws, and that in pursuance of, and to effect the object of, such conspiracy, certain acts set forth were committed by one or more of the defendants, is not insufficient, because it does not expressly aver that such acts were done with knowledge of the fraudulent and illegal character of the entries. The essence of the offense is the conspiracy, and while an overt act is an essential element under the statute, the use of the word "knowingly" in charging the conspiracy must fairly be held to apply to and characterize the acts specifically charged to have been done in furtherance of such conspiracy, and for the purpose of carrying it into effect. U. S. v. Mitchell (C. C. 1905) 141 Fed. 666.

Averments in an indictment for conspiracy under this section that defendants conspired to fraudulently obtain the issuance by the United States of land scrip in satisfaction of a confirmed private land claim, which scrip when issued could be located on public lands of the United States, and that such conspiracy was carried out by fraudulently procuring the appointment of an administrator of the succession of the true claimant, on whose application the scrip was issued, and by whom it was sold, and the proceeds converted by defendants to their own use, are sufficient to sustain the charge that the conspiracy was one to defraud the United States. U. S. v. Bradford (C. C. 1905) 148 Fed. 413, judgment affirmed Bradford v. U. S. (1907) 152 Fed. 616, 81 C. C. A. 606, writ of certiorari denied (1907) 27 Sup. Ct. 795, 206 U. S. 563, 51 L. Ed. 1190.

An indictment charging that defendants did conspire, combine, confederate, and agree together to defraud the United States, by corruptly and for their own gains administering and procuring the administration of Act March 3, 1901, c. 853, 31 Stat. 1133, appropriating money to survey public lands, in a manner contrary to the true intent and purpose thereof, and wasteful of the money so appropriated and apportioned, prejudicial to the welfare and interest of the United States and the public service thereof, did not charge a conspiracy to defraud the government of its money or property, but charged a conspiracy to defraud the United States by corruptly administering an act of Congress. U. S. v. Moore (C. C. 1909) 173 Fed. 122.

An indictment for conspiracy, alleging that defendants conspired to procure the maladministration of Act March 3, 1901, c. 853, 31 Stat. 1133, appropriating money for the survey of public lands in a specified order, by procuring the use of such funds for the survey of lands which were nonagricultural and the subject of fictitious entries, sufficiently charged the conspirators' corrupt purpose, and was therefore not objectionable for failure to allege that defendants had guilty

knowledge of the falsity of the entries. Id.

An indictment charging a conspiracy by defendants to defraud the United States by obtaining title to upwards of 5,000 acres of coal lands in Alaska of the value of $2,000,000 by means of 39 false, fraudulent, and fictitious entries made by as many different persons, ostensibly for their own benefit, but in fact for the benefit of the defendants, whereby the defendants would be enabled to receive and enjoy the benefit of a greater number of coal entries and locations and a greater quantity of coal lands than was permissible under the law, charged a crime. U. S. v. Doughten (C. C. 1911) 186 Fed. 226.

An indictment averring that defendants conspired to defraud the United States of coal lands in Alaska by inducing persons to locate and acquire title to claims thereon under the statute to be later transferred to a corporation, so as to enable it to thereby acquire a greater quantity of coal land than allowed by law, and that defendants, pursuant to such conspiracy, aided such claimants in making proof and payment for their lands, is insufficient to charge the crime of conspiracy to defraud the United States under this section, where it does not show that the claimants were dummies, but avers that they were qualified to make the entries, and does not charge that they did not fully comply with the law to entitle them to make proof and obtain patents. U. S. v. Munday (C. C. 1911) 186 Fed. 375, judgment reversed (1911) 32 Sup. Ct. 53, 222 U. S. 175, 56 L. Ed. 149.

A count in an indictment under this section charging a conspiracy to defraud the United States by hiring 28 persons to enter at a land office, under color of the pre-emption laws, certain public lands of the United States, solely for the purpose of selling the same on speculation to defendant and L., and some other person to the grand jury unknown, is good. U. S. v. Gordon (D. C. 1884) 22 Fed. 250.

A count in an indictment under this section which charges a conspiracy to defraud the United States by presenting for approval to a land office false and fraudulent affidavits and proofs of settlement and improvement, under the pre-emption law, of 28 persons, stating that such persons were entitled to enter public lands, and had severally complied with the pre-emption laws, and had severally entered such lands for their individual benefit, and not for speculation, is sufficient. Id.

The objection that it is within the exclusive jurisdiction of the land department to determine questions of fact involved in the trial of an indictment for conspiracy to defraud the United States by an illegal entry of public lands cannot be raised by demurrer, where the indictment does not show that any proceeding relating to such entry is pending in the department. U. S. v. Peuschel (D. C. 1902) 116 Fed. 642.

To constitute a criminal conspiracy to defraud the United States by obtaining title and possession, through homestead entry, to mineral lands not subject to entry, the fact that the land contained valuable minerals, and knowledge of such fact by the conspirators at the time the conspiracy was formed, are essential, and must be averred in the indictment. An indictment which, after charging such conspiracy and the subsequent making of an affidavit, and the filing of an application for entry in furtherance thereof, avers that the defendants "then and there" well knew that the land contained valuable mineral deposits, is uncertain, and fatally defective, in failing to charge such knowledge at the time the conspiracy was formed. Id.

Where an indictment charged that defendants did unlawfully conspire together to defraud the United States out of a portion of its public lands on homestead entry, etc., such allegation included all proceedings as a whole necessary to complete the transfer of the title. U. S. v. Cunningham (D. C. 1904) 129 Fed. 833.

It would be implied from such allegation that the affidavits and proofs were such as were required by law to entitle the entryman to a patent, and that such affidavits and proof were false. Id.

An allegation in an indictment that defendants did unlawfully conspire to defraud the United States out of a portion of its public land, by means "of procuring persons" to make false and fraudulent entries on such land, was not inconsistent with a further allegation as to the overt acts charged, showing that the false proofs and entries were made by defendants themselves, and not by others procured by them. Id.

An indictment charges a conspiracy to defraud the United States, within R. S. § 5440 (embodied herein), where it avers that defendants conspired to obtain the legal title to school lands within public forest reservations from certain states by means of acts and representations set out, and which are of such fraudulent character that the equitable title to such lands would remain in the states, and to then exchange such lands for public lands of the United States, under the provisions of Act June 4, 1897, c. 2, § 1, 30 Stat. 36, which authorize such exchanges, but which contemplate that the government shall obtain the full, fee-simple title to the lands for which it makes the exchange, including the equitable as well as the legal title. U. S. v. Hyde (D. C. 1904) 132 Fed. 545, judgment

affirmed Hyde v. Shine (1905) 25 Sup. Ct. 760, 199 U. S. 62, 50 L. Ed. 90.

An indictment alleging that defendants during all the times between May 25, 1902, and the commission of the last overt act therein set forth continued to conspire together to defraud the United States of the title to its public lands in the manner and by the means agreed on between them on May 25, 1902, was not equivalent to a charge that defendants subsequent to that date entered into a new conspiracy to accomplish their unlawful design, but was merely an allegation that the conspiracy formed on that day was never abandoned, but was in continuous operation thereafter until the date of the last overt act charged. U. S. v. Brace (D. C. 1907) 149 Fed. 874.

An indictment charging that defendants conspired together to defraud the government of the title to a portion of the public domain, to wit, etc., and in pursuance of the conspiracy performed the overt acts of obtaining and using before the register and receiver of the local land office false and bogus affidavits, represented by defendants to be genuine, in making proof of a timber culture entry theretofore regularly made on the land by H., since deceased, under an agreement with his widow that they were to succeed by conveyance from her to all the rights of the government secured by virtue of a patent issued by the government based on such proofs, was not defective for uncertainty. U. S. v. Burkett (D. C. 1907) 150 Fed. 208.

An indictment which charges defendants with conspiracy to defraud the United States, by obtaining for a certain corporation coal lands of the United States, in excess of the quantity which it could lawfully acquire under the coal land purchase laws, by means of entries to be made by certain of the defendants as individuals, thereby securing patents to themselves, paying for the lands with money furnished by the corporation, and thereupon conveying such lands to the corporation, and which charges as overt acts the making of applications for such entries, the acquiring of patents, and the making of such conveyances, does not state an offense under this section where it does not aver that such defendants were employed or procured by the corporation to make applications for the entries in its behalf, that there was any fraudulent intention in fact in making the entries, or that the patents issued thereon were void; there being nothing in the statute to prevent the corporation from lawfully acquiring by purchase any quantity of coal lands, the title to which or the preference right to purchase which had been lawfully acquired by others. Pereles v. Weil (D. C. 1907) 157 Fed. 419.

An indictment under this section for conspiracy to defraud the United States charges an offense where it avers the purpose of the conspiracy to be to acquire coal lands of the United States by means of false, fictitious, and fraudulent entries and applications, and to induce and hire others to make like entries, at the cost and for the benefit of defendants to whom such entrymen were to convey the lands so entered, and where it fully sets out such means and overt acts committed for the purpose of effecting the object of such conspiracy. Arnold v. Weil (D. C. 1907) 157 Fed. 429.

An indictment which charges that defendants conspired to hire persons to make entry and purchase of public lands of the United States under the coal land act, with money furnished by defendants, such lands to be conveyed by the entrymen to a corporation, for the purpose of enabling the corporation to acquire a larger quantity of such lands than it could lawfully purchase under the act, does not charge a conspiracy to defraud the United States within this section, where it is not averred that such entrymen were not legally qualified to make the purchases they did, nor that they severally acquired more land than the acreage limited by the act. U. S. v. Keitel (D. C. 1907) 157 Fed. 396, order reversed (1908) 29 Sup. Ct. 123, 211 U. S. 370, 53 L. Ed. 230.

An indictment for conspiracy alleged that defendants conspired to defraud the United States out of the Umatilla reservation lands sold at private sale by means of procuring persons to make false and fraudulent applications and affidavits to purchase such lands for the benefit of defendants, and procured them to make such false and fraudulent applications and affidavits. Held, that an objection that there was no requirement of the statute for the sale of such lands that an affidavit should be made for the "purchase" of the land, but that an "oath or affirmation" was required of the purchaser at the time of the purchase, and that the indictment did not charge that defendants conspired to defraud the government by procuring persons who had become purchasers to make fraudulent oaths or affirmations was hypercritical; a false affidavit being tantamount to a false oath or affirmation. U. S. v. Raley (D. C. 1909) 173 Fed. 159.

In an indictment for conspiracy to defraud the United States by making a false oath or affidavit in connection with the purchase of Umatilla reservation lands, it was not necessary to set out the details of the administration of the oath, by whom administered, or that the person officiating was an officer qualified to do so. Id.

An indictment for conspiracy in procuring false public land affidavits was not defective for failure to allege in what respect the affidavits were false or fraudulent. Id.

Where an indictment for conspiracy to defraud the United States alleged

that defendant conspired to obtain Umatilla reservation lands by procuring persons to make false affidavits for the purchase of the lands on defendant's account, and by procuring persons to make contracts prior to such purchase whereby the title was to inure to defendant's benefit, and by procuring them to make false proofs of residence and cultivation of the lands, all of which acts were forbidden and unlawful, it sufficiently charged the means by which the conspiracy was to be effectuated. Id.

Where an indictment for conspiracy to defraud the United States alleged that the defendants had conspired by means of false applications to purchase to obtain title to a portion of the public lands subject to private sale and situated on the Umatilla Indian reservation, in Umatilla county, Or., not allotted nor required for allotment, it was not material that such lands were not public lands in the strict sense; the ultimate title being in the United States. Id.

On trial of an indictment for conspiracy to defraud the United States by illegally obtaining title to coal land in Alaska, the government in open court "abandoned for all time" the charge in the indictment of the foreign or alien character of the certain corporation alleged to have entered the land, whereupon the court sustained an objection to the indictment, and the case was appealed to the Supreme Court, where the order was reversed. Held, that since the word "abandon" means a giving up, total desertion, absolute relinquishment, and an "abandonment" is the relinquishment of a right, the giving up of something to which one is entitled, while "amendment" means a change or modification to better an allegation by removing that which is erroneous, corrupt, or superfluous, or by substituting something in the place of what is removed, the abandonment of such allegation did not constitute an amendment, nor a material alteration of the indictment by elimination, so as to invalidate it, but changed the proof to be offered (citing 1 Words and Phrases, 4, 369). U. S. v. Munday (D. C. 1914) 211 Fed. 536.

94. —— Issues, proof, and variance.— Where an indictment under R. S. § 5480, as amended by Act March 2, 1889, post, § 10,385, for conspiracy to defraud through the mails, charged as one of the acts in furtherance of the conspiracy that B. deposited in the post office a letter addressed to D., applying for an agency to sell its shoes, and ordering shoes, railroad waybills showing a shipment of the shoes by D., and an order by B. to a freight agent to deliver his freight to a certain person, are admissible. Stokes v. U. S. (1895) 15 Sup. Ct. 617, 620, 157 U. S. 187, 39 L. Ed. 667.

Under an indictment against a number of defendants for conspiracy to defraud the government out of certain public lands, charged to have been illegally entered for the benefit of the defendants, it is not a fatal variance that the proof shows that some of them only shared in the benefit; the offense being complete if the conspiracy is established and an overt act committed in pursuance thereof. Olson v. U. S. (1904) 133 Fed. 849, 67 C. C. A. 21.

On the trial of an indictment for conspiracy to defraud the government by procuring other persons to make entries of public lands under the timber and stone act for the benefit of defendants, the intent and motive of such entrymen in making the entries is the material question in issue; and where they are placed on the stand by the prosecution, and testify to facts and circumstances from which it is sought to infer an illegal purpose and agreement, it is competent for the defendants, on cross-examination, to question them directly as to the purpose with which the entries were made, and as to whether they had made any contracts to sell or convey the lands to others. Id.

Where an indictment charged a conspiracy to defraud the United States of moneys thereafter to become due from a certain mercantile firm as customs duties, proof that the merchandise in question was consigned to a firm of customs brokers, who paid the duties thereon, was not a variance; the goods being owned by the mercantile firm, and so consigned only for convenience of entry. Grunberg v. U. S. (1906) 145 Fed. 81, 76 C. C. A. 51.

An indictment under this section need not aver with exact accuracy the date of the formation or beginning of the conspiracy, nor, if the date is alleged, need it be proved as laid, but it is sufficient if the conspiracy is proved to have existed prior to the commission of the overt act charged, and that it continued to exist at that time. Bradford v. U. S. (1907) 152 Fed. 617, 81 C. C. A. 607.

While in an indictment under this section for a conspiracy to use the mails to defraud, a fraudulent purpose must be averred and proved, and where a purpose to defraud two jointly is charged, it must be proved as laid, where the sending of individual letters to parties named is charged in different counts, an averment in general terms of an intent to defraud these parties does not necessarily import that the conspiracy contemplated a joint defrauding of the whole number named; the parties not being jointly interested in the property which it was the aim to secure. Marrin v. U. S. (1909) 167 Fed. 951, 93 C. C. A. 351, affirming judgment (D. C. 1908) 159 Fed. 767, writ of certiorari denied (1911) 32 Sup. Ct. 523, 223 U. S. 719, 56 L. Ed. 629.

In a prosecution under this section for a conspiracy to defraud, the govern-

ment is not required to prove that all the overt acts alleged were committed, nor that all defendants named in the indictment were engaged in the conspiracy, and, in such a prosecution, the fact that there was evidence tending to show that the conspiracy in which some of the defendants not on trial were engaged was separate from that in which those on trial were engaged, did not entitle the latter to an acquittal. Jones v. U. S. (1910) 179 Fed. 584, 103 C. C. A. 142.

There is not a fatal variance between indictment and proof in a prosecution for conspiracy under this section because the indictment charges that defendants conspired with each other and with others to the grand jurors unknown, while the evidence shows that the name of another conspirator was in fact known, where the indictment fully sets out his connection with the conspiracy, and names him, so as to clearly advise defendants of the charge against them. Id.

An indictment under R. S. § 5440 (embodied herein), for conspiracy to defraud the United States of public lands, does not charge a conspiracy to do an act not unlawful in itself, because there is no separate statute making it a crime to defraud the United States; but the statute itself makes a conspiracy to defraud the United States a distinct crime, and no further offense need be averred nor proved. Mays v. U. S. (1910) 179 Fed. 610, 103 C. C. A. 168.

Where an indictment against officers of a national bank and others, alleged to have aided and abetted them in the misapplication of the bank's funds, charged conspiracy and intent to willfully misapply the bank's funds in several ways, and, among them, of procuring it to make large loans to a hosiery company by paper indorsed by a woolen company, which, it was claimed, was then largely indebted to the bank, proof that funds of the bank were loaned on paper of the hosiery company which was indorsed by the woolen company was admissible, but not evidence of a mortgage given by the woolen company to the bank, nor as to notes which the woolen company made to the bank to secure its individual obligations, and not as indorser of the hosiery company. Prettyman v. U. S. (1910) 180 Fed. 30, 103 C. C. A. 384.

Where three persons were charged with conspiracy to embezzle and misapply the funds and credits of a national bank, and the proof was sufficient to convict two of them, but not the third, the charge against him would be treated as surplusage, and the conviction of the others sustained. Breese v. U. S. (1913) 203 Fed. 824, 122 C. C. A. 142, affirming judgment U. S. v. Breese (D. C. 1908) 172 Fed. 761.

Under an indictment charging defendants as individuals, evidence of acts done in the name of corporations of which defendants were officers held admissible. Houston v. U. S. (1914) 217 Fed. 852, 133 C. C. A. 562.

Under an indictment under this section charging a conspiracy to defraud the United States, it was not error to admit evidence of other overt acts than those specifically named in the indictment. Id.

Where indictment charged conspiracy with persons unknown, fact that third parties testified before grand jury held not to show that they were known to be conspirators, so as to preclude conviction for conspiring with them. Mitchell v. U. S. (1916) 229 Fed. 357, 143 C. C. A. 477.

On an indictment under Act March 2, 1867, § 30, the government is not bound to strict proof of the ownership of the rectifying distillery to which it is alleged the spirits were unlawfully removed. U. S. v. Smith (C. C. 1869) Fed. Cas. No. 16,322.

The conspiracy need not be shown to have been formed at the precise time or times alleged in the indictment. U. S. v. Goldberg (C. C. 1876) Fed. Cas. No. 15,223.

Acts charged to have been done to effect the object of the conspiracy must be proved as laid, but time and quantity need not be proved. U. S. v. Hamilton (C. C. 1876) Fed. Cas. No. 15,288; Same v. Hutchins (C. C. 1876) Fed. Cas. No. 15,430.

A variance between the indictment and the evidence as to the time when the alleged overt act was committed is immaterial. U. S. v. Graff (C. C. 1878) Fed. Cas. No. 15,244.

In an indictment for a conspiracy to steal, and stealing, property, an allegation that it was "the property of and in the possession of the United States of America," is supported by evidence that the property was in the possession of the collector of customs of the United States, having been seized by him as smuggled merchandise. U. S. v. Gardner (C. C. 1890) 42 Fed. 829.

Where a particular motive for the conspiracy is alleged in the indictment, and the jury is justified from the evidence in finding that such motive did really exist, it is immaterial that the evidence shows that the conspirators had different motives additional to that the indictment describes. U. S. v. Lancaster (C. C. 1891) 44 Fed. 896, 10 L. R. A. 333.

Where an indictment for conspiracy to defraud the government out of public lands by a fraudulent homestead entry alleged facts showing that the conspiracy in fact succeeded, and that by reason of fraudulent and forged proofs the land sought to be acquired was actually patented by the government in pursuance of such proofs, the indictment was not objectionable for failure to allege that the overt acts of the conspirators in furtherance of the

conspiracy were effective in accomplishing its object. U. S. v. McKinley (C. C. 1903) 126 Fed. 242.

Where an indictment under this section charged that defendants conspired to defraud the United States by unlawfully and fraudulently procuring the issuance of, and converting to their own use, certain land scrip, and that to effect the objects of the conspiracy they "unlawfully, knowingly, falsely, and fraudulently" applied for and procured the appointment of a pretended administrator of the succession of a person to whom a private land claim had been confirmed, on whose application the scrip was issued, it was not necessary that the government should prove that defendants had actual knowledge of the true facts in relation to the succession, or knowledge that the allegations made in their petition for the appointment of the administrator were false; but it is sufficient if defendants had no knowledge of their truth, or reason to believe them to be true, and they were in fact false. This is true although the indictment avers actual knowledge, such an averment being surplusage, and one which need not be proved. U. S. v. Bradford (C. C. 1905) 148 Fed. 413, judgment affirmed Bradford v. U. S. (1907) 152 Fed. 616, 81 C. C. A. 606, writ of certiorari denied (1907) 27 Sup. Ct. 795, 206 U. S. 563, 51 L. Ed. 1190.

Where an indictment, under R. S. § 5440 (embodied herein), for a conspiracy to commit the offense created by section 10 of the interstate commerce law, as amended by Act March 2, 1889, charges a conspiracy between lumber merchants and their servants and an employé of a railroad company to procure less than the established rates by falsely weighing the lumber shipped, such weighing being done by the railroad employé, the jury, in order to convict, must find an agreement between two or more of defendants for the purpose named, and also, as an overt act, the actual false weighing of lumber by such employé. U. S. v. Howell (D. C. 1892) 56 Fed. 21.

An indictment under R. S. § 5440 (embodied herein), and under section 10 of the interstate commerce law, as amended by Act March 2, 1889, charged a conspiracy between lumber merchants and their servants and an employé of a railroad company to procure less than the established rate by falsely weighing the lumber shipped, and alleged that a shipment was made from East Atchison, Mo., where the underweighing was accomplished. The evidence showed that the lumber was shipped from Atchison, Kan., and that the rates from Atchison and East Atchison were the same. Held, that this variance was immaterial, if the overt act charged—the underweighing—was accomplished at East Atchison, within the jurisdiction of the district court trying the case. Id.

It is sufficient for the prosecution to show that any one of the means described in the indictment as having been used to carry out the conspiracy was used to execute that purpose. U. S. v. Cassidy (D. C. 1895) 67 Fed. 698.

Where an indictment for conspiracy contains several counts, it is sufficient, to warrant a conviction on counts charging two or more overt acts, that the evidence establishes the commission of one of them. U. S. v. Richards (D. C. 1906) 149 Fed. 443.

An indictment alleging that defendants during all the times between May 25, 1902, and the commission of the last overt act therein set forth continued to conspire together to defraud the United States of the title to its public lands in the manner and by the means agreed on between them on May 25, 1902, was not equivalent to a charge that defendants subsequent to that date entered into a new conspiracy to accomplish their unlawful design, but was merely an allegation that the conspiracy formed on that day was never abandoned, but was in continuous operation thereafter until the date of the last overt act charged. U. S. v. Brace (D. C. 1907) 149 Fed. 874.

95. Removal of offenders to other district for trial.—On an application to remove persons to another federal district where they were charged with violating R. S. § 5440 (embodied herein), by conspiring to defraud the United States of public lands subject to entry under section 4671, ante, certified copies of General Land Office records showing that all the entries of public lands mentioned in the indictment were perfected and issued therefor prior to all the alleged overt acts under the alleged conspiracy, and more than three years before the indictment was filed, were admissible on the question of probable cause of the charge. U. S. v. Black (1908) 160 Fed. 431, 87 C. C. A. 383.

96. Evidence—Judicial knowledge.—In a prosecution for conspiracy to defraud the customs revenue, it is not requisite that proof should be given that the imports involved were dutiable, or were not within a provision exempting from duty goods of American origin. The court can take judicial knowledge of the laws of the United States and the fact that the imports were dutiable. Marrash v. U. S. (1909) 168 Fed. 225, 93 C. C. A. 511.

97. —— Presumptions and burden of proof.—Where an indictment for conspiracy to willfully misapply the funds of a national bank charged that the conspiracy had been formed between officers of the bank and defendant K. to willfully misapply the bank funds to the use of a company, and that such con-

spiracy was accomplished by defendant K. in drawing and accepting a draft in behalf of the company, and in depositing the draft in the bank, and obtaining credit therefor in the company's account, to effect the object of the conspiracy, the burden was on the government to prove that the conspiracy as alleged was entered into, that defendant K. was a party to it, and that the acts referred to were done by him to effect the object of the conspiracy. Prettyman v. U. S. (1910) 180 Fed. 30, 103 C. C. A. 384.

If the proof in a prosecution for conspiracy shows a previous meeting and a concert of action thereafter, each of the parties doing some act contributing to accomplish an unlawful purpose, a jury is justified in finding that they were conspiring together to accomplish that purpose. Radin v. U. S. (1911) 189 Fed. 568, 111 C. C. A. 6.

Where the syndic of a firm is charged with conspiracy to defraud the United States in preferring a false claim, there is no conclusive presumption that he had acquired all the knowledge from the books of the firm which a proper execution of his trust would have required him to gain. U. S. v. Noblom (C. C. 1878) Fed. Cas. No. 15,896.

A conspiracy may be inferred where it is shown that any two or more of the parties charged, aimed, by their acts, to accomplish the same unlawful purpose or object, one performing one part and another another part of the same, so as to complete it, although they never met together to concert the means, or to give effect to the design. U. S. v. Sacia (D. C. 1880) 2 Fed. 754.

98. —— **Admissibility in general.**— Testimony that the same course of conduct was going on long before the date in the indictment when it was alleged that the defendants conspired to commit an offense against the United States by effecting entries of raw sugars at less than their true weights is admissible. Heike v. U. S. (1913) 33 Sup. Ct. 226, 227 U. S. 131, 57 L. Ed. 450, Ann. Cas. 1914C, 128.

In a prosecution for conspiracy to defraud the United States by the execution of straw bail, the introduction of affidavits of justification could not be objected to under R. S. § 860, prohibiting the introduction of evidence obtained from a party or witness by means of a judicial proceeding, by any of the conspirators except those who made the affidavits. Radford v. U. S. (1904) 129 Fed. 49, 63 C. C. A. 491.

Evidence that one of several alleged conspirators had conceived a fraudulent intent before he entered into the conspiracy is not competent to show that his alleged co-conspirators, who had no knowledge of the facts, had such an intent before or at the time the conspiracy was charged. Miller v. U. S. (1904) 133 Fed. 337, 66 C. C. A. 399.

Under an indictment charging the defendants with conspiracy to defraud the United States of a large quantity of public lands, the overt act charged being the causing of an illegal entry of a tract described by a person named for their benefit, evidence tending to show that defendants induced the entry of other tracts by different persons at the same time and under similar circumstances is competent, in proof of the conspiracy and the fraudulent motive; and hence, where such indictment was consolidated with others covering such other entries, the dismissal of the latter after the evidence had been taken thereon was not prejudicial to the defendants. Olson v. U. S. (1904) 133 Fed. 849, 67 C. C. A. 21.

On the trial of an indictment for conspiracy, letters shown to be in the handwriting of the defendant, addressed to an alleged co-conspirator and containing self-charging admissions, are admissible in evidence, although it is not proved that they were transmitted to the persons to whom they are addressed, and their interpretation and weight are matters for determination by the jury in the light of all of the evidence in the case. Chadwick v. U. S. (1905) 141 Fed. 225, 72 C. C. A. 343.

An indictment charged the defendants with having conspired together "before and on" a certain date. Held that, while evidence of acts done after that date was inadmissible as direct proof of an act then done in furtherance of the conspiracy, it was competent as proof of acts done before or on said date. Browne v. U. S. (1905) 145 Fed. 1, 76 C. C. A. 31, affirming judgments U. S. v. Rosenthal (C. C. 1903) 126 Fed. 766, and Same v. Cohn (C. C. 1904) 128 Fed. 615, and writ of certiorari denied (1906) 26 Sup Ct. 755, 200 U. S. 618, 50 L. Ed. 623.

Where accused was indicted for conspiracy to rob the post office at L., evidence, was incompetent to show a general conspiracy, in which accused participated, to rob banks and everything that was "robbable." Rabens v. U. S. (1906) 146 Fed. 978, 77 C. C. A. 224.

In a prosecution for conspiracy under R. S. §§ 5508, 5509, ante, §§ 9770, 9772, the alleged purpose of which was to prevent the arrest of defendant and others for violating the revenue laws, and including the crime of murder in aggravation thereof, a neighbor of defendant was allowed to testify that at the time when the officers attempted defendant's arrest, and a deputy marshal was killed, defendant had a still, which at one time was east of his house, and then on the west side thereof. Another witness testified that he frequently visited defendant's house before the deputy was killed, and bought whisky of him; that he let defendant know he wanted it, and would lay his money down in a certain place, and after going back would find a bottle of

whisky there and the money gone. Deputy marshals were allowed to testify that on a visit which they made to defendant's place a year or two before the occurrence in question they found whisky in jugs concealed about the premises, and that, on attempting to continue their search down a ravine leading from defendant's house, the latter and another appeared with guns, and compelled them to turn back. Held, that this evidence was properly admitted to prove the object and purpose of the conspiracy, and explain defendant's motive in entering into it, and in resisting the officers by firing on them and killing one of their number. Davis v. U. S. (1901) 107 Fed. 753, 46 C. C. A. 619.

Under an indictment for conspiracy to commit an offense against the United States by subornation of perjury in procuring persons to make application for the purchase of lands under the timber and stone act, under agreements to convey the same to defendants, and to falsely swear, among other things, that such lands were chiefly valuable for timber, it was not error to permit the government to prove that the lands were not valuable for the timber upon them, but were chiefly valuable for grazing purposes, although such evidence tended to show that the lands were not subject to entry under the act. Van Gesner v. U. S. (1907) 153 Fed. 46, 82 C. C. A. 180.

The same rules of law and evidence govern the trial of the issue, whether or not a defendant jointly with others consented to the existence of a former conspiracy within the three years, and the subsequent execution of it which control the issue whether or not the conspiracy was originally formed, where that is the crucial issue. Ware v. U. S. (1907) 154 Fed. 577, 84 C. C. A. 503, 12 L. R. A. (N. S.) 1053, 12 Ann. Cas. 233, writ of certiorari denied (1907) 28 Sup. Ct. 255, 207 U. S. 588, 52 L. Ed. 353.

Where a general regulation promulgated by the General Land Office respecting homestead entries of public land, for the government of the officers of local land offices, is pertinent to the issue as to the criminal intent of a defendant charged with a criminal offense under the land laws as corroborating his testimony as to his understanding of the requirement of the law, by showing that such understanding was in accordance with that of the Land Department until after the alleged offense, he was entitled to have such regulation placed before the jury as a matter of evidence, and its exclusion was error. Nurnberger v. U. S. (1907) 156 Fed. 721, 84 C. C. A. 377.

On the trial of defendants charged with having conspired with a person named and with others to the grand jurors unknown to induce a partnership to accept rebates from railroad companies on shipments in violation of the interstate commerce law, where there was evidence tending to establish the conspiracy, and that the arrangement for the illegal rebates was made between defendants and one member of such partnership, entries in a private memorandum book kept by such partner, showing sums received as "freight commissions" and distributed between the partners individually, which transactions did not appear on the books of the firm, were admissible in evidence. Thomas v. U. S. (1907) 156 Fed. 897, 84 C. C. A. 477, 17 L. R. A. (N. S.) 720.

On such trial also evidence of contemporaneous contracts made by defendants with other large shippers, similar in all respects to that made with the partnership named, and that such shippers also received sums of money indirectly which they understood to come from defendants, and to be in fact rebates, was admissible on the question of intent and motive in the transaction charged in the indictment. Thomas v. U. S. (1907) 156 Fed. 897, 84 C. C. A. 477, 17 L. R. A. (N. S.) 720.

Permitting the prosecution to introduce in evidence a statement signed by one of its witnesses held not prejudicial error, although it was not admissible as evidence on the issues, where the witness was first interrogated in regard to making the statement on his cross-examination. Cohen v. U. S. (1907) 157 Fed. 651, 85 C. C. A. 113, writ of certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

An indictment for conspiracy to commit an offense against the United States by subornation of perjury charged that defendants procured and instigated a number of persons to make application for the purchase of public lands in a certain township under the timber and stone act, and to falsely swear in their applications and proofs that they were not seeking to purchase such lands on speculation, but for their own exclusive benefit and use, and that they had not made any contract or agreement by which the title would inure to the benefit of another; whereas, in truth and fact, such persons were applying to purchase the lands on speculation and under prior agreements to convey the title to defendants. Held, that under such indictment the motive of the parties to the transactions was a material fact to be proved, and that evidence that defendants had induced other persons to file on or purchase state lands in the same vicinity, which were subsequently conveyed to defendants, was properly admitted, where the jury were instructed to consider it only as bearing on such question of motive. Van Gesner v. U. S. (1907) 153 Fed. 46, 82 C. C. A. 180.

Under such indictment, it was also competent for the government to show, by the persons who made such appli-

cations to purchase lands, that it was their intention and understanding at the time that the lands should be conveyed by them to defendants, contrary to their sworn statements and testimony. Id.

Where an indictment for conspiracy to defraud the United States of government land by fraudulent homestead entries charged defendants with conspiring to defraud the government of lands embraced in certain homestead claims filed by certain named persons, the government was properly permitted, for the purpose of proving defendants' intent and guilty knowledge, to show that various other persons had also filed on and made final proof on various other tracts of land under the homestead laws, in pursuance of an agreement with the defendants and for their benefit. Jones v. U. S. (1908) 162 Fed. 417, 89 C. C. A. 303, writ of certiorari denied (1908) 29 Sup. Ct. 685, 212 U. S. 576, 53 L. Ed. 657.

On the trial of defendants charged with using the mails in the execution of a scheme to defraud, in which it was an important issue whether a bank conducted by defendants and others was honestly operated or merely used as a means for fraudulently obtaining money from innocent persons, an unauthenticated paper purporting to be a copy of a letter written by one unidentified third person to another, and making charges against the solvency and management of the bank, was not competent evidence merely because there was testimony that it had been shown to one of the defendants, and its admission was prejudicial error. Lemon v. U. S. (1908) 164 Fed. 953, 90 C. C. A. 617.

Where a contract between codefendants charged with conspiracy to defraud the United States was introduced in evidence by the prosecution as tending to prove such conspiracy, it was error to exclude evidence offered by defendants to show that on learning that such contract might be unlawful it was superseded by another claimed to be legal, especially where evidence was admitted of acts done by the defendants subsequent to the date of the alleged substituted agreement. Perrin v. U. S. (1909) 169 Fed. 17, 94 C. C. A. 385; Benson v. Same (1909) 169 Fed. 31, 94 C. C. A. 399.

In prosecutions for criminal conspiracy it is as competent to prove the conspiracy by circumstances as by direct evidence, but proof of the combination charged must almost always be extracted from the circumstances connected with the transaction which forms the subject of the accusation. U. S. v. Breese (C. C. 1909) 173 Fed. 402.

On the trial of defendants charged with conspiracy to defraud the United States by procuring fraudulent homestead entries of public lands, testimony of the entrymen that they did not intend to go upon the land and establish an actual residence was admissible. Richards v. U. S. (1909) 175 Fed. 911, 99 C. C. A. 401.

On the trial of a defendant charged with conspiracy to procure fraudulent homestead entries of public lands, testimony that defendant correctly explained the requirements of the homestead law as to residence, etc., to persons who were not mentioned in the indictment or the government's evidence as having any connection with the offense charged was irrelevant, and not admissible as part of the res gestæ. Huntington v. U. S. (1909) 175 Fed. 950, 99 C. C. A. 440.

On the trial of a defendant for conspiracy to defraud the United States of public lands, evidence that he had previously been engaged in the illegal acquisition of public lands elsewhere by a different method was admissible as bearing upon the question of intent, purpose, and design. Jones v. U. S. (1910) 179 Fed. 584, 103 C. C. A. 142.

Testimony admitted on the trial of an indictment for conspiracy held competent and material, and its admission, even if erroneous, not prejudicial to defendant. Id.

On the prosecution of defendant for conspiracy to defraud the United States of public lands by fraudulently acquiring state lands of little or no value, procuring their inclusion in a national forest reservation, and obtaining lieu lands of greater value from the government in exchange therefor, evidence of such fraudulent acquiring of state lands within the boundaries of the reservation subsequently established more than three years before the finding of the indictment, and the sale of which by the state had afterward been validated by an act of the Legislature, was nevertheless admissible as tending to prove the intent and design of the conspiracy. Id.

In a prosecution for conspiracy to defraud the United States of public lands by fraudulently acquiring state lands, and having them included within a national forest reservation, thus acquiring the right to select in exchange public lands of the United States of greater value, where one of the defendants was at the time of the transactions Commissioner of the General Land Office, evidence that the reservation was established on his recommendation, that news of the fact was given out in advance of the official announcement, and that his resignation was afterward requested by his superiors because of his conduct in relation to forest reservations was competent on the trial of a codefendant. Id.

In a prosecution for conspiracy to defraud the United States of public lands by fraudulently acquiring state lands and exchanging them under the forest reservation laws for lands of the United States, evidence of the fraudulent acquisition of the state lands was material as showing the basis of

the conspiracy and the method of procedure adopted to carry it into effect. Mays v. U. S. (1910) 179 Fed. 610, 103 C. C. A. 168.

In a prosecution against officers of a national bank and certain alleged aiders and abetters for the willful misappropriation of the bank's funds, a question to one of the officers, if he had any arrangement with the vice president of the bank by which the bank was to be defrauded by willfully abstracting its funds and appropriating them to illegitimate purposes, should have been allowed. Prettyman v. U. S. (1910) 180 Fed. 30, 103 C. C. A. 384.

Where, in a prosecution against officers of a national bank and alleged aiders and abetters for misapplying the bank's funds, it was claimed that such application was made partly through overdrafts by defendant K., and that he had conspired with certain officers of the bank to defraud it of its funds, evidence that many other customers of the bank had made overdrafts on it, the details of which were exhibited on certain pages of the bank's individual ledger offered in evidence, was admissible as bearing on defendant's criminal intent. Id.

In a prosecution for conspiracy to defraud the United States by suborning certain named persons to commit perjury in making entries under Timber and Stone Act June 3, 1878, c. 151, 20 Stat. 89, evidence of acts of the alleged perjurers committed long after they had sworn to and filed their statements, and that subsequent to such filing they had agreed with defendant D. for a money consideration to file a relinquishment of their applications at such a time as he could manage to take it up with script, together with a relinquishment so filed, was inadmissible to show motive. Dwinnell v. U. S. (1911) 186 Fed. 754, 108 C. C. A. 624.

The prosecution on a trial for conspiracy to defraud the government of its public lands held entitled to show that entrymen understood that the lands entered on should be turned over to the conspirators. Hedderly v. U. S. (1912) 193 Fed. 561, 114 C. C. A. 227.

The admission of unanswered letters written to a defendant on trial for using the mails to defraud by an associate in the business, containing intimations that the business was conducted by dishonest methods, held prejudicial error. Marshal v. U. S. (1912) 197 Fed. 511, 117 C. C. A. 65.

In a prosecution for conspiracy to defraud the United States out of public land entered under the Timber & Stone Act by alleged prior agreements, to purchase with entrymen, allegations in their final proofs that the purchases were made for the entrymen alone were admissible as bearing on defendants' good faith. Worden v. U. S. (1913) 204 Fed. 1, 122 C. C. A. 315.

Books of a corporation held inadmissible against an officer and superintendent of a corporation to establish a conspiracy to defraud the United States of public lands entered under the Timber & Stone Act, where it appeared that defendants had no knowledge of the entries nor any connection with the keeping of the books. Id.

In a prosecution for conspiracy to defraud the United States out of certain public land under the Timber and Stone Act, evidence of the making of 27 other entries than those described in the indictment and proof that the land was immediately transferred to defendants or a lumber company operated by them held admissible as bearing on defendant's good faith. Id.

In a prosecution for conspiracy to defraud the United States out of public land, expressions of opinion by entrymen as to the value of the lands held irrelevant, except so far as defendants could be shown to be responsible therefor. Id.

The purchasing and withholding from filing of homestead relinquishments and the institution of contests supported by probable cause, acts being authorized by law, could not constitute acts to effect the object of a conspiracy to defraud the United States, in violation of R. S. § 5440 (embodied herein), and hence were not admissible in evidence to prove the charge. Fain v. U. S. (1913) 209 Fed. 525, 126 C. C. A. 347.

Evidence of contests of valid entries by defendants, and that some of their statements on immaterial issues in their affidavits of contest were false, held inadmissible, in a prosecution for a conspiracy in violation of R. S. § 5440 (embodied herein), to defraud the United States by inducing false homestead entries and clouding title to land and instituting false contests. Id.

In a prosecution for a conspiracy to defraud in violation of R. S. § 5440 (embodied herein), in relation to homestead entries, evidence that an entryman was intoxicated at a certain time, and that a person who made a corroborating affidavit in a contest instituted by defendant was a "professional contester" held inadmissible where it did not tend to prove any fraud on the government. Id.

On trial for conspiring to defraud United States in connection with sale of zinc, evidence as to sales to others by the conspirators held admissible to show market value. Meyer v. U. S. (1915) 220 Fed. 800, 135 C. C. A. 564.

On a trial for participation in a conspiracy to use the mails to defraud, error in admitting an instrument containing positive averments of facts tend-

ing to establish accused's guilt cannot be disregarded as nonprejudicial. Todd v. U. S. (1915) 221 Fed. 205, 136 C. C. A. 615.

On trial for conspiring to arrest a person with intent to hold him in a condition of peonage, evidence of other similar acts held admissible to show accord and combination and the defendants' intent. Huff v. U. S. (1916) 228 Fed. 892, 143 C. C. A. 290.

On an indictment for conspiracy to defraud the United States by smuggling goods, an affidavit indorsed by the master on the manifest, a month after it was filed, is not admissible as a part thereof. U. S. v. Graff (C. C. 1878) Fed. Cas. No. 15,244.

The fact that the overt acts charged and proven were severally criminal is no answer in an indictment for conspiracy, and such overt acts may be proven to show the existence of the conspiracy charged. U. S. v. Rindskopf (D. C. 1874) Fed. Cas. No. 16,165.

On the trial of defendants, charged with conspiracy to defraud the United States, evidence is admissible to show the state of mind of one charged as a co-conspirator with respect to the matters to which the alleged conspiracy related, prior to the date when it is alleged to have been formed. U. S. v. Greene (D. C. 1906) 146 Fed. 784.

On the trial of defendants contractors charged with conspiracy with a codefendant, who was an engineer officer in charge of government work, to defraud the United States with respect to such work, telegrams and letters sent by such engineer to one of the defendants on trial prior to the conspiracy charged; but at a time when defendants were connected with the work, which informed such defendant of the publication of an affidavit made by an inspector on the work, charging such defendant with an attempt to bribe the affiant, and with stating that he had power to cause affiant's removal by the engineer, and which telegrams and letters urged such defendant to send a statement and an affidavit dictated therein in denial, are admissible in evidence for the purpose of showing the attitude of the engineer in the matter, and such joint action as to indicate an improper understanding and relation between the defendants on trial and the engineer officer, where it is also proposed to follow it by other evidence showing a continuance of such intimacy and relation to the time of the conspiracy charged. Id.

Previous intimacy between persons charged with conspiracy is competent and important proof on the trial, and proof of close intimacy is especially important, if the duties of the parties respectively were intended to be in opposition, and should the occasion arise might forbid such intimacy, as where the conspiracy charged was to defraud the government in respect to contracts for public work, and the alleged conspirators were respectively contractors for such work and the government engineer officer in charge of the same. U. S. v. Greene (D. C. 1906) 146 Fed. 803, judgment affirmed Greene v. U. S. (1907) 154 Fed. 401, 85 C. C. A. 251, writ of certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

Upon the trial of a charge of conspiracy, where the prosecution depends upon inferences to be drawn from facts to prove the conspiracy, great latitude of proof must be allowed, and the jury should have before them, and are entitled to consider, every fact which has a bearing upon and a tendency to prove the ultimate fact in issue. Id.

In a prosecution for conspiracy to defraud the United States of certain public land under homestead entries, the fact that defendants advanced money to the entryman to pay his entry fee and to make improvements on the land was not in itself unlawful, and could only be considered in determining whether or not there was a conspiracy or unlawful agreement with the entryman, of which such advancement formed a part. U. S. v. Richards (D. C. 1906) 149 Fed. 443.

In a prosecution for conspiracy, the overt act may be considered, with other evidence, as one of the circumstances in determining whether or not there was a conspiracy or agreement charged. Id.

Guilty connection of a conspirator may be established by showing association by the persons accused in and for the purpose of procuring the illegal object. U. S. v. Cole (D. C. 1907) 153 Fed. 801.

In a trial for conspiring to use the mails in carrying out a scheme to defraud, the cashbook, checks, and entries of cash in defendant's deposit book in a trust company, made during the continuance of the scheme, were properly admitted to show the conspiracy. U. S. v. Marrin (D. C. 1908) 159 Fed. 767, judgment affirmed Marrin v. U. S. (1909) 167 Fed. 951, 93 C. C. A. 351, writ of certiorari denied (1911) 32 Sup. Ct. 523, 223 U. S. 719, 56 L. Ed. 629.

In a prosecution for conspiring to violate the laws of the United States by giving and receiving rebates, alleged overt acts, which were in themselves lawful, being connected with the object of the conspiracy, may be shown in evidence. U. S. v. Grand Trunk Ry. Co. of Canada (D. C. 1915) 225 Fed. 283.

Testimony tending to show such a relation or understanding between alleged conspirators as would be indicative of a purpose to defraud the gov-

ernment by means of contracts for public works to be given out and carried on under charge of the accused would be admissible, even though it related to matters antedating the time of the particular conspiracy charged. (1899) 22 Op. Atty. Gen. 589.

Quære, whether, in the prosecution of a former Post Office Department official and others for conspiracy to defraud the United States in procuring the purchase by the government of necessary articles at an excessive price, where it appears that the purchases were made on orders initialed by him, which orders and other papers connected with them were audited as a matter of routine in the Sixth Auditor's Office of the Department, the papers purporting to bear his initials taken from the files of such office are not admissible in evidence under section 1502, ante, without proof of the genuineness of such initials. Lorenz v. U. S. (1904) 24 App. D. C. 337.

In a prosecution of a former Post Office Department official and others for conspiracy in procuring the purchase by the government of a patent letter box fastening, used throughout the country, at an excessive price, whether the letters of the defendant and former government official were not admissible in evidence on behalf of the prosecution, and the question of whether they were written by the defendant to be left to the jury, when they were shown to have been sent through the mails and placed in the official files, and to have been officially acted on by such defendant, though his handwriting was not proved, quære. Id.

99. —— Acts and declarations of co-conspirators or codefendants.—Where a conspiracy or privity of design has been established, the acts and declarations of any of the conspirators, done or made during the pendency of the conspiracy and in furtherance thereof, are admissible against the others. Wiborg v. U. S. (1896) 163 U. S. 632, 16 Sup. Ct. 1127, 41 L. Ed. 289, modifying judgment U. S. v. Wiborg (D. C. 1896) 73 Fed. 159; Same v. Lancaster (C. C. 1891) 44 Fed. 896, 10 L. R. A. 333; Same v. Cassidy (D. C. 1895) 67 Fed. 698.

On the trial of an indictment for conspiracy, the admission in evidence of declarations made by one of the alleged conspirators before proof of the conspiracy was not prejudicial, where such proof was subsequently made by evidence other than the declarations. Cohen v. U. S. (1907) 157 Fed. 651, 85 C. C. A. 113, writ of certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

A conspiracy to commit a crime may be and usually must be from the nature of the case proved by inference from the acts of the parties and their cooperation. Smith v. U. S. (1907) 157 Fed. 721, 85 C. C. A. 333, writ of certiorari denied (1908) 28 Sup. Ct. 569, 208 U. S. 618, 52 L. Ed. 647.

Declarations of an alleged co-conspirator to a witness are inadmissible to prove the existence of the conspiracy as against another party thereto. Hauger v. U. S. (1909) 173 Fed. 54, 97 C. C. A. 372.

Evidence considered in a prosecution for conspiracy, and held to have a sufficient tendency to show the connection of other defendants with the conspiracy, to render letters written by them, charged in the indictment as overt acts, admissible in evidence against the defendants on trial. Jones v. U. S. (1910) 179 Fed. 584, 103 C. C. A. 142.

On the trial of a defendant under this section for conspiracy to commit an offense against the United States, a letter passing between others of the alleged conspirators held competent against the defendant as tending to prove the conspiracy, in the absence of specific objection to the part of it referring to defendant. Stirlen v. U. S. (1910) 183 Fed. 302, 105 C. C. A. 514, writ of certiorari denied (1911) 31 Sup. Ct. 721, 220 U. S. 617, 55 L. Ed. 611.

In a prosecution against two for conspiracy to defraud the United States out of public lands, the books of one of the defendants, showing advances to entrymen, were not admissible against his codefendant. Worden v. U. S. (1913) 204 Fed. 1, 122 C. C. A. 315.

Evidence that a defendant, charged with having entered into a conpiracy with other defendants to make and utter counterfeit coins, was a relative of others of the defendants; that he resided with one of them for six weeks, during which time the counterfeit coins were there made; that he wrote the letter ordering the machine with which they were made; and that, after the arrest of one of the defendants, he wrote offering to assist in procuring bail—is sufficient as connecting defendant with the conspiracy to authorize the admission against him of statements of his co-conspirators. Taylor v. U. S. (1898) 89 Fed. 954, 32 C. C. A. 449.

A statement tending to show a conspiracy to commit a crime between the person making it and the persons to whom it was made is not admissible against a third person who was not present, and to whom it is not shown to have been communicated, on his trial for the crime, unless his connection with the conspiracy is affirmatively shown. Dolan v. U. S. (1903) 123 Fed. 52, 59 C. C. A. 176, reversing judgment on rehearing (1902) 116 Fed. 578, 54 C. C. A. 34.

Admissions of one conspirator, made after the conspiracy has come to an end, are inadmissible against his fellows. Fain v. U. S. (1913) 209 Fed. 525, 126 C. C. A. 347.

In a prosecution for conspiracy to

defraud the United States in violation of this section, a letter written by one defendant after completion of the fraudulent acts charged held inadmissible against his codefendant. Id.

On the trial of defendants for conspiracy to defraud the United States of certain lands, a special agent for the Land Department testified that he asked one of the defendants for a statement as to the transaction, and in reply received a letter from him stating, "I send herewith the statement of Mr. Williams, covering, as I believe, all the points you suggested," and inclosing an affidavit of said Williams to which were attached copies of contracts of different dates between the defendants relating to the acquisition of the lands in question. Held, that it was error to permit the prosecution to detach the copy of one of the contracts from the affidavit and to introduce the same, together with the letter in evidence, as a declaration or admission of defendant, and at the same time to exclude the affidavit and copies of the other contracts which formed an integral part of the statement. Perrin v. U. S. (1909) 169 Fed. 17, 94 C. C. A. 385; Benson v. Same (1909) 169 Fed. 31, 94 C. C. A. 399.

On the trial of defendants charged with having conspired to prevent the shipment of certain tobacco in interstate commerce, statements made by one of defendants while the tobacco was being withheld from shipment, at their instance, were admissible against them. Steers v. U. S. (1911) 192 Fed. 1, 112 C. C. A. 423.

Where several persons are proved to have combined together for the same illegal purpose, any act done by one of the parties in pursuance of the original concerted plan, and with reference to the common object, is, in contemplation of law, the act of the whole party, and the proof of such act will be evidence against any of the others who engaged in the same conspiracy; and declarations of a co-conspirator, made during the pendency of the illegal enterprise, are not only evidence against himself, but are evidence against his associates in the crime. U. S. v. Lancaster (C. C. 1891) 44 Fed. 896, 10 L. R. A. 333.

In determining whether a conspiracy was formed and whether acts were done to effect the same, the acts and conduct of a defendant not on trial may be considered in connection with those of the defendant or defendants on trial. U. S. v. Breese (C. C. 1909) 173 Fed. 402.

On the trial of one indicted for conspiring to defraud the United States by mailing old newspapers for the purpose of fraudulently increasing the weight of mail matter, (transported over a railway post route during a period fixed by the postal authorities for weighing such mail matter, as a basis for ascertaining the additional compensation to be paid the railway company,) evidence that the newspapers, the fraudulent mailing of which within the district constituted the overt act charged in the indictment, were rewrapped and remailed over the postal route in question, from a place without the district, by an alleged co-conspirator, is not competent as proof of such overt act, but may be considered as showing the nature, extent, plan, and operations of the conspiracy, if one existed. U. S. v. Newton (D. C. 1892) 52 Fed. 275.

Any act done by one party to a conspiracy in furtherance of the common design is in law the act of all, and proof thereof is evidence against all. U. S. v. Cassidy (D. C. 1895) 67 Fed. 698.

Any declaration by one of the parties pending the illegal enterprise is evidence against all. Id.

Where, in a prosecution for conspiracy to use the mails in furtherance of a scheme to defraud, in violation of R. S. § 5480, post, § 10385, the government established a prima facie case of conspiracy, it was then properly permitted to show all relevant declarations of the coconspirators made in furtherance of the conspiracy, though in defendant's absence. U. S. v. Francis (D. C. 1906) 144 Fed. 520, judgment modified Francis v. U. S. (1907) 152 Fed. 155, 81 C. C. A. 407, writ of certiorari denied (1907) 27 Sup. Ct. 797, 206 U. S. 565, 51 L. Ed. 1191.

Letters held admissible in evidence on the trial of defendants, charged with conspiracy to defraud the United States in relation to contracts for public work, as tending to show an outside business association and intimacy between defendants and their alleged coconspirator, who was the government engineer in charge of the public work. U. S. v. Greene (D. C. 1906) 146 Fed. 787.

In a prosecution for conspiracy, the acts and declarations of the persons accused may be considered, though made in the absence of some of the defendants, where the conspiracy has been fully established by independent evidence, and it has been shown that the defendant against whom it is offered was a party thereto. U. S. v. Richards (D. C. 1906) 149 Fed. 443.

In conspiracy cases, proof of the acts and declarations of the alleged conspirators may be introduced, although not properly admissible at the time because community of intent and design had not been established; but if received, the error may be cured by the subsequent introduction of proof of the conspiracy existing at the time the alleged declarations were made. (1899) 22 Op. Atty. Gen. 589.

100. —— Testimony of coconspirator. —The testimony of a coconspirator is competent upon the trial of an indictment for conspiracy. U. S. v. Sacia (D. C. 1880) 2 Fed. 754.

101. —— Weight and sufficiency.—To sustain an indictment charging a con-

spiracy to commit an offense against the United States, under this section, it is not necessary that there should be direct evidence of a formal agreement; but it is sufficient if the evidence of the separate details of the transaction as it was carried out indicate with the requisite certainty the existence of a preconcerted plan and purpose. Reilley v. U. S. (1903) 106 Fed. 896, 46 C. C. A. 25, judgment reversed Francis v. U. S. (1903) 23 Sup. Ct. 334, 188 U. S. 375, 47 L. Ed. 508.

A conviction of conspiracy to defraud by pretending to deal in what is commonly called "green articles" and "spurious treasury notes," to be accomplished by the use of the mails in violation of R. S. § 5480, post, § 10385, held sustained by the evidence. Lehman v. U. S. (1903) 127 Fed. 41, 61 C. C. A. 577.

A charge of conspiracy for the concealment of property by a bankrupt, in violation of section 9613, ante, may be supported by evidence that the property was sold under a chattel mortgage given by the bankrupt prior to the bankruptcy, where it is shown that such mortgage and sale were merely colorable, and that the property, in fact, remained that of the bankrupt. Cohen v. U. S. (1907) 157 Fed. 651, 85 C. C. A. 113, writ of certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

Evidence in prosecution for conspiracy held sufficient, in view of the rule that conspiracy may be determined by inference from the facts proved, to make a case for the jury. Alkon v. U. S. (1908) 163 Fed. 810, 90 C. C. A. 116.

Conspiracy to defraud the United States, under this section, is not necessarily established by direct evidence. Circumstantial evidence may suffice. A formal agreement need not be proved. It is sufficient to show that the parties are acting together understandingly to accomplish the same unlawful purpose, even though individual conspirators may do acts in furtherance of the common unlawful design, apart from and unknown to others. Marrash v. U. S. (1909) 168 Fed. 225, 93 C. C. A. 511.

Knowledge by an alleged co-conspirator that the other defendants were attempting to defraud is not sufficient to involve him in the conspiracy; nor is mere suspicion that he was a party to the conspiracy. Id.

In a prosecution for conspiracy to commit a crime against the United States, to wit, the transportation in interstate commerce in passenger trains or cars of nitro-glycerin and dynamite in violation of Cr. Code, §§ 37, 232, et seq., and for transporting, aiding, and abetting in such transportation of nitroglycerin and dynamite, evidence held sufficient to sustain a conviction of certain of the defendants and insufficient to sustain a conviction of certain others. Ryan v. U. S. (1914) 216 Fed. 13, 132 C. C. A. 257.

In a prosecution for conspiracy to submit false evidence to the Post Office Department in support of an application to admit certain publications to second-class rates, evidence held insufficient to show that defendants knowingly submitted false testimony with knowledge that the facts inquired about were regarded by the Post Office Department as material. Myrick v. U. S. (1915) 219 Fed. 1, 134 C. C. A. 619.

Evidence considered and held to sustain a conviction of defendants for conspiracy to commit an offense against the United States by concealing assets of an estate in bankruptcy. Rabinowitz v. U. S. (1915) 222 Fed. 846, 138 C. C. A. 272.

Intent of defendants, charged under this section with conspiracy to violate section 10385, post, by use of mails to promote frauds, may be shown by circumstantial evidence. Farmer v. U. S. (1915) 223 Fed. 903, 139 C. C. A. 341.

Evidence held not to sustain a conviction of a conspiracy under this section to violate section 10385, post, punishing the use of mails to promote frauds. Id.

In a trial for conspiring to conceal assets in bankruptcy, evidence held insufficient to show that a particular defendant committed any unlawful act in the district. Roukous v. U. S. (1912) 195 Fed. 353, 115 C. C. A. 255, modifying judgment U. S. v. Young & Holland Co. (C. C. 1909) 170 Fed. 110, and writ of certiorari denied Roukous v. U. S. (1912) 32 Sup. Ct. 840, 225 U. S. 710, 56 L. Ed. 1267.

Indictment under this section for conspiracy to commit an offense against the United States by using the mails to defraud, held sustained by evidence of the conspiracy and that defendants procured another to deposit certain letters in the mail. Rose v. U. S. (1915) 227 Fed. 357, 142 C. C. A. 53.

On an indictment for a conspiracy under Act March 2, 1867, § 30, there must be satisfactory evidence not only of the conspiracy charged, but of the overt act averred, to carry into effect the object of the conspiracy. U. S. v. Smith (C. C. 1869) Fed. Cas. No. 16,322.

A conspiracy may be proved by direct and positive evidence, or by facts showing that there was a concert of action and a unity of purpose in effecting an unlawful object. Id.

The evidence to establish a conspiracy is generally circumstantial, and is sufficient if it proves the existence of an agreement to do the unlawful act, although its terms and the time and place where it was entered into are not shown. U. S. v. Hamilton (C. C. 1876) Fed. Cas. No. 15,288; Same v. Hutchins (C. C. 1876) Fed. Cas. No. 15,430.

A conspiracy may be proved by cir-

cumstantial evidence. The Mussel Slough Case (C. C. 1880) 5 Fed. 680.

It is not necessary to prove that the defendants came together and actually agreed, in terms, to have that design, and to pursue it by common means. If it be proved that the defendants pursued by their acts the same objects, often by the same means, one performing one part and another another part of the same, so as to complete it with a view to the attainment of the same object, the jury will be justified in the conclusion that they were engaged in a conspiracy to effect that object. Id.

It requires more than proof of mere passive cognizance of a crime on the part of a defendant to sustain a charge of conspiracy to commit it, and the jury must find that such prisoner did some act or made some agreement showing an intention to participate in some way in such conspiracy. U. S. v. Lancaster (C. C. 1891) 44 Fed. 896, 10 L. R. A. 333.

A conviction for conspiracy cannot be had on the uncorroborated testimony of a co-conspirator, nor can co-conspirators corroborate each other. U. S. v. Logan (C. C. 1891) 45 Fed. 872, judgment reversed Logan v. U. S. (1892) 12 Sup. Ct. 617, 144 U. S. 263, 36 L. Ed. 429.

Proof of ordering of goods by several persons, not intending to pay for them, will not support an indictment for conspiracy to defraud by using the mails, without proof that the orders were given pursuant to a prearranged plan. U. S. v. Barrett (C. C. 1894) 65 Fed. 62.

Evidence that employés of the owner of a distillery joined and participated with him in removing from such distillery to a place other than a bonded warehouse spirits on which the internal revenue tax had not been paid, in violation of section 6038, under circumstances from which they must have known the illegal nature of the transactions, is sufficient to sustain an indictment, under R. S. § 5440 (embodied herein) of both employer and employés, for conspiracy to commit an offense against the United States. U. S. v. Scott (C. C. 1905) 139 Fed. 697, judgment affirmed Scott v. U. S. (1908) 165 Fed. 172, 91 C. C. A. 206.

On the trial of one indicted for conspiring to defraud the United States by mailing old newspapers for the purpose of fraudulently increasing the weight of mail matter, mere suspicion or bare knowledge of an alleged co-conspirator that defendant was attempting to defraud the United States is not sufficient to make such person a party to the attempt, and to sustain the charge, it being necessary to show intentional participation in the attempt to defraud; and if the evidence shows that such alleged co-conspirator had knowledge that defendant was mailing over said post route such newspapers with intent to defraud the United States, and such alleged co-conspirator, with a view to assist defendant therein, remailed such newspapers over said post route, a conspiracy to defraud the United States is proven, and by such remailing such alleged co-conspirator becomes an active party to the conspiracy. U. S. v. Newton (D. C. 1892) 52 Fed. 275.

Though the offense of conspiracy may be established by circumstantial evidence, the circumstances must be of such a character as to exclude every reasonable hypothesis but that of defendant's guilt of the offense charged. U. S. v. Richards (D. C. 1906) 149 Fed. 443.

102. Peremptory challenges.—Section 10509, post, does not, because of section 10516, post, apply to a prosecution under R. S. § 5440 (embodied herein), for the offense of conspiracy committed prior to the enactment of such Code, and the defendant in such prosecution is entitled to but three peremptory challenges. Heike v. U. S. (1911) 192 Fed. 83, 112 C. C. A. 615, affirming judgment U. S. v. Heike (C. C. 1910) 175 Fed. 852, and writ of certiorari granted Heike v. U. S. (1912) 32 Sup. Ct. 527, 223 U. S. 730, 56 L. Ed. 633, and judgment affirmed (1913) 33 Sup. Ct. 226, 227 U. S. 131, 57 L. Ed. 450, Ann. Cas. 1914C, 128.

103. Instructions and questions for jury.—Refusal to instruct on trial for conspiracy to defraud the United States by fraudulently obtaining California and Oregon state lands and exchanging them under Act June 4, 1897, for other public lands, that want of knowledge of the character of the land applied for or that it was not adversely occupied, did not make the application void, held not error. Hyde v. U. S. (1912) 32 Sup. Ct. 793, 807, 225 U. S. 347, 56 L. Ed. 1114, affirming judgment (1910) 35 App. D. C. 451.

Instructions with respect to the intent necessary to be found to warrant a conviction of defendants on a charge of conspiracy to defraud the United States, which charged, in effect, that, if defendants intended the consequences which naturally and in fact resulted from their acts, and such result was to defraud the government, they could not be acquitted because they may not have thought the government would be defrauded, considered and approved. McGregor v. U. S. (1904) 134 Fed. 187, 69 C. C. A. 477.

On the trial of an indictment for conspiracy, letters shown to be in the handwriting of the defendant, addressed to an alleged co-conspirator and containing self-charging admissions, are admissible in evidence, although it is not proved that they were transmitted to the persons to whom they are addressed, and their interpretation and

weight are matters for determination by the jury in the light of all of the evidence in the case. Chadwick v. U. S. (1905) 141 Fed. 225, 72 C. C. A. 343.

The instructions given on the trial of an indictment for conspiracy to induce perjury on the part of persons applying to enter la..d under the timber and stone act by falsely stating that the lands were not being purchased by them on speculation and that they had not made any agreement by which the titles they might acquire should inure to the benefit of any other person, considered, and, as applied to the evidence, held correct, as confining the inquiry to the preliminary statements made at the time of the applications. Nickell v. U. S. (1909) 167 Fed. 741, 93 C. C. A. 229, affirming judgment on rehearing (1908) 161 Fed. 702, 88 C. C. A. 562, and writ of certiorari denied (1909) 29 Sup. Ct. 699, 214 U. S. 517, 53 L. Ed. 1064.

The questions whether a conspiracy existed, as charged in an indictment, and whether an act was done by one or more of the defendants to effect the object of the conspiracy, are questions of fact for the jury. Marrash v. U. S. (1909) 168 Fed. 225, 93 C. C. A. 511.

Evidence considered, in a prosecution for conspiracy to defraud the United States of public lands by means of fraudulent homestead entries and to commit an offense against the laws of the United States by suborning entrymen to commit perjury, and held sufficient to justify the submission of the case to the jury. Richards v. U. S. (1909) 175 Fed. 911, 99 C. C. A. 401.

Instructions considered and approved in a prosecution under this section for using the mails to defraud. Mitchell v. U. S. (1912) 196 Fed. 874, 116 C. C. A. 436.

An agreement whereby a commissioner taking evidence in support of a claim against the United States is to have a contingent fee of $5,000 is not necessarily criminal. The jury are to judge whether such agreement is any evidence of the falsity of the claim. U. S. v. Noblom (C. C. 1878) Fed. Cas. No. 15,896.

Evidence reviewed in the charge to the jury on trial of consolidated indictments and counts severally charging conspiracy to defraud the United States between contractors for public work and the government engineer officer in charge of the same, the presentation of fraudulent claims against, and embezzlement from, the United States. U. S. v. Greene (D. C. 1906) 146 Fed. 803, judgment affirmed Greene v. U. S. (1907) 154 Fed. 401, 85 C. C. A. 251, writ of certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

In a prosecution of a former Post Office Department official and others for conspiracy in procuring the purchase by the government of a patent letter box fastening, used throughout the country, at an excessive price, whether the letters of the defendant and former government official were not admissible in evidence on behalf of the prosecution, and the question of whether they were written by the defendant to be left to the jury, when they were shown to have been sent through the mails and placed in the official files, and to have been officially acted on by such defendant, though his handwriting was not proved, quære. Lorenz v. U. S. (1904) 24 App. D. C. 337.

104. Effect of acquittal or conviction of offense.—An indictment under this section contained several counts charging the conspiracy to defraud in substantially the same language, but each charging a different overt act. A nolle was entered as to some counts, and a verdict of guilty was rendered on all the others except one. Held, that the acquittal on one count was not a finding against any conspiracy, which would work an acquittal as to all. Dealy v. U. S. (1894) 14 Sup. Ct. 680, 681, 152 U. S. 539, 38 L. Ed. 545.

Where two only are charged with a conspiracy, and one is acquitted, the other must be acquitted also. U. S. v. Hamilton (C. C. 1876) Fed. Cas. No. 15,288.

Conviction under this section for conspiring to defraud the United States by the unlawful removal of distilled spirits, without paying taxes, bars a subsequent civil suit to recover the penalty of double the amount of such taxes. U. S. v. McKee (C. C. 1877) Fed. Cas. No. 15,688.

Where two were indicted for conspiracy to insure a vessel and have her cast away, and one of them was indicted individually for the same thing, and both were acquitted of the conspiracy, held that the individual must also be acquitted if he could not be found guilty without assuming the existence of the conspiracy. U. S. v. Morris (D. C. 1868) Fed. Cas. No. 15,812.

105. New trial.—Where a verdict of guilty was rendered in a trial for conspiracy to defraud the United States of duty on imported merchandise against a member of a firm that was implicated in the conspiracy, held that the verdict was contrary to the evidence, and a new trial should be granted, where it appeared that the accused had been admitted to the firm within seven months of the time of the fraud; that during that time, and the previous time when he had been an employé of the firm, he had not been connected with the general management of the business, which was of large volume and international scope, requiring a systematic division of duties; that he had been engaged almost exclusively in selling the merchandise and designing patterns; and that there was no evidence that he had had any relation with a single fact in connection

with the purchase of the merchandise or its importation, with the exception that he had signed in blank some of the entries of the merchandise, leaving the particulars of the entries to be filled in by the customs brokers, and no evidence that he had had occasion to examine into the business of the company, or that there had been an accounting during his membership in the firm. U. S. v. Cohn (C. C. 1904) 128 Fed. 615, judgment affirmed Browne v. U. S. (1905) 145 Fed. 1, 76 C. C. A. 31, writ of certiorari denied (1906) 26 Sup. Ct. 755, 200 U. S. 618, 50 L. Ed. 623.

Where parties have been indicted for conspiracy, tried together, and found guilty the grant of a new trial to one of the accused does not require that a new trial should be granted to any co-conspirator. Id.

106. Sentence and punishment.—Where accused was sentenced to one year only on one of the counts of an indictment for conspiracy, the court had no power to direct that such sentence be served in a penitentiary. Francis v. U. S. (1907) 152 Fed. 155, 81 C. C. A. 407, modifying judgment U. S. v. Francis (D. C. 1906) 144 Fed. 520, and writ of certiorari denied (1907) 27 Sup. Ct. 797, 206 U. S. 565, 51 L. Ed. 1191.

Cumulative sentences may be imposed, but they must be imposed in that form. U. S. v. Peeke (1907) 153 Fed. 166, 82 C. C. A. 340, 12 L. R. A. (N. S.) 314.

On application to the federal Circuit Court for habeas corpus by one convicted therein, the court can correct the sentence if it be excessive or resentence, and hence where persons convicted of conspiring to commit a federal offense under this section were sentenced to imprisonment "at hard labor," on habeas corpus proceedings the trial court can amend the sentence nunc pro tunc by striking the quoted words, which are not authorized by the statute. Ex parte Harlan (C. C. 1909) 180 Fed. 119, decree affirmed Harlan v. McGourin (1910) 31 Sup. Ct. 44, 218 U. S. 442, 54 L. Ed. 1101, 21 Ann. Cas. 849.

When statutes prescribe particular modes of punishment, a court cannot inflict another, and hence under this section authorizing imprisonment for conspiracy to commit a federal offense, imprisonment "at hard labor" is unauthorized. Id.

Petitioner was found guilty on five counts of an indictment under R. S. § 5440 (embodied herein), each charging a separate conspiracy to commit an offense against the United States, and was given a single sentence of confinement in a penitentiary for a term of five years. Said section 5440 provided that a person convicted of a violation thereof shall be liable to a fine "or to imprisonment for not more than two years, or to both fine and imprisonment." Held, that the judgment must be construed as a single sentence for five years, and not as one for cumulative sentences on the five counts, no one exceeding two years, and that as so construed it was void as to the excess above two years. Ex parte Peeke (D. C. 1906) 144 Fed. 1016, order affirmed U. S. v. Peeke (1907) 153 Fed. 166, 82 C. C. A. 340, 12 L. R. A. (N. S.) 314.

Quære whether, on a judgment of conviction of conspiracy under this section, defining and punishing conspiracy to defraud the United States, on an indictment containing 12 counts, where the sentence on each was not greater than warranted by the conviction under the first count, the judgment of the lower court might not be sustained, even if the insufficiency of the remaining counts be conceded. Lorenz v. U. S. (D. C. 1904) 24 App. D. C. 337.

Sentence should be imposed, not as for common-law conspiracy, but under this section, relating to conspiracy to commit an offense against the United States, upon conviction under an indictment which, even though sufficient to charge common-law conspiracy, charges every element of the offense of conspiracy to commit perjury in violation of this section 37 in conjunction with Code, D. C. § 858, denouncing perjury, and avers that the offense was committed against the form of the statute and against the peace and government of the United States, where there is ample evidence to support the indictment as to every element of the offense including the overt act, and the trial and charge to the jury proceeded upon the theory that the defendants were being tried for conspiracy to commit perjury. Fletcher v. U. S. (1914) 42 App. D. C. 53, 511.

CITED WITHOUT DEFINITE APPLICATION

Ex parte Karstendick (1876) 93 U. S. 396, 397, 23 L. Ed. 889; U. S. v. Perrin (1889) 9 Sup. Ct. 681, 682, 131 U. S. 55, 33 L. Ed. 88; Clune v. U. S. (1895) 16 Sup. Ct. 125, 126, 159 U. S. 590, 40 L. Ed. 269; France v. U. S. (1897) 17 Sup. Ct. 219, 220, 164 U. S. 676, 41 L. Ed. 595; Francis v. U. S. (1903) 23 Sup. Ct. 334, 188 U. S. 375, 47 L. Ed. 508; Champion v. Ames (1903) 23 Sup. Ct. 321, 188 U. S. 321, 47 L. Ed. 492; Harlan v. McGourin (1910) 31 Sup. Ct. 44, 218 U. S. 442, 54 L. Ed. 1101, 21 Ann. Cas. 849; Bradford v. U. S. (1913) 33 S. Ct. 576, 228 U. S. 446, 57 L. Ed. 912; Nash v. U. S. (1913) 33 S. Ct. 780, 229 U. S. 373, 57 L. Ed. 1232; U. S. v. Davis (1913) 34 S. Ct. 112, 231 U. S. 183, 58 L. Ed. 177; Stokes v. U. S. (1894) 60 Fed. 597, 598, 9 C. C. A. 152; U. S. v. Dunbar (1897) 83 Fed. 151, 156, 27 C. C. A. 488; Salla v. U. S. (1900) 104 Fed. 544, 546, 44 C. C. A. 26; Lehman v. U. S. (1903) 127 Fed. 41, 61 C. C. A. 577; Radford v. U. S. (1904) 129 Fed. 49, 63 C. C. A. 491; Van Gesner v. U. S. (1907) 153 Fed. 46, 82 C. C. A. 180;

Lemon v. U. S. (1908) 164 Fed. 953, 90 C. C. A. 617; Haddox v. Richardson (1909) 168 Fed. 635, 94 C. C. A. 99; Foley Mfg. Co. of Illinois v. Sierra Nevada Lumber Co. of Utah (1909) 172 Fed. 197, 96 C. C. A. 649; Renigar v. U. S. (1909) 172 Fed. 646, 97 C. C. A. 172, 26 L. R. A. (N. S.) 683, 19 Ann. Cas. 1117; U. S. v. Conklin (1910) 177 Fed. 55, 100 C. C. A. 473; Waller v. U. S. (1910) 179 Fed. 810, 103 C. C. A. 302, 31 L. R. A. (N. S.) 113; Dyar v. U. S. (1911) 186 Fed. 617, 108 C. C. A. 478; Register v. U. S. (1911) 186 Fed. 624, 108 C. C. A. 488; Blackman v. U. S. (1911) 186 Fed. 965, 109 C. C. A. 109; U. S. v. Wells (1912) 192 Fed. 870, 113 C. C. A. 194, certiorari denied (1912) 32 Sup. Ct. 842, 225 U. S. 714, 56 L. Ed. 1269; Franklin v. U. S. (1912) 193 Fed. 334, 113 C. C. A. 258; Mackin v. U. S. (C. C. 1885) 23 Fed. 334, 335; U. S. v. Johannesen (C. C. 1888) 35 Fed. 411, 412; Ex parte Hyde (C. C. 1904) 194 Fed. 207; U. S. v. Heike (C. C. 1910) 175 Fed. 852 (writ of error dismissed [1910] 30 Sup. Ct. 539, 217 U. S. 423, 54 L. Ed. 821, judgment affirmed [1911] 192 Fed. 83, 112 C. C. A. 615, certiorari granted [1912] 32 Sup. Ct. 527, 223 U. S. 730, 56 L. Ed. 633, judgment affirmed [1913] 33 Sup. Ct. 226, 227 U. S. 131, 57 L. Ed. 450, Ann. Cas. 1914C, 128); Ireland v. Henkle (C. C. 1910) 179 Fed. 993; U. S. v. Olsen (D. C. 1893) 57 Fed. 579, 583; U. S. v. Twining (D. C. 1904) 132 Fed. 129; U. S. v. Haskell (D. C. 1909) 169 Fed. 449; U. S. v. Swift (D. C. 1911) 186 Fed. 1002; Woog v. U. S. (1913) 48 Ct. Cl. 80.

§ 10202. (Crim. Code, § 38.) Fraudulent interference with delivery, etc., of prize property; punishment for.

Whoever shall willfully do, or aid or advise in the doing, of any act relating to the bringing in, custody, preservation, sale, or other disposition of any property captured as prize, or relating to any documents or papers connected with the property, or to any deposition or other document or paper connected with the proceedings, with intent to defraud, delay, or injure the United States or any captor or claimant of such property, shall be fined not more than ten thousand dollars, or imprisoned not more than five years, or both.

R. S. § 5441. Act March 4, 1909, c. 321, § 38, 35 Stat. 1096.

§ 10203. (Crim. Code, § 39.) Bribery of United States officer; punishment for.

Whoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and imprisoned not more than three years.

R. S. § 5451. Act March 4, 1909, c. 321, § 39, 35 Stat. 1096.

Notes of Decisions

1. Prescription of official action
2. Meaning of "lawful duty."
3. Official function in general.
4. Service as interpreter.
4. "Obligation for the payment of money."
6. Tendering check to affect official action.
7. Payment or offer not relating to officer's duty.
8. When attempt completed.
9. Offer in contemplation of probable performance of official function.
10. Inducing postmaster to sell stamps on credit.
11. Inducing rehearing in deportation proceeding.
12. Paying money to officer in violation of section 10287.

13. Procuring false certificate to increase pension.
14. Inducing statistician to divulge report in advance of publication.
15. Common-law offense as punishable by statute.
16. Offense in absence of statute.
17. Where crime triable.
18. Indictment.
19. Evidence.
20. Recovery back of money paid to officer.

See notes under § 10201, ante.

1. Prescription of official action.—The official action sought to be influenced by a bribe charged to have been given and accepted contrary to this section and section 10287, post, need not have been prescribed by statute; it is sufficient that it was governed by a lawful requirement of the executive department under whose authority the officer was acting; and such requirement need not have been prescribed by a written rule or regulation, but might also be found in an established usage which constituted the common law of the department, and fixed the duties of those engaged in its activities. U. S. v. Birdsall (1914) 34 Sup. Ct. 512, 233 U. S. 223, 58 L. Ed. 930.

2. Meaning of "lawful duty."—The phrase "lawful duty" in R. S. § 5451 (embodied herein), is not restricted to a duty imposed by statute, but is broad enough to cover a duty imposed by a lawful superior; and an indictment charging a conspiracy to induce an assistant statistician in the Department of Agriculture to furnish to the accused advance news of crop conditions, and to cause to be published false reports as to such conditions in violation of the rules of the department, to aid defendants in market speculations, by promising such employé a percentage of the profits of such speculations, charges a conspiracy to commit an offense against the United States under R. S. § 5440, ante, § 10201. U. S. v. Haas (C. C. 1908) 163 Fed. 908.

3. Official function in general.—A person employed by the United States as an assistant statistician in the Department of Agriculture, in the performance of the duties with which he is charged by the rules of the department, acts for the United States in an official function, within the meaning of this section, making it a criminal offense to bribe any such person to induce him to do or to omit to do any act in violation of his lawful duty. U. S. v. Haas (C. C. 1908) 163 Fed. 908.

The "official function" within this section is not necessarily a function belonging to an office held by one acting on behalf of the United States, and it may also be a function belonging to an office held by a superior, which function has been committed to a subordinate, whether an officer or a mere employé, for the purpose of being executed. U. S. v. Ingham (D. C. 1899) 97 Fed. 935.

4. Service as interpreter.—An interpreter of the Chinese language, appointed by the secretary of the treasury, is not acting within the scope of his official duty under such appointment while serving as interpreter of such language at a hearing of a criminal charge before the United States commissioner, within the meaning of this section, making it a criminal offense to offer to bribe any person acting for or on behalf of the United States in any official function. In re Yee Gee (D. C. 1897) 83 Fed. 145.

5. "Obligation for the payment of money."—A bank check is not an "obligation for the payment of money," within the legal meaning of such term as used in this section. Order, U. S. v. Green (D. C. 1905) 136 Fed. 618, affirmed. Green v. MacDougall (1905) 26 Sup. Ct. 748, 199 U. S. 601, 50 L. Ed. 328.

6. Tendering check to affect official action.—The tendering by a person of his personal check, drawn on a bank and payable to an officer of the United States, to such officer, with intent thereby to affect his official action, does not constitute the crime of bribery, since a check made and delivered for such illegal purpose is void, and not within any of the classes of instruments enumerated in the statute. Green v. MacDougall (1905) 26 Sup. Ct. 748, 199 U. S. 601, 50 L. Ed. 328.

7. Payment or offer not relating to officer's duty.—The crime of bribery cannot be predicated upon the offer of a reward not to perform duties for the performance of which there was no legal or constitutional warrant. U. S. v. Boyer (D. C. 1898) 85 Fed. 425.

One paying money to a person acting for the United States in an official function to influence his official action in a matter over which he is not charged with any official or other duty is not guilty of bribery, under this section. U. S. v. Birdsall (D. C. 1912) 195 Fed. 980.

An indictment against a special officer for the suppression of the liquor traffic among Indians, for accepting a bribe to recommend clemency for persons convicted of selling liquor to Indians, held not to constitute an offense, since defendant had no legal duties to perform in that regard. U. S. v. Birdsall (D. C. 1913) 206 Fed. 818, judgment reversed (1914) 34 Sup. Ct. 512, 233 U. S. 223, 58 L. Ed. 930.

8. When attempt completed.—The offense of attempting to bribe an officer is completed at the time when and at the place where the letter containing the corrupt offer is written and delivered at a post office in the district, though addressed to the officer, residing in another state. U. S. v. Worrall (C. C. 1798) Fed. Cas. No. 16,766.

9. Offer in contemplation of probable performance of official function.—An of-

fer made to a person in contemplation of a mere probability that he may be called to perform official functions, and intended to influence his conduct in the performance of such functions if he shall be so called, does not violate this section, making it a criminal offense to offer to bribe a person exercising any official function, with intent to influence his action in his official capacity. In re Yee Gee (D. C. 1897) 83 Fed. 145.

10. Inducing postmaster to sell stamps on credit.—An attempt to induce a postmaster to sell stamps on credit is a violation of this section. Palliser v. U. S. (1890) 10 Sup. Ct. 1034, 1035, 136 U. S. 257, 34 L. Ed. 514, affirming order In re Palliser (C. C. 1889) 40 Fed. 575.

11. Inducing rehearing in deportation proceeding.—Under the law and regulations of the Department of Commerce and Labor, an immigration inspector is an officer of the United States, and his act in recommending a rehearing in case of an alien ordered to be deported is an act in the line of his official duty, so that the offer of a bribe to him to recommend such rehearing is an offense against the United States. Becharias v. U. S. (1913) 208 Fed. 143, 125 C. C. A. 359.

12. Paying money to officer in violation of section 10287.—One paying money to an officer of the United States in violation of R. S. § 5501, post, § 10287, may be indicted under this section, though perhaps not strictly an accomplice. King v. U. S. (1902) 112 Fed. 988, 50 C. C. A. 647.

13. Procuring false certificate to increase pension.—A conspiracy to procure, by bribery, the making of a false certificate by the board of examining surgeons, whereby the commissioner of pensions may be induced to allow a fraudulent increase of pension, is a conspiracy to defraud the United States, within the meaning of R. S. § 5440, ante, § 10201. U. S. v. Van Leuven (D. C. 1894) 62 Fed. 62.

14. Inducing statistician to divulge report in advance of publication.—Regulations of the Agricultural Department having forbidden the giving out of any statement relating to the business of the department without the approval of the chief of the bureau, and secrecy having been imposed on all employés by the established usage and practice, indictments charging bribery of an associate statistician of the Bureau of Statistics of the Department of Agriculture to divulge the contents of the current cotton crop report in advance of its official publication stated an offense under this section. Haas v. Henkel (1909) 166 Fed. 621, order affirmed (1910) 30 Sup. Ct. 249, 216 U. S. 462, 54 L. Ed. 569, 17 Ann. Cas. 1112.

15. Common-law offense as punishable by statute.—An indictment for offering an internal revenue officer a bribe to set fire to a distillery situated within the limits of a state is not cognizable by the federal courts, since there are no common-law offenses against the United States; and this section, which makes it a crime to offer to bribe an officer of the United States with intent to influence him to do or omit to do any act in violation of his lawful duty, applies only to acts within the official functions of the officer. U. S. v. Gibson (D. C. 1891) 47 Fed. 833.

The fact that an internal revenue officer has the right, by virtue of his office, to enter the distillery at any time, does not bring the offense within the cognizance of the federal courts. Id.

Congress in enacting this section intended to punish by statute what was punishable by common law, but which law could not be invoked against officers of the United States, because there are no common-law offenses against the United States. U. S. v. Green (D. C. 1905) 136 Fed. 618, 652, order affirmed (1905) 26 Sup. Ct. 748, 199 U. S. 601, 50 L. Ed. 328.

16. Offense in absence of statute.—Quære, whether a person is subject to indictment in the federal courts for attempting to bribe a federal officer, in the absence of an act of congress defining such offense. U. S. v. Worrall (C. C. 1798) Fed. Cas. No. 16,766.

17. Where crime triable.—The crime of bribing a public officer, in violation of this section, when begun by mailing a letter containing the money in one federal district, and completed by the receipt of the letter in another district, is triable in the latter district. Benson v. Henkel (1905) 25 Sup. Ct. 569, 572, 198 U. S. 1, 49 L. Ed. 919, affirming order In re Benson (C. C. 1904) 130 Fed. 486.

18. Indictment.—Objections to an indictment charging a violation of this section in bribing two federal officers to reveal the contents of certain reports pertaining to an investigation then pending in the Land Department with respect to certain frauds used in obtaining public lands are not available in proceedings before a United States Commissioner for the removal of the accused to another federal district for trial, where such objections raise the questions whether the statute applied to reports which had not yet been filed and might never be filed, or whether the words of the statute, "which may at any time be pending, or which may by law be brought before him in his official capacity," apply to the pendency of the investigation or to the pendency of an obligation not to reveal the contents of a paper then in the officer's possession, or whether the revealing of the contents of such reports was forbidden by any lawful authority, there being no statute imposing such obligation; but such questions should be

determined by the court in which the indictment was found. Benson v. Henkel (1905) 25 Sup. Ct. 569, 570, 198 U. S. 1, 49 L. Ed. 919.

Allegations charging a conspiracy by which an employé in the Bureau of Statistics in the Department of Agriculture was to give his coconspirators advance information of the official cotton crop reports, and a conspiracy to bribe such employé for the same purpose, sufficiently show, for the purposes of a removal, under section 1674, ante, to the District of Columbia of offenses against the United States. Haas v. Henkel (1910) 30 Sup. Ct. 249, 254, 216 U. S. 462, 54 L. Ed. 569, 17 Ann. Cas. 1112.

Where an indictment against a United States Indian agent for bribery alleged that he, having charge of the execution and completion of certain leases for certain tracts of land in a specified Indian reservation, commonly known as the Ponca Pasture, etc., feloniously and corruptly accepted and received the sum of $1,500 from one A. for the purpose of influencing his action on the completion of such leases—the subject-matter of the leases being mere matter of inducement, and the gravamen of the offense the acceptance of and the asking of the bribe—the indictment was not defective for failure to describe the leases with sufficient certainty. Sharp v. U. S. (1905) 138 Fed. 878. 71 C. C. A. 258, reversing judgment (1904) 76 Pac. 177, 13 Okl. 522.

An indictment under this section making it an offense to tender "any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States," with intent to influence his decision or action on any matter pending or which may be brought before him in his official capacity, which charges the defendant with bribing an officer, etc., by tendering to him "a certain obligation for the payment of money, to wit, the personal check of him, the said [defendant], drawn upon the Knickerbocker Trust Company of New York City, N. Y., in favor of the said [officer], for the sum of three hundred and twenty-five dollars, with intent," etc., but which does not set out the check, nor give its date or contents, nor allege that the trust company named was in existence or engaged in the banking business, is insufficient to charge the offense stated, because it does not show the check to have been an obligation for the payment of money, nor so identify it as to protect the defendant in case of a subsequent indictment for the same offense; and such indictment is insufficient to sustain proceedings for the removal of defendant from another district for trial thereon. U. S. v. Greene (D. C. 1905) 136 Fed. 618, order affirmed Green v. MacDougall (1905) 26 Sup. Ct. 748, 199 U. S. 601, 50 L. Ed. 328.

19. Evidence.—In a prosecution for alleged bribery of a government officer in violation of this section, evidence held insufficient to warrant a finding that defendant made any promise or offer, or gave any money or other valuable thing to such officer in order to affect his official action. Vernon v. U. S. (1906) 146 Fed. 121, 76 C. C. A. 547.

In a proceeding for the removal of a defendant to another federal district for trial on an indictment charging him with a violation of R. S. § 5451 (embodied herein), by bribing an officer of the postal department to use his official position to promote the sale to the government of articles in which defendant was interested as agent, evidence that defendant and such officer were personally acquainted, that the sales were made by defendant, who in soliciting the same talked with such officer and his superiors, who in fact made the purchases, and that after receiving his commissions on the sales he paid a similar amount to such officer, without any explanation of the reason for such payment, or evidence showing that they had any connection with the sales, is not sufficient, aside from the indictment itself, to show the commission of the crime charged, or to establish probable cause to believe the defendant guilty. U. S. v. Greene (D. C. 1905) 136 Fed. 618, order affirmed Green v. MacDougall (1905) 26 Sup. Ct. 748, 199 U. S. 601, 50 L. Ed. 328.

20. Recovery back of money paid to officer.—If money paid to a public officer with the corrupt motive, and purpose of procuring the official action of another officer was subsequently seized by the proper authorities, and is now in the treasury, it cannot be recovered back, though the payment was made to procure the release of a cargo of cotton illegally or improperly detained by the officer. It was bribery under Act Feb. 26, 1853 (10 Stat. L. 170, § 6). Clark v. U. S. (1876) 12 Ct. Cl. 597.

Cited without definite application, Burton v. U. S. (1906) 26 Sup. Ct. 688, 701, 202 U. S. 344, 50 L. Ed. 1057, 6 Ann. Cas. 392; U. S. v. Van Leuven (D. C. 1894) 65 Fed. 78, 79; Woog v. U. S. (1913) 48 Ct. Cl. 80.

§ 10204. (Crim. Code, § 40.) Unlawfully taking or using papers relating to claims; punishment for.

Whoever shall take and carry away, without authority from the United States, from the place where it has been filed, lodged, or deposited, or where it may for the time being actually be kept by

authority of the United States, any certificate, affidavit, deposition, written statement of facts, power of attorney, receipt, voucher, assignment, or other document, record, file, or paper, prepared, fitted, or intended to be used or presented in order to procure the payment of money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, whether the same has or has not already been so used or presented, and whether such claim, account, or demand, or any part thereof, has or has not already been allowed or paid; or whoever shall present, use, or attempt to use, any such document, record, file, or paper so taken and carried away, in order to procure the payment of any money from or by the United States, or any officer or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

R. S. § 5454. Act March 4, 1909, c. 321, § 40, 35 Stat. 1096.

§ 10205. (Crim. Code, § 41.) Persons interested not to act as government agents; punishment for.

No officer or agent of any corporation, joint stock company, or association, and no member or agent of any firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, joint stock company, association, or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation, joint stock company, association, or firm. Whoever shall violate the provision of this section shall be fined not more than two thousand dollars and imprisoned not more than two years.

R. S. § 1783. Act March 4, 1909, c. 321, § 41, 35 Stat. 1097

Notes of Decisions

See notes under § 10396, post.

Awarding contract to firm, member of which is an officer.—This section does not prevent the awarding of a contract for furnishing coal for the Post Office Department to a firm one of the members of which is an officer in that department, provided it is the lowest bidder, and the officer does not "act as an officer or agent of the United States" with reference to the purchase of the coal. Such section, being quasi-penal in character, must be strictly construed; and, under such construction, a partner cannot be held to be an "agent," for he is a principal, and the act is essentially the act of principals. (1903) 24 Op. Atty. Gen. 557.

Cited without definite application, In re Harper (D. C. 1904) 133 Fed. 970, affirmed (1905) 141 Fed. 626, 72 C. C. A. 320.

§ 10206. (Crim. Code, § 42.) Enticing desertion from Army or Navy.

Whoever shall entice or procure, or attempt or endeavor to entice or procure, any soldier in the military service, or any seaman or other person in the naval service of the United States, or who has been recruited for such service, to desert therefrom, or shall aid any such soldier, seaman, or other person in deserting or in attempting to desert from such service; or whoever shall harbor, conceal, protect, or assist any such soldier, seaman, or other person who may have deserted from such service, knowing him to have deserted therefrom, or shall refuse to give up and deliver such soldier, seaman, or other person on the demand of any officer authorized to receive him, shall be imprisoned not more than three years and fined not more than two thousand dollars.

R. S. §§ 1553, 5455. Act Feb. 27, 1877, c. 69, § 1, 19 Stat. 253. Act March 4, 1909, c. 321, § 42, 35 Stat. 1097.

Notes of Decisions

Application of statute to crime of soldier.—This section merely provides for the punishment of civilians, not subject to the articles of war, who are ac-

cessories to the crime of desertion by a soldier, or who do any of the acts specified, tending to promote his commission of that crime, and has no application to the crime of the soldier himself. Kurtz v. Moffitt (1885) 6 Sup. Ct. 148, 153, 115 U. S. 487, 29 L. Ed. 458.

Evidence.—A conviction for having procured or enticed a person to desert (Act 1812, c. 14, § 17) is sustained by evidence of the making of representations as to the means and facilities for deserting to induce a person to enlist, with the belief that they were likely to cause him to desert, if they had such effect. U. S. v. Clark (D. C. 1862) Fed. Cas. No. 14,808.

Cited without definite application. U. S. v. Michael (D. C. 1907) 153 Fed. 609.

§ 10207. (Crim. Code, § 43.) Enticing workmen from arsenals or armories; punishment for.

Whoever shall procure or entice any artificer or workman retained or employed in any arsenal or armory, to depart from the same during the continuance of his engagement, or to avoid or break his contract with the United States; or whoever, after due notice of the engagement of such workman or artificer, during the continuance of such engagement, shall retain, hire, or in anywise employ, harbor, or conceal such artificer or workman, shall be fined not more than fifty dollars, or imprisoned not more than three months, or both.

R. S. § 1668. Act March 4, 1909, c. 321, § 43, 35 Stat. 1097.

§ 10208. (Crim. Code, § 44.) Injuries to fortifications, etc.; punishment for.

Whoever shall willfully trespass upon, injure, or destroy any of the works or property or material of any submarine mine or torpedo, or fortification or harbor-defense system owned or constructed or in process of construction by the United States, or shall willfully interfere with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Act July 7, 1898, c. 576, 30 Stat. 717. Act March 4, 1909, c. 321, § 44, 35 Stat. 1097.

Notes of Decisions

Statute as grant of power to make regulations.—The statute cannot be taken as a grant of power to make regulations on the subject in question, however important and desirable such regulations may be. (1907) 26 Op. Atty. Gen. 258.

The Attorney General concurs in the view that general legislation by Congress is necessary for the protection of submarine cables connecting the several military stations in the various fortified harbors of the United States. Id.

§ 10209. (Crim. Code, § 45.) Unlawfully entering fort, etc.; punishment for.

Whoever shall go upon any military reservation, army post, fort, or arsenal, for any purpose prohibited by law or military regulation made in pursuance of law, or whoever shall reenter or be found within any such reservation, post, fort, or arsenal, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

Act March 4, 1909, c. 321, § 45, 35 Stat. 1097.

§ 10210. (Act March 3, 1911, c. 226, § 1.) Obtaining unlawful information respecting national defense, or receiving, communicating, etc., such information; punishment.

Whoever, for the purpose of obtaining information respecting the national defense, to which he is not lawfully entitled, goes upon any vessel, or enters any navyyard, naval station, fort, battery, torpedo station, arsenal, camp, factory, building, office, or other place connected with the national defense, owned or con-

structed or in process of construction by the United States, or in the possession or under the control of the United States or any of its authorities or agents, and whether situated within the United States or in any place noncontiguous to but subject to the jurisdiction thereof; or whoever, when lawfully or unlawfully upon any vessel, or in or near any such place, without proper authority, obtains, takes, or makes, or attempts to obtain, take, or make, any document, sketch, photograph, photographic negative, plan, model, or knowledge of anything connected with the national defense to which he is not entitled; or whoever, without proper authority, receives or obtains, or undertakes or agrees to receive or obtain, from any person, any such document, sketch, photograph, photographic negative, plan, model, or knowledge, knowing the same to have been so obtained, taken, or made; or whoever, having possession of or control over any such document, sketch, photograph, photographic negative, plan, model, or knowledge, willfully and without proper authority, communicates or attempts to communicate the same to any person not entitled to receive it, or to whom the same ought not, in the interest of the national defense, be communicated at that time; or whoever, being lawfully intrusted with any such document, sketch, photograph, photographic negative, plan, model, or knowledge, willfully and in breach of his trust, so communicates or attempts to communicate the same, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both. (36 Stat. 1084.)

This section and the two sections next following were an act entitled "An act to prevent the disclosure of national defense secrets."

§ 10211. (Act March 3, 1911, c. 226, § 2.) Communicating information unlawfully obtained respecting national defense to foreign government, etc.; punishment.

Whoever, having committed any offense defined in the preceding section, communicates or attempts to communicate to any foreign government, or to any agent or employee thereof, any document, sketch, photograph, photographic negative, plan, model, or knowledge so obtained, taken, or made, or so intrusted to him, shall be imprisoned not more than ten years. (36 Stat. 1085.)

See note to preceding section.

§ 10212. (Act March 3, 1911, c. 226, § 3.) Jurisdiction of offenses against preceding provisions.

Offenses against the provisions of this Act committed upon the high seas or elsewhere outside of a judicial district shall be cognizable in the district where the offender is found or into which he is first brought; but offenses hereunder committed within the Philippine Islands shall be cognizable in any court of said islands having original jurisdiction of criminal cases, with the same right of appeal as is given in other criminal cases where imprisonment exceeding one year forms a part of the penalty; and jurisdiction is hereby conferred upon such courts for such purpose. (36 Stat. 1085.)

See note to section 1 of this act, ante, § 10210.

§ 10213. (Crim. Code, § 46.) Robbery of personal property of the United States; punishment for.

Whoever shall rob another of any kind or description of personal property belonging to the United States, or shall feloniously take and carry away the same, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

R. S. § 5456. Act March 4, 1909, c. 321, § 46, 35 Stat. 1097.

Notes of Decisions

Stealing stamps.—Postage stamps remaining in the possession of the United States unissued are personal property belonging to the United States and may

be the subject of larceny under this section. Jolly v. U. S. (1898) 18 Sup. Ct. 624, 625, 170 U. S. 402, 42 L. Ed. 1085.

The offense is complete where accused feloniously took and carried away stamps, the property of the United States without reference to whether he broke and entered or attempted to break and enter any post office with intent to commit this offense. Anderson v. Moyer (D. C. 1912) 193 Fed. 499.

Blank checks.—Six blank checks, with stubs attached, each of the value of one cent, the personal property of the United States, constituted "property," the subject of larceny, under this section. Keller v. U. S. (1909) 168 Fed. 697, 94 C. C. A. 368.

Goods delivered to workman for special purpose.—A workman is guilty of larceny where goods delivered to him for a special purpose are taken away by him with intent to steal them. U. S. v. Strong (C. C. 1821) Fed. Cas. No. 16,411; Same v. Clew (C. C. 1827) Id. 14,819.

Jurisdiction of state court.—Under R. S. § 711, ante, § 1233, giving federal courts exclusive jurisdiction of all crimes and offenses cognizable under the authority of the United States, and section 5456 (embodied herein), declaring that every person who robs another of any kind or description of personal property belonging to the United States shall be punished, etc., an indictment charging the felonious entry of the private office of A., from which defendant feloniously stole certain moneys, postage stamps, and other valuable papers and checks, was not within the jurisdiction of the state court, if the property stolen was in fact the property of the United States. Ex parte Roach (D. C. 1908) 166 Fed. 344.

Indictment.—This section covers two distinct offenses, to wit, the robbing another of personal property belonging to the United States, and the felonious taking and carrying away the same, so that an indictment for the latter offense need not charge a forcible taking. Jolly v. U. S. (1898) 18 Sup. Ct. 624, 625, 170 U. S. 402, 42 L. Ed. 1085.

Under section 1690, ante, providing that, when there are several charges against a person for the same act, or for two or more acts connected together, or of the same class of crimes, which may be properly joined, the whole may be joined in one indictment in separate counts, an indictment may contain a count under this section, relating to the felonious taking away by any one of anything belonging to the United States, and a count under R. S. § 5460, post, § 10336, referring to the felonious taking and embezzlement of metals at the United States mint, though one offense be classed as larceny and the other as embezzlement, and the punishments are different. U. S. v. Jones (D. C. 1895) 69 Fed. 973.

Sentence and punishment.—Where defendant was convicted of burglary of a post office building with intent to commit larceny, and of larceny committed at the same time and as a part of a continuous act, under separate counts of the same indictment, pursuant to R. S. §§ 5456, 5475, 5478 (this compilation, §§ 10213, 10360, 10362), and was sentenced to separate punishments, the sentence for larceny was void, so that, after defendant had satisfied the sentence for burglary, he was entitled to release. Munson v. McClaughry (1912) 198 Fed. 72, 117 C. C. A. 180, 42 L. R. A. (N. S.) 302.

One indicted in one count for violation of R. S. § 5478, post, § 10362, and in another count for a violation of sections 5456, 5475 (this compilation, §§ 10213, 10360), may be convicted of the offense charged in the first count without a conviction of the offense charged in the second count, or may be convicted of the offense charged in the second count without a conviction of the offense charged in the first count, and sentence may be imposed accordingly. Id.

Where petitioner was indicted for breaking and entering a post office in violation of R. S. §§ 5456, 5478 (this compilation, §§ 10213, 10362), and in another count of the same indictment with larceny of postage stamps, and was convicted on both counts, the court had jurisdiction to impose a cumulative sentence on each. Anderson v. Moyer (D. C. 1912) 193 Fed. 499.

§ 10214. (Crim. Code, § 47.) Embezzling public moneys, etc.; punishment for.

Whoever shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Act March 3, 1875, c. 144, § 1, 18 Stat. 479. Act March 4, 1909, c. 321, § 47, 35 Stat. 1097.

Notes of Decisions

See § 10200, ante, and notes thereunder.

Embezzlement.—Embezzlement within the statute is the fraudulent appropri-

ation of property by a person to whom the same has been intrusted or into whose hands it has lawfully come. McKnight v. U. S. (1899) 97 Fed. 208, 215, 38 C. C. A. 115.

Indictment.—Where an indictment charges, under this section, the embezzlement of a certain sum of money, belonging to the United States, by defendant, a post office employé, if the words charging defendant with being such an employé are material, it must be averred that the money embezzled came into his hands by virtue of such employment, since otherwise the allegation of employment is meaningless, and may be misleading. Moore v. U. S. (1895) 16 Sup. Ct. 294, 295, 160 U. S. 268, 40 L. Ed. 422.

Where in such indictment the words charging defendant's employment are treated as surplusage, the property embezzled must be identified with particularity, a mere averment that it was a certain amount not being sufficient. Id.

In an indictment founded on this section which alleges that the accused was an assistant in a post office of the United States, and that a certain sum of money belonging to the United States came into his hands in his capacity as such assistant, which he thereafter embezzled, a general description of the money as consisting of so many dollars and cents is sufficient. McBride v. U. S. (1900) 101 Fed. 821, 42 C. C. A. 38.

An indictment under this section, which charges defendant with stealing money "belonging to" the United States, sufficiently avers the ownership of the property stolen. Dimmick v. U. S. (1905) 135 Fed. 257, 70 C. C. A. 141.

In an indictment under Act March 3, 1825, c. 65, § 16, punishing any one who shall "fraudulently embezzle," etc., the word "feloniously" will not supply the place of "fraudulently." U. S. v. Forrest (C. C. 1826) Fed. Cas. No. 15,131.

An indictment under Act March 3, 1825, must state that defendant was employed in the bank of the United States or an office of discount and deposit, etc., in some state or territory of the United States. Id.

An indictment under this section charging defendant with the embezzlement of money of the United States is bad where it does not allege that he was a clerk or employé of the government, or that the money came lawfully into his possession by virtue of some employment. U. S. v. Allen (D. C. 1906) 150 Fed. 152.

Evidence.—Where defendant charged with larceny of money from a mint while employed therein as clerk, to account for his presence there at unusual hours, testified that he went to check up the pay rolls, it was competent for the government to show the length of time required to perform such work. Dimmick v. U. S. (1905) 135 Fed. 257, 70 C. C. A. 141.

While evidence to show motive is not essential to conviction in a criminal prosecution, where the guilt of defendant is clearly established it is admissible; and in a prosecution for larceny of money, where the evidence was largely circumstantial, it was not error to admit evidence to show that defendant was in debt at the time as tending to some extent to show a motive for the crime. Id.

It is not necessary to a conviction for larceny of money that the money, or any part of it, should be shown to have been in defendant's possession. Id.

Circumstantial evidence considered, and held sufficient to sustain a conviction for larceny. Id.

Cited without definite application, U. S. v. Mason (1910) 31 Sup. Ct. 28, 218 U. S. 517, 54 L. Ed. 1133; U. S. v. De Groat (D. C. 1887) 30 Fed. 764, 765.

§ 10215. (Crim. Code, § 48.) Receiving, etc., stolen public property; punishment for.

Whoever shall receive, conceal, or aid in concealing, or shall have or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined by any other person, knowing the same to have been so embezzled, stolen, or purloined, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both; and such person may be tried either before or after the conviction of the principal offender.

Act March 3, 1875, c. 144, § 2, 18 Stat. 479. Act March 4, 1909, c. 321, § 48, 35 Stat. 1098.

Notes of Decisions

Unconstitutionality of part of statute.—So much of Act March 3, 1875 (18 Stat. 479, c. 144, § 2), as provides that the judgment of conviction against the principal in the crime of embezzlement or larceny of property of the United States shall be evidence in the prosecution against a receiver thereof that the property was embezzled or stolen is in violation of Const. Amend. 6, declaring

that an accused shall be confronted with the witnesses against him. Kirby v. U. S. (1899) 19 Sup. Ct. 574, 577, 174 U. S. 47, 43 L. Ed. 890.

Character of property as stolen.—Stolen postage stamps sent by the thief to defendant were delivered up to a postmaster on written order of the thief, but were subsequently allowed to go forward, and to be delivered to defendant. Held, that they lost their character as stolen property. U. S. v. De Bare (D. C. 1875) Fed. Cas. No. 14,-935.

Felony.—Whether receiving property of the United States with the intent to convert the same, knowing it to have been stolen, is a felony, is a question of law, depending upon the punishment permitted by the United States statutes, of which a state court will take judicial notice. In re Kirby (1897) 73 N. W. 95, 10 S. D. 338.

Indictment.—An indictment under this section charging that the property was owned by the United States when it was stolen, and that defendant feloniously received such property knowing it to have been feloniously stolen, sufficiently alleges the United States' ownership when it was received by defendant, and need not aver the name of the person from whom the defendant received it or that such name was unknown to the grand jurors. Kirby v. U. S. (1899) 19 Sup. Ct. 574, 579, 174 U. S. 47, 43 L. Ed. 890.

In order to sustain federal jurisdiction of a prosecution for receiving stolen stamps, it was essential that the indictment allege and the proof show that they were stolen from the United States. Naftzger v. U. S. (1912) 200 Fed. 494, 118 C. C. A. 598.

In a prosecution for receiving stolen stamps, knowing them to have been stolen, an indictment held demurrable for uncertainty. Id.

An indictment for receiving stolen goods, charging that the accused received the goods from the principal felon, is not sustained by proof that they were received from the person to whom the thief had delivered them. U. S. v. De Bare (D. C. 1875) Fed. Cas. No. 14,935.

Bill of particulars.—If it appears at the trial to be essential in the preparation of the defense to an indictment for receiving stolen property that defendant should know the name of the person from whom the government expects to prove that the property was received, the court may require the prosecution to give a bill of particulars. Kirby v. U. S. (1899) 19 Sup. Ct. 574, 580, 174 U. S. 47, 43 L. Ed. 890.

Evidence.—On the trial of an indictment for receiving stolen property, consisting of certain pigs of tin, alleged to have been stolen from a pile, it was competent for the government to introduce in evidence other pigs from the same pile to show the similarity between them and the ones found on defendant's premises. Ahearn v. U. S. (1907) 158 Fed. 606, 85 C. C. A. 428, writ of certiorari denied (1908) 28 Sup. Ct. 567, 208 U. S. 615, 52 L. Ed. 646.

In a prosecution under this section for knowingly receiving property stolen from a navy yard of the United States, on the question of knowledge, evidence is admissible to show that the defendant had received and purchased articles of the same general character stolen from such navy yard at other times. Sapir v. U. S. (1909) 174 Fed. 219, 98 C. C. A. 227.

In a prosecution for receiving stolen stamps, evidence held insufficient to warrant a finding that they were stolen from the United States. Naftzger v. U. S. (1912) 200 Fed. 494, 118 C. C. A. 598.

In a prosecution for receiving stolen stamps, reports of post office inspectors as to post office robberies held inadmissible, as bearing on the issue of defendant's guilty knowledge. Id.

Abstract of reports of post office inspectors to the inspector in charge, with reference to post office robberies within the state, held inadmissible, as hearsay, in a prosecution for receiving stolen stamps. Id.

§ 10216. (Crim. Code, § 49.) Timber depredations on public lands; punishment for; rights of entrymen.

Whoever shall cut, or cause or procure to be cut, or shall wantonly destroy, or cause to be wantonly destroyed, any timber growing on the public lands of the United States; or whoever shall remove, or cause to be removed, any timber from said public lands, with intent to export or to dispose of the same; or whoever, being the owner, master, or consignee of any vessel, or the owner, director, or agent of any railroad, shall knowingly transport any timber so cut or removed from said lands, or lumber manufactured therefrom, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both. Nothing in this section shall prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking the timber necessary to support his improve-

ments, or the taking of timber for the use of the United States. And nothing in this section shall interfere with or take away any right or privilege under any existing law of the United States to cut or remove timber from any public lands.

Act June 3, 1878, c. 151, § 4, 20 Stat. 90. Act Aug. 4, 1892, c. 375, § 2, 27 Stat. 348. Act March 4, 1909, c. 321, § 49, 35 Stat. 1098.

Notes of Decisions

1. Criminal intent.
2. Cutting on railroad lands.
3. Clearing pre-emption or homestead claim.
4. Cutting and removing timber from mineral lands.
5. Taking timber for use in quartz mill.
6. Estoppel to prosecute.
7. Jurisdiction of Alaska justice court.
8. Indictment or information.
9. Evidence.
10. Instructions.
11. Civil action to recover value of timber.

1. Criminal intent.—Where defendant admits that he had cut timber on 300 acres of usurveyed government land, to which he had no claim or color of title, and there is evidence that he was informed by the register of the land office that he could not acquire title because the lands were not open to entry, and that he promised his workmen that he would stand between them and the government, and that he had fully exhausted all his privileges of purchasing such lands, the intent constituting the offense of unlawfully cutting timber on government land, defined by R. S. § 2461, ante, § 4980, and Act June 3, 1878, is sufficiently shown. Teller v. U. S. (1901) 113 Fed. 273, 51 C. C. A. 230.

Any cutting or removing timber from the public lands with intent to dispose of or wantonly to destroy the same, is a trespass for which the party guilty of the same is liable, civilly and criminally. U. S. v. Smith (C. C. 1882) 11 Fed. 487.

The manifest meaning of the statute is that the timber shall not be cut for the sake of the timber, but for the improvement of the land. U. S. v. Ball (C. C. 1887) 31 Fed. 667, 668. See, also, U. S. v. Young (C. C. 1882) 11 Fed. 493.

It is no defense to a prosecution for unlawful cutting of timber from public land that there was no criminal intent in the cutting. U. S. v. Murphy (C. C. 1887) 32 Fed. 376; Same v. Mann (C. C. 1887) Id. 386.

2. Cutting on railroad lands.—One cutting timber upon lands unearned and unpatented by a railroad to which they had been granted by act of congress violated Act June 3, 1878, c. 151, § 4. U. S. v. Childers (D. C. 1882) 12 Fed. 586, 589.

3. Clearing pre-emption or homestead claim.—A citizen who has made a regular and proper homestead entry is liable to a criminal prosecution for cutting and removing standing trees and timber found upon the land. Shiver v. U. S. (1895) 16 Sup. Ct. 54, 55, 159 U. S. 491, 40 L. Ed. 231.

Section 4 of Act June 3, 1878, prohibits the cutting of any timber on the public lands with intent to dispose of the same; but the proviso thereto permits a settler under the pre-emption and homestead acts to clear his claim as fast as the same is put under cultivation, and the timber cut in the course of such clearing may be disposed of by the settler to the best advantage. U. S. v. Williams (C. C. 1883) 18 Fed. 475.

While holding land under a homestead entry, the homesteader can only cut and sell the timber from such portions or parts of the land as are being cleared for cultivation or settlement. U. S. v. Murphy (C. C. 1887) 32 Fed. 376; Same v. Mann (C. C. 1887) Id. 386.

The United States cannot recover the value of timber cut from public land by a homestead settler during his residence thereon, which was continued until he became entitled to a patent; nor where, instead of completing his term of residence under the homestead law, he obtained title to the land by locating scrip thereon, relinquishing his homestead entry for the purpose. In neither case was there any trespass nor did the United States sustain any loss which can be the basis of a recovery of damages. U. S. v. Ellis (C. C. 1903) 122 Fed. 1016, following U. S. v. Ball (C. C. 1887) 31 Fed. 667; Id. 670, and writ of error dismissed (1891) 11 Sup. Ct. 1029, 140 U. S. 701, 35 L. Ed. 602.

If a person cuts and removes timber from lands which he knows to belong to the United States, and to be occupied under a homestead claim, under a purchase or license from the homesteader, and knowing also that the land from which it is taken is not to be put into immediate cultivation, he is presumed to have intended to take the timber unlawfully, and is subject to prosecution therefor. U. S. v. Niemeyer (D. C. 1899) 94 Fed. 147.

4. Cutting and removing timber from mineral lands.—The right given by Act June 3, 1878, c. 150, 20 Stat. 88, ante, § 4989, to citizens of the states of Colorado and Nevada, and the territories, excepting Washington, to cut timber from public mineral lands for certain domestic purposes, was not affected by the act of the same date (20 Stat. 89) for the sale of timber lands in the states of California, Oregon, Nevada,

and in Washington territory, and which prohibited the cutting of timber on any public lands in those states and territory with intent "to export or dispose of the same," as amended by Act Aug. 4, 1892, c. 375, 27 Stat. 348, ante, § 4671, by striking out the names of the states and territory therein named and inserting in lieu thereof the words "public-land states." The first act was special, and designed for the benefit of the residents of states and territories in many parts of which timber is scarce, and the amendment to the second act must be construed as authorizing the sale of timber lands in all other public-land states, and not as repealing by implication the privileges conferred by such special act. U. S. v. Price Trading Co. (1901) 109 Fed. 239, 48 C. C. A. 331.

The exclusive right to occupy and work a mineral claim, given to the locator by the mining laws during his occupancy, does not segregate such claim from the public domain, so as to exclude such land from the operation of this statute. Teller v. U. S. (1901) 113 Fed. 273, 51 C. C. A. 230.

Timber upon mineral lands in the state of California was protected and governed by the provisions of Act June 3, 1878, c. 151. U. S. v. Benjamin (C. C. 1884) 21 Fed. 285.

One who cuts and removes timber from mineral lands of the United States, and sells the same, or the lumber manufactured therefrom, without taking from the purchaser a written statement of the purposes for which the same is intended to be used, as required by the regulations of the secretary of the interior made under Act June 3, 1878, is guilty of a violation of that statute, and subject to its penalties. U. S. v. Reder (D. C. 1895) 69 Fed. 965.

On the trial of an indictment for cutting timber from mineral lands of the United States for purposes other than agricultural, mining, or domestic, contrary to Act June 3, 1878, the intent is immaterial. Id.

5. **Taking timber for use in quartz mill.**—The proviso to Act June 3, 1878, c. 151, § 4, prohibiting the cutting and removal of timber on the public domain, provides that it shall not prevent any miner from clearing land in working his claim, or from taking timber to support his improvements. Held, that the taking of the timber for use in a quartz mill adjacent to the land from which it was cut was not within the proviso, and hence was prohibited by the act. U. S. v. English (C. C. 1901) 107 Fed. 867, judgment affirmed English v. U. S. (1902) 116 Fed. 625, 54 C. C. A. 81.

Under Act June 3, 1878, c. 151, § 4, prohibiting the cutting and removal of timber on the public domain, and providing that such act shall not prevent any miner from clearing land in working his claim, or from cutting timber to support his improvements, the unlawfulness of cutting for use in a quartz mill adjacent to the lands from which it is taken being fairly open to question, cutting for such purpose will not be held willful, and hence the penalty prescribed will not be imposed. Id.

6. **Estoppel to prosecute.**—The fact that defendant was induced, through the wrong representations of the register of the land office, to believe in the unrestricted right of the homesteader to cut timber from his entry, does not estop the government from prosecuting him for such unlawful cutting. U. S. v. Murphy (C. C. 1887) 32 Fed. 376; Same v. Mann (C. C. 1887) Id. 386.

7. **Jurisdiction of Alaska justice court.**—The defendants were arrested for a violation of this section. They were brought before a justice of the peace in Alaska for preliminary examination, and demanded trial under the section 410 of the Alaska Code of Criminal Procedure, which gives a justice of the peace jurisdiction to try "any misdemeanor punishable by imprisonment in the county jail, or by fine, or by both." Held, the justice court in Alaska is a court of limited jurisdiction, and has no jurisdiction to try offenses other than those within the limits of its jurisdiction found in and denounced by the Alaska penal statutes which specially confer power on that court. It has no jurisdiction to try persons accused of violation of general penal laws of the United States, though the penalty may be within the limit of the jurisdiction conferred on such justice courts. U. S. v. Bozaravitch (1910) 4 Alaska, 37.

8. **Indictment or information.**—An information charging the unlawful cutting of timber on public lands although drawn to conform to the requirements of R. S. § 2461, ante, § 4980, and intended to charge an offense thereunder, may be treated as drawn under Act June 3, 1878, c. 151, § 4, 20 Stat. 90, where it contains all the averments necessary to charge an offense thereunder. Stubbs v. U. S. (1901) 111 Fed. 366, 49 C. C. A. 392, reversing judgment on rehearing (1900) 104 Fed. 988, 44 C. C. A. 292.

The clause specifying intent, in section 4 of Act June 3, 1878, which declares it unlawful "to cut, or cause or procure to be cut, or wantonly destroy, any timber growing on any lands of the United States, * * * or remove or cause to be removed any timber from said public lands, with intent to export or dispose of the same," qualifies the cutting as well as the removal of timber; and an indictment for cutting timber on the public lands specified in the act, which does not allege that the defendant intended to export

or dispose of the timber so cut, is fatally defective. U. S. v. Hacker (D. C. 1896) 73 Fed. 292.

9. Evidence.—The burden rests on the defendant to establish the defense that such cutting was lawful under the act which authorizes the cutting of timber from mineral lands for certain purposes and under prescribed regulations. Stubbs v. U. S. (1900) 104 Fed. 988, 44 C. C. A. 292; Id. (1901) 111 Fed. 366, 49 C. C. A. 392.

On the trial of one accused of unlawfully cutting timber on land of the United States, evidence that about the time of the cutting defendant purchased and paid for the full quantity of similar land, which he could purchase under the stone and timber act is inadmissible to show that he would not intentionally commit a trespass. Teller v. U. S. (1901) 113 Fed. 273, 51 C. C. A. 230.

Where the cutting is admitted, the only intent necessary to show is the intent to export or dispose of the timber. Id.

On the trial of one accused of unlawfully cutting timber on land of the United States, evidence of a custom in that locality, known to the general land office, of entering on land and cutting the timber therefrom before patent was obtained, is inadmissible, since a custom to violate the law cannot justify itself. Id.

Where defendant unlawfully cut timber on public land, the fact that he acted in accordance with a general custom in that locality is not evidence of an honest intent on his part. Id.

Where defendant unlawfully cut timber on public land, the fact that before cutting he endeavored to ascertain whether the land was surveyed, and also notified a special agent of the government that he was cutting the timber, and was not warned off for three weeks, is not evidence of an honest intent. Id.

Where accused shows that he had a mineral entry, which, under the law, entitled him to cut timber therefrom for certain purposes, the presumption arises that the cutting done was for such legal purposes; and the burden rests upon the government to prove, beyond a reasonable doubt, that it was not. U. S. v. Routledge (1896) 45 P. 883, 8 N. M. 385.

10. Instructions.—On the trial of defendant for unlawfully cutting timber on public land, the court charged that, in order to convict, the jury must find that there existed in his mind a willful and wrongful purpose to obtain the timber in violation of law; and that if he entered on public land knowing it was such, without having complied with the provisions of law giving him a right to do so, and cut timber therefrom, they would be authorized to find the requisite criminal intent. Held, that such charge fairly stated the law, and was as favorable to defendant as he was entitled to. Teller v. U. S. (1901) 113 Fed. 273, 51 C. C. A. 230.

11. Civil action to recover value of timber.—Act June 3, 1878, c. 151, § 4, 20 Stat. 90, which makes it unlawful and punishable as a misdemeanor to cut timber growing on any lands of the United States in the states of California, Oregon, Nevada, or in Washington Territory, or to remove or cause to be removed any timber from said public lands "with intent to export or dispose of the same," whatever may be its proper construction as a penal statute, cannot be construed to authorize persons to cut and remove timber from public lands for their own use, beyond the express authority given in the proviso in favor of miners and agriculturists; and timber so cut or removed remains the property of the United States, which may recover it, or its value, in a civil action. Judgment (C. C. 1901) United States v. English, 107 Fed. 867, affirmed. English v. U. S. (1902) 116 Fed. 625, 54 C. C. A. 81.

In action for value of timber cut from unperfected homestead, evidence held to justify finding that entryman cut and sold the timber in ignorance that he was violating the law. H. D. Williams Cooperage Co. v. U. S. (1915) 221 Fed. 234, 137 C. C. A. 90.

Entryman held to have no legal right to cut and to sell timber from uncultivated part of unperfected homestead. Id.

A willful trespasser is liable to the government, not only for the value of timber cut and sold from an unperfected homestead, but for the value of the product created by his labor. Id.

Homestead entryman, who acted in good faith in cutting and selling timber, held not a willful trespasser, and the giving and refusing of instructions, on the theory that he was, was error. Id.

The same rule of damages is applicable to a purchaser of timber cut from an unperfected homestead as is applicable to the original trespasser. Id.

§ 10217. (Crim. Code, § 50, as amended, Act June 25, 1910, c. 431, § 6.) Timber, etc., depredations on Indian lands or trust allotments; punishment for.

Whoever shall unlawfully cut, or aid in unlawfully cutting, or shall wantonly injure or destroy, or procure to be wantonly injured or destroyed, any tree, growing, standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any

Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

R. S. § 5388, as amended, Act June 4, 1888, c. 340, 25 Stat. 166. Act March 4, 1909, c. 321, § 50, 35 Stat. 1098. Act June 25, 1910, c. 431, § 6, 36 Stat. 857.

This section was amended by Act June 25, 1910, c. 431, § 6, cited above, by inserting the words "or any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States," as set forth here.

Notes of Decisions

1. Power of Congress to enact law.
2. Definition of "timber."
3. Lands of United States.
4. Lands reserved in general.
5. Cutting or removing from lands reserved for naval purposes.
6. Timber on military or Indian reservations or lands.
7. Purchase of timber cut by Indian allottee.
8. Turpentine boxing or wanton destruction on lands open to pre-emption and other entries.
9. Proceedings for cutting timber in general.
10. Prosecution of citizen who has made homestead entry.
11. Seizure of property belonging to wrongdoer.
12. Indictment.
13. Evidence.
14. Nominal fine.

1. Power of Congress to enact law.—Congress has power to enact laws to punish the unauthorized cutting of timber on unallotted lands in an Indian reservation within a state, the title to which is in the United States, and to confer jurisdiction on federal courts to enforce them. U. S. v. Kempf (D. C. 1909) 171 Fed. 1021.

2. Definition of "timber."—The term "timber" signifies the standing trees and the felled trees prepared for transportation to a vessel or sawmill, such as sawlogs or lumber in bulk, but does not embrace any article manufactured from the tree, such as shingles or boards. U. S. v. Schuler (C. C. 1853) Fed. Cas. No. 16,234.

3. Lands of United States.—The Cherokee tribe derived the title to their lands by grant from the United States, and such lands cannot be held to be "lands of the United States," within R. S. § 5388 (embodied herein). U. S. v. Reese (C. C. 1879) Fed. Cas. No. 16,137.

The lands lying in the "Cherokee Strip" which are leased to whites are not lands of the United States within the meaning of R. S. § 5388 (embodied herein), which penalizes the cutting or destroying of timber on the lands of the United States. (1887) 18 Op. Atty. Gen. 555.

4. Lands reserved in general.—The general public domain is open to private entry, and lands cannot be said to be reserved for such entry. The lands reserved are those severed from the mass of public land and appropriated for governmental purposes. U. S. v. Garretson (C. C. 1890) 42 Fed. 22, 24.

5. Cutting or removing from lands reserved for naval purposes.—An indictment will lie for cutting or removing timber from any of the public lands, though the same are not reserved for naval purposes. U. S. v. Redy (C. C. 1852) Fed. Cas. No. 16,133; Same v. Schuler (C. C. 1853) Fed. Cas. No. 16,234.

6. Timber on military or Indian reservations or lands.—R. S. § 5388, as amended June 4, 1888 (embodied herein), which forbids the cutting or wanton destruction of timber upon military or Indian reservations, does not apply to one who removes and uses for building purposes timber which has been cut on an Indian reservation by another person without his aid or encouragement. U. S. v. Konkapot (C. C. 1890) 43 Fed. 64.

The cutting or destroying of timber on lands which have been patented to individual Indians is not an offense. (1888) 19 Op. Atty. Gen. 183.

Indians occupying reservations, the title to which is in the United States subject to their occupancy, have no right to cut and remove the dead and fallen timber thereon for the purpose of sale alone; such timber, where not used by the Indians for fuel or for agricultural or other purposes connected with the occupation of the land, being the property of the United States. (1888) 19 Op. Atty. Gen. 194.

Under the treaty between the government and the Osage Indians, and the policy of the government in its dealings with Indians, the Osage tribe occupy their reservation under the authority of the United States. The fact that the government issued a patent to the Indians for lands embraced within their reservation does not take such reservation out of Act June 4, 1888, prohibiting the cutting of timber upon lands belonging to or occupied by Indians under authority of the United States. Labadie v. U. S. (1897) 51 P. 666, 6 Okl. 400.

Act June 4, 1888, prohibiting the cut-

ting of timber on Indian lands, is applicable to an Indian sustaining tribal relations who cuts timber for speculative purposes. Id.

7. Purchase of timber cut by Indian allottee.—Conceding that the United States, as trustee for Indian allottees, has authority to protect them from imposition and fraud in respect to their lands, it cannot recover in trover from one who in good faith and for a fair price has purchased timber cut by an allottee from his land, where it has itself no beneficial interest in the land. U. S. v. Torrey Cedar Co. (C. C. 1904) 154 Fed. 263, judgment affirmed U. S. v. Paine Lumber Co. (1907) 27 Sup. Ct. 697, 206 U. S. 467, 51 L. Ed. 1139.

This statute is not applicable to Indian allottees under the Stockbridge and Munsee treaty of 1856 (11 Stat. 603). Id.

8. Turpentine boxing or wanton destruction on lands open to pre-emption and other entries.—R. S. § 5388 (embodied herein), making the wanton destruction of timber on lands reserved for public uses a crime, does not cover turpentine boxing or wanton destruction of timber on lands open for pre-emption, homestead, and cash entries. U. S. v. Garretson (C. C. 1890) 42 Fed. 22.

9. Proceedings for cutting timber in general.—The government may proceed civilly or criminally for cutting timber. Bly v. U. S. (C. C. 1877) Fed. Cas. No. 1,581.

10. Prosecution of citizen who has made homestead entry.—A citizen who has made a regular and proper homestead entry is nevertheless liable to a criminal prosecution under section 4980, ante, and R. S. § 5388 (embodied herein) for cutting and removing standing trees and timber found upon the land. Shiver v. U. S. (1895) 16 Sup. Ct. 54, 159 U. S. 491, 40 L. Ed. 231.

11. Seizure of property belonging to wrongdoer.—R. S. § 5388 (embodied herein), which imposes a fine for timber depredations upon the public lands of the United States, makes no provision for seizure of property belonging to a wrongdoer. (1887) 18 Op. Atty. Gen. 555.

12. Indictment.—The rule of proof on an indictment for cutting and removing timber from public lands is fixed by the statute. Act March 2, 1831. U. S. v. Darton (C. C. 1853) Fed. Cas. No. 14,919.

An indictment for cutting oak on public lands cannot be sustained by evidence that defendant cut pine. Id.

An indictment for removing timber from public lands must state the particular section or quarter section from which the timber was taken, as a part of the description of the offense. U. S. v. Schuler (C. C. 1853) Fed. Cas. No. 16,234.

An indictment for removal need not allege that the timber was removed from the land on which it was grown, or from which it was cut. Id.

An indictment which describes the land, in general language, as "lands of the United States," is not sufficient. Id.

In an indictment for cutting timber it is not necessary to state the class of lands from which the trees were cut. U. S. v. Thompson (C. C. 1853) Fed. Cas. No. 16,490.

In such an indictment it is not necessary to describe every kind of timber cut. U. S. v. Redy (C. C. 1852) Fed. Cas. No. 16,133.

13. Evidence.—In prosecutions for cutting timber, the official plats and books in the land office are admissible to show title. Bly v. U. S. (C. C. 1877) Fed. Cas. No. 1,581.

Parol evidence is inadmissible to show that the locus in quo was swamp land. Id.

14. Nominal fine.—A nominal fine, only, imposed for cutting timber, where defendant had made full reparation, and there was no intention to defraud the public. U. S. v. Murray (C. C. 1851) Fed. Cas. No. 15,843.

Cited without definite application, Pine River Logging & Improvement Co. v. U. S. (1902) 22 Sup. Ct. 920, 922, 186 U. S. 279, 46 L. Ed. 1164; U. S. v. 11,150 Pounds of Butter (1912) 195 Fed. 657, 115 C. C. A. 463; U. S. v. Shannon (C. C. 1907) 151 Fed. 863 (affirmed [1908] 160 Fed. 870, 88 C. C. A. 52); U. S. v. Bale (D. C. 1907) 156 Fed. 687; U. S. v. Grimaud (D. C. 1909) 170 Fed. 205, reversed (1911) 31 Sup. Ct. 480, 220 U. S. 506, 55 L. Ed. 563.

§ 10218. (Crim. Code, § 51.) Boxing, etc., trees for turpentine, etc.; punishment for.

Whoever shall cut, chip, chop, or box any tree upon any lands belonging to the United States, or upon any lands covered by or embraced in any unperfected settlement, application, filing, entry, selection, or location, made under any law of the United States, for the purpose of obtaining from such tree any pitch, turpentine, or other substance, or shall knowingly encourage, cause, procure, or aid in the cutting, chipping, chopping, or boxing of any such tree, or shall buy, trade for, or in any manner acquire any pitch, turpentine, or other substance, or any article or commodity made from any such pitch,

turpentine, or other substance, when he has knowledge that the same has been so unlawfully obtained from such trees, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both.

Act June 4, 1906, c. 2571, 34 Stat. 208. Act March 4, 1909, c. 321, § 51, 35 Stat. 1098.

Notes of Decisions

See notes under the preceding section.

Civil liability defined.—See U. S. v. Waters-Pierce Oil Co. (1912) 196 Fed. 767, 116 C. C. A. 391 (modifying judgment [C. C. 1910] 180 Fed. 309); Union Naval Stores Co. v. U. S. (1913) 202 Fed. 491, 123 C. C. A. 1.

Cited without definite application, Parish v. U. S. (1911) 184 Fed. 590, 106 C. C. A. 570.

§ 10219. (Crim. Code, § 52.) Setting fire to timber on public lands; punishment for.

Whoever shall willfully set on fire, or cause to be set on fire, any timber, underbrush, or grass upon the public domain, or shall leave or suffer fire to burn unattended near any timber or other inflammable material, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

Act Feb. 24, 1897, c. 313, § 1, 29 Stat. 594, as amended, Act May 5, 1900, c. 349, 31 Stat. 169. Act March 4, 1909, c. 321, § 52, 35 Stat. 1098.

§ 10220. (Crim. Code, § 53, as amended, Act June 25, 1910, c. 431, § 6.) Failing to extinguish fires; punishment for.

Whoever shall build a fire in or near any forest, timber, or other inflammable material upon the public domain, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or upon any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall, before leaving said fire, totally extinguish the same; and whoever shall fail to do so shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

Act Feb. 24, 1897, c. 313, § 2, 29 Stat. 594, as amended, Act May 5, 1900, c. 349, 31 Stat. 170. Act March 4, 1909, c. 321, § 53, 35 Stat. 1098; Act June 25, 1910, c. 431, § 6, 36 Stat. 857.

This section was amended by Act June 25, 1910, c. 431, § 6, cited above, by inserting, after the words "public domain," the words beginning "or upon any Indian reservation" and ending "without the consent of the United States," as set forth here.

§ 10221. (Crim. Code, § 54.) Fines to be paid into school funds.

In all cases arising under the two preceding sections the fines collected shall be paid into the public school fund of the county in which the lands where the offense was committed are situated.

Act Feb. 24, 1897, c. 313, § 3, 29 Stat. 594. Act May 5, 1900, c. 349, 31 Stat. 170. Act March 4, 1909, c. 321, § 54, 35 Stat. 1099.

§ 10222. (Crim. Code, § 55.) Trespassing on Bull Run National Forest, Oregon; punishment for.

Whoever, except forest rangers and other persons employed by the United States to protect the forest, federal, and state officers in the discharge of their duties, and the employees of the water board of the city of Portland, State of Oregon, shall knowingly trespass upon any part of the reserve known as Bull Run National Forest, in the Cascade Mountains, in the State of Oregon, or shall enter thereon for the purpose of grazing stock, or shall engage in grazing stock thereon, or shall permit stock of any kind to graze thereon, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

Act April 28, 1904, c. 1774, 33 Stat. 526. Act March 4, 1909, c. 321, § 55, 35 Stat. 1099.

§ 10223. (Crim. Code, § 56.) Breaking fences, driving cattle, etc., on inclosed public lands; punishment for; lands excepted.

Whoever shall knowingly and unlawfully break, open, or destroy any gate, fence, hedge, or wall inclosing any lands of the United States which, in pursuance of any law, have been reserved or purchased by the United States for any public use; or whoever shall drive any cattle, horses, hogs, or other live stock upon any such lands for the purpose of destroying the grass or trees on said lands, or where they may destroy the said grass or trees; or whoever shall knowingly permit his cattle, horses, hogs, or other live stock, to enter through any such inclosure upon any such lands of the United States, where such cattle, horses, hogs, or other live stock may or can destroy the grass or trees or other property of the United States on the said lands, shall be fined not more than five hundred dollars, or imprisoned not more than one year, or both: Provided, That nothing in this section shall be construed to apply to unreserved public lands.

Act March 3, 1875, c. 151, §§ 2, 3, 18 Stat. 481, 482. Act March 4, 1909, c. 321, § 56, 35 Stat. 1099.

Notes of Decisions

Implied license to use land for pasture.—There is no implied license to use for pasture purposes public land reserved for the preservation of forests, to the destruction or injury of such forests. U. S. v. Tygh Valley Land & Live-Stock Co. (C. C. 1896) 76 Fed. 693.

§ 10224. (Crim. Code, § 57.) Injuring or removing survey marks; punishment for.

Whoever shall willfully destroy, deface, change, or remove to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or shall willfully cut down any witness tree or any tree blazed to mark the line of a Government survey, or shall willfully deface, change, or remove any monument or bench mark of any Government survey, shall be fined not more than two hundred and fifty dollars, or imprisoned not more than six months, or both.

Act June 10, 1896, c. 398, § 1, 29 Stat. 343. Act March 4, 1909, c. 321, § 57, 35 Stat. 1099.

§ 10225. (Crim. Code, § 58.) Interrupting surveys; punishment for.

Whoever in any manner, by threats or force, shall interrupt, hinder, or prevent the surveying of the public lands, or of any private land claim which has been or may be confirmed by the United States, by the persons authorized to survey the same, in conformity with the instructions of the Commissioner of the General Land Office, shall be fined not more than three thousand dollars and imprisoned not more than three years.

R. S. § 2412. Act March 4, 1909, c. 321, § 58, 35 Stat. 1099.

Notes of Decisions

"Public lands" within statute.—Unpatented mining claims, though claimed by a corporation and subject to patent, to wit, on compliance with prescribed conditions, held nevertheless "public lands," within R. S. § 2412, making it an offense for any person to interfere with the survey of lands belonging to the United States. U. S. v. Fickett (1913) 205 Fed. 134, 123 C. C. A. 366.

§ 10226. (Crim. Code, § 59.) Agreement to prevent bids at land sales; punishment for.

Whoever, before or at the time of the public sale of any of the lands of the United States, shall bargain, contract, or agree, or attempt to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof; or whoever by intimidation, combination, or unfair management shall hinder or prevent, or at-

tempt to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

R. S. § 2373. Act March 4, 1909, c. 321, § 59, 35 Stat. 1099.

Notes of Decisions

Purpose of statute in general.—This section was intended to protect the government and punish all persons who enter into combinations or conspiracies to prevent others from bidding at the sales, either by agreement not to do so, or by intimidation, threats, or violence. Fackler v. Ford (1860) 24 How. 322, 332, 16 L. Ed. 690. See, also, Wright v. Shumway (D. C. 1853) Fed. Cas. No. 18,093.

Indirect agreement as within statute.—An indirect agreement not to bid at a sale of public land is within the statute. Stannard v. McCarty (Iowa, 1841) Morris, 124.

§ 10227. (Act June 25, 1910, c. 431, § 5.) Inducing conveyances by Indians of trust interests in lands; punishment for; exception.

It shall be unlawful for any person to induce any Indian to execute any contract, deed, mortgage, or other instrument purporting to convey any land or any interest therein held by the United States in trust for such Indian, or to offer any such contract, deed, mortgage, or other instrument for record in the office of any recorder of deeds. Any person violating this provision shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding five hundred dollars for the first offense, and if convicted for a second offense may be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: Provided, That this section shall not apply to any lease or other contract authorized by law to be made. (36 Stat. 857.)

This section was part of an act to provide for determining the heirs of deceased Indians, etc., cited above.

§ 10228. (Crim. Code, § 60.) Injuries to United States telegraph, etc., lines; punishment for.

Whoever shall willfully or maliciously injure or destroy any of the works, property, or material of any telegraph, telephone, or cable line, or system, operated or controlled by the United States, whether constructed or in process of construction, or shall willfully or maliciously interfere in any way with the working or use of any such line, or system, or shall willfully or maliciously obstruct, hinder, or delay the transmission of any communication over any such line, or system, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both.

Act June 23, 1874, c. 461, 18 Stat. 250. Act March 4, 1909, c. 321, § 60, 35 Stat. 1099.

§ 10229. (Crim. Code, § 61.) Counterfeiting weather forecasts; punishment for.

Whoever shall knowingly issue or publish any counterfeit weather forecast or warning of weather conditions falsely representing such forecast or warning to have been issued or published by the Weather Bureau, United States Signal Service, or other branch of the Government service, shall be fined not more than five hundred dollars, or imprisoned not more than ninety days, or both.

Act March 3, 1905, c. 1405, 33 Stat. 864. Act March 4, 1909, c. 321, § 61, 35 Stat. 1088.

§ 10230. (Crim. Code, § 62.) Molesting Animal Industry employees; punishment for; using deadly weapon; punishment for.

Whoever shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer or employee of the Bureau of Animal

Industry of the Department of Agriculture in the execution of his duties, or on account of the execution of his duties, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both; and whoever shall use any deadly or dangerous weapon in resisting any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duties, or on account of the performance of his duties, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

Act March 3, 1905, c. 1496, § 4, 33 Stat. 1265. Act March 4, 1909, c. 321, § 62, 35 Stat. 1100.

Cited without definite application, St. Louis Merchants' Bridge Terminal Ry. Co. v. U. S. (1911) 188 Fed. 191, 110 C. C. A. 63; U. S. v. Southern Ry. Co. (C. C. 1911) 187 Fed. 209.

§ 10231. (Crim. Code, § 63.) Forging customs entry certificates; punishment for.

Whoever shall forge, counterfeit, or falsely alter any certificate of entry made or required to be made in pursuance of law by any officer of the customs, or shall use any such forged, counterfeited or falsely altered certificate, knowing the same to be forged, counterfeited, or falsely altered, shall be fined not more than ten thousand dollars and imprisoned not more than three years.

R. S. § 5417. Act March 4, 1909, c. 321, § 63, 35 Stat. 1100.

Notes of Decisions

Setting out instrument in indictment.—The rule which requires a setting out of an entire instrument or its tenor in an indictment in the federal courts is limited mainly, if not wholly, to cases of forgery, counterfeiting, and sending threatening letters. U. S. v. Heinze (C. C. 1908) 161 Fed. 425.

§ 10232. (Crim. Code, § 64.) Concealing or destroying invoices, etc.; punishment for.

Whoever shall willfully conceal or destroy any invoice, book, or paper relating to any merchandise liable to duty, which has been or may be imported into the United States from any foreign port or country, after an inspection thereof has been demanded by the collector of any collection district, or shall at any time conceal or destroy any such invoice, book, or paper for the purpose of suppressing any evidence of fraud therein contained, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

R. S. § 5443. Act March 4, 1909, c. 321, § 64, 35 Stat. 1100.

Notes of Decisions

Conspiracy.—A conspiracy to conceal or destroy papers relating to imported merchandise (R. S. § 5443 [embodied herein]) sent by the consignor to the consignee, showing its fraudulent entry, is punishable under R. S. § 5440, ante, § 10,201. U. S. v. De Grieff (C. C. 1879) Fed. Cas. No. 14,936.

Sufficiency of indictment charging a conspiracy to conceal or destroy papers relating to imported merchandise sent by the assignor to the consignee showing its fraudulent entry. R. S. §§ 5440, 5443 (this compilation, §§ 10201, 10232). Id.

§ 10233. (Crim. Code, § 65.) Resisting revenue officers, rescuing or destroying seized property, etc.; punishment for; using deadly weapon; punishment for.

Whoever shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer of the customs or of the internal revenue, or his deputy, or any person assisting him in the execution of his duties, or any person authorized to make searches and seizures, in the execution of his duty, or shall rescue, attempt to rescue, or cause to be rescued, any property which has been seized by any per-

son so authorized; or whoever before, at, or after such seizure, in order to prevent the seizure or securing of any goods, wares, or merchandise by any person so authorized, shall stave, break, throw overboard, destroy, or remove the same, shall be fined not more than two thousand dollars, or imprisoned not more than one year, or both; and whoever shall use any deadly or dangerous weapon in resisting any person authorized to make searches or seizures, in the execution of his duty, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duty, shall be imprisoned not more than ten years.

R. S. § 5447. Act March 4, 1909, c. 321, § 65, 35 Stat. 1100.

Notes of Decisions

Offense in general.—R. S. § 5447 (embodied herein), relates to assaults, resistances, or interferences by an individual, and to the use of deadly or dangerous weapons with intent to commit bodily injury, or to deter or prevent the person authorized from discharging his duty, and it does not deal with the case of conspiracy and the actual commission of personal or bodily injury, and is entirely consistent with R. S. § 5508 (ante, § 10183), and section 5509 which only extend the same principle to crimes actually committed pursuant to a conspiracy to prevent the exercise of the authority conferred by law. U. S. v. Patrick (C. C. 1893) 54 Fed. 338, 349.

Meaning of "any officer" and "execution of his duty."—The provisions of the Chinese restriction acts requiring the customs officers to prevent the landing from boats or vessels of Chinese who are not entitled to land do not impose upon those officers the duty of arresting Chinese who are already in the United States without right, nor is there any law imposing such duty; and hence an inspector who, without legal process, attempts to make such arrests, acts merely as a private citizen, and one who opposes him therein is not guilty of opposing "any officer" of the customs in the "execution of his duty," within the meaning of this section. U. S. v. Baird (D. C. 1891) 48 Fed. 554.

The phrases "any officer" and "execution of his duty" refer to official character rather than to an individual and to official duty appertaining to an office. Id.

Exemption of officer from arrest.—A customs officer is not exempt from arrest under civil process from a state court, by this section. Ex parte Murray (D. C. 1888) 35 Fed. 496.

Severable offense.—Though several persons are concerned in resisting a revenue officer in the execution of his duty, the offense, under Act March 23, 1823, c. 58, is severable, and separate penalties are recoverable. U. S. v. Babson (D. C. 1838) Fed. Cas. No. 14,489.

Assault on inspector of customs.—An inspector of customs, whose official duties require him to be at a particular dock, there to await the arrival of a vessel, so as to watch the discharge of her cargo or superintend it, if at such a place for that purpose, is there in the discharge of his duties as such inspector, and an assault made on the inspector under such circumstances is an interference with the discharge of his official duties, under this section. U. S. v. McEwan (C. C. 1890) 44 Fed. 594.

Using deadly weapon in resisting Indian agent.—Act July 18, 1866 (14 Stat. 178, c. 201), entitled "An act to further prevent smuggling and for other purposes," provides (section 6) that any person who shall assault, resist, etc., any officer of the customs or his deputies, or any person authorized "by this act" to make searches and seizures, shall receive a prescribed punishment, and that if any person shall discharge any deadly weapon at any person authorized "as aforesaid" to make searches and seizures, he shall be deemed guilty of felony, etc. This section, omitting the quoted portions, was incorporated into R. S. § 5447 (embodied herein), being placed in a chapter entitled "Crimes against the Operation of the Government," with a marginal note defining it as "resisting revenue officers, rescuing or destroying seized property," etc. Held, that using a deadly weapon in resisting an Indian agent who was making search for spirituous liquors on the reservation did not fall within section 5447. Mackey v. Miller (1903) 126 Fed. 161, 62 C. C. A. 139.

§ 10234. (Crim. Code, § 66.) Falsely assuming to be a revenue officer; punishment for.

Whoever shall falsely represent himself to be a revenue officer, and, in such assumed character, demand or receive any money or other article of value from any person for any duty or tax due to the United States, or for any violation or pretended violation of any

revenue law of the United States, shall be fined not more than five hundred dollars and imprisoned not more than two years.

R. S. § 5448. Act March 4, 1909, c. 321, § 66, 35 Stat. 1100.

Notes of Decisions

Indictment.—An indictment charging that defendants, unlawfully and feloniously, falsely represented themselves to be revenue officers of the United States, and in such assumed character did demand and receive $200 from I., for a pretended violation by the latter of Act June 13, 1898, in respect of knowingly and willfully buying washed revenue stamps, etc., and with having such washed and restored revenue stamps in possession knowingly and without lawful excuse as prohibited by this section was sufficient. U. S. v. Brown (C. C. 1902) 119 Fed. 482.

§ 10235. (Crim. Code, § 67.) Offering presents to customs officer; punishment for.

Whoever, being engaged in the importation into the United States of any goods, wares, or merchandise, or being interested as principal, clerk, or agent in the entry of any goods, wares, or merchandise, shall at any time make, or offer to make, to any officer of the revenue, any gratuity or present of money or other thing of value, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

R. S. § 5452. Act March 4, 1909, c. 321, § 67, 35 Stat. 1100.

§ 10236. (Crim. Code, § 68.) Admitting entries for less than legal duty; punishment for.

Whoever, being an officer of the revenue, shall, by any means whatever, knowingly admit or aid in admitting to entry, any goods, wares, or merchandise, upon payment of less than the amount of duty legally due thereon, shall be removed from office and fined not more than five thousand dollars, or imprisoned not more than two years, or both.

R. S. § 5444. Act March 4, 1909, c. 321, § 68, 35 Stat. 1101.

Notes of Decisions

Entry of goods in general.—This section, relating to the crime of illegally admitting imported goods to "entry," does not refer merely to the act of filing at the custom house the document known as an "entry," but comprises the transaction of entering the goods into the body of the commerce of the country; that is, the whole process of passing the goods through the custom house, which cannot be deemed complete until liquidation has been had. U. S. v. Mescall (C. C. 1908) 164 Fed. 584.

Performance of assigned duty.—Under this section an officer is indictable where he knowingly and corruptly aids an importer in effecting an entry on payment of less than the legal duty, although his action was in the performance of a duty assigned to him by a superior officer which he was not obligated to perform, and could not legally perform under the statute. U. S. v. Rosenthal (C. C. 1903) 126 Fed. 766, judgment affirmed Browne v. U. S. (1905) 145 Fed. 1, 76 C. C. A. 31, writ of certiorari denied (1906) 26 Sup. Ct. 755, 200 U. S. 618, 50 L. Ed. 623.

Aid before and after the fact.—This section includes aid given both before and after the fact; and where a customs officer aids one who has made wrongful entry, by concealing the falsity of the entry, or by supporting it by false official returns, he is within the prohibition of the section. U. S. v. Mescall (C. C. 1908) 164 Fed. 584.

Cited without definite application, Greene v. U. S. (1907) 154 Fed. 401, 85 C. C. A. 251 (certiorari denied [1907] 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357); Ex parte Browne (C. C. 1906) 148 Fed. 68 (affirmed [1907] 27 Sup. Ct. 539, 205 U. S. 309, 51 L. Ed. 816, 10 Ann. Cas. 636); U. S. v. McMahon (D. C. 1909) 175 Fed. 296.

§ 10237. (Crim. Code, § 69.) Securing false entry of goods; punishment for.

Whoever, by any means whatever, shall knowingly effect, or aid in effecting, any entry of goods, wares, or merchandise, at less than the true weight or measure thereof, or upon a false classification thereof as to quality or value, or by the payment of less than the

amount of duty legally due thereon, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

R. S. § 5445. Act March 4, 1909, c. 321, § 69, 35 Stat. 1101.

Notes of Decisions

Repeal of original statute.—R. S. § 5445 (embodied herein), held not repealed by Act June 22, 1874, § 12, nor by Act June 10, 1890, § 9. Heike v. U. S. (1911) 192 Fed. 83, 112 C. C. A. 615, affirming judgment U. S. v. Heike (C. C. 1910) 175 Fed. 852, writ of certiorari granted Heike v. U. S. (1912) 32 Sup. Ct. 527, 223 U. S. 730, 56 L. Ed. 633, judgment affirmed (1913) 33 Sup. Ct. 226, 227 U. S. 131, 57 L. Ed. 450, Ann. Cas. 1914C, 128.

Meaning of "entry."—The word "entry," as used in this section, includes in its meaning the entire process of putting imported goods through the custom house. Heike v. U. S. (1911) 192 Fed. 83, 112 C. C. A. 615, affirming judgment U. S. v. Heike (C. C. 1910) 175 Fed. 852, writ of certiorari granted Heike v. U. S. (1912) 32 Sup. Ct. 527, 223 U. S. 730, 56 L. Ed. 633, judgment affirmed (1913) 33 Sup. Ct. 226, 227 U. S. 131, 57 L. Ed. 450, Ann. Cas. 1914C, 128.

In this section the term "entry" is not limited to the paper so known in the customs service, nor to the making and filing of it, nor the process of filing it and thereby entering the goods. U. S. v. Mescall (C. C. 1908) 164 Fed. 587.

Meaning of "effect, or aid in effecting."—The expression "effect, or aid in effecting," an illegal entry of imports, in this section, includes aid in carrying out the fraud, rendered either after or before entry at the custom house. U. S. v. Mescall (C. C. 1908) 164 Fed. 587.

Customs weigher aiding entry.—This section, relating to "every person" who aids in effecting the illegal entry of imports, while ordinarily not intended to apply to those individuals—customs officers—covered by the preceding section of the law, does not exclude an officer of the service if the facts bring him within the definition of the "person" at whom this provision is aimed, and may therefore include a customs weigher who aids in the way prohibited. U. S. v. Mescall (C. C. 1908) 164 Fed. 587.

Failure of fraudulent entry.—The penalty provided for illegally effecting the entry of imports, under this section cannot be avoided on the theory that the fraud would not have been successful until the release of the goods after payment of the duty, and the participants in the wrongdoing might have repented before that time. U. S. v. Mescall (C. C. 1908) 164 Fed. 587.

Limitations.—An offense under this section is a crime arising under the revenue laws subject to the limitation of section 1710, ante. U. S. v. Hirsch (1879) 100 U. S. 33, 34, 25 L. Ed. 539.

Indictment.—An indictment under this section, which charges that defendants, on a day named, "with intent * * * that the United States should be wrongfully deprived of a portion of the lawful duties due" on certain imported goods, which were specifically dutiable according to weight, effected an entry thereof at less than their true weight, and by payment of less than their legal duty, sufficiently charges that the entry was "knowingly" effected, and also that the entry was a completed entry, on which the duty was liquidated, and not merely the preliminary entry. U. S. v. Rosenthal (C. C. 1903) 126 Fed. 766, judgment affirmed Browne v. U. S. (1905) 145 Fed. 1, 76 C. C. A. 31, writ of certiorari denied (1906) 26 Sup. Ct. 755, 200 U. S. 618, 50 L. Ed. 623.

An indictment indorsed as based on R. S. § 5445 (embodied herein), charging defendants with having effected an entry of goods at less than their true weight, and by payment of less than the legal duty thereon, by means of a false invoice and the bribery of an officer, is sustainable under section 9 of the customs and administrative act of June 10, 1890 (c. 407, 26 Stat. 135) conceding that such section supersedes said section 5445. Id.

Cited without definite application. U. S. v. Mescall (C. C. 1908) 164 Fed. 580 (reversed [1909] 30 Sup. Ct. 19, 215 U. S. 26, 54 L. Ed. 77); U. S. v. McMahon (D. C. 1909) 175 Fed. 296.

§ 10238. (Crim. Code, § 70.) False certification by consular officer; punishment for.

Whoever, being a consul, or vice-consul, or other person employed in the consular service of the United States, shall knowingly certify falsely to any invoice, or other paper, to which his certificate is by law authorized or required, shall be fined not more than ten thousand dollars and imprisoned not more than three years.

R. S. § 5442. Act March 4, 1909, c. 321, § 70, 35 Stat. 1101.

Cited without definite application, Carter v. McClaughry (1902) 22 Sup. Ct. 181, 193, 183 U. S. 365, 46 L. Ed. 236.

§ 10239. (Crim. Code, § 71.) Taking seized property from revenue officer; punishment for.

Whoever shall dispossess or rescue, or attempt to dispossess or rescue, any property taken or detained by any officer or other person under the authority of any revenue law of the United States, or shall aid or assist therein, shall be fined not more than three hundred dollars and imprisoned not more than one year.

R. S. § 5446. Act March 4, 1909, c. 321, § 71, 35 Stat. 1101.

Notes of Decisions

Attempt to rescue goods under seizure.—On an indictment for attempt to rescue goods under seizure it appeared that defendant, on arriving at the place soon after the officers had obtained possession, sprang from his wagon in a violent manner, and, with abusive terms, threatened to get his gun from the adjoining house and shoot the officers, who only prevented him from accomplishing his purpose with much difficulty, and after an obstinate resistance. Held, that if this conduct was the result of sudden passion, excited by a supposed injury inflicted by the officers on defendant's mother, a conviction would not be warranted; but that, although defendant afterwards stated that he acted under such impression, and helped the officers in placing the goods upon his wagon, agreeing that it might be used for bearing them away, the jury could consider his subsequent attempt to prevent its removal by threats and violent conduct, as showing his original purpose, and a connection between all his transactions. U. S. v. Ford (D. C. 1887) 33 Fed. 861.

Cited without definite application, Eaton v. Calhoun (C. C. 1880) 15 Fed. 155, 157.

§ 10240. (Crim. Code, § 72.) Forging or altering ship's or custom-house papers; punishment for.

Whoever shall falsely make, forge, counterfeit, or alter any instrument in imitation of, or purporting to be, an abstract or official copy or certificate of the recording, registry, or enrollment of any vessel, in the office of any collector of the customs, or a license to any vessel for carrying on the coasting trade or fisheries of the United States, or a certificate of ownership, pass, passport, sea letter, or clearance, granted for any vessel, under the authority of the United States, or a permit, debenture, or other official document granted by any collector or other officer of the customs by virtue of his office; or whoever shall utter, publish, or pass, or attempt to utter, publish, or pass, as true, any such false, forged, counterfeited, or falsely altered instrument, abstract, official copy, certificate, license, pass, passport, sea letter, clearance, permit, debenture, or other official document herein specified, knowing the same to be false, forged, counterfeited, or falsely altered, with an intent to defraud, shall be fined not more than one thousand dollars and imprisoned not more than three years.

R. S. § 5423. Act March 4, 1909, c. 321, § 72, 35 Stat. 1101.

Notes of Decisions

Counterfeiting paper not good under statute, but purporting to be genuine.—Where an original paper executed with printed signatures is not good under the statute, yet, where it purports to be a genuine certificate, it is a felony under Act March 3, 1825, § 19, to counterfeit it. U. S. v. Schoyer (C. C. 1845) Fed. Cas. No. 16,232a.

Counterfeiting certificate given on importation of spirits.—The certificate required to be given on the importation of distilled spirits (Act March 2, 1799, § 41) is an "official document granted by the collector," within Act 1825, § 19, relating to forging and counterfeiting, and on which section this section is based. U. S. v. Schoyer (C. C. 1845) Fed. Cas. No. 16,232a.

Alteration of engineer's license.—The alteration of a license of an engineer of steam vessels issued under R. S. § 4441, ante, § 8203, is not an offense within R. S. §§ 5418, 5479, or section 5423 (this compilation, §§ 10192, 10240). Revocation of the license, under R. S. § 4450, ante, § 8212, seems to be the only punishment provided by law for such case. (1890) 19 Op. Atty. Gen. 649.

Indictment.—Where the certificate which the supervisor of the revenue was authorized to issue (Act March 2, 1799, § 41) was issued by the collector, an indictment under Act March 3, 1825, § 19 (this section as originally enacted), for altering it, must allege that the collector was designated by the president

to fulfill the duties of the supervisor under Act March 3, 1803, and that the certificate was issued in such capacity. U. S. v. Schoyer (C. C. 1847) Fed. Cas. No. 16,232.

The rule which requires a setting out of an entire instrument or its tenor in an indictment in the federal courts is limited mainly, if not wholly, to cases of forgery, counterfeiting, and sending threatening letters. U. S. v. Heinze (C. C. 1908) 161 Fed. 425.

§ 10241. (Crim. Code, § 73.) Forging, etc., military bounty-land warrants, etc.; punishment for.

Whoever shall falsely make, alter, forge, or counterfeit any military bounty-land warrant, or military bounty-land warrant certificate, issued or purporting to have been issued by the Commissioner of Pensions under any law of Congress, or any certificate or duplicate certificate of location of any military bounty-land warrant, or military bounty-land warrant certificate upon any of the lands of the United States, or any certificate or duplicate certificate of the purchase of any of the lands of the United States, or any receipt or duplicate receipt for the purchase money of any of the lands of the United States, issued or purporting to have been issued by the register and receiver at any land office of the United States or by either of them; or whoever shall utter, publish, or pass as true, any such false, forged, or counterfeited military bounty-land warrant, military bounty-land warrant certificate, certificate or duplicate certificate of location, certificate or duplicate certificate of purchase, receipt or duplicate receipt for the purchase money of any of the lands of the United States, knowing the same to be false, forged, or counterfeited, shall be imprisoned not more than ten years.

R. S. § 5420. Act March 4, 1909, c. 321, § 73, 35 Stat. 1101.

§ 10242. (Crim. Code, § 74.) Forging, etc., certificates of citizenship; punishment for.

Whoever shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or shall knowingly aid or assist in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

Act June 29, 1906, c. 3592, § 16, 34 Stat. 602. Act March 4, 1909, c. 321, § 74, 35 Stat. 1102.

Notes of Decisions

General operation of former law.—The words, "if any person shall make, forge," etc., a certificate of citizenship (Act March 3, 1813, § 13) are intended to be general in their operation, and are not confined to seamen. U. S. v. Randolph (C. C. 1853) Fed. Cas. No. 16,120.

§ 10243. (Crim. Code, § 75.) Engraving, etc., counterfeit plates for citizenship certificates; printing, etc.; distinctive paper; punishment for.

Whoever shall engrave, or cause or procure to be engraved, or assist in engraving, any plate in the likeness of any plate designed for the printing of a certificate of citizenship; or whoever shall sell any such plate, or shall bring into the United States from any foreign place any such plate, except under the direction of the Secretary of Commerce and Labor or other proper officer; or whoever shall have in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such certificate has been printed, with intent to use or to suffer such plate to be used in forging or counterfeiting any such certificate or any part thereof; or whoever shall print, photograph, or in any manner cause to be printed, photographed, made, or executed, any print or impression in the likeness of any such certificate, or any part thereof; or whoever shall sell any such certificate, or shall bring the same into

the United States from any foreign place, except by direction of some proper officer of the United States; or whoever shall have in his possession a distinctive paper which has been adopted by the proper officer of the United States for the printing of such certificate, with intent unlawfully to use the same, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

Act June 29, 1906, c. 3592, § 17, 34 Stat. 602. Act March 4, 1909, c. 321, § 75, 35 Stat. 1102.

§ 10244. (Crim. Code, § 76.) False personation, etc., in procuring naturalization; punishment for.

Whoever, when applying to be admitted a citizen, or when appearing as a witness for any such person, shall knowingly personate any person other than himself, or shall falsely appear in the name of a deceased person, or in an assumed or fictitious name; or whoever shall falsely make, forge, or counterfeit any oath, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law relating to or providing for the naturalization of aliens; or whoever shall utter, sell, dispose of, or shall use as true or genuine, for any unlawful purpose, any false, forged, antedated, or counterfeit oath, notice, certificate, order, record, signature, instrument, paper, or proceeding above specified; or whoever shall sell or dispose of to any person other than the person for whom it was originally issued any certificate of citizenship or certificate showing any person to be admitted a citizen, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

R. S. § 5424. Act March 4, 1909, c. 321, § 76, 35 Stat. 1102.

Notes of Decisions

See notes under § 10506, post.

Felony or misdemeanor.—R. S. § 5424 (embodied herein), providing that any person who utters, sells, etc., any false naturalization certificate shall be punished, etc., not having declared such offense a felony, and having repealed the former acts making it such, the offense was reduced to a misdemeanor. Berkowitz v. U. S. (1899) 93 Fed. 452, 35 C. C. A. 379.

R. S. § 5424 (embodied herein), declared that every person applying to be admitted as a citizen, or appearing as a witness for such person, who knowingly personates any other than himself, or falsely appears in the name of a deceased person, etc., shall be punished by fine or imprisonment, or both; section 5425 (post, § 10245) prohibited the use of a false certificate of citizenship, etc., on pain of similar punishment; section 5426 (post, § 10246) prohibited the use of a false certificate, etc., as evidence of a right to vote, on a similar penalty; and section 5427 (post, § 10506) declared that every person who knowingly and intentionally aids or abets any person in the commission of any felony denounced in the three preceding sections, or attempts to do any act therein made a felony, etc., shall be punished in the same manner and to the same extent as the principal party. Held, that since, by reason of the inadvertent failure of the revisors of the statutes to define a felony, the offense described by sections 5424–5426 was not a felony, the inadvertent use of the word "felony" in section 5427 might be disregarded as surplusage, and such use of an inaccurate term did not affect the validity of an indictment under section 5427. U. S. v. York (C. C. 1904) 131 Fed. 323.

Persons liable under statute.—R. S. § 5424 (embodied herein), provided that every person applying to be admitted a citizen or appearing as a witness for any such person, who knowingly personates any other person than himself, or falsely appears in the name of a deceased person or in an assumed or fictitious name, or falsely makes, forges, or counterfeits any oath, etc., required or authorized by law relating to or providing for the naturalization of aliens, or who utters, sells, disposes of, or uses as true or genuine, or for any unlawful purpose, any false, forged, antedated, or counterfeit oath, etc., or sells or disposes of to any person other than the person for whom it was originally issued any certificate of citizenship, etc., shall be punished. Held, that the word "who," as so used, and whenever used in the section, referred to the initial "every person," which related to the words "applying to be admitted a citizen or appearing as a witness for any such person," and hence the section did not include the uttering of a forged naturalization certificate by a person other than the person applying there-

pearing as a witness for the applying. U. S. v. York (C. 31 Fed. 323.

5424 (embodied herein), pro- every person applying to be s a citizen, or appearing as for any such person who personates any other per- himself or falsely appears e of a deceased person, or in d or fictitious name, or false- forges, or counterfeits any ce, affidavit, certificate, order, c., shall be punished. Held, provision should be construed it read, "or any person who akes, forges or counterfeits," s so construed prohibited the making of a certificate of tion by a person other than on applying to be admitted a appearing as a witness for person." U. S. v. Raisch 906) 144 Fed. 486.

acy to commit offense.—An in- charging a defendant with g to utter as true false nat- n certificates, in violation of 424 (embodied herein), charg- ense different from that under r section; and hence an ac- n the indictment for such con- s not a bar to a subsequent on for the offense of utter- Berkowitz v. U. S. (1899) 452, 35 C. C. A. 379.

swearing.—R. S. § 2167, requir- ourt to ascertain whether the for naturalization under that as resided three years in the States before attaining major- ld, that a third person, swear- ely in that regard, was liable penalty prescribed in section nbodied herein), for any wit- o in such proceeding falsely n oath "required or author- ized" by the naturalization laws. U. S. v. Lehman (D. C. 1889) 39 Fed. 49.

A person who is called on by an applicant for naturalization to testify as to the fact of residence for three years cannot defend against an accusation of having made a false oath on the ground that the oath was not required by the naturalization laws, inasmuch as the applicant might have established the fact by his own oath. An oath so taken is at least an authorized oath. Id.

R. S. § 5424 (embodied herein), which makes it an offense for any person applying to become a citizen, or appearing as a witness for such person, to "falsely make, forge, or counterfeit any oath," etc., applies to written oaths, and not to false swearing in open court in a naturalization proceeding by a witness for the applicant, as the latter offense is punishable exclusively under section 5395, post, § 10248. U. S. v. Lehman (D. C. 1889) 39 Fed. 768.

Sale of certificate or evidence of citizenship or naturalization.—Under R. S. § 5424 (embodied herein), it is a criminal offense to sell a certificate of naturalization to other than the person to whom it was issued, and it is immaterial that such certificate was fraudulently procured, by misrepresentation to the court, or that it was forged, if prima facie and apparently valid. U. S. v. Ragazzini (C. C. 1892) 50 Fed. 923.

The certificate or evidence of citizenship, the sale of which is made criminal by Act March 3, 1813, is a certified copy of the act by which one was naturalized, and which authorizes his employment on an American vessel. U. S. v. Makins (D. C. 1869) Fed. Cas. No. 15,710.

Cited without definite application, U. S. v. Tynen (1870) 11 Wall. 88, 93, 20 L. Ed. 153; Schmidt v. U. S. (1904) 133 Fed. 257, 66 C. C. A. 389.

5. (Crim. Code, § 77.) Using false certificate of citizenship; izenship blanks; denying citizenship; punishment for.

oever shall use or attempt to use, or shall aid, assist, or pate in the use of any certificate of citizenship, knowing the o be forged, counterfeit, or antedated, or knowing the same to een procured by fraud or otherwise unlawfully obtained; or er, without lawful excuse, shall knowingly possess any false, , antedated, or counterfeit certificate of citizenship purporting e been issued under any law of the United States relating to lization, knowing such certificate to be false, forged, antedated, nterfeit, with the intent unlawfully to use the same; or who- hall obtain, accept, or receive any certificate of citizenship, ng the same to have been procured by fraud or by the use or of any false name or statement given or made with the intent cure, or to aid in procuring, the issuance of such certificate, or ng the same to have been fraudulently altered or antedated; oever, without lawful excuse, shall have in his possession any certificate of citizenship provided by the Bureau of Immigration Naturalization with the intent unlawfully to use the same; or

whoever, after having been admitted to be a citizen, shall, on oath or by affidavit, knowingly deny that he has been so admitted, with the intent to evade or avoid any duty or liability imposed or required by law, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

R. S. § 5425. Act June 29, 1906, c. 3592, § 19, 34 Stat. 602. Act March 4, 1909, c. 321, § 77, 35 Stat. 1102.

Notes of Decisions

See notes under the preceding section, and under § 10506, post.

Certificate of citizenship.—A certified copy of the record of a court showing the admission of an alien to citizenship constitutes a "certificate of citizenship," within the meaning of R. S. §§ 5425, 5427 (this compilation §§ 10245, 10506), making it a crime to use, or aid and abet another in using, false certificates of citizenship for purposes therein specified. Dolan v. U. S. (1890) 133 Fed. 440, 69 C. C. A. 274.

False or forged certificates.—In R. S. § 5425 (embodied herein), making it a criminal offense to knowingly use any false or forged certificate of citizenship "purporting to have been issued under the provisions of any law of the United States relating to naturalization," the clause quoted refers to certificates which purport upon their face to have been issued after a compliance on the part of the alien named therein with the naturalization laws and as evidence of that fact, and a certificate to sustain an indictment based on such statute need not recite that it is issued under a law of the United States, there being, in fact, no statute authorizing or requiring the issuance of such certificates. Dolan v. U. S. (1890) 133 Fed. 440, 69 C. C. A. 274.

A "false" certificate of citizenship, within the meaning of R. S. §§ 5425, 5427 (this compilation, §§ 10245, 10506), which make it a criminal offense to knowingly use, or aid and abet another in using, "any false, forged, antedated or counterfeit certificate of citizenship," etc., is not limited to one which is forged, but includes one which is false in its recital of facts. Id.

Acceptance of certificate.—R. S. § 5425 (embodied herein), making any one guilty of a felony who "obtains, accepts, or receives any certificate of citizenship, known to such person to have been procured by fraud," applies to the acceptance of such a certificate obtained by fraud practiced on the court which issued it at the time thereof, and not simply to the acceptance of a fraudulent certificate outstanding in the hands of third persons. U. S. v. Lehman (D. C. 1889) 39 Fed. 768.

Actual use of certificate for unlawful purpose.—To constitute an offense under the provision of R. S. § 5425 (embodied herein), that "every person * * * who without lawful excuse knowingly is possessed of any false, forged, antedated or counterfeit certificate of citizenship * * * knowing such certificate to be false, forged, antedated or counterfeit, with intent unlawfully to use the same," shall be punished, etc., it is not necessary that such false certificate be actually used for an unlawful purpose. Green v. U. S. (1907) 150 Fed. 560, 80 C. C. A. 362.

Indictment.—An indictment for a violation of R. S. § 5425 (embodied herein), making any one guilty of a felony who obtains any certificate of citizenship known to such person to have been procured by fraud, which describes the fraud charged by averring only that defendant obtained a certificate at a time when he was not legally entitled thereto, without describing the facts constituting the fraud, is bad, though it avers that such facts are unknown to the grand jury. U. S. v. Lehman (D. C. 1889) 39 Fed. 768.

As the offense defined in R. S. § 5395, post, § 10248, i. e., the taking of a false oath in naturalization proceedings is a felony, counts under that section are properly joined with counts under sections 5425 and 5427 (this compilation, §§ 10245, 10506). Id.

A subsequent count in the indictment for "counseling and advising" the commission of the offense prohibited by R. S. § 5425 (embodied herein), in violation of section 5427, post, § 10506, which alleges that the fraud charged consisted in making a false statement to the court granting the certificate, is sufficient. Id.

An indictment charging that defendants unlawfully conspired with another to commit an offense against the United States, by causing the violation of this section, in this: That they induced 21 persons named to obtain certificates of citizenship by means of false statements, made with intent to procure such certificates; that such other party, to effect such object, appeared before the district court of the United States and the superior court of the state, and made certain false statements to such courts, with intent to procure the issuance of such certificates of citizenship under the laws relating to the naturalization of aliens; that such false statements were to the effect that such persons had resided in the state one year at least, which statement was false—does not charge

the defendants any offense ne United States, as an in- charging a conspiracy to com- ense against the United States ion of this section must al- the persons who should ob- pt, or receive certificates of should do so with knowl- they had been procured by false statements, made with to procure or aid in procur- ue of such certificates. U. S. D. C. 1902) 118 Fed. 899.

lation of separate indictments. e indictments against the same under R. S. § 5427, post, § 10506, each charging them with having aided and abetted a different person in using a false certificate of citizenship as evidence of a right to vote, the acts charged being the furnishing of such false certificates for the use of such persons by the defendants, all of which were made by them at the same time, charge acts or transactions connected together, and may properly be consolidated under R. S. § 1024, ante, § 1690. Dolan v. U. S. (1904) 133 Fed. 440, 69 C. C. A. 274.

Cited without definite application, Levin v. U. S. (1904) 128 Fed. 826, 63 C. C. A. 476.

(Crim. Code, § 78.) Attempting to vote, etc., on false ificate; punishment for.

ver shall in any manner use, for the purpose of registering er, or as evidence of a right to vote, or otherwise unlaw- y order, certificate of citizenship, or certificate, judgment, plification, showing any person to be admitted to be a whether heretofore or hereafter issued or made, knowing that er, certificate, judgment, or exemplification has been unlaw- ued or made; or whoever shall unlawfully use, or attempt to such order or certificate, issued to or in the name of any other or in a fictitious name, or the name of a deceased person, fined not more than one thousand dollars, or imprisoned not n five years, or both.

. § 5426. Act March 4, 1909, c. 321, § 78, 35 Stat. 1103.

Notes of Decisions

es under § 10244, ante, and ost.

sed to avoid limitation.—The der," "certificate of citizen- ertificate," "judgment," and cation" are used to avoid and eate a limitation, and all are bring within the prohibition ent showing any person to be to be a citizen. Dolan v. U. 133 Fed. 440, 69 C. C. A.

te not within statute.—A cer- citing that the statutory req- ve been complied with, issued o has fully complied with all ions precedent to admission ship, is not within R. S. § odied herein), though all the s were not recorded. In re (C. C. 1879) Fed. Cas. No.

Sufficiency of affidavit.—Sufficiency of affidavit of violation of R. S. § 5426 (embodied herein), relating to unlawful registration. In re Coleman (C. C. 1879) Fed. Cas. No. 2,980.

Proof to sustain indictment.—A conviction on an indictment for using, for the purpose of registering as a voter, a naturalization certificate, knowing the same to have been unlawfully issued (R. S. § 5426 [embodied herein]), is not sustained by proof that defendant knew that the certificate had been issued without his presence in court, and without any oath being taken by him. U. S. v. Burley (C. C. 1877) Fed. Cas. No. 14,686.

Cited without definite application, Schmidt v. U. S. (1904) 133 Fed. 257, 66 C. C. A. 389; U. S. v. Lehman (D. C. 1889) 39 Fed. 768, 770.

(Crim. Code, § 79.) Falsely claiming citizenship; pun- nent for.

ver shall knowingly use any certificate of naturalization re or which hereafter may be granted by any court, which n or may be procured through fraud or by false evidence, has been or may hereafter be issued by the clerk or any other f the court without any appearance and hearing of the appli- court and without lawful authority; or whoever, for any nt purpose whatever, shall falsely represent himself to be a f the United States without having been duly admitted to

citizenship, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

R. S. § 5428. Act March 4, 1909, c. 321, § 79, 35 Stat. 1103.

Notes of Decisions

False representation as to citizenship.—An alien, who knowingly makes a false affidavit that he has been duly naturalized as a citizen of the United States, before a registration officer, for the purpose of procuring himself to be registered as a voter at an approaching election in a state, commits an offense in violation of R. S. § 5428 (embodied herein), which makes it a criminal offense for any person to falsely represent himself to be a citizen of the United States without having been duly admitted to citizenship "for any fraudulent purpose whatever." Green v. U. S. (1907) 150 Fed. 560, 80 C. C. A. 362.

In the provision of R. S. § 5428 (embodied herein), making it a criminal offense for any person to falsely represent himself to be a citizen of the United States for any fraudulent purpose "without having been duly admitted to citizenship," the word "duly" applies to regularity and compliance with requirements, rather than to the truth of the facts involved in the admission, and where the person charged was granted a certificate of citizenship by an order of court, both of which are regular in form and have not been vacated, it is impossible to charge "unlawful use" based solely upon a further allegation of knowledge that the certificate had not been "duly" made. U. S. v. Hamilton (C. C. 1907) 157 Fed. 569.

Acquittal as bar to deportation.—A judgment of acquittal is not a bar to deportation proceedings. Williams v. U. S. (1911) 186 Fed. 479, 108 C. C. A. 457.

Cited without definite application, Schmidt v. U. S. (1904) 133 Fed. 257, 66 C. C. A. 389.

§ 10248. (Crim. Code, § 80.) Falsely swearing in naturalization cases; punishment for.

Whoever, in any proceeding under or by virtue of any law relating to the naturalization of aliens, shall knowingly swear falsely in any case where an oath is made or affidavit taken, shall be fined not more than one thousand dollars and imprisoned not more than five years.

R. S. § 5395. Act March 4, 1909, c. 321, § 80, 35 Stat. 1103.

Notes of Decisions

1. Ambiguity in statute.
2. Amendment of statute.
3. Corruption or malice.
4. Materiality of testimony.
5. Perjury in petition.
6. Oath of applicant as to residences.
7. Perjury in state court.
8. Indictment.
9. Evidence.
10. Instructions.

See § 4379, and notes thereunder.

1. Ambiguity in statute.—Any ambiguity in this section may be removed by the language of the act from which it is taken, as authorized by section 10597, post. Schmidt v. U. S. (1904) 133 Fed. 257, 66 C. C. A. 389.

2. Amendment of statute.—Naturalization Act June 29, 1906, c. 3592, § 23, 34 Stat. 603, section 4379, ante, providing a punishment for knowingly making a false affidavit as to any material fact required to be proved in a naturalization proceeding, is to be regarded as an amendment of R. S. § 5395 (embodied herein), providing that in all cases where any oath or affidavit is made or taken, under or by virtue of any law relating to the naturalization of aliens, any person who knowingly swears falsely shall be punished by imprisonment, etc. U. S. v. Dupont (D. C. 1910) 176 Fed. 823.

3. Corruption or malice.—On the trial of a defendant charged with a violation of R. S. § 5395 (embodied herein), which denounces a penalty against one who "knowingly swears falsely" in making any oath under any law relating to naturalization, it is sufficient to warrant conviction if defendant knowingly and willfully testified falsely, and it is not necessary that his act should also have been corrupt or malicious. Holmgren v. U. S. (1907) 156 Fed. 439, 84 C. C. A. 301, judgment affirmed (1910) 30 Sup. Ct. 588, 217 U. S. 509, 54 L. Ed. 861, 19 Ann. Cas. 778.

4. Materiality of testimony.—To constitute the crime of false swearing in a naturalization case under Cr. Code, § 80, the testimony given must be material. U. S. v. Bressi (D. C. 1913) 208 Fed. 369.

Testimony given by an applicant for naturalization on the hearing of his petition that he was never arrested nor imprisoned in his native country, and never committed a crime there, is material, and if knowingly false constitutes perjury under Cr. Code, § 80. Id.

5. Perjury in petition.—Under Naturalization Act June 29, 1906, c. 3592, § 4, subd. 2, 34 Stat. 597, section 4352, ante, providing that a naturalization

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o be proved on the final hear-
subdivision 4, declaring that
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ssary allegation of a petition
alization, and hence perjury
ssigned on a false allegation
U. S. v. Dupont (D. C. 1910)
823.

of applicant as to residences.
2165, relating to the natural-
aliens, which provides that it
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ase allowed to prove his resi-
e to be construed as a prohi-
bidding the taking of the oath
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egarded as insufficient for the
Such an oath, if admitted, is
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30 Fed. 672.

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C. A. 301, judgment affirmed
Sup. Ct. 588, 217 U. S. 509,
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. Y. 1895, c. 927, p. 742, pro-
ddition to the procedure pre-
Congress in the naturaliza-
liens, that an application in
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s under R. S. § 5395 (em-
rein), punishing perjuries occurring in naturalization proceedings; R. S. § 711, cl. 1, ante, § 1233, giving United States Circuit and District Courts jurisdiction of all crimes and offenses cognizable under the authority of the United States. U. S. v. Severino (C. C. 1903) 125 Fed. 949.

Under Const. art. 3, § 1, providing that the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may ordain and establish, and that the judges shall hold office during good behavior, and shall receive a compensation which shall not be diminished during their continuance in office, state courts acting in the naturalization of aliens pursuant to the authority given by Congress remain state tribunals, and do not become in any degree courts of the United States; and hence a perjury committed in such proceedings is an offense against the state, and not the federal sovereignty, and, in the absence of statute conferring jurisdiction on the federal courts, is exclusively a matter of state cognizance. Id.

Act July 14, 1870, c. 254, 16 Stat. 254 entitled "An act to amend the naturalization laws and to punish crimes against the same," etc., provides (section 1) that "in all cases where any oath or affidavit is made or taken under or by virtue of the law relating to the naturalization of aliens or in any proceedings under such laws" any person who knowingly swears falsely shall be punished, etc. Section 4 made the provisions of the act applicable to all naturalization proceedings before any court, and provided that "the courts of the United States shall have jurisdiction of all offenses under the provisions of this act in or before whatsoever court or tribunal the same shall have been committed." When incorporated into the Revised Statutes of 1875, section 1 of this act became section 5395, being placed in the chapter entitled "Crimes against Justice," while the other sections were distributed elsewhere. Section 4 became R. S. § 5429, post, § 10,249, and, with the portion of this section above quoted omitted, was made applicable only to sections immediately preceding, thus excluding section 5395 (embodied herein). Held that, notwithstanding the changes on revision, section 5395 still conferred on the federal courts jurisdiction of a perjury committed in naturalization proceedings in a state court, in the procedure prescribed by Congress. Id.

Willful false swearing by a person giving testimony in a naturalization proceeding, before a state court, is an offense against the laws of the United States punishable in the federal courts, and not in the state courts. People v. Sweetman (N. Y. 1857) 3 Park. Cr. R. 358.

8. Indictment.—An indictment under R. S. § 5395 (embodied herein), for

subornation of perjury considered, and held good. Boren v. U. S. (1906) 144 Fed. 801, 75 C. C. A. 531.

An indictment under R. S. § 5395 (embodied herein), charging that defendant made a false affidavit before a notary public "in a proceeding for naturalization" then and there pending in a stated court "touching the matters in issue and material in said proceedings," cannot be construed to charge the making of the affidavit "under or by virtue of any law relating to the naturalization of aliens," within the first clause of said section, but clearly charges the offense under the second clause, and is not sustained by evidence showing that the affidavit was made before the proceeding was instituted. Moore v. U. S. (1906) 144 Fed. 962, 75 C. C. A. 670.

Where the indictment distinctly states that the application of respondent to become a citizen was before "the district court of the said United States then and there holden for the said district of Massachusetts," and that the said respondent "did then and there, in the said matter and proceeding, knowingly swear falsely and make oath before said court," it is a sufficient designation of the court, and a distinct averment that the oath was made before it. U. S. v. Walsh (C. C. 1884) 22 Fed. 644.

An indictment for perjury alleged to have been committed by the respondent in his declaration of intention to become a citizen of the United States under R. S. § 5395 (embodied herein), need not set forth the declaration. Id.

An indictment for false swearing in naturalization proceedings, alleging that the person who administered the oath was a deputy clerk of the court of criminal correction, and acting as such when the oath was administered in open court, is sufficient without alleging the steps by which the officer became deputy clerk. U. S. v. Lehman (D. C. 1889) 39 Fed. 49.

As the district court of the United States takes judicial notice of the laws of the state in which it is situated, an allegation that the deputy clerk was authorized to administer such oath is not necessary. Id.

As the offense defined in R. S. § 5395 (embodied herein), i. e., the taking of a false oath in naturalization proceedings, is a felony, counts under that section are properly joined with counts under sections 5425 and 5427 (this compilation, §§ 10245, 10506). U. S. v. Lehman (D. C. 1889) 39 Fed. 768.

An indictment in substance charging that defendants unlawfully conspired with one P. to commit an offense against the United States by conspiring and inducing certain named persons to obtain, accept and receive certain certificates of citizenship for themselves by means of certain false statements made with intent to procure the issuance of said certificates of citizenship to them, and that said P., to affect the object of said conspiracy entered into between him and the defendants, did appear before the district court for a certain district and did then and there make certain false statements to said court with intent to procure from said court the issuance to such named persons of certain certificates of citizenship under the laws of the United States relating to the naturalization of aliens, which said false statements were then and there well known by defendants and P. to be false, and which said false statements consisted in the making by said P. of certain statements to said court in a matter material to the proceedings then and there pending before it, and concerning which said court had jurisdiction, that said named persons had resided within a certain named state one year at least, whereas in truth and in fact they had not resided in said state as alleged, but had lived and did at that time live in another state, was not a charge of conspiracy to violate this section. U. S. v. Melfi (D. C. 1902) 118 Fed. 899, 903.

9. Evidence.—In a prosecution for perjury committed in a naturalization proceeding, where the record of the court therein, including the final order, was admitted in evidence without objection, it was proper for the court to instruct the jury that such record should be taken as establishing the facts therein stated, although the final order may have been defective in form, in failing to recite the making and recording of the affidavits required by section 39 of Act March 3, 1903, c. 1012, 32 Stat. 1222, for which defect it is declared void by said section; it being doubtful, moreover, whether it is intended that such order shall be void, except for the purpose of proving citizenship. Schmidt v. U. S. (1904) 133 Fed. 257, 66 C. C. A. 389.

The provision of Act March 3, 1903, c. 1012, § 39, 32 Stat. 1222, that all courts shall, before issuing a final order or certificate of naturalization, "cause to be entered of record the affidavit of the applicant and of his witnesses, so far as applicable, reciting and affirming the truth of every material fact requisite to naturalization," does not limit the evidence which may be taken in the proceeding to the affidavits so entered of record; and, on the trial of a person for perjury committed in such a proceeding, oral evidence is admissible to show the commission of the offense. Id.

10. Instructions.—Instructions on the trial of a defendant charged with perjury in naturalization proceedings, under R. S. § 5395 (embodied herein), considered and approved. Holmgren v. U. S. (1907) 156 Fed. 439, 84 C. C. A.

nent affirmed (1910) 30 Sup. 17 U. S. 509, 54 L. Ed. 861, Cas. 778.

Cited without definite application, Wechsler v. U. S. (1907) 158 Fed. 579, 86 C. C. A. 37.

(Crim. Code, § 81.) Provisions applicable to all courts of uralization.

rovisions of the five sections last preceding shall apply to all ngs had or taken, or attempted to be had or taken, before any which any proceeding for naturalization may be commenced pted to be commenced, and whether such court was vested by jurisdiction in naturalization proceedings or not.

. § 5429. Act March 4, 1909, c. 321, § 81, 35 Stat. 1103.

Notes of Decisions

es under the preceding sec-

Jurisdiction of offense.—See U. S. v. Severino (C. C. 1903) 125 Fed. 949

(Crim. Code, § 82.) Shanghaiing of sailors described; ishment for.

ver, with intent that any person shall perform service of any kind on board of any vessel engaged in trade and e among the several States or with foreign nations, or on any vessel of the United States engaged in navigating the s or any navigable water of the United States, shall procure e, or attempt to procure or induce, another, by force or r by representations which he knows or believes to be untrue, the person so procured or induced is intoxicated or under ence of any drug, to go on board of any such vessel, or to n anywise enter into any agreement to go on board of any sel to perform service or labor thereon; or whoever shall y detain on board of any such vessel any person so procured ed to go on board thereof, or to enter into any agreement to ard thereof, by any means herein defined; or whoever shall y aid or abet in the doing of any of the things herein made , shall be fined not more than one thousand dollars, or im- not more than one year, or both.

June 28, 1906, c. 3583, §§ 1-3, 34 Stat. 551, as amended, Act March 2, . 2359, 34 Stat. 1233. Act March 4, 1909, c. 321, § 82, 35 Stat. 1103.

Notes of Decisions

Information.—Information under this section held demurrable. U. S. v. Domingos (C. C. 1911) 193 Fed. 263.

(Crim. Code, § 83.) Corporations contributing for politi- elections; penalty for; additional to officers.

ll be unlawful for any national bank, or any corporation d by authority of any law of Congress, to make a money tion in connection with any election to any political of- shall also be unlawful for any corporation whatever to money contribution in connection with any election at which tial and Vice-Presidential electors or a Representative in s is to be voted for, or any election by any State legislature ited States Senator. Every corporation which shall make tribution in violation of the foregoing provisions shall be more than five thousand dollars; and every officer or director orporation who shall consent to any contribution by the corpo- violation of the foregoing provisions shall be fined not more e thousand dollars, or imprisoned not more than one year,

Jan. 26, 1907, c. 420, 34 Stat. 864. Act March 4, 1909, c. 321, § 83, 35 1103.

§ 10252. (Crim. Code, § 84.) Hunting, taking eggs, etc., on bird-breeding grounds; punishment for.

Whoever shall hunt, trap, capture, willfully disturb, or kill any bird of any kind whatever, or take the eggs of any such bird, on any lands of the United States which have been set apart or reserved as breeding grounds for birds, by any law, proclamation, or executive order, except under such rules and regulations as the Secretary of Agriculture may, from time to time, prescribe, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

Act June 28, 1906, c. 3565, 34 Stat. 536. Act March 4, 1909, c. 321, § 84 5 Stat. 1104.

An appropriation for the enforcement of this section and for the maintenance of reservations for animals and for the purchase, capture, and transportation of game for national reservations was made by the agricultural appropriation act for the fiscal year ending 1914, Act March 4, 1913, c. 145, 37 Stat. 847.

CHAPTER FIVE

Offenses Relating to Official Duties

Sec.
10253. Extortion by officials; punishment for.
10254. Receipting for larger sums than are paid; punishment for.
10255. Disbursing officers unlawfully using, etc., public money; punishment for.
10256. Failure of depositaries to safely keep public deposits; punishment for.
10257. Custodian failing to keep, etc., public moneys; punishment for.
10258. Failure of officer to render accounts; punishment for.
10259. Failure to deposit as required; punishment for.
10260. Persons affected.
10261. Record evidence of embezzlement.
10262. Prima facie evidence.
10263. Evidence of conversion.
10264. Banker, etc., receiving unauthorized deposit of public money; punishment for.
10265. Embezzlement by internal-revenue officer; punishment for.
10266. Officer contracting beyond specific appropriation.
10267. Court officers failing to deposit money, etc.; punishment for; delivery upon security.
10268. Receiving loan, etc., from court officer; punishment for.
10269. Failure to make returns or reports; punishment for.
10270. False entries in accounts or records, or false reports of public or trust moneys or securities; punishment.
10271. Aiding in obscene literature trade, etc.; punishment for.
10272. Trading in public property by collecting or disbursing officer; punishment for.

Sec.
10273. Court officials purchasing fees at less than face value; punishment for.
10274. Falsely certifying as to record of deeds; punishment.
10275. Other false certificates; punishment.
10276. Steamboat inspectors taking illegal fees; punishment for.
10277. Pension agents taking fee; punishment for.
10278. Officers interested in claims against United States; punishment for.
10279. Members of National Guard of District of Columbia not prohibited from being interested in claims.
10280. Accepting, etc., bribe by Member of Congress; punishment for.
10281. Offering, etc., bribe to Member of Congress; punishment for.
10282. Member of Congress taking consideration for procuring contract, etc.; offering Member of Congress consideration to procure contract, etc.; punishment for; contracts void able.
10283. Receiving pay by Senator or Member of Congress in matters affecting United States punishment for.
10284. Member of Congress interested in public contracts; punishment for; contracts void; repayment, etc.
10285. Making official contract with Member of Congress; punishment for.
10286. Contracts not affected.
10287. Official accepting bribe; punishment for.

litical contributions not to be
olicited by officers named.
litical contributions not to be
eceived in public offices.
munity from official proscrip-
ion.
king political contributions to
fficials.

Sec.
10292. Punishment for violations.
10293. Officials, etc., giving advance information of crop reports; punishment for; actual knowledge required.
10294. Official knowingly issuing false crop reports; punishment for.

(Crim. Code, § 85.) Extortion by officials; punishment

officer, clerk, agent, or employee of the United States, and
rson representing himself to be or assuming to act as such
clerk, agent, or employee, who, under color of his office,
p, agency, or employment, or under color of his pretended
ned office, clerkship, agency, or employment, is guilty of
n, and every person who shall attempt any act which if
ed would make him guilty of extortion, shall be fined not
an five hundred dollars, or imprisoned not more than one
both.

S. § 5481, as amended, Act June 28, 1906, c. 3574, 34 Stat. 546. Act
4, 1909, c. 321, § 85, 35 Stat. 1104.

Notes of Decisions

as in force in Alaska.—R. S.
mbodied herein), defining the
extortion under color of of-
passed after the cession of
in force there from the time
sage. U. S. v. Carr (D. C.
l. Cas. No. 14,730.

within meaning of statute.—
n appointed by the Commis-
Pensions under section 9106,
ot an officer. U. S. v. Ger-
378) 99 U. S. 508, 25 L. Ed.
lee v. U. S. (1887) 22 Ct. Cl.

ty imposed to have supervi-
public lands, and the duty
on the commissioner of the
nd office under the supervi-
he secretary, necessarily re-
ese officers to act by and
he agency of others, and the
employ these agents is inci-
the obligation to enforce the
special agent of the general
e, whether appointed by the
of the interior or by the
ner, is not an officer within
ng of R. S. § 5481 (embodied
providing for punishment of
r of the United States guilty
on under color of office. U.
ierholz (D. C. 1904) 133 Fed.

Const. art. 2, § 2, cl. 2, provid-
all officers shall be appointed
resident, by and with the ad-
ne Senate, or Congress may
appointment of such inferior
s they think proper in the
alone, in the courts, or in the
departments, a special agent
nd Department of the United
pointed under Appropriation
4, 1897, c. 2, 30 Stat. 32, to
expenses of protecting timber
on public lands, but providing no fixed salary, tenure of office, or person with power to appoint, was not an officer of the United States, within R. S. § 5481 (embodied herein). United States v. Schlierholz (D. C. 1905) 137 F. 616.

Extortion in general.—Laboring to exact fees from one party after having received them from another is not extortion. U. S. v. Chenault (C. C. 1813) Fed. Cas. No. 14,791.

Extortion is the unlawful taking by any officer, by color of his office, of any money or thing of value that is not due him, or more than is due, or before it is due. U. S. v. Waitz (D. C. 1876) Fed. Cas. No. 16,631.

The word "extortion" implies that the money paid was extorted on the part of the one receiving it, and was paid unwillingly by the one paying it, and the mere taking of illegal fees by an officer of the United States is not extortion. U. S. v. Harned (D. C. 1890) 43 Fed. 376, 377.

Offense dependent on knowledge.—An officer is not guilty of extortion in collecting greater fees than those allowed by law, unless he did so with knowledge that he was violating the law. U. S. v. Highleyman (D. C. 1876) Fed. Cas. No. 15,361.

Extortion by register of land office.—A register of a land office cannot lawfully act as attorney for an applicant for a patent, and where, acting as such, he receives a gross sum as compensation for services in both capacities in excess of legal fees as register, he is guilty of extortion. U. S. v. Waitz (D. C. 1876) Fed. Cas. No. 16,631.

Chinese inspector.—A Chinese inspector, appointed by the treasury de-

partment to assist the collector of a port in enforcing the Chinese exclusion laws, is not a person acting under authority of any "revenue" or "customs" law, within the meaning of section 5889, ante, or of section 5890, ante, so as to be subject to indictment thereunder for extorting money under color of his office. The words "extortion or willful oppression under color of law," and the knowingy demanding "other or greater sums than are authorized by law," or the receiving "any fee, compensation or reward, except as by law prescribed, for the performance of any duty"—illegal acts described in subdivisions 1 and 2 of section 5889, ante,—refer to offenses committed by officers or agents "appointed and acting under the authority of any revenue law of the United States." The accused, in his capacity of Chinese inspector, did not act under any law that could properly be regarded as a revenue law. He was appointed pursuant to acts of congress appropriating money to be used by the treasury department "to prevent unlawful entry of Chinese." Williams v. U. S. (1897) 18 Sup. Ct. 92, 94, 168 U. S. 382, 42 L. Ed. 509, reversing (D. C. 1886) 76 Fed. 223.

A Chinese inspector may be prosecuted for extorting money under color of his office, under this section, which provides for the punishment of "every officer of the United States" who is guilty of extortion, etc., except those officers and agents otherwise specially provided for. Id.

One appointed inspector under the customs laws, but designated and acting as inspector of Chinese immigrants, is within section 23 of Act Feb. 8, 1875, declaring that existing laws for the punishment of acts committed by internal revenue or treasury officers shall apply to "all persons whomsoever, employed, appointed, or acting under authority of any internal revenue or customs laws, when such persons are designated or acting as officers or deputies," and is indictable under section 5889, ante, for extortion, or receiving illegal fees. U. S. v. Williams (D. C. 1896) 76 Fed. 223.

Consolidation of indictments.—Two indictments against the same person, charging him with extorting money on different occasions from two different persons, under color of his office, may be consolidated. Williams v. U. S. (1897) 18 Sup. Ct. 92, 95, 168 U. S. 382, 42 L. Ed. 509.

Evidence.—On prosecution of a United States officer for extortion, under this section, proof that money in excess of legal fees was received by defendant, and that in receiving the money he acted in an official capacity and corruptly, is not sufficient to warrant a conviction, without evidence tending to prove that the excess was exacted by the defendant, and not paid voluntarily. U. S. v. Harned (D. C. 1890) 43 Fed. 376.

Cited without definite application. Wechsler v. U. S. (1907) 158 Fed. 579, 86 C. C. A. 37; Scully v. U. S. (C. C. 1890) 193 Fed. 185.

§ 10254. (Crim. Code, § 86.) Receipting for larger sums than are paid; punishment for.

Whoever, being an officer, clerk, agent, employee, or other person charged with the payment of any appropriation made by Congress, shall pay to any clerk or other employee of the United States a sum less than that provided by law, and require such employee to receipt or give a voucher for an amount greater than that actually paid to and received by him, is guilty of embezzlement, and shall be fined in double the amount so withheld from any employee of the Government and imprisoned not more than two years.

R. S. § 5483. Act March 4, 1909, c. 321, § 86, 35 Stat. 1105.

Notes of Decisions

Offense by postmaster.—A postmaster at an experimental free delivery office is an officer charged with payment of an appropriation made by congress, and hence is subject to indictment, under R. S. § 5483 (embodied herein), for underpayments to a letter carrier, and for requiring vouchers for sums greater than such payments. U. S. v. Mayers (D. C. 1896) 81 Fed. 159.

Indictment. — An indictment under this section which stated that defendant was instrumental in prosecuting a certain person's claim for a pension and wrongfully withheld certain money of the pensioner, was sufficient, without setting forth the particular circumstances in which such instrumentality consisted. U. S. v. Connally (D. C. 1880) 1 Fed. 779, 780.

§ 10255. (Crim. Code, § 87.) Disbursing officers unlawfully using etc., public money; punishment for.

Whoever, being a disbursing officer of the United States, or a person acting as such, shall in any manner convert to his own use, or loan with or without interest, or deposit in any place or in

ıer, except as authorized by law, any public money intrusted or shall, for any purpose not prescribed by law, withdraw Treasurer or any assistant treasurer, or any authorized de- or transfer, or apply, any portion of the public money in- o him, shall be deemed guilty of an embezzlement of the o converted, loaned, deposited, withdrawn, transferred, or ınd shall be fined not more than the amount embezzled, or ed not more than ten years, or both.

. § 5488. Act March 4, 1909, c. 321, § 87, 35 Stat. 1105.

Notes of Decisions

by army officers.—An army charge of river and harbor nts, who pays out the money his order, and control on unts, represented by false lently certified vouchers pur- be issued as against the ap- for the improvements, ıeys, to his knowledge, are or owing from the United the parties paid, or to any pplies to a purpose not pre- law public moneys of the ıtes, within the meaning of 88 (embodied herein). Car- Claughry (1902) 22 Sup. Ct. 83 U. S. 365, 46 L. Ed. 236, rder (C. C. 1900) 105 Fed.

ıe sixty-second article, pro- all crimes not capital, which d soldiers may be guilty of, ned in the foregoing articles, taken cognizance of by a ial, and "punished at the dis- the court"; and R. S. § odied herein), providing that ursing officer, who, for any ot prescribed by law, trans- plies any money intrusted to emed guilty of an embezzle- may be punished both by imprisonment,"—where an the army has been found a court-martial of willfully riating money appropriated ss for the improvement of harbors, the court has au- mpose a penalty, both by fine sonment. In re Carter (C. 7 Fed. 496.

nse of embezzlement by a officer of the United States in R. S. § 5488 (embodied broader than that defined the first, fourth, or ninth of the sixtieth article of such offense, at least if not narrower definition of the ticle, is punishable under the d article which covers all the prejudice of good order ıry discipline, "though not in the foregoing articles." McClaughry (C. C. 1900) 105 rder affirmed (1902) 22 Sup. 83 U. S. 365, 46 L. Ed. 236. eedings by a court-martial officer of the army, a charge of embezzlement as defined by R. S. § 5488 (embodied herein), is supported by a specification which sets forth that the accused was a disbursing officer of the United States, and as such was intrusted with certain public money, which he willfully and knowingly caused to be paid on false accounts, the amounts paid not being due or owing by the United States to the parties to whom the payments were made, as he well knew. Id.

Offenses by naval officers.—The willful use of government funds by a pay officer of the navy for the purpose of cashing a certificate of deposit as an accommodation to a personal friend constitutes embezzlement under the provisions of sections 87 and 89 of the Criminal Code. (1912) 29 Op. Atty. Gen. 563.

The overpayment by a pay officer of the navy to himself from public funds, where the officer is guilty of such negligence or indifference as to indicate a willful disregard of the duties imposed upon him by law with respect to the safe-keeping of the moneys in his charge, is in violation of sections 87 and 89 of the Criminal Code. Id.

The willful withdrawing of public funds by a pay officer of the navy for his personal use while absent from his station of duty, even though there be no intention on his part to defraud the United States and the funds withdrawn are subsequently replaced, is a violation of the provisions of sections 87 and 89 of the Criminal Code. Id.

Limitations.—Section 1708, ante, is applicable to offenses described in this section. Greene v. U. S. (1907) 154 Fed. 401, 411, 85 C. C. A. 251, certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

Indictment.—An indictment against a public officer for embezzlement of public funds need not state what kind of money was embezzled—whether coin, and, if so, whether gold or silver, or bills, or of what denominations, and how many of each. U. S. v. Bornemann (C. C. 1888) 36 Fed. 257.

Cited without definite application, Rose v. Roberts (1900) 99 Fed. 948, 949, 40 C. C. A. 199; U. S. v. Jessup (D. C. 1883) 15 Fed. 790, 793.

§ 10256. (Crim. Code, § 88.) Failure of depositaries to safely keep public deposits; punishment for.

If the Treasurer of the United States or any assistant treasurer, or any public depositary, fails safely to keep all moneys deposited by any disbursing officer or disbursing agent, as well as all moneys deposited by any receiver, collector, or other person having money of the United States, he shall be deemed guilty of embezzlement of the moneys not so safely kept, and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years.

R. S. § 5489. Act March 4, 1909, c. 321, § 88, 35 Stat. 1105.

Notes of Decisions

Embezzlement by assistant paymaster of the navy.—An assistant paymaster in the navy, charged with the duty of keeping safely money intrusted to his care, who was furnished a safe with combination locks on both the outer and inner doors for the safe-keeping of his money, and who, after removing the lock from the inner door of the safe and failing to lock the outer door, left the vessel, knowing the condition of the safe, and as a result a portion of the money was lost, is chargeable with negligence equivalent to a criminal intent, and is guilty of embezzlement under the provisions of this section. (1910) 28 Op. Atty. Gen. 286.

Cited without definite application, U. S. v. Jessup (D. C. 1883) 15 Fed. 790, 793.

§ 10257. (Crim. Code, § 89.) Custodian failing to keep, etc., public moneys; punishment for.

Every officer or other person charged by any Act of Congress with the safe-keeping of the public moneys, who shall loan, use, or convert to his own use, or shall deposit in any bank or exchange for other funds, except as specially allowed by law, any portion of the public moneys intrusted to him for safe-keeping, shall be guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged, and shall be fined in a sum equal to the amount of money so embezzled and imprisoned not more than ten years.

R. S. § 5490. Act March 4, 1909, c. 321, § 89, 35 Stat. 1105.

Notes of Decisions

1. Persons to whom statute applies in general.
2. Clerks in treasury department.
3. Deputy collector as "public officer."
4. Clerk of court.
5. "Public moneys" within meaning of statute.
6. Use of moneys for private purpose.
7. Overpayment to self.
8. Cashing certificate of deposit.
9. Loan by officer.
10. Indictment.
11. Evidence.
12. Punishment.

1. Persons to whom statute applies in general.—The terms employed in section 16 of the act of 1846 to designate the persons liable under it are not limited to principal officers. U. S. v. Hartwell (1867) 6 Wall. 385, 395, 18 L. Ed. 830.

Act Aug. 13, 1841, and Act Aug. 6, 1846, apply to persons intrusted by law with the legal possession of public moneys, and not to those subordinates who, not being intrusted with such possession, may be punished for fraudulent conversion. U. S. v. Hutchinson (D. C. 1848) Fed. Cas. No. 15,432.

W. having been constituted an attorney by certain Indians to collect from the government claims for back pay and bounty due them for military services, he was, upon executing a bond to the United States conditioned for the faithful performance of his duties as such attorney, and filing the same in the Interior Department, also empowered as a special agent of that department, without compensation (except such fees as were then or might thereafter be authorized by said department), to collect and pay over to the said Indians their claims. The appointment as such special agent was not made in pursuance of any law of congress. Held, that W. did not become, by virtue of that appointment, or by the execution of the bond, an officer of the United States within the meaning of section 16 of the act of August 6, 1846 (chapter 90), and subject to prosecution thereunder; but advised that the Secretary of the Interior may proceed by civil action on the bond for any breach of its conditions, and seek the recovery of whatever damages, if any, the Government has thereby sustained. (1871) 13 Op. Atty. Gen. 588.

2. Clerks in treasury department.—A clerk appointed by a United States assistant treasurer held to be an officer within the meaning of the act of 1846. U. S. v. Hartwell (1867) 6 Wall. 385, 393, 18 L. Ed. 830.

One appointed under Act Jan. 18, 1837, as clerk to the treasurer of the mint, is not indictable, under Act Aug. 13, 1841, and Act Aug. 6, 1846, for embezzling public moneys. U. S. v. Hutchinson (D. C. 1848) Fed. Cas. No. 15,432.

A clerk appointed by the direction and with the approbation of the secretary of the treasury at a fractional currency counter of a subtreasury department is an officer of the United States. U. S. v. Bloomgart (D. C. 1868) Fed. Cas. No. 14,612.

3. Deputy collector as "public officer."—A deputy collector is a "public officer," within the meaning of the act of 1846 relating to the embezzlement by public officers of public moneys intrusted to them. U. S. v. Bowerman (D. C. 1871) Fed. Cas. No. 14,630.

4. Clerk of court.—A clerk of a federal district court cannot be charged with embezzling the surplus fees and emoluments of his office until he refuses or fails to make his half-yearly return, or to pay over the surplus shown to exist by such return or the audit thereof, even if such surplus fees and emoluments can in any event be the subject of embezzlement. U. S. v. Mason (1910) 31 Sup. Ct. 28, 218 U. S. 517, 54 L. Ed. 1133.

5. "Public moneys" within meaning of statute.—The duty of a clerk of a federal district court to pay over to the United States the surplus fees and emoluments of his office, which his half-yearly return or the audit thereof shows to exist over and above compensation and allowances authorized by law to be retained by him, is not governed by the statutes relating to the embezzlement of "public money," or "money or property of the United States"; but such fees or emoluments are received by the clerk not as money or property belonging to the United States, but as the amount allowed to him for his compensation and office expenses under the statutes defining his rights and duties, and with the respect to the amount payable when the return is made the clerk is not a trustee, but a debtor. U. S. v. Mason (1910) 31 Sup. Ct. 28, 218 U. S. 517, 54 L. Ed. 1133.

Moneys collected from engineers and pilots under the act of 1852, and the proceeds of forfeited goods under the revenue laws, paid to the deputy collector, are "public moneys," within the statute. U. S. v. Bowerman (D. C. 1871) Fed. Cas. No. 14,630.

6. Use of moneys for private purpose.—It is unlawful for an officer charged with the safe-keeping of moneys to use the same for his own private purposes. U. S. v. Dimmick (D. C. 1901) 112 Fed. 350, affirmed (1902) 116 Fed. 825, 54 C. C. A. 329.

The willful withdrawing of public funds by a pay officer of the navy for his personal use while absent from his station of duty, even though there be no intention on his part to defraud the United States and the funds withdrawn are subsequently replaced, is a violation of the provisions of sections 87 and 89 of the Criminal Code. (1912) 29 Op. Atty. Gen. 563.

7. Overpayment to self.—The overpayment by a pay officer of the navy to himself from public funds, where the officer is guilty of such negligence or indifference as to indicate a willful disregard of the duties imposed upon him by law with respect to the safe-keeping of the moneys in his charge, is in violation of sections 87 and 89 of the Criminal Code. (1912) 29 Op. Atty. Gen. 563.

8. Cashing certificate of deposit.—The willful use of government funds by a pay officer of the navy for the purpose of cashing a certificate of deposit as an accommodation to a personal friend constitutes embezzlement under the provisions of sections 87 and 89 of the Criminal Code. (1912) 29 Op. Atty. Gen. 563.

9. Loan by officer.—On the unlawful loan of public moneys by a public officer to persons having knowledge of the fact, both lender and borrower are principals and are equally guilty. U. S. v. Hartwell (C. C. 1869) Fed. Cas. No. 15,318.

10. Indictment.—Neither an exception nor a proviso is contained in the act defining the offense (Act Aug. 6, 1846, § 16), and an indictment alleging every ingredient of the offense is not demurrable merely because another act provides that no person shall be prosecuted unless the indictment is found within a specified time from the time of the commission of the offense. U. S. v. Cook (1872) 17 Wall. 168, 177, 21 L. Ed. 538.

An allegation that defendant, "then and there being an officer of the United States, having the safe-keeping and disbursement of public moneys, * * * did then and there knowingly, willfully, and feloniously convert and embezzle a portion of said public moneys intrusted to him," states defendant's official character directly, and not by way of recital merely. U. S. v. Bornemann (C. C. 1888) 36 Fed. 257.

A count which omits to state what office defendant held is demurrable. Id.

An allegation in an indictment against a cashier of an assistant treasurer for

embezzling public funds, that the money was on deposit with the assistant treasurer, does not negative defendant's possession and control in such sense as to render its appropriation an embezzlement, since, under the law, of which the court will take notice, he was an officer of the United States, and not a mere servant or agent of the assistant treasurer, and it was his duty to take charge of and handle the money. Id.

An indictment against a public officer for embezzlement of public funds need not state what kind of money was embezzled, whether coin, and if so, whether gold or silver, or bills, or of what denominations, and how many of each. Id.

11. Evidence.—On the trial of an assistant postmaster for embezzlement of money belonging to the United States, quarterly reports of the office, shown to be in the handwriting of the defendant, and to have been prepared by hi although signed by the postmaste when properly certified as required b R. S. § 889, ante, § 1502, are admissib against the defendant to establish th amount of money with which the offi was chargeable. McBride v. U. (1900) 101 Fed. 821, 42 C. C. A. 38.

12. Punishment.—For the crime embezzlement by a federal officer th court sentenced the convicted person t confinement for six years at hard labo and to pay a fine to the extent of h embezzlements. U. S. v. Bloomga (D. C. 1868) Fed. Cas. No. 14,613.

Cited without definite applicatio U. S. v. Germaine (1878) 99 U. S. 50 510, 25 L. Ed. 482; U. S. v. Jessup (C. 1883) 15 Fed. 790, 793; Unit States Fidelity & Guaranty Co. v. Tit Guaranty & Surety Co. (D. C. 191 200 Fed. 443.

§ 10258. (Crim. Code, § 90.) Failure of officer to render account punishment for.

Every officer or agent of the United States who, having receive public money which he is not authorized to retain as salary, pa or emolument, fails to render his accounts for the same as provide by law shall be deemed guilty of embezzlement, and shall be fine in a sum equal to the amount of the money embezzled and im prisoned not more than ten years.

R. S. § 5491. Act March 4, 1909, c. 321, § 90, 35 Stat. 1105.

Notes of Decisions

See notes under preceding section.

Use of moneys for private purpose.—It is unlawful for an officer charged with the safe-keeping of moneys to use the same for his own private purposes. U. S. v. Dimmick (D. C. 1901) 112 Fed. 350, affirmed (1902) 116 Fed. 82 54 C. C. A. 329.

Cited without definite applicatio U. S. v. Germaine (1878) 99 U. S. 50 510, 25 L. Ed. 482; U. S. v. Jessup (C. 1883) 15 Fed. 790, 793.

§ 10259. (Crim. Code, § 91.) Failure to deposit as required; pu ishment for.

Whoever, having money of the United States in his possessio or under his control, shall fail to deposit it with the Treasure or some assistant treasurer, or some public depositary of the Uni ed States, when required so to do by the Secretary of the Treasur or the head of any other proper department, or by the accountin officers of the Treasury, shall be deemed guilty of embezzlemen thereof, and shall be fined in a sum equal to the amount of mone embezzled and imprisoned not more than ten years.

R. S. § 5492. Act March 4, 1909, c. 321, § 91, 35 Stat. 1105.

Notes of Decisions

See notes under § 10257, ante.

Necessity of actual embezzlement.—The offense denounced by this section may be complete without any actual embezzlement, and is committed where there is a willful and felonious failure to comply with a specified requirement of the secretary of the treasury, or the head of a department, as to deposits of moneys of the United States. Dimmick v. U. S. (1903) 121 Fed. 638, 57 C. C. A. 664, writ of certiorari denied (1903) 24 Sup. Ct. 846, 191 U. S. 574, 48 Ed. 308.

Requirement of deposit.—In a pros cution of a clerk in the United Stat mint under this section, a general reg lation of the treasury department r quiring the moneys to be deposited the last day of each quarter in whi they were received constituted a suf cient requirement by the secretary the treasury for the deposit of the mo ey. Dimmick v. U. S. (1903) 121 Fe

C. A. 664, affirming judg-
. Dimmick (D. C. 1901) 112
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U. S. (1903) 24 Sup. Ct.
S. 574, 48 L. Ed. 308.
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comply with such rule is
statute.* U. S. v. Dimmick
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nick v. U. S. (1902) 116 Fed.
C. A. 329, writ of certiorari
3) 23 Sup. Ct. 850, 189 U.
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t thereof, even if such sur-
nd emoluments can in any
e subject of embezzlement.
nson (1910) 31 Sup. Ct. 28,
517, 54 L. Ed. 1133.

t. — Where an indictment
government clerk for failing
money when required by the
of the treasury, as required
tion, charged that the money
ed by defendant on Decem-
00, and that it was in his
on December 31, 1900, which
t day of the quarter in which
eposit the same in compliance
ules of the treasury depart-
that defendant failed to de-
ame on that day, it was not
le on the ground that it did
the accused with failure to
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o deposit on a specified date.
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574, 48 L. Ed. 308.
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ich it was claimed defendant
eposit. Id.
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possibly open to the criticism
es not charge that the failure
was willful and intentional, if
med that such a mental state
ential element of the offense.
Higgins v. U. S. (1911) 185 Fed. 710, 108 C. C. A. 48.

An indictment for embezzlement of public money considered, and held to sufficiently describe the offense charged. U. S. v. Greene (D. C. 1906) 146 Fed. 778.

Evidence.—In a prosecution under the statute against a clerk of the mint for failure to deposit the proceeds of the sale of old materials, a rule of the treasury department requiring that all funds received from the sale of such materials shall be separately deposited on the last day of each quarter in which it was received in the treasury of the United States, etc., was admissible. Dimmick v. U. S. (1903) 121 Fed. 638, 57 C. C. A. 664, affirming judgment U. S. v. Dimmick (D. C. 1901) 112 Fed. 352, and writ of certiorari denied (1903) 24 Sup. Ct. 846, 191 U. S. 574, 48 L. Ed. 308.

A clerk of the mint received money for old materials on the 11th and 14th of December, 1900. He falsely entered the same on the records as having been received on the 3d of the following January. The superintendent of the mint testified that, in a conversation had on February 5th, defendant admitted that he had used the money, and that he knew of the regulation of the mint requiring the deposit of all such moneys on the last day of the quarter in which they were received, which was December 31, 1900. Defendant had been cashier of the mint from September 1, 1898, to September 1, 1899, and from that time was chief clerk. The book containing the treasury regulations for the deposit of money was in his room, and subject to his inspection. Held, that a verdict finding defendant guilty of willfully failing to deposit such money as required was sustained by the evidence. Id.

Instructions.—Where, in a prosecution of a clerk of the mint for failing to deposit moneys received for old materials, the court charged that in order to convict defendant the jury must find that his failure to deposit was intentional and willful, and in that connection read this section, under which the indictment was found, such instruction sufficiently covered a request to charge that defendant must be acquitted if he had no notice or knowledge that he was required to deposit the money before the end of the quarter. Dimmick v. U. S. (1903) 121 Fed. 638, 57 C. C. A. 664, affirming judgment U. S. v. Dimmick (D. C. 1901) 112 Fed. 352, and writ of certiorari denied (1903) 24 Sup. Ct. 846, 191 U. S. 574, 48 L. Ed. 308.

Where, in a prosecution against a clerk of the mint for failing to deposit moneys received from the sale of old materials before the expiration of the quarter in which the moneys were received, as required by treasury department rules, the quarter after the re-

ceipt of such money terminated on December 31, 1900, an instruction that defendant was not guilty if he deposited the money referred to in the indictment at any time before the last of the succeeding quarter, which was March 31, 1901, was properly refused. Id.

Verdict.—Where two counts of an indictment against a clerk of the United States mint charged embezzlement for failure to deposit funds in his hands, as required by this section, and two other counts charged him with failure to deposit the same as directed by the secretary of the treasury, for which a punishment is provided by the same section, a verdict of guilty on the latte counts only did not operate as an a quittal on the ground that the crime embezzlement charged was with refe ence to the same moneys referred to such subsequent count. Dimmick v. U S. (1903) 121 Fed. 638, 57 C. C. 664, affirming judgment U. S. v. Dim mick (C. C. 1901) 112 Fed. 352, an writ of certiorari denied Dimmick v. U S. (1903) 24 Sup. Ct. 846, 191 U. S 574, 48 L. Ed. 308.

Cited without definite applicatio U. S. v. Germaine (1878) 99 U. S. 50 510, 25 L. Ed. 482; U. S. v. Jessu (D. C. 1883) 15 Fed. 790, 793.

§ 10260. (Crim. Code, § 92.) Persons affected.

The provisions of the five preceding sections shall be construe to apply to all persons charged with the safe-keeping, transfe or disbursement of the public money, whether such persons b indicted as receivers or depositaries of the same.

R. S. § 5493. Act March 4, 1909, c. 321, § 92, 35 Stat. 1105.

Notes of Decisions

See notes under § 10257, ante.

Cited without definite application, U. S. v. Germaine (1878) 99 U. S. 508, 510, 25 L. Ed. 482; U. S. v. Jessup (D C. 1883) 15 Fed. 790, 793.

§ 10261. (Crim. Code, § 93.) Record evidence of embezzlement

Upon the trial of any indictment against any person for em bezzling public money under any provision of the six precedin sections, it shall be sufficient evidence, prima facie, for the purpos of showing a balance against such person, to produce a transcript fron the books and proceedings of the Treasury, as required in civil cases under the provisions for the settlement of accounts between th United States and receivers of public money.

R. S. § 5494. Act March 4, 1909, c. 321, § 93, 35 Stat. 1105.

Cited without definite application, U. S. v. Germaine (1878) 99 U. S. 508, 510, 25 L. Ed. 482; U. S. v. Jessup (D. C. 1883) 15 Fed. 790, 793; U. S. v. Grimand (D. C. 1909) 170 Fed. 20 reversed (1911) 31 Sup. Ct. 480, 22 U. S. 506, 55 L. Ed. 563.

§ 10262. (Crim. Code, § 94.) Prima facie evidence.

The refusal of any person, whether in or out of office, charge with the safe-keeping, transfer, or disbursement of the public mon ey to pay any draft, order, or warrant, drawn upon him by th proper accounting officer of the Treasury, for any public money in hi hands belonging to the United States, no matter in what capacity th same may have been received, or may be held, or to transfer or dis burse any such money, promptly, upon the legal requirement of an authorized officer, shall be deemed, upon the trial of any indictmen against such person for embezzlement, prima facie evidence of suc embezzlement.

R. S. § 5495. Act March 4, 1909, c. 321, § 94, 35 Stat. 1106.

Cited without definite application, U. S. v. Germaine (1878) 99 U. S. 508, 510, 25 L. Ed. 482.

§ 10263. (Crim. Code, § 95.) Evidence of conversion.

If any officer charged with the disbursement of the public mon eys accepts, receives, or transmits to the Treasury Departmen to be allowed in his favor any receipt or voucher from a creditor of th United States without having paid to such creditor in such funds a the officer received for disbursement, or in such funds as he may b

l by law to take in exchange, the full amount specified in ipt or voucher, every such act is an act of conversion by er to his own use of the amount specified in such receipt or

§ 5496. Act March 4, 1909, c. 321, § 95, 35 Stat. 1106.

Cited without definite application, U. S. v. Germaine (1878) 99 U. S. 508, 510, 25 L. Ed. 482.

(Crim. Code, § 96.) Banker, etc., receiving unauthorized sit of public money; punishment for.

banker, broker, or other person not an authorized deposi- ublic moneys, who shall knowingly receive from any dis- officer, or collector of internal revenue, or other agent of d States, any public money on deposit, or by way of loan or lation, with or without interest, or otherwise than in pay- debt against the United States, or shall use, transfer, con- ropriate, or apply any portion of the public money for any ot prescribed by law; and every president, cashier, teller, or other officer of any bank or banking association who shall y provision of this section is guilty of embezzlement of the oney so deposited, loaned, transferred, used, converted, ap- l, or applied, and shall be fined not more than the amount , or imprisoned not more than ten years, or both.

§ 5497. Act March 4, 1909, c. 321, § 96, 35 Stat. 1106.

Notes of Decisions

s extending crime of embez- This section extends the mbezzlement of public mon- ry * * * person * * * ransfers, converts, appropri- plies any portion of the pub- for any purpose not pre- law." U. S. v. Greene (D. 46 Fed. 778.

aw as confined to bank of- penal sanctions of section t of 1866 was confined to of- banks and banking associa- . v. Hartwell (1867) 6 Wall. 3 L. Ed. 830.

district court.—A clerk of a rict court cannot be charged zzling the surplus fees and of his office until he refus- to make his half-yearly re- pay over the surplus shown such return or the audit en if such surplus fees and can in any event be the embezzlement. U. S. v. Mason (1910) 31 Sup. Ct. 28, 218 U. S. 517, 54 L. Ed. 1133.

Limitations.—Section 1708, ante, is applicable to offenses described in this section. Greene v. U. S. (1907) 154 Fed. 401, 411, 85 C. C. A. 251, certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

Priority of government as creditor of insolvent bank.—Where postal and money order funds have been deposited by a deputy postmaster, without security, in a bank which subsequently becomes insolvent, a bill by the United States, claiming a priority over other creditors, will be dismissed. Cook County Nat. Bank v. U. S. (1882) 2 Sup. Ct. 561, 107 U. S. 445, 27 L. Ed. 537.

Cited without definite application, Cook County Nat. Bank v. U. S. (1883) 2 Sup. Ct. 561, 565, 107 U. S. 445, 27 L. Ed. 537; Dimmick v. U. S. (1902) 116 Fed. 825, 54 C. C. A. 329 (writ of certiorari denied [1903] 23 Sup. Ct. 850, 189 U. S. 509, 47 L. Ed. 923).

(Crim. Code, § 97.) Embezzlement by internal-revenue er; punishment for.

fficer connected with, or employed in, the Internal-Reve- ice of the United States, and any assistant of such offi- shall embezzle or wrongfully convert to his own use any other property of the United States, and any officer of the tates, or any assistant of such officer, who shall embezzle fully convert to his own use any money or property which come into his possession or under his control in the execu- ch office or employment, or under color or claim of authority fficer or assistant, whether the same shall be the money or

property of the United States or of some other person or party, shall, where the offense is not otherwise punishable by some statute of the United States, be fined not more than the value of the money and property thus embezzled or converted, or imprisoned not more than ten years, or both.

R. S. § 5497, as amended, Act Feb. 3, 1879, c. 42, 20 Stat. 280. Act March 4, 1909, c. 321, § 97, 35 Stat. 1106.

Notes of Decisions

See notes under the preceding section. See, also, § 10395, ante, and notes thereunder.

Review of evidence in charge to jury.—Evidence reviewed in the charge to the jury on trial of consolidated indictments and counts severally charging conspiracy to defraud the United States between contractors for public work and the government engineer officer in charge of the same, the presentation of fraudulent claims against, and embezzlement from, the United States. U. S. v. Greene (D. C. 1906) 146 Fed. 803; judgment affirmed Greene v. U. S. (1907) 154 Fed. 401, 85 C. C. A. 251; writ of certiorari denied (1907) 28 Sup. Ct. 261, 207 U. S. 596, 52 L. Ed. 357.

§ 10266. (Crim. Code, § 98.) Officer contracting beyond specific appropriation.

Whoever, being an officer of the United States, shall knowingly contract for the erection, repair, or furnishing of any public building, or for any public improvement, to pay a larger amount than the specific sum appropriated for such purpose, shall be fined not more than two thousand dollars and imprisoned not more than two years.

R. S. § 5503. Act March 4, 1909, c. 321, § 98, 35 Stat. 1106.

Notes of Decisions

Object of this and other statutes.—The object of R. S. §§ 3679, 3732, 5503 (this compilation, §§ 6778, 6884, 10266), was to prevent executive officers from involving the government in expenditures or liabilities beyond those contemplated and authorized by the lawmaking power. (1895) 21 Op. Atty. Gen. 248.

Effect as to authority of the secretary of the navy.—The secretary of the navy is without authority, in view of R. S. §§ 3732, 3733, 5503 (this compilation, §§ 6884, 6886, 10266), to incur any obligation for work on an uncompleted dry dock when the appropriation has been exhausted, even though immediate action is very important. (1896) 21 Op. Atty. Gen. 288.

Effect as prohibiting continuing employment of contractors.—Executive officers are prohibited by R. S. §§ 3679, 3732, 3733, 5503 (this compilation, §§ 6778, 6884, 6886, 10266), from continuing the employment of the contractors and involving the government in expenditures or liabilities beyond those contemplated by congress, or authorized by law. (1895) 21 Op. Atty. Gen. 244.

Bill of particulars in prosecution.—An indictment charging embezzlement being so indefinite that the court was unable to understand whether it involved but a single transaction or a series of peculations, the court ordered that a bill of particulars be furnished, and continued the case to allow time to prepare it. At a subsequent term, upon the case being called for trial, the district attorney declared his inability to furnish the bill of particulars, and moved to discontinue the cause. Held that the statement of the district attorney was equivalent to an admission of a lack of evidence to sustain the charge and the motion should be granted, notwithstanding defendant's protest and demand for a jury trial. U. S. v. Brooks (D. C. 1890) 44 Fed. 749; Same v. Harned (D. C. 1890) Id. 751.

§ 10267. (Crim. Code, § 99.) Court officers failing to deposit money, etc.; punishment for; delivery upon security.

Whoever, being a clerk or other officer of a court of the United States, shall fail forthwith to deposit any money belonging in the registry of the court, or hereafter paid into court or received by the officers thereof, with the Treasurer, assistant treasurer, or a designated depositary of the United States, in the name and to the credit of such court, or shall retain or convert to his own use or to the use of another any such money, is guilty of embezzlement, and shall

not more than the amount embezzled, or imprisoned not more
n years, or both; but nothing herein shall be held to prevent
very of any such money upon security, according to agreement
es, under the direction of the court.

S. § 5504. Act March 4, 1909, c. 321, § 99, 35 Stat. 1106.

Notes of Decisions

e in bankruptcy as officer atute.—While an assignee in cy is an officer of the court, he officer within the purview of on, and there seems to be no atute embracing assignees in cy for the specific offense of nent. U. S. v. Bixby (D. C. ed. 375.

ity of clerk to receive money.— s deemed to have authority to oney paid into court by a pri- or in a pending cause with the nction, in view of R. S. § 828, ante, § 1383, giving commissions to the clerk for receiving and paying out money in pursuance of any statute or court order, when read in connection with R. S. §§ 798, 995, 996, 5504, 5505 (this compilation, §§ 1326, 1644, 1645, 10267, 10268). Howard v. U. S. (1902) 22 Sup. Ct. 543, 547, 184 U. S. 676, 46 L. Ed. 754.

Cited without definite application, Huttig Mfg. Co. v. Edwards (1908) 160 Fed. 619, 87 C. C. A. 521; Henry v. Sowles (D. C. 1886) 28 Fed. 481.

. (Crim. Code, § 100.) Receiving loan, etc., from court cer; punishment for.

ever shall knowingly receive, from a clerk or other officer urt of the United States, as a deposit, loan, or otherwise, ney belonging in the registry of such court, is guilty of embez- and shall be punished as prescribed in the preceding section.

S. § 5505. Act March 4, 1909, c. 321, § 100, 35 Stat. 1107.

Notes of Decisions

See notes under the preceding section.

. (Crim. Code, § 101.) Failure to make returns or re- ts; punishment for.

y officer who neglects or refuses to make any return or which he is required to make at stated times by any Act of s or regulation of the Department of the Treasury, other than unts, within the time prescribed by such Act or regulation, fined not more than one thousand dollars.

S. § 1780. Act March 4, 1909, c. 321, § 101, 35 Stat. 1107.

. (Act March 4, 1911, c. 270.) False entries in accounts or ords, or false reports of public or trust moneys or securi- ; punishment.

ever, being an officer, clerk, agent, or other person holding ice or employment under the Government of the United and, being charged with the duty of keeping accounts or of any kind, shall, with intent to deceive, mislead, injure, aud the United States or any person, make in any such or record any false or fictitious entry or record of any mat- ting to or connected with his duties, or whoever with like in- ll aid or abet any such officer, clerk, agent, or other person oing; or whoever, being an officer, clerk, agent, or other per- ding any office or employment under the Government of the States and, being charged with the duty of receiving, holding, ng over moneys or securities to, for, or on behalf of the United or of receiving or holding in trust for any person any moneys rities, shall, with like intent, make a false report of such mon- securities, or whoever with like intent shall aid or abet any such clerk, agent, or other person in so doing, shall be fined not

more than five thousand dollars, or imprisoned not more than ten years, or both.

Act March 4, 1911, c. 270, 36 Stat. 1355.

This was an act entitled "An act to provide punishment for the falsification of accounts and the making of false reports by persons in the employ of the United States," cited above.

Notes of Decisions

Indictment.—In an indictment for the falsification of an account, other false accounts made by the defendant at about the same time may be introduced in evidence for the purpose of proving guilty knowledge. U. S. v. Russell (D. C. 1884) 19 Fed. 591.

§ 10271. (Crim. Code, § 102.) Aiding in obscene literature trade, etc.; punishment for.

Whoever, being an officer, agent, or employee of the Government of the United States, shall knowingly aid or abet any person engaged in violating any provision of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail, obscene or indecent publications, or representations, or means for preventing conception or producing abortion, or other article of indecent or immoral use or tendency, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

R. S. § 1875. Act July 24, 1897, c. 11, § 17, 30 Stat. 209. Act March 4, 1909, c. 321, § 102, 35 Stat. 1107.

Section 17 of the Dingley Tariff Act of July 24, 1897, cited above, was incorporated in this section, and was repealed by section 341 of the Criminal Code, post, § 10515; but it was re-enacted, in the same language, in the subsequent Payne-Aldrich Tariff Act of 1909, Act Aug. 5, 1909, c. 6, § 10, and was re-enacted with slight verbal changes in the Underwood Tariff Act of 1913, § IV, G, subsec. 2, ante, § 5300.

Cited without definite application, See U. S. v. Williams (C. C. 1880) 3 Fed. 484, 488; U. S. v. Wilson (D. C. 1893) 58 Fed. 768, 769.

§ 10272. (Crim. Code, § 103.) Trading in public property by collecting or disbursing officer; punishment for.

Whoever, being an officer of the United States concerned in the collection or the disbursement of the revenues thereof, shall carry on any trade or business in the funds or debts of the United States, or of any State, or in any public property of either, shall be fined not more than three thousand dollars, or imprisoned not more than one year, or both, and be removed from office, and thereafter be incapable of holding any office under the United States.

R. S. §§ 1788, 1789. Act March 4, 1909, c. 321, § 103, 35 Stat. 1107.

§ 10273. (Crim. Code, § 104.) Court officials purchasing fees at less than face value; punishment for.

Whoever, being a judge, clerk, or deputy clerk of any court of the United States, or of any territory thereof, or a United States district attorney, assistant attorney, marshal, deputy marshal, commissioner, or other person holding any office or employment, or position of trust or profit under the Government of the United States shall, either directly or indirectly, purchase at less than the full face value thereof, any claim against the United States for the fee, mileage, or expenses of any witness, juror, deputy marshal, or any other officer of the court whatsoever, shall be fined not more than one thousand dollars.

Act Feb. 25, 1897, c. 316, 29 Stat. 595. Act March 4, 1909, c. 321, § 104, 35 Stat. 1107.

§ 10274. (Crim. Code, § 105.) Falsely certifying as to record of deeds; punishment.

Whoever, being an officer or other person authorized by any law of the United States to record a conveyance of real property or any other instrument which by such law may be recorded, shall

ly certify falsely that such conveyance or instrument has or been recorded, shall be fined not more than one thousand or imprisoned not more than seven years, or both.

March 4, 1909, c. 321, § 105, 35 Stat. 1107.

. (Crim. Code, § 106.) **Other false certificates; punishment.**

ever, being a public officer or other person authorized by of the United States to make or give a certificate or other shall knowingly make and deliver as true such a certificate ing, containing any statement which he knows to be false, e where the punishment thereof is not elsewhere expressly l by law, shall be fined not more than five hundred dollars, isoned not more than one year, or both.

March 4, 1909, c. 321, § 106, 35 Stat. 1107.

. (Crim. Code, § 107.) **Steamboat inspectors taking illegal s; punishment for.**

y inspector of steamboats who, upon any pretense, receives or reward for his services, except what is allowed to him by ll forfeit his office, and be fined not more than five hundred or imprisoned not more than six months, or both.

S. § 5482. Act March 4, 1909, c. 321, § 107, 35 Stat. 1107.

Notes of Decisions

to remove inspectors.—The remove inspectors of hulls rs appointed under section 9, 30, 1852, c. 106, § 9, is vested in the secretary of the treasury, and not in the designating board. (1862) 10 Op. Atty. Gen. 204.

. (Crim. Code, § 108.) **Pension agents taking fee; punishnt for.**

y pension agent, or other person employed or appointed by no takes, receives, or demands any fee or reward from any er for any service in connection with the payment of his , shall be fined not more than five hundred dollars.

S. § 5487. Act March 4, 1909, c. 321, § 108, 35 Stat. 1107.

. (Crim. Code, § 109.) **Officers interested in claims against ited States; punishment for.**

ever, being an officer of the United States, or a person holdplace of trust or profit, or discharging any official function or in connection with, any Executive Department of the ment of the United States, or under the Senate or House esentatives of the United States, shall act as an agent or attorprosecuting any claim against the United States, or in any or by any means, otherwise than in discharge of his proper duties, shall aid or assist in the prosecution or support of any im, or receive any gratuity, or any share of or interest in any rom any claimant against the United States, with intent to assist, or in consideration of having aided or assisted, in the tion of such claim, shall be fined not more than five thousand or imprisoned not more than one year, or both.

S. § 5498. Act March 4, 1909, c. 321, § 109, 35 Stat. 1107.

Notes of Decisions

army officer as within statute. ed officer of the army is "an f the United States," and so e an attorney for claimants in of claims. Tyler's Motion v. 883) 18 Ct. Cl. 25.

ed officer of the army is an of the United States" within ning of this section, and it is of the court not to permit a violation of the statute in its presence. In re Winthrop (1895) 31 Ct. Cl. 35.

Assistant attorney of District of Columbia.—An assistant attorney of the District of Columbia is not an officer of the government or of the United States within the provisions of R. S. §§ 1782, 5498 (this compilation, §§ 10278, 10283). (1885) 18 Op. Atty. Gen. 161.

Commissioners of deeds for District of Columbia.—Commissioners of deeds for the District of Columbia are prohibited under the provisions of sections 109 and 113 of the Criminal Code from acting as agents or attorneys in the prosecution of pension claims against the United States. (1910) 28 Op. Atty. Gen. 131.

Such commissioners are officers of the United States within the meaning of such sections. Id.

Internal revenue storekeeper.—An internal revenue storekeeper is an officer within the meaning of the act of Congress making it a criminal offense for any officer to act as attorney or agent in the prosecution of a claim against the United States. Angell v. Rowlett's Adm'r (1883) 4 Ky. Law Rep. (abstract) 909.

Accepting appointment as counsel for delegates to Pan-American Conference by attorney prosecuting claims before Spanish Treaty Claims Commission.—The acceptance of an appointment as counsel for the delegates of the United States to the Pan-American Conference by a person who is engaged as an attorney in prosecuting claims before the Spanish Treaty Claims Commission would not subject such person to the penalties prescribed by R. S. § 5498 (embodied herein). The penalties therein prescribed are for the prosecution of claims against the United States by one who holds an office or place such as is described in such section. (1901) 23 Op. Atty. Gen. 533.

While the appointee would be subject to no penalty for accepting such appointment, yet if, while holding the place of such counsel, he should engage in the prosecution of claims against the United States before that commission, or other tribunal, he would be subject to the penalties therein prescribed. Id.

While such person would not be an officer, as that term is there used, he would come within the description of a person holding a place of trust or profit under the government of the United States. Id.

Appearing and arguing case as supporting claim.—To appear and argue a case for a claimant would be to support a claim against the United States, and would subject the officer to the penalty prescribed by statute. Tyler's Motion v. U. S. (1883) 18 Ct. Cl. 25.

Abandonment of contract to act as agent or attorney.—Where a claim agent has qualified as an internal revenue storekeeper, he will be treated as having abandoned any contract he may have had whereby he was to act as agent or attorney in the prosecution of claims against the United States. Angell v. Rowlett's Adm'r (1883) 4 Ky. Law Rep. (abstract) 909.

Cited without definite application, Ex parte Curtis (1882) 1 Sup. Ct. 381, 383, 106 U. S. 371, 27 L. Ed. 232.

§ 10279. (Act March 1, 1901, c. 670, § 1.) Members of National Guard of District of Columbia not prohibited from being interested in claims.

Members of the National Guard of the District of Columbia who receive compensation for their services as such shall not be held or construed to be officers of the United States, or persons holding any place of trust or profit, or discharging any official function under or in connection with any Executive Department of the Government of the United States within the provision of section fifty-four hundred and ninety-eight of the Revised Statutes of the United States. (31 Stat. 844.)

This was a proviso annexed to an appropriation for the support of the militia in the District of Columbia appropriation act for the fiscal year 1902, cited above.

A similar proviso was made by the District of Columbia appropriation act for the preceding year, Act June 6, 1900, c. 789, § 1, 31 Stat. 577.

R. S. § 5498, mentioned in this proviso, was incorporated in section 109 of the Criminal Code, ante, § 10278.

§ 10280. (Crim. Code, § 110.) Accepting, etc., bribe by Member of Congress; punishment for.

Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, directly or indirectly, ask, accept, receive, or agree to receive, any money, property, or other valuable consideration, or any promise, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value to him or to any person with his consent, connivance, or concurrence, for his attention to, or services, or

intent to have his action, vote, or decision influenced, on tion, matter, cause, or proceeding, which may at any time be in either House of Congress or before any committee there- ich by law or under the Constitution may be brought before is official capacity, or in his place as such Member, Delegate, ent Commissioner, shall be fined not more than three times unt asked, accepted, or received, and imprisoned not more e years; and shall, moreover, forfeit his office or place, and r be forever disqualified from holding any office of honor, profit under the Government of the United States.

. §§ 1781, 5500, 5502. Act March 4, 1909, c. 321, § 110, 35 Stat. 1108.

Notes of Decisions

See notes under § 10283, post.

(Crim. Code, § 111.) Offering, etc., bribe to Member ongress; punishment for.

ver shall promise, offer, or give, or cause to be promised, or given, any money or other thing of value, or shall make r any contract, undertaking, obligation, gratuity, or se- r the payment of money or for the delivery or conveyance ing of value, to any Member of either House of Congress, ate to Congress, or Resident Commissioner, after his election ntment and either before or after he has qualified, and dur- ontinuance in office, or to any person with his consent, con- or concurrence, with intent to influence his action, vote, or on any question, matter, cause, or proceeding which may at be pending in either House of Congress, or before any com- ereof, or which by law or under the Constitution may be before him in his official capacity or in his place as such Mem- egate, or Resident Commissioner, shall be fined not more e times the amount of money or value of the thing so prom- red, given, made, or tendered, and imprisoned not more than ars.

. § 5450. Act March 4, 1909, c. 321, § 111, 35 Stat. 1108.

Cited without definite application,
U. S. v. Dietrich (C. C. 1904) 126 Fed. 676, 680.

(Crim. Code, § 112.) Member of Congress taking con- ration for procuring contract, etc.; offering Member of gress consideration to procure contract, etc.; punishment contracts voidable.

ver, being elected or appointed a Member of or Delegate ress, or a Resident Commissioner, shall, after his election intment and either before or after he has qualified, and is continuance in office, or being an officer or agent of the States, shall directly or indirectly take, receive, or agree to from any person, any money, property, or other valuable con- n whatever, for procuring, or aiding to procure, any contract, e office, or place, from the United States or from any officer tment thereof, for any person whatever, or for giving any tract, appointive office, or place to any person whomsoever; ver, directly or indirectly, shall offer, or agree to give, or e, or bestow, any money, property, or other valuable con- n whatever, for the procuring, or aiding to procure, any such appointive office, or place, shall be fined not more than ten dollars and imprisoned not more than two years; and shall, r, be disqualified from holding any office of honor, profit, or

trust under the Government of the United States. Any such contract or agreement may, at the option of the President, be declared void.

R. S. § 1781. Act March 4, 1909, c. 321, § 112, 35 Stat. 1108.

Notes of Decisions

See notes under the succeeding section.

"Member of congress" within statute.—A person elected to the office of senator of the United States, until he has been accepted by the senate as a member and has assumed the duties of the office, is not a "member of congress" within the meaning of R. S. § 1781 (embodied herein), making it a criminal offense for a "member of congress or any officer or agent of the government" to receive or agree to receive a bribe for procuring or aiding to procure for another any contract, office, or place from the government. U. S. v. Dietrich (C. C. 1904) 126 Fed. 676.

Department clerk as subject to indictment.—A clerk in one of the departments is subject to indictment under R. S. § 1781 (embodied herein), or R. S. § 1782, post, § 10283, as an "officer and agent" or an "officer and clerk" of the United States. McGregor v. U. S. (1904) 134 Fed. 187, 69 C. C. A. 477.

Agreement to receive bribe and agreement to give bribe as distinct offenses.—The act of agreeing to receive a bribe is a substantive offense, and the act of agreeing to give a bribe another. Chadwick v. U. S. (1905) 141 Fed. 225, 236, 72 C. C. A. 343.

Two persons cannot be severally charged in the same indictment under R. S. § 1781 (embodied herein), and in a single count, the one with agreeing to receive a bribe as a member of congress and the other with agreeing to give such bribe, which constitute distinct and several offenses. U. S. v. Dietrich (C. C. 1904) 126 Fed. 664.

Giving note to member of congress.—R. S. § 1781 (embodied herein), and section 1782, post, § 10283, make it a criminal offense for any member of congress to receive or agree to receive any money, property, or other valuable consideration for procuring or aiding to procure any contract from the government, or to receive any compensation for services rendered in relation to any claim or contract in which the United States is a party. Section 1781 also makes it an offense for any person to give or agree to give any money, property, or other valuable consideration for the procuring or aiding to procure such contract by a member of congress. Held, that the delivery to a member of congress of a nonnegotiable note made by a government contractor, promising to pay a certain sum as the proceeds of the contract were received, and executed pursuant to an agreement to pay such member for his services in procuring the contract, did not constitute the giving or receiving of "property" or a "valuable consideration," within the meaning of the statute, such note being made unlawful and invalid by the statute itself. U. S. v. Driggs (C. C. 1903) 125 Fed. 520.

Limitations.—Indictments under the statute, based on payments subsequently made and received in accordance with the terms of the note, were not barred by limitation, where such payments were made within three years, though the note was delivered more than three years prior to the finding of the indictment. U. S. v. Driggs (C. C. 1903) 125 Fed. 520.

Indictment.—When a nonnegotiable note, made by a government contractor, promising to pay a certain sum as the proceeds of the contract were received, was executed pursuant to an agreement to pay the congressman for his services in procuring the contract, it was held that indictments under the statute based on payments subsequently made and received in accordance with the terms of the note, were not barred by limitation, where such payments were made within three years, though the note was delivered more than three years prior to finding the indictment. U. S. v. Driggs (C. C. 1903) 125 Fed. 520.

Conspiracy.—Charges against the same defendants for conspiracy to defraud the United States, based on R. S. § 5440, ante, § 10201, and for receiving money from their alleged coconspirator for aiding to procure a contract from the government, and for services rendered in relation to the same, based on R. S. § 1781 (embodied herein), and section 1782, post, § 10283, defendants being clerks in a department, and such charges all relating to the same transaction, may properly be joined in different counts in the same indictment under R. S. § 1024, ante, § 1690. McGregor v. U. S. (1904) 134 Fed. 187, 69 C. C. A. 477.

R. S. § 1781 (embodied herein), makes it a criminal offense for a member of congress to take, receive, "or agree to receive" any money, property, or other valuable consideration for procuring or aiding to procure any office from the government, and also a like offense for any person to offer, give, "or agree to give" any money or other consideration to any member of congress for procuring or aiding to procure such office. Held, that an agreement between a member of congress and another, the one to receive a bribe for aiding to procure an office

her to pay the same, consti-
bstantive offense under said
each of the parties thereto,
be made the basis of an in-
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S. v. Dietrich (C. C. 1904) 126 Fed. 664.

Cited without definite application, Beavers v. Haubert (1905) 25 Sup. Ct. 573, 574, 198 U. S. 77, 49 L. Ed. 950; U. S. v. Schlierholz (D. C. 1905) 137 Fed. 616, 624.

(Crim. Code, § 113.) Receiving pay by Senator or Mem-of Congress in matters affecting United States; punish-t for.

ver, being elected or appointed a Senator, Member of or to Congress, or a Resident Commissioner, shall, after on or appointment and either before or after he has qualified, g his continuance in office, or being the head of a department, officer or clerk in the employ of the United States, shall, di- indirectly, receive, or agree to receive, any compensation for any services rendered or to be rendered to any person, himself or another, in relation to any proceeding, contract, ntroversy, charge, accusation, arrest, or other matter or thing the United States is a party or directly or indirectly inter-fore any department, court-martial, bureau, officer, or any tary, or naval commission whatever, shall be fined not more thousand dollars and imprisoned not more than two years; moreover, thereafter be incapable of holding any office of ust, or profit under the Government of the United States.

§ 1782. Act March 4, 1909, c. 321, § 113, 35 Stat. 1109.

Notes of Decisions

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ions 1781 and 1782 of the atutes (this compilation, §§ 3), make it illegal for an the United States to have that sort of connection with a government contract which an agent, attorney, or solicitor assumes when he procures, or aids in procuring, such contract for another, or when he prosecutes for another any claim against the government founded thereon. (1874) 14 Op. Atty. Gen. 483.

But there is in the statutes no general provision whereby officers of the executive branch of the government are forbidden to contract directly with the government as principals, in matters separate from their offices and in no way connected with the performance of their official duties; nor are those officers forbidden to be connected with such contracts, after they are procured, by acquiring an interest therein. Id.

There is no prohibition against pension agents contracting directly with the government, or becoming connected with government contracts, in the manner just adverted to. Id.

2. Statute as excluding powers of government.—The powers of the federal government were not exceeded by the enactment of this section. Burton v. U. S. (1906) 26 Sup. Ct. 688, 692, 202 U. S. 344, 50 L. Ed. 1057, 6 Ann. Cas. 372.

3. Statute as interfering with senator's duties.—The discharge, by a senator of the United States of his legitimate duties is not interfered with by this section. Burton v. U. S. (1906) 26 Sup. Ct. 688, 693, 202 U. S. 344, 50 L. Ed. 1057, 6 Ann. Cas. 392.

4. Interference with authority of senate over members.—The authority

of the senate of the United States over its members is not interfered with by this section. Burton v. U. S. (1906) 26 Sup. Ct. 688, 693, 202 U. S. 344, 50 L. Ed. 1057, 6 Ann. Cas. 392.

5. Department clerk as subject to indictment.—A clerk in one of the departments is subject to indictment under R. S. § 1781, ante, § 10282, or R. S. § 1782 (embodied herein), as an "officer and agent" or an "officer and clerk" of the United States. McGregor v. U. S. (1904) 134 Fed. 187, 69 C. C. A. 477.

6. Assistant attorney of District of Columbia.—An assistant attorney of the District of Columbia is not an officer of the government or of the United States within the provisions of R. S. §§ 1782, 5498 (this compilation, §§ 10278, 10283). (1885) 18 Op. Atty. Gen. 161.

7. Retired army or naval officer as within statute.—An officer of the United States army or marine corps, retired from active service only, and not wholly retired from service, is an officer in the employ of the government, and so within the prohibition of this section. (1912) 29 Op. Atty. Gen. 397.

8. Commissioners of deeds for District of Columbia.—Commissioners of deeds for the District of Columbia are prohibited under the provisions of sections 109 and 113 of the Criminal Code from acting as agents or attorneys in the prosecution of pension claims against the United States. (1910) 28 Atty. Gen. 131.

Such commissioners are officers of the United States within the meaning of such sections. Id.

9. Member of congress.—By Act June 11, 1864, c. 119, a member of congress elect is, previous to as well as after taking the oath of office, debarred from acting as counsel for parties, and from prosecuting claims against the government, before any department, court-martial, bureau officer, or any civil, naval, or military commission, if he has received or has agreed to receive any compensation whatever, directly or indirectly, therefor. (1872) 14 Op. Atty. Gen. 133.

10. —— Continuance in employment as counsel after election.—H. while acting as counsel of the United States before the joint commission between the United States and Great Britain, under an appointment by the President, was elected a representative to the forty-third congress, the term whereof began on the 4th of March, 1873. On the 3d of March, 1873, an act was passed authorizing the President to continue him in his employment as such counsel, notwithstanding his election as aforesaid, until he should take the oath of office as a representative in congress. H. took the oath of office as a representative December 1, 1873, up to which date he was continued in employment as counsel, and he receive compensation for his services as suc for the period between that date an the 4th of March 1873. Question be ing raised whether he is entitled to re ceive also the salary of a member o congress for the same period, held tha he is so entitled; that he is not af fected by the prohibition contained i Act Sept. 30, 1850, c. 90, § 1, agains paying to one individual the salaries o two different offices. (1874) 14 Op Atty. Gen. 406.

C., an attorney at law, under a con tract to procure from the war depart ment the discharge of a man drafted in to the army, was afterwards a candidat for member of congress. The electio being disputed, neither C. nor his com petitor received a certificate of elec tion; but C. obtained his seat on prima facie case, and five months late was ousted. In the interval he pro cured the discharge as agreed, and sue for his compensation. Held, that C. wa not then a member of congress withi the act of June 11, 1861 (13 Stat. 123) providing that no member of congres shall after his election receive or agre to receive compensation for service rendered before a department, etc Bowman v. Coffroth (1868) 59 Pa. (P. F. Smith) 19.

11. Separate and distinct offenses.—The agreement to receive, and the receipt of, the forbidden compensation are made two separate and distinct offenses by R. S. § 1782 (embodied herein), making it a misdemeanor of United States Senator to receive o agree to receive compensation for services rendered before any department, in relation to any proceeding in which the United States is interested. Burton v U. S. (1906) 26 Sup. Ct. 688, 697, 202 U. S. 344, 50 L. Ed. 1057, 6 Ann. Cas 392.

12. Proceeding in which United States is "interested."—A fraud-order inquiry pending before the post-office department is a proceeding in which the United States, although having no direct money or pecuniary interest in the result, is "directly or indirectly interested," within the meaning of R. S. § 1782 (embodied herein), making it a misdemeanor for a United States senator to receive or agree to receive compensation for services rendered before any department, in relation to any proceeding in which the United States is so interested. Burton v. U. S. (1906) 26 Sup. Ct. 688, 694, 202 U. S. 344, 50 L. Ed. 1057, 6 Ann. Cas. 392.

The United States has a direct interest, within the meaning of R. S. § 1782 (embodied herein), in all its public lands and in the right of entry or purchase thereof through proceedings to be had at any of its land offices. U. S. v. Booth (C. C. 1906) 148 Fed. 112.

An inquiry by the post office department for the purpose of determining

a corporation has been guilty udulent use of the mails, and a fraud order shall be issued t, is a proceeding in which the tates is "interested," within R. 2 (embodied herein), prohibiting States senator from receiving ation for services rendered by any person or any bureau of ed States in relation to a mat- hich the United States is in- U. S. v. Burton (D. C. 1904) . 552, judgment reversed Bur- J. S. (1905) 25 Sup. Ct. 243, 3. 283, 49 L. Ed. 482.

reement of land office clerk as -An agreement by a clerk in office to receive compensation rming an entryman when land e open for entry, and assisting obtain title, held a violation of tion. U. S. v. Long (D. C. 84 Fed. 184.

ceiver in land office giving ad- formation.—The provision of R. 2 (embodied herein), making it for any officer in the employ overnment to "receive or agree ve any compensation whatever, or indirectly, for any services," etc., applies to a receiver d office in respect to matters his own office or which may fore it for his action thereon udicial, executive, or merely and without regard to the whether the service rendered rendered is proper or improp- a receiver commits an offense aid section by receiving com- n for giving advance informa- the person paying the same of oration of lands to the public through the action of the land ent, which lands thereby be- ubject to entry by means of otherwise in his district. U. oth (C. C. 1906) 148 Fed. 112.

ducing decision favorable to ion as to its use of the mails. the postmaster general had ion, in the abstract, of a pro- to determine whether a cer- poration should be longer per- o use the mails, and whether d order" should be issued it, such jurisdiction was suffi- the purposes of a prosecution ited States senator for taking ation from such corporation for rendered in representing it in ring to induce the Postmaster to render a decision favorable orporation in such proceeding, ion of R. S. § 1782 (embodied U. S. v. Burton (D. C. 1904) . 552, judgment reversed Bur- J. S. (1905) 25 S. Ct. 243, 196 3, 49 L. Ed. 482.

quiry authorized by section te, to be prosecuted by the post epartment for the purpose of ning whether a corporation is engaged in conducting a fraudulent scheme or device by means of the post office establishment, is "a matter or thing" concerning which a senator of the United States is precluded from rendering services for a pecuniary compensation by R. S. § 1782 (embodied herein). Id.

16. Giving note to member of congress.—R. S. § 1781 (embodied herein) and section 1782, post, § 10283, make it a criminal offense for any member of congress to receive or agree to receive any money, property, or other valuable consideration for procuring or aiding to procure any contract from the government, or to receive any compensation for services rendered in relation to any claim or contract in which the United States is a party. Section 1781 also makes it an offense for any person to give or agree to give any money, property, or other valuable consideration for the procuring or aiding to procure such contract by a member of congress. Held, that the delivery to a member of congress of a nonnegotiable note made by a government contractor, promising to pay a certain sum as the proceeds of the contract were received, and executed pursuant to an agreement to pay such member for his services in procuring the contract, did not constitute the giving or receiving of "property" for a "valuable consideration," within the meaning of the statute, such note being made unlawful and invalid by the statute itself. U. S. v. Driggs (C. C. 1903) 125 Fed. 520.

17. Jurisdiction and venue.—In a transaction whereby accused, a United States senator in Washington received checks sent from St. Louis, Mo., for services rendered in violation of R. S. § 1782 (embodied herein), the payment was in Washington, and there was no beginning of the offense in Missouri, so as to bring the case within R. S. § 731, ante, § 1024. Burton v. U. S. (1905) 25 Sup. Ct. 243, 245, 248, 196 U. S. 283, 49 L. Ed. 482.

The physical absence of the accused from the state of Missouri when the acceptance by a St. Louis corporation of his offer to render services in consideration of the compensation forbidden by R. S. § 1782 (embodied herein), was dispatched by mail or telegram, does not deprive the circuit court of the United States for the eastern district of Missouri of jurisdiction of the offense, on the theory that the crime was not committed in that district, within the meaning of Const. art. 3, § 2, and the sixth amendment, requiring the trial of all crimes against the United States to be held in the state and district where such crimes shall have been committed. Burton v. U. S. (1906) 26 Sup. Ct. 688, 701, 202 U. S 344. 50 L. Ed. 1057, 6 Ann. Cas. 392.

18. Indictment.—An indictment charges an offense under R. S. § 1782 (em-

bodied herein), where it avers that the accused, being such a senator, received compensation for services rendered before the postoffice department for the purpose of inducing a decision favorable to his client in a fraud order inquiry pending before that department. Burton v. U S. (1905) 25 Sup. Ct. 243, 245, 196 U. S. 283, 49 L. Ed. 482, reversing judgment U. S. v. Burton (D. C. 1904) 131 Fed. 552.

A nonnegotiable note, made by a government contractor, promising to pay a certain sum as the proceeds of the contract were received, was executed pursuant to an agreement to pay the congressman for his services in procuring the contract. Held, that indictments under the statute, based on payments subsequently made and received in accordance with the terms of the note, were not barred by limitation, where such payments were made within three years, though the note was delivered more than three years prior to finding the indictment. U. S. v. Driggs (C. C. 1903) 125 Fed. 520.

Where an indictment in a prosecution of a United States senator for receiving pay for services rendered to a client before the post office department, in violation of R. S. § 1782 (embodied herein), charged that accused rendered services before the department, that he received compensation therefor, that the United States was interested in the matter in relation to which the services were rendered, and specifically described the services and compensation and alleged the time it was received, and charged that the matter pending before the department was to the end and for the purpose of enabling the postmaster general to ascertain, find, and determine whether he should exercise the power conferred on him by section 3929 (§ 7411, ante), and forbid the use of the mails to the corporation, it was sufficient; and all other averments tending more specifically to describe the nature of the matter in process of investigation, were surplusage. U. S. v. Burton (D. C. 1904) 131 Fed. 552, judgment reversed Burton v. U. S. (1905) 25 Sup. Ct. 243, 196 U. S. 283, 49 L. Ed. 482.

An averment in indictment, in a prosecution of a United States senator for receiving pay for services rendered to a client before the post office department, that the matter pending before the post office department was whether a corporation had violated R. S. § 5480, post, § 10385, did not show want of jurisdiction in the postmaster general to hear and determine whether the corporation should be denied the use of the mail service; such averment being evidential only of the ultimate jurisdictional fact whether the corporation was then fraudulently using the mail, and such averment, if faulty, was cured by the latter averment that the inquiry was "to the end and for the purpose" of enabling the postmaster general to ascertain, find, and determine whether he should exercise the power conferred upon him by R. S. § 3929, ante, § 7411, and forbid the use of the mails to the corporation. Id.

Where an indictment alleged that defendant, being then and there a clerk in the employ of the government in the United States land office at D., during his continuance in office, did wrongfully and unlawfully agree to receive compensation for services rendered to a public land entryman, etc., sufficiently alleged that accused was an official or clerk of the government. U. S. v. Long (D. C. 1911) 184 Fed. 184.

Where an indictment against a clerk of a government land office for unlawfully agreeing to receive compensation for services rendered to an entryman alleged that the services were rendered in relation 'to a proceeding and claim in which the United States was a party and interested, before the United States land office, to obtain title to certain government land from the government, it sufficiently appeared that the land concerning which the alleged agreement was had was the property of the United States. Id.

19. Evidence.—An averment in an indictment, charging a United States senator with having received certain checks at St. Louis, Mo., as compensation for services rendered before the postoffice department, in violation of R. S. § 1782 (embodied herein), and alleging the payment to him of the money thereon at that place, is not supported by evidence that the checks, drawn on a St. Louis trust company, were received by him in the city of Washington, and were by him there indorsed and deposited with a local bank, and were afterwards paid at St. Louis, and that the amount of each check was, immediately upon deposit, credited by the Washington bank to the account of defendant, who had the right to draw against the account without waiting for payment at St. Louis. Burton v. U. S. (1905) 25 Sup. Ct. 243, 245, 196 U. S. 283, 49 L. Ed. 482.

20. Acquittal as sustaining plea in bar.—An acquittal upon the charge of having received the compensation forbidden by this section, from a specified person, described in the indictment as an officer and employé of a corporation, will not sustain a plea in bar of a prosecution upon the charge of having received such compensation from the corporation, where the accused declined to plead further after his demurrer to the answer, alleging that the two offenses are not, in legal effect, identical, was overruled. Burton v. U. S. (1906) 26 Sup. Ct. 688, 697, 202 U. S. 344, 50 L. Ed. 1057, 6 Ann. Cas. 392.

21. Disqualification from holding office.—Senators of the United States do not hold their places "under the gov-

t of the United States," within aning of the declaration in R. S. (embodied herein), that any one ed under its provisions shall be le of holding any office of honst, or profit under that govern- Burton v. U. S. (1906) 26 Sup. 3, 694, 202 U. S. 344, 50 L. Ed. Ann. Cas. 392.

ellection of fine from defend- estate.—A judgment entered a defendant convicted under R. 782 (embodied herein), which s that any person violating the hall be deemed guilty of a mis- or and shall be imprisoned and s wholly penal, and the death of endant after judgment and while the case is pending in an appellate court operates to abate the entire cause of action, and the fine is not collectible from the defendant's estate. U. S. v. Dunne (1909) 173 Fed. 254, 97 C. C. A. 420, 19 Ann. Cas. 1145, affirming judgment U. S. v. Mitchell (C. C. 1908) 163 Fed. 1014.

Cited without definite application, Beavers v. Haubert (1905) 25 Sup. Ct. 573, 574, 198 U. S. 77, 49 L. Ed. 950; U. S. v. Dietrich (C. C. 1904) 126 Fed. 676, 680; U. S. v. Mitchell (C. C. 1908) 163 Fed. 1014 (affirmed [1909] 173 Fed. 254, 97 C. C. A. 420, 19 Ann. Cas. 1145); U. S. v. Schliehols (D. C. 1905) 137 Fed. 616, 624.

84. (Crim. Code, § 114.) Member of Congress interested in ublic contracts; punishment for; contracts void; repayment, tc.

oever, being elected or appointed a Member of or Delegate ngress, or a Resident Commissioner, shall, after his election pointment and either before or after he has qualified, and g his continuance in office, directly or indirectly, himself, or y other person in trust for him, or for his use or benefit, or s account, undertake, execute, hold, or enjoy, in whole or in ny contract or agreement, made or entered into in behalf of the d States by any officer or person authorized to make contracts behalf, shall be fined not more than three thousand dollars. ntracts or agreements made in violation of this section shall be and whenever any sum of money is advanced by the United , in consideration of any such contract or agreement, it shall vith be repaid; and in case of failure or refusal to repay the when demanded by the proper officer of the department under authority such contract or agreement shall have been made or d into, suit shall at once be brought against the persons so failing using and his sureties, for the recovery of the money so ad- d.

. S. § 3739. Act March 4, 1909, c. 321, § 114, 35 Stat. 1109.

Notes of Decisions

ments or contracts within stat- general.—This section applies to ract made between the United and one who was not at the member of or delegate to con- out who became such while the t was still executory in whole part. In such case, on his be- a member the contract was at issolved, and his obligation to perform it, and his right to d enjoy further benefit from it, erminated by operation of law. Dietrich (C. C. 1904) 126 Fed. 3.

, in June 1876, R. entered into ract with the quartermaster's ent for the fiscal year ending , 1877, and he was afterwards fall of 1876) elected a dele- the forty-fifth congress, Con- ot having as yet (in May, 1877) d R. not being as yet a member body, it was held that the provision of R. S. § 3739 (embodied herein), and section 6892, ante, had no application to him. Whether, if the congress should meet, and R. should be sworn in as a delegrate during the continuance of his contract, the latter would thereby be annulled, was not considered. (1877) 15 Op. Atty. Gen. 281.

Agreements for the purchase of lands, for water rentals, for conveyance of water rights, and similar instruments, contractual in form, relating to the adjustment of vested water rights, executed in behalf of the United States by some officer of the reclamation service for purposes within the purview of the reclamation act (32 Stat. 388), are "agreements" or "contracts" within the meaning of R. S. §§ 3739–3742 (this compilation, §§ 6892, 10284–10286), which prohibit any member of congress from being a party to, or interested in, any contract with, or

on behalf of, the United States which is in its nature executory and continuous as to future performance, and require the insertion therein of the condition prescribed by R. S. § 3741. (1908) 26 Op. Atty. Gen. 537.

Contracts for carrying the mail.—By R. S. § 3740, post, § 10286, contracts for carrying the mail are excepted from the operation of the law (R. S. § 3739 [embodied herein]), forbidding members of congress to be admitted to any share in or benefit arising upon contracts with the government. (1885) 18 Op. Atty. Gen. 113.

Signing contractor's bond.—The provisions of R. S. §§ 3739-3741 (this compilation, §§ 6892, 10284, 10286), considered, and held that, upon a fair construction thereof, a member of congress may be lawfully accepted as a surety on the bond of a contractor with the United States. (1885) 18 Op. Atty. Gen. 286.

Signing a contractor's bond would not give the surety any immediate personal interest in its benefits. He is not a contractor with the government, nor does he, under any circumstances become so under the statute. Id.

Termination of contract by operation of law.—Under R. S. § 3739 (embodied herein), where a contract was made between the United States and one who was not at the time a member of or a delegate to congress, but who became such while the contract was still executory, on his becoming a member, the contract was at once dissolved, and his obligation to further perform it, and his right to hold and enjoy further benefit from it, were terminated by operation of law. U. S. v. Dietrich (C. C. 1904) 126 Fed. 671.

Prohibition of statute as extending to holding and enjoying contract.—The purpose and effect of the legislation contained in this and the two sections next following is to absolutely inhibit all contractual relations with the United States on the part of any member of or delegate to congress through "any contract or agreement made or entered into in behalf of the United States, by any officer or person authorized to make contracts on behalf of the United States," save in the instances specifically excepted by R. S. § 3740, post, § 10286. The inhibition is not alone against undertaking or executing (that is, making or entering into) such a contract or agreement, but also against holding or enjoying one (that is, having or retaining the title thereto or receiving the benefits thereof). U. S. v. Dietrich (C. C. 1904) 126 Fed. 671, 673.

Meaning of word "advanced."—The word "advanced," in this section, which requires the return of money advanced by the United States on any contract wherein a member of congress is benefited, is used in its ordinary legal meaning, and does not apply to contracts that have been fully executed and payment thereon fully made. (1903) 25 Op. Atty. Gen. 71.

Cited without definite application. Ex parte Curtis (1882) 1 Sup. Ct. 381, 384, 106 U. S. 371, 27 L. Ed. 232; Burton v. U. S. (1906) 26 Sup. Ct. 688, 692, 202 U. S. 344, 50 L. Ed. 1057, 6 Ann. Cas. 392; U. S. v. Dietrich (C. C. 1904) 126 Fed. 676, 680.

§ 10285. (Crim. Code, § 115.) Making official contract with Member of Congress; punishment for.

Whoever, being an officer of the United States, shall on behalf of the United States, directly or indirectly make or enter into any contract, bargain, or agreement, in writing or otherwise, with any Member of or Delegate to Congress, or any Resident Commissioner, after his election or appointment as such Member, Delegate, or Resident Commissioner, and either before or after he has qualified, and during his continuance in office, shall be fined not more than three thousand dollars.

R. S. § 3742. Act March 4, 1909, c. 321, § 115, 35 Stat. 1109.

Notes of Decisions

See notes under the preceding section.

§ 10286 (Crim. Code, § 116.) Contracts not affected.

Nothing contained in the two preceding sections shall extend, or be construed to extend, to any contract or agreement made or entered into, or accepted, by any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company; nor to the purchase or sale of bills of exchange or other property by any Member of or Delegate to Congress, or Resident Commissioner, where the same are ready for delivery,

yment therefor is made, at the time of making or entering e contract or agreement.

S. § 3740. Act March 4, 1909, c. 321, § 116, 35 Stat. 1109.

Notes of Decisions

otes under § 10284, ante.

acts for carrying the mail.—By 3740 (embodied herein), con- or carrying the mail are except- the operation of the law (R. 39, ante, § 10284), forbidding s of congress to be admitted share in or benefit arising upon s with the government. (1885) Atty. Gen. 113.

act as surety.—The provisions §§ 3739–3741 (this compilation, §§ 6892, 10284, 10286), considered, and held that upon a fair construction thereof a member of congress may be lawfully accepted as a surety on the bond of a contractor with the United States. (1885) 18 Op. Atty. Gen. 286.

Signing a contractor's bond would give the surety no immediate personal interest in its benefits. He is not a contractor with the government, nor does he, under any circumstances, become so under the statute. Id.

7. (Crim. Code, § 117.) Official accepting bribe; punishent for.

oever, being an officer of the United States, or a person act- r or on behalf of the United States, in any official capacity, or by virtue of the authority of any department or office of overnment thereof; or whoever, being an officer or person for or on behalf of either House of Congress, or of any com- of either House, or of both Houses thereof, shall ask, ac- or receive any money, or any contract, promise, undertaking, ion, gratuity, or security for the payment of money, or for livery or conveyance of anything of value, with intent to have cision or action on any question, matter, cause, or proceeding may at any time be pending, or which may by law be brought him in his official capacity, or in his place of trust or profit, ced thereby, shall be fined not more than three times the t of money or value of the thing so asked, accepted, or received, nprisoned not more than three years; and shall, moreover, his office or place and thereafter be forever disqualified from g any office of honor, trust, or profit under the Government United States.

S. §§ 5501, 5502. Act March 4, 1909, c. 321, § 117, 35 Stat. 1109.

Notes of Decisions

ruction in general.—This section ghly penal, and must be con- t least with reasonable strict- J. S. v. Van Wert (D. C. 1912) l. 974; Same v. Brents (D. C. l. 980.

are officers.—Under Const. art. n "officer of the United States," his section, is one who is either ed by the President by and with ice and consent of the Senate, he President alone, the courts or heads of some executive de- t of the government. United v. Van Wert (D. C. 1912) 195 Same v. Brents, Id. 980.

plice.—One paying money to an f the United States, in viola- R. S. § 5501 (embodied herein), indicted under R. S. § 5451, 10203, though perhaps not an accomplice. King v. U. S. 112 Fed. 988, 50 C. C. A. 647.

sity of official action being pre- by statute.—The official action sought to be influenced by a bribe charged to have been given and accepted contrary to this section and § 10203, ante, need not have been prescribed by statute; it is sufficient that it was governed by a lawful requirement of the executive department under whose authority the officer was acting; and such requirement need not have been prescribed by a written rule or regulation, but might also be found in an established usage which constituted the common law of the department, and fixed the duties of those engaged in its activities. U. S. v. Birdsall (1914) 34 Sup. Ct. 512, 233 U. S. 223, 58 L. Ed. 930.

Offense by Indian agent or special officer.—An Indian agent, in the execution and completion of leases of land not needed for farming or agricultural purposes or for individual allotments, was charged with such an official trust that his receiving a bribe to influence his official action thereon rendered him subject to punishment under R. S. § 5501 (embodied herein). Sharp v. U.

S. (1905) 138 Fed. 878, 71 C. C. A. 258, reversing judgment (1904) 76 Pac. 177, 13 Okl. 522.

A special officer appointed by the Commissioner of Indian affairs for the suppression of the liquor traffic among the Indians was not guilty of bribery, under this section, in accepting a sum of money for a recommendation to the United States district court and the district attorney, for the reduction of sentences of persons convicted of violating the liquor traffic law (R. S. §§ 161, 463, 465, ante, §§ 235, 716, 723), not imposing on accused any duty in regard to such recommendation. U. S. v. Van Wert (D. C. 1912) 195 Fed. 974; Same v. Brents (D. C. 1912) Id. 980.

Undervaluation of goods at custom house.—Where a bankrupt firm, through fraudulent undervaluations of goods entered at the custom house, has incurred a forfeiture of their value to the United States, the claim of the latter against the firm for the tort is joint and several; and upon proof of the debt, containing a statement of the facts, the United States is entitled, under section 3466 and this section of the Revised Statutes, to priority of payment out of any of the proceeds of either the joint or several estates, without reference to what may be the particular claim of priority in its proof of debt. In re Vetterlein & Co. (D. C. 1884) 20 Fed. 109, 110.

Indictment.—An indictment under R. S. § 5501 (embodied herein), charging that defendant, a member of a board of surgeons, did unlawfully ask a "gratuity, the nature of which is unknown," with intent to have his official action influenced, is bad, in that it fails to sufficiently inform defendant of what he is to meet in evidence. U. S. v. Kessel (D. C. 1894) 62 Fed. 57.

Cumulative sentence. — Cumulative sentences may be imposed, but they must be imposed in that form. U. S. v. Peeke (1907) 153 Fed. 166, 82 C. C. A. 340, 12 L. R. A. (N. S.) 314.

Cited without definite application, U. S. v. Booth (C. C. 1906) 148 Fed. 112.

§ 10288. (Crim. Code, § 118.) Political contributions not to be solicited by officers named.

No Senator or Representative in, or Delegate or Resident Commissioner to Congress, or Senator, Representative, Delegate, or Resident Commissioner elect, or officer or employee of either House of Congress, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any department, branch, or bureau of the executive, judicial, or military or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any officer, clerk, or employee of the United States, or any department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States.

Act Jan. 16, 1883, c. 27, § 11, 22 Stat. 406. Act March 4, 1909, c. 321, § 118, 35 Stat. 1110.

Notes of Decisions

See § 3270, ante, and notes thereunder.

Constitutionality.—An act of congress prohibiting executive officers or employés from requesting or receiving from other officers or employés any money or thing of value for political purposes, does not prohibit an act of a nature pertaining so exclusively to the sphere of private conduct as not to be within the power of congress to prescribe regulations for the discipline of government officials; it is only when congress has palpably transgressed the limits of its discretion that the judicial department will intervene. U. S. v. Curtis (C. C. 1882) 12 Fed. 824.

Voluntary contributions.—The statute does not forbid voluntary contributions for political purposes by persons in the employ of the government, but protects such persons from solicitation or coercion with respect to such contributions. (1896) 21 Op. Atty. Gen. 298.

Circular letters.—The sending of a circular letter by a political committee to federal officers and employés, soliciting financial aid in congressional or state elections, upon or attached to which appear the names of federal officers or employés, is a violation of section 11 of the civil service act (Act Jan. 16, 1883, 22 Stat. 406), which declares that no officer or employé of the government shall be in any manner concerned in soliciting or receiving any assessment or contribution for any political purpose whatever from any officer or employé of the United States. (1902) 24 Op. Atty. Gen. 133.

The statute unquestionably condemns all such circulars notwithstanding the

r form of words adopted in show a request rather than a and to give the responses a luntary character. Id.

ing money to pay secret agents. nt of the government, who re- oney to pay secret agents, is y of either receiving or being d in receiving a contribution political purpose, within the of Act Jan. 16, 1883, 22 Stat. re he received and honored an om one of said secret agents noney out of the next remit- a person not in the govern- vice as a contribution in aid litical campaign, it appearing l agent had nothing whatever th soliciting, inducing, or caus- secret agent to give the order, no relation or connection with on to whom he paid the money, no concern in or control over ey after it was so paid, al- e knew for what purpose it l. (1896) 21 Op. Atty. Gen.

ent.—An indictment under Act 1883, charging an officer of the ates with being unlawfully con- n soliciting and receiving con- s for a political purpose from , should state the names of ployés. U. S. v. Riley (C. C. Fed. 210.

ge that the accused was "know- oncerned in unlawfully receiv- ssessment from officers or em- the United States for a politi- ose sufficiently charges him owledge that the persons from whom the contributions were received were officers or employés of the United States. U. S. v. Scott (C. C. 1895) 74 Fed. 213.

Averments that the accused solicited and received from another his contribution for a political purpose charge, by implication, that the solicitation and reception were for the same purpose as the contribution, and no specific averment that the accused knew the purpose of the contribution is necessary; nor is the implication changed or weakened where the accused, instead of being charged with directly receiving the contribution, is charged with being unlawfully concerned in receiving it "indirectly." Id.

An indictment of an officer of the United States, under this section, for soliciting or receiving any assessment for any political purpose, was not bad for failure to name the particular persons from whom the contributions were solicited or received, where it was averred that the names of such persons were unknown to the grand jury. Id.

The expression, "being concerned in," is not a legal term or conclusion which needs a specification of facts for completeness of description. It is a colloquial expression, equivalent to "being engaged in," or "taking part in," and sufficiently informs the accused of what the government intends to prove; and hence it is sufficient to charge the offense in the words of the statute. Id.

Cited without definite application, U. S. v. Dietrich (C. C. 1904) 126 Fed. 676, 680; U. S. v. Shaw (D. C. 1893) 59 Fed. 110.

). (Crim. Code, § 119.) Political contributions not to be eived in public offices.

person shall, in any room or building occupied in the dis- of official duties by any officer or employee of the United nentioned in the preceding section, or in any navy-yard, fort, nal, solicit in any manner whatever or receive any contribution ey or other thing of value for any political purpose whatever.

Jan. 16, 1883, c. 27, § 12, 22 Stat. 407. Act March 4, 1909, c. 321, § 35 Stat. 1110.

Notes of Decisions

tion by letter.—Solicitation by a post office employé in a ce building, received and read uilding, held within the statute. Thayer (1908) 28 Sup. Ct. 426, 6. 39, 52 L. Ed. 673, reversing t (D. C. 1907) 154 Fed. 508.

The personal delivery to a postmaster in his office of a sealed letter containing a request for a contribution for a political campaign constitutes a criminal offense, under this section. U. S. v. Smith (D. C. 1908) 163 Fed. 926.

). (Crim. Code, § 120.) Immunity from official proscription.

officer or employee of the United States mentioned in sec- e hundred and eighteen, shall discharge, or promote, or de- or in any manner change the official rank or compensation of er officer or employee, or promise or threaten so to do, for giv- withholding or neglecting to make any contribution of money r valuable thing for any political purpose.

Jan. 16, 1883, c. 27, § 13, 22 Stat. 407. Act March 4, 1909, c. 321, § 120, tat. 1110.

§ 10291. (Crim. Code, § 121.) Making political contributions to officials.

No officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever.

Act Jan. 16, 1883, c. 27, § 14, 22 Stat. 407. Act March 4, 1909, c. 321, § 121, 35 Stat. 1110.

§ 10292. (Crim. Code, § 122.) Punishment for violations.

Whoever shall violate any provision of the four preceding sections shall be fined not more than five thousand dollars, or imprisoned not more than three years, or both.

Act Jan. 16, 1883, c. 27, § 15, 22 Stat. 407. Act March 4, 1909, c. 321, § 122, 35 Stat. 1110.

Cited without definite application,
U. S. v. Thayer (1908) 28 Sup. Ct. 426, 209 U. S. 39, 52 L. Ed. 673.

§ 10293. (Crim. Code, § 123.) Officials, etc., giving advance information of crop reports; punishment for; actual knowledge required.

Whoever, being an officer or employee of the United States or a person acting for or on behalf of the United States in any capacity under or by virtue of the authority of any department or office thereof, and while holding such office, employment, or position shall, by virtue of the office, employment, or position held by him, become possessed of any information which might exert an influence upon or affect the market value of any product of the soil grown within the United States, which information is by law or by the rules of the department or office required to be withheld from publication until a fixed time, and shall willfully impart, directly or indirectly, such information, or any part thereof, to any person not entitled under the law or the rules of the department or office to receive the same; or shall, before such information is made public through regular official channels, directly or indirectly speculate in any such product respecting which he has thus become possessed of such information, by buying or selling the same in any quantity, shall be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both: Provided, That no person shall be deemed guilty of a violation of any such rule, unless prior to such alleged violation he shall have had actual knowledge thereof.

Act March 4, 1909, c. 321, § 123, 35 Stat. 1110.

Notes of Decisions

See notes under § 10201, ante.

Offense in absence of statute.—The giving out of information by a clerk or employé of a department of the United States government in respect to a matter which it was understood should be kept secret, although for private gain, is not a crime against the United States, unless made so by law. U. S. v. Haas (D. C. 1906) 167 Fed. 211.

Statistician as officer.—A person engaged in the department of agriculture as an assistant statistician is not a public officer of the United States. U. S. v. Haas (D. C. 1906) 167 Fed. 211.

§ 10294. (Crim. Code, § 124.) Official knowingly issuing false crop reports; punishment for.

Whoever, being an officer or employee of the United States and whose duties require the compilation or report of statistics or information relative to the products of the soil, shall knowingly compile for issuance, or issue, any false statistics or information as a

report of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Act March 4, 1909, c. 321, § 124, 35 Stat. 1111.

CHAPTER SIX

Offenses against Public Justice

Sec.
10295. Perjury defined; punishment for.
10296. Subornation of perjury.
10297. Stealing or altering process; procuring false bail, etc.; punishment for.
10298. Destroying, etc., public records; punishment for.
10299. Destroying records by officer in charge; punishment for.
10300. Forging signature of judge, etc.; punishment for.
10301. Bribery of judicial officer; punishment for.
10302. Judicial officer accepting bribe; punishment for.
10303. Juror, referee, etc., accepting bribe; punishment for.
10304. Witness accepting bribe; punishment for.
10305. Attempting to influence witness, juror, or officer; punishment for.
10306. Conspiring to intimidate party, witness, or juror; punishment for.
10307. Attempt to influence juror by writing; punishment for.
10308. Allowing prisoner to escape.
10309. Application of provisions.
10310. Obstructing process or assaulting officer; punishment for.
10311. Rescuing, etc., prisoner; concealing person from arrest; punishment for.
10312. Rescue at execution; punishment for.
10313. Rescue of prisoner; punishment for.
10314. Rescue of dead body of executed offender; punishment for.
10315. Extortion by informer; punishment for.
10316. Misprision of felony; punishment for.

§ 10295. (Crim. Code, § 125.) Perjury defined; punishment for. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

R. S. § 5392. Act March 4, 1909, c. 321, § 125, 35 Stat. 1111.

Requisites of indictment for perjury were prescribed by R. S. § 5396, ante, § 1687.

Notes of Decisions

1. Repeal of former statute.
2. Territorial limits to which statute applies.
3. Nature and elements of offense in general.
4. Knowledge and intent.
5. Mistake.
6. Materiality of testimony or statement in general.
7. "Declarations" or "certificates" within statute.
8. Immunity to witness under constitution.
9. Oath and authority to administer in general.
10. Oath administered by state magistrate.
11. Oath administered by court commissioner in taking bail.
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13. Recruit taking oath of enlistment.
14. Affidavits by drafted soldiers.
15. Perjury by bank director.
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17. Naturalization proceedings.
18. Public land proceedings
19. Proceedings relating to revenue.
20. Bankruptcy proceedings.
21. Former jeopardy.
22. Jurisdiction and venue.
23. When indictment will lie.
24. Commissioner's charges for drawing complaints.
25. Indictment, proof, and variance.
26. Evidence.
27. Instructions and questions for jury.
28. Sentence and punishment.

1. Repeal of former statute.—The provisions of R. S. §§ 5392, 5393 (this compilation, §§ 10295, 10296), defining perjury and subornation of perjury, were reaffirmed in the Revision of 1874, and, being general in terms, were not repealed pro tanto by the special act of 1857 (11 Stat. 250), providing for oaths, affirmations, or affidavits made or taken before any register or receiver of any local land office, or used or filed in any such office, in respect to any right,

claim, or title to public lands. Babcock v. U. S. (C. C. 1888) 34 Fed. 873.

Act March 3, 1857, § 5, declaring that the making of a false affidavit in public land proceedings shall constitute perjury, being included, in part, in R. S. § 5392 (embodied herein), was within the repealing provision of R. S. § 5596, post, § 10593. U. S. v. Nelson (D. C. 1912) 199 Fed. 464.

2. Territorial limits to which statute applies.—This statute is of universal application within the territorial limits of the United States, and is not limited to those portions which are within the exclusive jurisdiction of the national government. Caha v. U. S. (1894) 14 Sup. Ct. 513, 514, 152 U. S. 211, 38 L. Ed. 415.

3. Nature and elements of offense in general.—This statute creates a new and substantial offense of false swearing, and punishes it in the same manner as perjury, but the oath need not be administered in a judicial proceeding, or in a case of which a state magistrate under state laws has jurisdiction, and it must be construed with reference to the usages of the treasury department, and false swearing and false affirmation must be construed to include all cases of false swearing and affirmation required by the practice of the treasury department in regard to the expenditure of public money or in support of claims against the United States. U. S. v. Bailey (1835) 9 Pet. 238, 254, 256, 9 L. Ed. 113.

The corrupting act may consist in taking the false oath before a competent tribunal or office in a case in which the law of the United States authorizes an oath to be administered. Nurnberger v. U. S. (1907) 156 Fed. 721, 726, 84 C. C. A. 377.

Whether perjury committed on a hearing on a criminal complaint before a district judge is punishable under Act April 30, 1790, c. 9, § 18, quære. U. S. v. Clark (C. C. 1813) Fed. Cas. No. 14,804.

An indictment for perjury cannot be sustained under Act July 29, 1813, §§ 7, 9, granting bounties to vessels engaged in the fisheries, where the owner signs the certificate, and the agent swears to it. U. S. v. Kendrick (C. C. 1820) Fed. Cas. No. 15,519.

Perjury may be committed in an affidavit to an account for the purpose of getting it passed by the orphans' court. U. S. v. Thomas (C. C. 1828) Fed. Cas. No. 16,475.

The act of 1825 in relation to perjury, being a general law, applies to all subsequent cases which come within it. U. S. v. Nihols (C. C. 1845) Fed. Cas. No. 15,880.

Where affiant stated the facts truly, and signed an affidavit on the advice of his lawyer, in whom he confided, that they were substantially the same therein, he is not guilty of perjury, though the affidavit be false. U. S. v. Stanley (C. C. 1855) Fed. Cas. No. 16,376.

The prosecution must show that the oath was administered to defendant by the person named, that he had authority to administer it, that defendant was sworn in a matter where an oath or affirmation is required under the laws of the United States, and that defendant swore with a wicked and corrupt intent, willfully false in regard to the matters alleged to be untrue. Act March 3, 1825, § 13. U. S. v. Coons (C. C. 1856) Fed. Cas. No. 14,860.

An indictment for an act which does not constitute an offense under the laws of the United States is still "a suit controversy, matter or cause pending," in which perjury may be committed Act 1790. U. S. v. Reese (C. C. 1866) Fed. Cas. No. 16,138.

To constitute perjury, it is essential that the oath was administered in the manner prescribed by law, and by some person duly authorized to administer the same in the matter wherein it was taken, and the false statement must be material to the issue in the case, and must be willfully made. U. S. v. Edwards (C. C. 1890) 43 Fed. 67.

Where an act expressly describes the kind of proof of compliance with its requirements, it is not competent for any officer of the United States to require new oaths, so as to make the false taking of them perjury. U. S. v. Nickerson (D. C. 1854) Fed. Cas. No. 15,878.

False swearing in a court which has no jurisdiction does not constitute perjury. U. S. v. Cuddy (D. C. 1889) 38 Fed. 696, 697.

To constitute perjury, the party charged must take an oath before some competent tribunal or officer that he will testify, declare, depose, or certify truly that his written testimony, declaration, or certificate by him subscribed was true, when in fact some material matter so testified, declared, or certified by him was false and untrue, and known by him at the time of taking such oath to have been false and untrue. U. S. v. Richards (D. C. 1906) 149 Fed. 443.

4. Knowledge and intent.—See notes ante.

False swearing is committed by knowingly swearing falsely to any material fact, and not merely by rash or reckless swearing. U. S. v. Shellmire (C. C. 1831) Fed. Cas. No. 16,271. U. S. v. Moore (D. C. 1873) Fed. Cas. No. 15,803.

Perjury, under Act 1823, may be either by swearing to a fact which the party knows is not true, or to his knowledge of a fact when he has not knowledge. An intent to defraud the government is not necessary. U. S. v. Atkins (D. C. 1856) Fed. Cas. No. 14,474.

To constitute the offense of false

under the fisheries bounty act there must be a willful and tent to swear falsely. U. S. (D. C. 1856) Fed. Cas. No.

avit to the existence of a fact import that the affiant has knowledge thereof, unless it ed, or the fact be of such a that he must have personal . U. S. v. Moore (D. C. 1873) No. 15,803.

ke.—A false swearing from not perjury. Anonymous (C. Fed. Cas. No. 475.

riality of testimony or state-general.—See notes, ante.

tute requires that the testi-n must not only be false, but material. Ammerman v. U. S. 5 Fed. 1, 108 C. C. A. 1.

stigation by a grand jury of a conspiracy to commit an of-inst the United States, testi-t accused attempted to bribe yé of the government to con-ence was material, and false before the grand jury rela-to constituted perjury. Brze-U. S. (1912) 198 Fed. 65, 117 173.

g to a false statement is not nless the matter is material ue, question, or purpose about ich the statement is made, or is intended and calculated to ability to a material statement ility to the affiant. U. S. v. C. 1882) 14 Fed. 447.

a party charged with counter-examination before a United mmissioner, testifies, on cross-on, in answer to a question, as never been in prison, when een in a state prison, such ver amounts to "material mat-in the meaning of R. S. § 5392 d herein), and an indictment y will lie. U. S. v. Landsberg 82) 23 Fed. 585.

n equity was filed to restrain ndant from infringing letters improved methods of explod-oes in oil wells, to increase the n thereof, and, to sustain an motion for a preliminary in-gainst him, the plaintiffs took ony of the defendant and oth-ses. From the defendant's ad-in his own testimony, it clear-ed that the plaintiffs were en-preliminary injunction against he made no resistance to the thereof. In the course of his on the defendant was inter-and testified as to the owner-rtain oil wells he was engaged ing. His testimony touching rship of the wells was alleged e, and he was indicted for per-ld, that the defendant's alleged ements in respect to the own-the wells did not tend to prevent the granting of a preliminary injunction, or defeat the due administration of justice, and were immaterial. U. S. v. Perdue (D. C. 1880) 4 Fed. 897.

In contempt proceedings a subpœna duces tecum was issued to a witness, requiring him to produce a deed therein described, and he answered orally under oath before the court that he had no such deed, and never had it. The deed he was required to produce was alleged to have been furnished him by one H., the respondent in the contempt proceeding. On the trial of a traverse to the answer to the subpœna duces tecum, H. testified that he had furnished or delivered the respondent no such deed. Held, that this testimony was in a matter material to the issue formed, and, if H. testified falsely, not believing his testimony to be true, he was guilty of perjury. U. S. v. Hall (D. C. 1890) 44 Fed. 864, 10 L. R. A. 324.

7. "Declarations" or "certificates" within statute.—The words "declaration" and "certificate" are not used in this section as terms of art or in any technical sense, but are used in the ordinary and popular sense, to signify statements of material facts sworn to and subscribed by the party charged with perjury; and if he did not believe such matters to be true when he swore to and subscribed to the statement that they were true, he is guilty of perjury as declared therein. U. S. v. Ambrose (1883) 2 Sup. Ct. 682, 108 U. S. 336, 27 L. Ed. 746.

Whether the sworn statements required to be made by a clerk of a United States court, in his accounts with, and returns to, the government, are "declarations" or "certificates," within this section, quære. U. S. v. Ambrose (C. C. 1880) 2 Fed. 556 (certified questions answered [1883] 2 Sup. Ct. 682, 108 U. S. 336, 27 L. Ed. 746).

The account of services rendered the United States by a clerk of the circuit and district court is a "declaration" or "certificate," within the meaning of this section, making the false verification thereof perjury. U. S. v. Ambrose (1883) 2 Sup. Ct. 682, 108 U. S. 336, 27 L. Ed. 746.

The oath of a cashier of a national bank, in a report to the comptroller of the currency, is a declaration within the meaning of this section. U. S. v. Bartow (C. C. 1882) 10 Fed. 873.

8. Immunity to witness under constitution.—The immunity which must, under Const. Amend. 5, be accorded to a witness compelled to give evidence against himself, relates only to past offenses, and need not exempt the witness from prosecution for perjury committed when so testifying. Glickstein v. U. S. (1911) 32 Sup. Ct. 71, 222 U. S. 139, 56 L. Ed. 128.

9. Oath and authority to administer in general.—Under the general powers given under this section and under the

more specific ones, local land officers in hearing contests constitute a competent tribunal authorized to administer oaths on which prosecution for perjury can be predicated. Caha v. U. S. (1894) 14 Sup. Ct. 513, 515, 152 U. S. 211, 38 L. Ed. 415.

An oath to do a certain thing in the future cannot be the subject of a prosecution for perjury. U. S. v. Glover (C. C. 1831) Fed. Cas. No. 15,218.

Authority to a county clerk to swear petitioners resident in his county does not give him power to administer an oath to one who resides in another county. U. S. v. Deming (C. C. 1845) Fed. Cas. No. 14,945.

To sustain an indictment for perjury, the oath must be administered by some one authorized. Id.

An oath, not required to be administered by any law or rule of court, is not perjury, though administered under the usage of a ministerial officer. U. S. v. Babcock (C. C. 1846) Fed. Cas. No. 14,488.

Under R. S. § 5392 (embodied herein), denouncing the crime of perjury, and declaring that the oath must be taken before some "competent tribunal, officer, or person," as the judge of probate had no authority to administer such oath, an indictment for perjury will not lie. U. S. v. Howard (D. C. 1889) 37 Fed. 666.

Defendant was indicted for perjury. The evidence showed that he made a verbal statement before a United States commissioner, and charged one B. with violating the revenue law. The commissioner reduced his statement to writing, beginning with the words, M., "being duly sworn," etc., and ending with the jurat. On being told, "If you swear to this statement, put your mark here," defendant made his mark. Held, that this was an oath. U. S. v. Mallard (D. C. 1889) 40 Fed. 151, 5 L. R. A. 816.

Where pursuant to ante, §§ 492, 5885, a regulation required collectors of taxes on distilled spirits to examine distiller's sureties and to require them to "justify" on a prescribed form, an oath taken by a surety with reference to his qualifications before a deputy collector, was held to be an oath taken in a case in which "a law of the United States authorizes an oath to be administered," within R. S. § 5392 (embodied herein), defining perjury. U. S. v. Hardison (D. C. 1905) 135 Fed. 419, 420, 421.

Act Aug. 15, 1876 (section 1475, ante), provides that notaries public of the several states, etc., are authorized to take affidavits in the same manner and with the same effect as commissioners of the United States circuit court may lawfully take or do. Held, that since a United States commissioner was authorized by Act May 28, 1896 (section 1337, ante), to take the oath of a proposed surety on a liquor distiller's bond, on which perjury might be assigned, an indictment for perjury in the taking of such oath was not defective on the ground that the officer administering it styled himself as "notary public and ex officio justice of the peace." Id.

10. Oath administered by state magistrate.—Where a state magistrate administers an oath under an act of congress expressly giving him the power to do so, it is a lawful oath, and an oath so administered is within Act March 1, 1823, c. 165. U. S. v. Bailey (1835) 9 Pet. 238, 259, 9 L. Ed. 113.

To make a party liable to prosecution for perjury in a United States court, it does not matter that the oath taken by him when endeavoring to benefit by the "timber culture act" was taken before an officer authorized by a state, rather than one authorized by the United States, to administer oaths. U. S. v. Madison (D. C. 1884) 21 Fed. 628.

In Alabama the probate judge is not the clerk of the probate court, though he may call himself ex officio clerk, and he is the principal judge, and not the clerk of the court of county commissioners (Code Ala. 1886, §§ 789, 795, 819, 827); and so in neither capacity is he clerk of a court of record, authorized to administer the oath in pre-emption cases, by R. S. § 2262, as amended June 9, 1880, and false statements under an oath administered by him, made by a pre-emption settler in his affidavit, do not constitute perjury. U. S. v. Redgood (D. C. 1891) 49 Fed. 54.

11. Oath administered by court commissioner in taking bail.—An oath administered by a commissioner to a person tendering himself for justification, as bail for a person committed by such commissioner to await the issuing of a warrant for his removal for trial, will support an indictment for perjury, though it does not appear that the deposition was used on the application for bail. U. S. v. Volz (C. C. 1876) Fed. Cas. No. 16,627.

A charge of perjury cannot be predicated upon an oath administered by a commissioner of the circuit court, in taking bail in a criminal case, in a state where the state laws do not authorize justices of the peace to administer oaths for similar purposes. U. S. v. Garcelon (D. C. 1897) 82 Fed. 611.

12. Oath administered by notaries.—Under R. S. § 5392 (embodied herein) the offense of perjury is not committed by a bank cashier who makes false returns of the condition of his bank to the comptroller of the currency under oath taken before a notary public for, prior to Act Feb. 26, 1881 (ante § 9975), notaries public had no authority under the laws of the United States to administer oaths. U. S. v. Curtis (1883) 2 Sup. Ct. 507, 107 U. S. 671, 27 L. Ed. 534.

An indictment against an officer of a bank under this section for a wil

e declaration or statement in made under section 9774, fied by his oath administered ry public of a state prior to 26, 1881, cannot be sustain-

the oath is taken and sub- the accused it is complete, the accused can make it, and ary, in certifying the fact of having been taken, errone- d the term "county" instead and used the seal of said ead of his own official seal, r did not affect the oath tak- S. v. Neale (C. C. 1883) 14

s public are not authorized w of the United States to ad- aths to affidavits required by and regulations prescribed ommissioner of the general e; and perjury cannot, there- assigned upon an affidavit re a notary public by a per- pport of his claim to a pref- ht to purchase coal land un- §§ 2348, 2349, ante, §§ 4660, S. v. Manion (D. C. 1890) 44

1778, ante, § 3259, authoriz- es public to administer oaths es in which justices of the e power to administer them, power to administer an oath estigation by the post-office t as to the alleged loss of a letter, for there is no stat- g justices such power, and indictment for perjury can be n false statements in an affi- e before a notary in such an ion. U. S. v. Law (D. C. Fed. 915.

ruit taking oath of enlist- mble that where a recruit, the oath of enlistment, y and willingly" swears is indictable for perjury un- March 3, 1825, c. 65, § 13. Op. Atty. Gen. 210.

davits by drafted soldiers.— etary of war may prescribe nts of affidavits by drafted laiming exemption from mil- ice, and false swearing as to s is perjury. Act March 3, S. v. Sonachall (D. C. 1864) No. 16,352.

ury by bank director.—If ac- an oath as bank director in stated that he was bona fide his own right of the number of stock then standing in his the books of the bank, and aid shares were not hypothe- n any way pledged as securi- loan or debt, and if he took y, and not believing that he g the truth, it is perjury, if f fact he was not the owner ock, or had pledged the same for a loan or debt. U. S. v. Neale (C. C. 1883) 14 Fed. 767.

16. Application for pensions.—R. S. § 4716 (ante, § 9012), providing that "no money on account of pensions shall be paid to any person * * * who in any manner voluntarily engaged in or aided or abetted the late rebellion," was not repealed by implication by Act June 27, 1890 (26 Stat. c. 634), known as the "dependent pension act," but applies to pensions granted or applied for under said act; and a false statement in that regard, made under oath by an applicant under that act, is upon a matter material to the inquiry, and renders him subject to prosecution for perjury. U. S. v. Hampton (1900) 101 Fed. 714, 41 C. C. A. 625.

The offense of perjury, as defined by R. S. § 5392 (embodied herein), may be predicated upon an affidavit to support a pension claim sworn to before a justice of the peace. U. S. v. Boggs (D. C. 1887) 31 Fed. 337.

17. Naturalization proceedings.—R. S. § 2165, relating to the naturalization of aliens, which provide that it shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the state or territory where such court is at the time held one year at least, but that the oath of the applicant shall be in no case allowed to prove his residence, are to be construed as a prohibition forbidding the taking of the oath of the applicant himself as proof of his residence, and not a provision merely that the oath of the applicant shall be regarded as insufficient for the purpose. Such an oath, if admitted, is extrajudicial, and perjury cannot be assigned thereon. U. S. v. Grottkau (D. C. 1887) 30 Fed. 672.

Under Naturalization Act June 29, 1906, § 4, subd. 2 (section 4352, ante), providing that a naturalization petition shall contain every fact material to the petitioner's naturalization required to be proved on the final hearing, and subdivision 4, declaring that petitioner shall prove, among other things, that he has resided immediately preceding his application continuously within the state or territory where the court is at the time held, for one year at least, petitioner's prior residence within the state or territory for a year is a necessary allegation of a petition for naturalization, and hence perjury may be assigned on a false allegation thereof. U. S. v. Dupont (D. C. 1910) 176 Fed. 823.

Perjury committed by a false allegation of fact in a naturalization petition is punishable under R. S. § 5392 (embodied herein), punishing perjury generally, and applicable to all cases in which a false oath or false testimony is given in a matter required by law be-

fore any competent tribunal, officer, or person, regardless of whether such evidence is punishable under Naturalization Act June 29, 1906, § 23 (section 4379, ante), or not. Id.

18. Public land proceedings.—See, also, notes, ante.

False swearing in a land contest before the local land office in respect to a homestead entry constitutes perjury, within this section; for, although such a contest is not specifically authorized by statute, it is provided for by the rules of the land department under a general grant of authority to prescribe appropriate regulations for the disposition of the public lands, and has frequently been recognized by acts of congress. Caha v. U. S. (1894) 14 Sup. Ct. 513, 516, 152 U. S. 211, 38 L. Ed. 415, distinguishing U. S. v. Bailey (1835) 9 Pet. 238, 9 L. Ed. 113, and U. S. v. Eaton (1892) 12 Sup. Ct. 764, 144 U. S. 677, 36 L. Ed. 591.

A charge of perjury cannot be based upon false statements as to residence and cultivation in the affidavit of a homestead claimant when making final proof, on the theory that his oath as to these matters was authorized by a law of the United States because of a regulation of the land department requiring the claimant to testify as other witnesses, adopted under the supposed authority of R. S. §§ 161, 441, 453, 2478 (this compilation, §§ 235, 681, 699, 5120), conferring administrative powers, or of R. S. § 2246, ante, § 4494, empowering and requiring the register and receiver "to administer any oath required by law or the instructions of the general land office in connection with the entry or purchase of any tract of the public lands," since these sections do not justify any additions to the requirements of R. S. § 2291, ante, § 4532, that cultivation and residence be proved by two credible witnesses, and nonalienation and allegiance by affidavit of the claimant. U. S. v. George (1913) 33 Sup. Ct. 412, 228 U. S. 14, 57 L. Ed. 712.

A charge of perjury cannot be based upon false statements as to residence and cultivation in an affidavit of a homestead claimant under a regulation of the Land Department adopted pursuant to R. S. §§ 161, 441, 453, 2478 (this compilation, §§ 235, 681, 699, 5120), conferring administrative powers, or of R. S. § 2246, ante, § 4494, since these sections do not justify any additions to the requirements of R. S. § 2291, ante, § 4532, that cultivation and residence be proved by two credible witnesses. Id.

A charge of perjury under this section may be based on false statements in affidavit required by act of congress or authorized regulation of the general land office. U. S. v. Smull (1915) 35 Sup. Ct. 349, 236 U. S. 405, 59 L. Ed. 641.

Under the provision of the act for the sale of timber and stone lands (Act June 3, 1878 [section 4672, ante]), requiring an applicant for purchase thereunder to make oath that he has not "directly or indirectly made any agreement or contract in any way or manner" by which the title should inure in whole or in part to the benefit of any person except himself, such oath is false, and constitutes perjury where he has made an agreement to sell the land, whether written or oral; its enforceability being immaterial. Boren v. U. S. (1906) 144 Fed. 801, 75 C. C. A. 531.

A false averment in the affidavit of an entryman under Timber and Stone Act 1878, § 2 (section 4672, ante), is perjury. Nickell v. U. S. (1908) 161 Fed. 702, 88 C. C. A. 562.

Where an entryman on public lands signed and swore to an affidavit that he entered the land for his individual use and benefit, and not for speculation, when in fact, he intended to immediately transfer the land to another under a pre-existing contract, he thereby committed perjury as defined by R. S. § 5392 (embodied herein). Nickell v. U. S. (1909) 161 Fed. 702, 88 C. C. A. 562, judgment affirmed on rehearing (1909) 167 Fed. 741, 93 C. C. A. 229, writ of certiorari denied (1909) 29 Sup. Ct. 699, 214 U. S. 517, 53 L. Ed. 1064.

R. S. § 2301, as amended by Act March 3, 1891, § 6 (section 4589, ante), provides for the commutation of homestead entries after 14 months "upon making proof of settlement and of residence and cultivation for such period of 14 months" without specifying the kind of proof. Before amendment, the section required proof to be made as in pre-emption cases, which, under a regulation of the department, was by the testimony of the claimant corroborated by at least two witnesses. Held, that after the amendment, in the absence of a regulation providing otherwise, the same manner of taking proof might properly be followed, in which case the entryman was a competent witness as to his own settlement, and his false testimony respecting the same constituted perjury. Hallock v. U. S. (1911) 185 Fed. 417, 107 C. C. A. 487, writ of certiorari denied (1911) 31 Sup. Ct. 717, 220 U. S. 613, 55 L. Ed. 610.

By virtue of section 5 of the crimes act of March 3, 1857 (11 Stat. 250), and section 6 of the timber culture act of June 14, 1878 (20 Stat. 130), an affidavit taken before a county clerk may be used before the register and receiver in any proceeding or question arising under said last-named act in which an affidavit is allowed or authorized by any law of the United States or regulation of the land department thereof; and, if such affidavit is willfully and knowingly or corruptly false in any material matter, an indictment for perjury may be maintained thereon in the proper United States court. U. S. v. Shinn (C. C. 1882) 14 Fed. 447.

An applicant for the entry of land, under the homestead act, may make oath to the excusatory facts that authorize him to verify the affidavit accompanying his application, before the clerk of the county, as provided in R. S. § 2294, ante, § 4546, and if such oath is willfully and knowingly false in any material particular, or includes a statement of fact which such applicant did not believe, he is guilty of perjury as defined by R. S. § 5392 (embodied herein). U. S. v. Hearing (C. C. 1886) 26 Fed. 744.

Defendant entered a homestead claim, and, on application to commute his entry to a cash entry, he made affidavit, July 30, 1887, before a judge of probate, that he had actually moved on the land in December, 1886, that his actual residence had been on the land up to the time of taking the oath, that his residence thereon had been continuous, and that he had not resided or boarded elsewhere than on said land since commencing his residence thereon. Held, that the statements were not such as are required or authorized by law to be made by an applicant for a pre-emption, homestead, or a homestead commutation entry, under R. S. § 2262, and sections 2289–2291 (ante, §§ 4530–4532). They were irrelevant and immaterial, and perjury could not be predicated on them. U. S. v. Howard (D. C. 1889) 37 Fed. 666.

Rules and regulations issued by the commissioner of the general land office, pursuant to the coal land laws, do not have force as laws of the United States, within the meaning of this section. U. S. v. Manion (D. C. 1890) 44 Fed. 800.

This section is applicable to the crime defined and may be punishable by Act March 3, 1857, § 5 (11 Stat. 250). U. S. v. Bedgood (D. C. 1891) 49 Fed. 54, 57.

Congress cannot confer on the secretary of the interior or commissioner of the land office power to make rules and regulations, such as prescribing by whom the oath is to be administered to one making a pre-emption entry, or the facts to be contained in the affidavit, so as to make it perjury for the preemptor to make a false affidavit, when the facts sworn to are not required by statute to be sworn to; and the statute does not authorize the oath to be administered by the person who administers it. Id.

Applicants to purchase timber lands are required by statute to file an affidavit that the land is unfit for cultivation, uninhabited, and unimproved, and, to the best of the applicant's belief, contains no valuable mineral deposits, etc. The land department, by its regulations, has prescribed the additional requirement that the applicant shall swear that he personally examined the land. Held, that a charge of perjury may be predicated upon a false statement in the affidavit that the applicant personally examined the land; for the statute defining perjury in such cases (Act March 3, 1857, 11 Stat. 250) includes affidavits made in compliance with "orders, regulations, or instructions" concerning public lands issued by the department officials, as well as those made in compliance with acts of congress. U. S. v. Wood (D. C. 1895) 70 Fed. 485.

To constitute the crime of perjury under R. S. § 5392 (embodied herein), by the making of a false affidavit in relation to an entry of public lands, it is essential that such affidavit should be material, and that it should be authorized by a law of the United States. Such a charge cannot be based upon an affidavit of the nonmineral character of the land made in support of a homestead entry, although a regulation of the land office requires such an affidavit to be made in certain states, since it is not required by R. S. § 2290, ante, § 4531, which prescribes the contents of a homestead affidavit, and the statute cannot be added to for criminal purposes by a departmental regulation. U. S. v. Maid (D. C. 1902) 116 Fed. 650.

Act June 3, 1878, c. 151, providing for the sale of public lands, restricts the quantity to 160 acres to any one person, and section 2 (section 4672, ante), requires the applicant to file with the register a written statement under oath that he does not apply to purchase the land on speculation, but in good faith to appropriate it to his exclusive use, and that he has not made any agreement or contract to convey the same. Section 3 (section 4673, ante), provides that if no adverse claim shall be filed after publication of notice of the application, the applicant, on furnishing the register of the land office satisfactory evidence of the publication of the notice, that the land is unoccupied, and apparently contains no deposits of gold, etc., and on paying the purchase money and fees, shall be entitled to a patent. The act also authorizes the commissioner of the general land office to make regulations for the carrying of its provisions into effect, and one of the regulations so made requires the register of the land office to examine the applicant under oath with reference to the good faith of his application. Held, that section 3 did not preclude the land officers from requiring proof of the good faith of the application as a part of the applicant's final proof, and that the register of the land office had express power to administer an oath to the applicant on such examination, as provided by R. S. § 2246, ante, § 4494, the falsity of which could be the basis of a prosecution for perjury. U. S. v. Brace (D. C. 1907) 149 Fed. 869.

A false statement in an affidavit filed by defendant to enter agricultural lands in a forest reserve, made the basis of an indictment for perjury, held not im-

material as a matter of law. U. S. v. Nelson (D. C. 1912) 199 Fed. 464.

19. Proceedings relating to revenue.—The affidavit required by the regulations of the treasury department to be made by a surety upon an ordinary match-stamp bond, to secure the payment due to the United States for internal revenue stamps to be delivered on credit to a manufacturer of matches setting forth the pecuniary responsibility of the surety, is an instrument authorized by law; and, if statements made therein as to his pecuniary responsibility are false to his knowledge, the surety is guilty of perjury. Ralph v. U. S. (C. C. 1881) 9 Fed. 693.

Section 6241, ante, in requiring wholesale dealers in oleomargarine, process, renovated, or adulterated butter, to keep such books and render such returns as the commissioner of internal revenue may by regulation require under prescribed penalties for its violation, has no relation to the tax to be assessed on such dealer, and the regulations made thereunder and in force prior to their revision in 1907, in requiring an oath to the returns, do not have the force of law in such sense that a false oath to a return subjects the maker to prosecution for perjury under R. S. § 5392 (embodied herein). U. S. v. Lamson (C. C. 1908) 165 Fed. 80.

An oath in a case required by law, taken before a deputy collector, may be the basis of an indictment for perjury. U. S. v. Barton (D. C. 1833) Fed. Cas. No. 14,534.

A person cannot be convicted of perjury in swearing falsely to an income tax return, where it was not made with a corrupt intention, but with the honest belief that it was correct. U. S. v. Smith (D. C. 1870) Fed. Cas. No. 16,341.

Although the income tax act makes no provision for compelling a person to make oath to his return, yet, as it permits him to do so, intentional false swearing therein is perjury. Id.

Under section 5885, ante, authorizing every collector and deputy collector to administer oaths touching any part of the administration of the internal revenue laws or where such oaths are authorized by law, or by regulations authorized by law, and Internal Revenue Laws 1900, p. 47, § 321, R. S. § 321, ante, § 492, giving the internal revenue commissioner general supervision of the collection of taxes imposed by any internal revenue law, and authorizing him to prepare and distribute instructions, regulations, etc., it was held, that an oath taken by a distiller's surety, pursuant to a regulation, with reference to his qualifications, before a deputy collector, was an oath taken in a case in which "a law of the United States authorizes an oath to be administered," within R. S. § 5392 (embodied herein), defining perjury. U. S. v. Hardison (D. C. 1905) 135 Fed. 419.

Where defendant swore falsely, as to his qualifications to become a surety on a distiller's bond, before a deputy internal revenue collector, he was properly charged with perjury thereon, as defined by R. S. § 5392 (embodied herein), though under the state law perjury could only be committed in a judicial proceeding, other false oaths being defined and punished as "false swearing." Id.

Importer, making affidavit that nothing had been concealed or suppressed whereby the United States might be defrauded, held guilty of perjury if he had knowledge of any document which, if known, would have led the United States to fix the customs duties higher than those based on the values stated in the consular invoice. U. S. v. Salem (D. C. 1914) 216 Fed. 420.

20. Bankruptcy proceedings.—The immunity clause in Bankr. Act July 1, 1898, c. 541, § 7, subd. 9, 30 Stat. 548, that no testimony given by the bankrupt under the command of that section shall be offered in evidence against him in any criminal proceeding, does not bar a criminal prosecution for perjury, for false swearing when giving such testimony. Glickstein v. U. S. (1911) 32 Sup. Ct. 71, 222 U. S. 139, 56 L. Ed. 128.

R. S. § 860, held not to prevent prosecution for perjury in a bankruptcy proceeding. Cameron v. U. S. (1911) 192 Fed. 548, 113 C. C. A. 20.

R. S. § 5392, brought forward as Cr. Code, § 125 (embodied herein), denounces perjury and fixes the punishment at a fine not to exceed $2,000 and imprisonment for not more than five years; R. S. § 5393, post, § 10296, denounces subornation of perjury, and fixes the punishment as in the preceding section; and Bankruptcy Act 1898, § 29, makes it an offense to swear falsely in bankruptcy proceedings, and fixes the punishment at imprisonment for not to exceed two years. Held, that false swearing in bankruptcy proceedings constituted perjury, under R. S. §§ 5392, 5393, the bankruptcy act merely changing the punishment, and subornation of perjury in bankruptcy proceedings is an offense under sections 5392, 5393. Epstein v. U. S. (1912) 196 Fed. 354, 116 C. C. A. 174.

This section covers false swearing in bankruptcy proceedings and every other way of committing perjury. Id.

Perjury committed in bankruptcy proceedings cannot be prosecuted under the general criminal law (section 18) nor will an indictment lie at common law. Anonymous (C. C. 1804) Fed. Cas. No. 475.

Perjury under the bankrupt law was not indictable under Act April 30, 1790. U. S. v. Passmore (C. C. 1804) Fed. Cas. No. 16,005, 4 Dall. 372, 374, 1 L. Ed. 871.

The bankrupt is not guilty of perjury in withholding certain items from his schedule under the advice of counsel to

had fairly submitted the facts
d to his property. U. S. v.
C. C. 1845) Fed. Cas. No. 14,-

an order of the district court,
ng petitioners in bankruptcy to
eir petitions before the clerk
unty in which they reside, and
g such county clerk commis-
administer oaths to such pe-
the clerk of one county has
to administer such oath to a
of another county. U. S. v.
(C. C. 1845) Fed. Cas. No.

Act March 3, 1825, an inten-
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any portion of his property
schedule, sworn to by him as
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perjury. U. S. v. Nihols (C.
Fed. Cas. No. 15,880.
ankrupt's intentional omission
a part of his property in his
hedule is perjury under the act
Id.
ity clerk, being authorized to
same as the principal, has the
administer oaths in bankrupt-
such oaths are presumed to be
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Bankr. Act July 1, 1898, § 21a
9605, ante), which authorizes
of bankruptcy by order to re-
y designated person to be ex-
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ppoint a special commissioner
ct such examination, and, where
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respecting transfers of prop-
the bankrupt, his powers were
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. 664, 114 C. C. A. 357, 39 L.
N. S.) 385.

22. Jurisdiction and venue.—See, also, notes under §§ 991(2), 1233, ante.

Under R. S. § 711, cl. 1, ante, § 1233, providing that the federal courts shall have exclusive jurisdiction of all crimes and offenses cognizable under the authority of the United States; and R. S. § 5392 (embodied herein), providing that any one who shall testify falsely, after having taken an oath to testify truly, in a case where any law of the United States authorizes an oath to be administered, shall be guilty of perjury,—the federal courts have exclusive jurisdiction of that offense, when committed in giving a deposition before a notary public to be used in the case of a contested election of a member of congress, as provided by R. S. § 110, ante, § 167. In re Loney (1889) 134 U. S. 372, 10 Sup. Ct. 584, 33 L. Ed. 949.

The federal courts have exclusive jurisdiction of perjury in a deposition to be used in the case of a contested election of a member of congress. Thomas v. Loney (1890) 10 Sup. Ct. 584, 134 U. S. 372, 33 L. Ed. 949, affirming judgment In re Loney (C. C. 1889) 38 Fed. 101.

R. S. § 5392 (embodied herein), defining the crime of perjury, is not confined in its operation to places within the exclusive jurisdiction of the United States, but is of universal application within the territorial limits thereof; and the crime is punishable in the district court of the district in which it is committed. Caha v. U. S. (1894) 14 Sup. Ct. 513, 152 U. S. 211, 38 L. Ed. 415.

Defendant was charged before a state court with perjury in having testified falsely before a notary public in a proceeding under R. S. tit. 2, c. 8 (this compilation, tit. 2, c. 8), regulating the taking of testimony in a contest for a seat in the house of representatives of the United States. Held, that the offense is cognizable only by the federal courts, under R. S. § 5392 (embodied herein), providing for the punishment of perjury in any case in which the laws of the United States authorize an oath to be administered, and the second section of the judiciary act of August 13, 1888, giving the United States courts exclusive cognizance of all crimes cognizable under the authority of the United States. In re Loney (C. C. 1889) 38 Fed. 101, judgment affirmed Thomas v. Loney (1890) 10 Sup. Ct. 584, 134 U. S. 372, 33 L. Ed. 949.

To make a party liable to prosecution for perjury in a United States court, it does not matter that the oath taken by him when endeavoring to benefit by the "timber culture act" was taken before an officer authorized by a state, rather than one authorized by the United States, to administer oaths. U. S. v. Madison (D. C. 1884) 21 Fed. 628.

Perjury committed by a witness in the federal court is a crime against the federal laws only, and a prosecution therefor is within the exclusive jurisdiction of the federal courts. McIntosh v. Bullard, Earnheart & Magness (Ark. 1910) 129 S. W. 85.

Const. art. 3, § 1, vests the judicial power of the United States in the courts thereof. By R. S. § 711, cl. 1, ante, § 1233, such courts have jurisdiction exclusive of the state courts of all crimes and offenses cognizable under the authority of the United States. R. S. § 629, cl. 20, ante, § 991(2), gives the circuit courts of the United States exclusive cognizance of all such crimes except where otherwise provided by law, and R. S. § 5392 (embodied herein), defining and punishing perjury, does not save the jurisdiction of the state courts. Held, that perjury committed by false swearing before a United States commissioner was not subject to the jurisdiction of a state court under Ky. St. § 1174 (Russell's St. § 3708), defining and punishing perjury. Commonwealth v. Kitchen (1911) 133 S. W. 586, 141 Ky. 655.

The courts of New Hampshire have no jurisdiction of the crime of perjury, committed in an examination before a commissioner in bankruptcy appointed under the act of the congress of the United States, passed August 19, 1841, "to establish a uniform system of bankruptcy throughout the United States." State v. Pike (1844) 15 N. H. 83.

23. When indictment will lie.—An indictment for perjury will lie, though the proceedings in which the alleged perjury was committed are not concluded at the time the indictment is returned. U. S. v. Pettus (C. C. 1897) 84 Fed. 791.

24. Commissioner's charges for drawing complaints.—Where the court below has allowed a commissioner's charges in excess of three folios for drawing complaints, its action will not be disturbed; the complaints in question being under R. S. §§ 5392, 5393 (this compilation, §§ 10295, 10296), for perjury and subornation of perjury, under R. S. § 2461, ante, § 4980, for cutting timber, and under R. S. § 5440, ante, § 10201, for conspiracy. U. S. v. Barber (1891) 11 Sup. Ct. 751, 140 U. S. 177, 35 L. Ed. 398, reversing Barber v. U. S. (D. C. 1887) 35 Fed. 886.

25. Indictment, proof, and variance.—See § 1687, ante, and notes thereunder.

26. Evidence.—On the trial of a defendant for perjury committed in a naturalization proceeding, his signature to affidavits filed in the proceeding is admissible to prove the fact that he was a witness therein, although such affidavits, when signed, were in blank. Schmidt v. U. S. (1904) 133 Fed. 257, 66 C. C. A. 389.

The provision of Act March 3, 1903, c. 1012, § 39, 32 Stat. 1222, that all courts shall, before issuing a final order or certificate of naturalization, "cause to be entered of record the affidavit of the applicant and of his witnesses, so far as applicable, reciting and affirming the truth of every material fact requisite to naturalization," does not limit the evidence which may be taken in the proceeding to the affidavits so entered of record; and, on the trial of a person for perjury committed in such a proceeding, oral evidence is admissible to show the commission of the offense. Id.

On the trial of a defendant for perjury in falsely testifying that he had known an applicant for naturalization for five years prior to the hearing, during which time he had been a resident of the United States, a ship's manifest, showing that the applicant arrived in this country as an alien less than five years prior to the proceeding, and that in answer to a question propounded by the ship's officers at the port of emigration he stated, not under oath, that he had never been in the United States, is insufficient alone to warrant a conviction. Sullivan v. U. S. (1908) 161 Fed. 253, 88 C. C. A. 289.

On the trial of a defendant, charged with false swearing in a proceeding for the naturalization of an alien, in giving false testimony as to the length of time the applicant had been in the United States, the ship's manifest, showing the date of his entry, is admissible in evidence to establish such fact, on proper proof of identity. Id.

In a prosecution for perjury alleged to have been committed by accused in support of W.'s homestead claim, accused was not prejudiced by the admission of proof in support of his homestead claim in which he swore that he had continuously resided on land other than the place where he actually resided for the purpose of affecting his reputation for truth and veracity which a witness for accused had previously testified had been good, such homestead proof not being contradicted in any particular. Barnard v. U. S. (1908) 162 Fed. 618, 89 C. C. A. 376.

In a prosecution for perjury committed by defendant in support of W.'s homestead claim, oral statements made by W., indicating that he did not reside on the homestead claimed by him during the time stated in his homestead proof, and during the time defendant testified W. had an established residence on the land, was admissible as res gestæ. Id.

In a prosecution for perjury alleged to have been committed by defendant in support of W.'s homestead claim

that witness took up a home-
public lands in the same sec-
he state where W. made his
d that, though witness never
n the land, defendant was a
n his behalf when he (witness)
oof of his residence on the
d, was admissible to show
e, design, and system on de-
part in furnishing evidence
rt of fraudulent land claims.

iction of perjury may be sus-
the testimony of a single wit-
roborated by circumstances
y independent evidence suffi-
warrant the jury in saying
believed one rather than the
where the evidence of one
with other facts and circum-
roved is more than sufficient
erbalance the oath of defend-
the legal presumption of his
. Hashagen v. U. S. (1909)
396, 94 C. C. A. 618.

osecution for perjury, the tes-
f one witness and corroborat-
nstances held sufficient to sus-
ding that the evidence alleged
een perjured was false. Id.

trial of a post office clerk for
n falsely swearing on the trial
er prosecution against him for
etters, in which he was acquit-
he had not read and did not
d a purported confession sign-
n and introduced against him,
rejudicial error to permit cer-
ectors, who charged him with
er offense and at whose in-
e alleged confession was sign-
tify as to his previous actions,
them, which led them to make
ge; the question of his guilt
charge having been conclu-
ttled against the government
rposes by his acquittal. Chit-
J. S. (1910) 178 Fed. 442, 101
342.

trial of a defendant for per-
swearing falsely as a witness
criminal case, it was prejudi-
to permit the government to
t documentary evidence, which
her have confirmed or contra-
fendant's testimony, was not
on such trial; defendant hav-
no control over the introduc-
idence therein. Ammerman v.
11) 185 Fed. 1, 108 C. C. A.
sing judgment U. S. v. Am-
(D. C. 1910) 176 Fed. 635.

ce offered by a defendant on
perjury held competent and
sly excluded in view of the
admission of evidence on the
the government, over obje-
ch such offered evidence tend-
ntradict. Id.

osecution for perjury in testi-
examination as a bankrupt,
heck given by accused before
cy was in payment of a bona
where the payee contradicted
such testimony, evidence of other facts directly tending to show that the check was given as part of a scheme to defraud creditors was relevant. Daniels v. U. S. (1912) 196 Fed. 459, 116 C. C. A. 233.

On the trial of a defendant charged with perjury in knowingly giving false testimony before a grand jury, the testimony of the stenographer who took down the testimony as given and of any other person who heard and remembers it is competent to prove what was testified to by defendant. Brzezinski v. U. S. (1912) 198 Fed. 65, 117 C. C. A. 173.

Testimony as to a statement by defendant to another grand jury witness that witness could get a sum of money for going away somewhere held competent, as tending to show the motive inducing defendant to give the false testimony. Id.

In a prosecution for perjury of an applicant for a patent in verifying that he was the first inventor or discoverer of the art, evidence of negligence and delay of a prior inventor in reducing his idea relating to the same art to practice was immaterial. Patterson v. U. S. (1913) 202 Fed. 208, 120 C. C. A. 650.

The sufficiency of the evidence in support of an indictment for perjury considered, under R. S. §§ 5392, 5396 (this compilation, §§ 1687, 10295), with respect to the authority of the referee in bankruptcy before whom the false testimony was charged to have been given. Baskin v. U. S. (1913) 209 Fed. 740, 126 C. C. A. 464; Offner v. Same (1913) 209 Fed. 749, 126 C. C. A. 473.

Evidence in a prosecution for perjury held admissible and sufficient to identify the proceedings in which the false testimony was charged to have been given. Id.

A copy of the record in the cause in which the perjury was committed, where the court is the same, need not be produced. U. S. v. Erskine (C. C. 1833) Fed. Cas. No. 15,057.

It is only necessary to prove so much of the testimony of the witness as relates to the particular fact on which the perjury is assigned. Id.

The affidavit of a third person is admissible to show what the prisoner swore to, where both affidavits were on the same sheet of paper. U. S. v. Buete (C. C. 1851) Fed. Cas. No. 14,-680a.

Papers filed by the prisoner to sustain the allegations contained in the original paper, if they tend to establish the charge made in the indictment as to guilty knowledge, will be admitted in evidence. U. S. v. Gardiner (C. C. 1853) Fed. Cas. No. 15,186a.

There need not be positive evidence that the paper was sworn to by the prisoner; it may be proved by circumstantial evidence. Id.

The statements of defendant which

are made the basis of a charge of perjury must be disproved by two witnesses, or by one witness and corroborating circumstances. U. S. v. Coons (C. C. 1856) Fed. Cas. 14,860.

Where a witness testifies that he is well acquainted with the applicant, on an application to a state court for the naturalization of a foreigner, and it appears that he was a total stranger to the applicant, and volunteered as a witness, there is sufficient evidence to warrant a conviction of the witness on an indictment for perjury, under the statute. U. S. v. Jones (C. C. 1877) Fed. Cas. No. 15,491.

Upon a trial for perjury, for having sworn falsely as to the truth of a certain deposition, the notary, who administered the oath in the state of New York, testified that there was but one legal form of administering an oath in the state, and that such form was, "Do you solemnly swear that the above affidavit subscribed by you is true, in the presence of the ever-living God;" that he "used that form substantially," but did not know whether he "put in 'the presence of the ever-living God'"; but that he was "a little conscientious about that," and "a little careful about using it." Held, upon a motion for a new trial, that this testimony of the notary, coupled with the certificate given at the time to the effect that the affidavit was sworn to before him, was sufficient evidence to sustain a finding that an oath was administered to the accused. U. S. v. Baer (C. C. 1880) 6 Fed. 42.

When the indictment alleges the perjury to have been committed by the respondent in his application for naturalization, the record of the court before which the application was made, by him signed and sworn to, is the best and only evidence that can be produced. U. S. v. Walsh (C. C. 1884) 22 Fed. 644.

Upon an indictment for perjury upon an application for naturalization, duly recorded by the court before which the application was made, the clerk of the court cannot be permitted to testify that the record was false. Id.

On an indictment for perjury, an affidavit of the defendant directly contradicting the one on which the perjury is assigned, is not sufficient evidence of the falsity of the latter. U. S. v. Mayer (D. C. 1865) Fed. Cas. No. 15,753.

The falsity of the oath, taken under the revenue laws, on which perjury is assigned, may be shown by the books and papers of the defendant. Id.

On an indictment for perjury, every allegation of the indictment may be established by the testimony of a single witness, except the allegation that the evidence in question given by the prisoner was false, and that he did not believe it to be true. Such allegation must be established by two witnesses, or by one witness with satisfactory corroboration. U. S. v. Hall (D. C. 1890) 44 Fed. 864, 10 L. R. A. 324.

On an indictment for perjury alleged to consist in denying having furnished a deed to a certain person, where the deed is shown to have been a forgery, the testimony of the prosecuting witness that it was in defendant's handwriting is corroborated by evidence that defendant was extensively engaged in forging, and causing to be forged, deeds to lands in that part of the state. Id.

27. Instructions and questions for jury.—In a prosecution for perjury committed in a naturalization proceeding, where the record of the court therein, including the final order, was admitted in evidence without objection, it was proper for the court to instruct the jury that such record should be taken as establishing the facts therein stated, although the final order may have been defective in form, in failing to recite the making and recording of the affidavits required by section 39 of Act March 3, 1903, c. 1012, 32 Stat. 1222, for which defect it is declared void by said section; it being doubtful, moreover, whether it is intended that such order shall be void, except for the purpose of proving citizenship. Schmidt v. U. S. (1904) 133 Fed. 257, 66 C. C. A. 389.

On a trial for perjury, the refusal of the court to state in its charge the rule requiring two witnesses, or one witness and corroborating circumstances, to establish the material facts charged, was not error where the only facts averred, not established beyond controversy, related to the question of intent; the only real issue being as to whether defendant testified knowingly and intentionally or through mistake, to which issue the rule could not apply. O'Leary v. U. S. (1907) 158 Fed. 796, 86 C. C. A. 56.

Evidence considered in a prosecution for perjury, and held sufficient to warrant the submission of the case to the jury. Leyer v. U. S. (1910) 183 Fed. 102, 105 C. C. A. 394.

Instructions in a prosecution for perjury considered, and held without error. Id.

Where, on a trial for perjury, there was no direct testimony as to the falsity of accused's testimony, nor any direct written evidence coming from accused proving his testimony to be untrue, nor any established admission inconsistent with his innocence, it was error to charge that a conviction was authorized if the state's testimony irresistibly led to the conclusion beyond a reasonable doubt that accused swore falsely and contrary to what he knew to be the truth, and also to refuse to charge that to convict, the falsity of the testimony must be proved by two credible witnesses or by one witness and corroborative circumstances. Allen v. U. S. (1912) 194 Fed. 664, 114

57, 39 L. R. A. (N. S.) 385.
errors in instructions on a
erjury considered. U. S. v.
(C. C. 1869) Fed. Cas. No.

secution for perjury, at the
he instruction, the court, in
o a question from a juror,
ry might give the verdict in
n which the defendant com-
alleged perjury such consid-
they thought it entitled to,
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motion for a new trial, that
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sult, and therefore granted a
U. S. v. Burkhardt (C. C.
Fed. 141.

a false oath was taken un-
e as to the law or fact in-
rein is a question of fact for
U. S. v. Smith (D. C. 1870)
No. 16,341.

eriality of the false oath is
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ence and punishment.—Under
92 (embodied herein), which,
ing the crime of perjury and
the punishment therefor,
that the person committing
e "shall moreover thereafter
le of giving testimony in any
the United States until such
e judgment against him is re-
the incapacity attaches only
s who have been convicted
t section. O'Leary v. U. S.
8 Fed. 796, 86 C. C. A. 56.

y upon a conviction of per-
ourt might inflict the punish-
fine, imprisonment, and the
J. S. v. Snow (C. C. 1803)
Fed. Cas. No. 16,349. But see section 10499, post.

A judgment and sentence of imprisonment omitting any reference to hard labor is illegal where one is indicted and convicted under R. S. § 5392 (embodied herein), which imposes, as a penalty for perjury, "imprisonment at hard labor." In re Christian (C. C. 1897) 82 Fed. 199.

R. S. § 5392 (embodied herein), providing that every person convicted of perjury shall thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed, excludes a witness convicted of perjury under the laws of the United States from giving evidence in any United States court, whatever the law of the state where the trial had on the subject may be; but as to all witnesses convicted of crimes other than perjury their competency is determined by the laws of the state where the trial is had, under Act July 6, 1862, c. 189, 12 Stat. 588, declaring that the laws of the state in which the court shall be held shall be the rules of decision as to the competency of witnesses in the courts of the United States in trials at common law in equity, and in admiralty. Wise v. Williams (C. C. 1908) 162 Fed. 161.

Cited without definite application, Logan v. U. S. (1892) 12 Sup. Ct. 617, 629, 144 U. S. 263, 36 L. Ed. 429; New York v. Eno (1894) 15 Sup. Ct. 30, 33, 155 U. S. 89, 39 L. Ed. 80; Todd v. U. S. (1895) 15 Sup. Ct. 889, 891, 158 U. S. 278, 39 L. Ed. 982; Markham v. U. S. (1895) 16 Sup. Ct. 288, 290, 160 U. S. 319, 40 L. Ed. 441; Modox Co. v. Moxie Nerve Food Co. (1907) 162 Fed. 649, 89 C. C. A. 441; Patterson v. U. S. (1913) 202 Fed. 208, 120 C. C. A. 650; U. S. v. Thompson (C. C. 1887) 31 Fed. 331, 332; U. S. v. Wallace (D. C. 1891) 46 Fed. 569; In re Di Clerico (D. C. 1908) 158 Fed. 905.

(Crim. Code, § 126.) Subornation of perjury.

ver shall procure another to commit any perjury is guilty
nation of perjury, and punishable as in the preceding sec-
scribed.

. § 5393. Act March 4, 1909, c. 321, § 126, 35 Stat. 1111.
isites of indictment for subornation of perjury were prescribed by R.
397, ante, § 1688.

Notes of Decisions

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See notes under the preceding section, and § 10201, ante.

I. Repeal of statute.—The provisions of R. S. §§ 5392, 5393 (this compilation, §§ 10295, 10296), defining perjury and subornation of perjury, were reaffirmed in the Revision of 1874, and, being general in terms, were not repealed pro tanto by the special act of 1857 (11 Stat. 250), providing for oaths, affirma-

tions, or affidavits made or taken before any register or receiver of any local land office, or used or filed in any such office, in respect to any right, claim, or title to public lands. Babcock v. U. S. (C. C. 1888) 34 Fed. 873.

2. Statute as embracing subornation of every sort of perjury.—This section embraces subornation of every sort of perjury. Epstein v. U. S. (1912) 196 Fed. 354, 116 C. C. A. 174.

3. Misdemeanor.—The crime of subornation of perjury at common law and under the laws of the United States is a misdemeanor. Hallock v. U. S. (1911) 185 Fed. 417, 107 C. C. A. 487, writ of certiorari denied (1911) 31 Sup. Ct. 717, 220 U. S. 613, 55 L. Ed. 610.

4. Knowledge of falsity.—To constitute the crime of procuring perjury to be committed, it is not enough that both the accused and the false witness knew the falsity of the statements sworn to, but the accused must also have known that the witness knew the statements to be false. U. S. v. Evans (D. C. 1884) 19 Fed. 912.

5. Witness at preliminary hearing before commissioner.—Where defendant acted as attorney for the husband of a witness suborned to testify falsely at a preliminary hearing before a United States commissioner, it was no objection to defendant's liability that the witness had not been arrested when defendant was charged with having committed the crime, or that she knew she would be arrested and had in mind a particular tribunal or proceeding before which the perjury should be committed. Cohen v. U. S. (1914) 214 Fed. 23, 130 C. C. A. 417.

6. Public land proceedings.—See, also, note, post.

To support an indictment for subornation of perjury based on the alleged procurement of the making of a false affidavit or oath before the receiver or register of a land office in support of an application to enter land under the homestead law, it is not essential that the affidavit should have been subscribed as well as sworn to before such officer. Nurnberger v. U. S. (1907) 156 Fed. 721, 84 C. C. A. 377.

Procuring entryman to make false affidavits constituted subornation of perjury as defined by R. S. § 5393 (embodied herein). Nickell v. U. S. (1908) 161 Fed. 702, 88 C. C. A. 562, judgment affirmed on rehearing (1909) 167 Fed. 741, 93 C. C. A. 229, writ of certiorari denied (1909) 29 Sup. Ct. 699, 214 U. S. 517, 53 L. Ed. 1064.

Since Act June 3, 1878, § 2 (section 4672, ante), providing for applications for the purchase of stone and timber lands, does not require that applicant's initial statement shall be based on a personal examination of the lands, nor that he shall state from his personal knowledge that the land is unfit for cultivation, etc., subornation of perjury could not be based on a charge that defendant induced an applicant to purchase such lands to falsely swear in his initial application that he had personally examined the land and stated from personal knowledge that the same was unfit for cultivation. Robnett v. U. S. (1909) 169 Fed. 778, 95 C. C. A. 244.

Since an entryman who has made his preliminary sworn statement concerning the bona fides of his application and the absence of agreement by which title would inure to the benefit of another need not make an additional oath to such facts on final proof, notwithstanding any regulation of the commissioner of the general land office, subornation of perjury cannot be laid on the alleged suborning of an entryman to swear falsely concerning the bona fides of his application in his final proof. Dwyer v. U. S. (1909) 170 Fed. 160, 95 C. C. A. 416.

7. Conspiracy.—See, also, note, post, and notes under § 10201, ante.

A conspiracy by two or more persons to procure the commission of perjury, which embraces an unsuccessful attempt, is punishable under the criminal laws of the United States, even though it be conceded that an attempt by one person to suborn another to commit perjury may not be so punishable, since under R. S. § 5440, ante, § 10201, it is clearly criminal for two or more persons to conspire to commit any offense against the United States, provided only that one or more of the parties to the conspiracy do an act towards effecting the object of the conspiracy. Williamson v. U. S. (1908) 28 Sup. Ct. 163, 207 U. S. 425, 52 L. Ed. 278.

The precise persons to be suborned, or the time and place of such suborning, need not be agreed upon in the minds of the conspirators, in order to constitute the crime of conspiracy to suborn perjury in proceedings for the purchase of public land under the timber and stone act. Id.

Where the facts alleged, in an indictment for conspiracy to commit an offense against the United States by subornation of perjury in proceedings to acquire public lands, necessarily import willfulness on the part of the persons giving such testimony, the failure of the indictment to use the word itself is not fatal. Van Gesner v. U. S. (1907) 153 Fed. 46, 82 C. C. A. 180.

Defendant and others conspired to defraud entrymen on public lands of the location fees, and, in order to induce them to enter the lands, M. represented to them that he was the agent of a fictitious corporation of whom a fictitious person was president, which corporation desired to purchase the land, and would do so from the entrymen, either for a specified amount, or in accordance with an estimate of timber

Pursuant to such conspiracy, induced the entrymen to sign to entry affidavits declaring ntrymen were purchasing the eir own benefit, and not for , and that they had no conreement to transfer the same had contracted to convey the ch corporation. Held that, would have been personally uch contracts under the rule who holds himself out as an nonexisting principal is perole, the affidavits were in fact constituted perjury, though no intention on defendant's y time to carry them out or the land. Nickell v. U. S. 1 Fed. 702, 88 C. C. A. 562, affirmed on rehearing (1909) 741, 93 C. C. A. 229, writ of denied (1909) 29 Sup. Ct. J. S. 517, 53 L. Ed. 1064.

ment.—See § 1688, and notes .

nce.—The rule that under an for perjury the defendant convicted on the uncorroboimony of a single witness is able to a case of subornation . Boren v. U. S. (1906) 144 75 C. C. A. 531.

n indictment for conspiracy an offense against the United subornation of perjury in prosons to make application for ase of lands under the timber act, under agreements to e same to defendants, and to ear, among other things, that s were chiefly valuable for was not error to permit the nt to prove that the lands were ole for the timber upon them, chiefly valuable for grazing although such evidence tended hat the lands were not subject under the act. Van Gesner v. 07) 153 Fed. 46, 82 C. C. A.

trial of a defendant charged rnation of perjury in procurstead entrymen to make the oath that the entry was not the benefit of any other per in fact they had agreed to e land to defendant for a stipice as soon as they obtained as error to refuse to permit to testify that he made no eements, but that the agreeually made, as he understood the conveyance optional with parties or to other facts, ded to show that his act was l nor corrupt, as required by te to constitute the crime Nurnberger v. U. S. (1907) 721, 84 C. C. A. 377.

trial of an indictment for subof perjury in procuring false homestead and entrymen, the k kept by the register of the land office is admissible in evidence to establish the fact that the lands to which the application related were public lands subject to homestead entry at such office, and it is competent for the register as a witness to explain the meaning of abbreviations used therein. Id.

In a prosecution for conspiracy to defraud the United States by suborning certain named persons to commit perjury in making entries under Timber and Stone Act June 3, 1878, c. 151, 20 Stat. 89, evidence of acts of the alleged perjurors committed long after they had sworn to and filed their statements, and that subsequent to such filing they had agreed with defendant D. for a money consideration to file a relinquishment of their applications at such a time as he could manage to take it up with script, together with a relinquishment so filed, was inadmissible to show motive. Dwinnell v. U. S. (1911) 186 Fed. 754, 108 C. C. A. 624.

Where defendant was charged with suborning a witness to commit perjury at a hearing before a United States commissioner in which G. was charged with violating the white slave act, the complaint against G. was admissible to prove one of the steps in the proceeding in which the false testimony was suborned to be given. Cohen v. U. S. (1914) 214 Fed. 23, 130 C. C. A. 417.

A person solicited to commit perjury is not an accomplice in the crime of subornation committed by the person who suborned him; and the fact that he committed the perjury does not prevent the jury from convicting the suborner of the solicitation on his testimony. U. S. v. Thompson (C. C. 1887) 31 Fed. 331.

The evidence showed that defendant procured certain unknown persons to go before the local land office at D. and swear to affidavits required for entering government land; that these persons made the application in the names of persons who were not present, and, in some instances, not in the state; that defendant did this by agreement with the persons whose names were used; and that he obtained the receipts for them, and received money for his services. While it was not shown that he was personally present, except in one instance, when these false affidavits were sworn to, yet they were all made by his procurement, with knowledge of their falsity, and with knowledge that the persons making them knew they were false. Held, that a verdict of guilty was amply sustained by the evidence. Babcock v. U. S. (C. C. 1888) 34 Fed. 873.

10. Instructions.—Instructions, given on the trial of a defendant charged with subornation of perjury in procuring homestead entrymen to make false oaths, held erroneous and misleading, in that they authorized the jury to con-

vict in case they found that any statement made by affiants in their affidavits was false and was intentionally sworn to, when there was evidence tending to show that some of the recitals in the affidavits respecting the intention to reside on and improve the land as affiants understood the law were not applicable to their entries, and that their act in swearing to the same was not therefore willful and corrupt, as required by R. S. § 2291, as amended by Act March 3, 1877, § 2 (section 4532, ante), to constitute the crime of perjury. Nurnberger v. U. S. (1907) 156 Fed. 721, 84 C. C. A. 377.

The instructions given on the trial of an indictment for conspiracy to induce perjury on the part of persons applying to enter land under the timber and stone act (Act June 3, 1878, as amended by Act Aug. 4, 1892 [section 4671, ante]), by falsely stating that the lands were not being purchased by them on speculation and that they had not made any agreement by which the titles they might acquire should inure to the benefit of any other person, considered, and, as applied to the evidence, held correct, as confining the inquiry to the preliminary statements made at the time of the applications. Nickell v. U. S. (1909) 167 Fed. 741, 93 C. C. A. 229, affirming judgment on rehearing (1908) 161 Fed. 702, 88 C. C. A. 562, and writ of certiorari denied (1909) 29 Sup. Ct. 699, 214 U. S. 517, 53 L. Ed. 1064.

In the prosecution for subornation of perjury the indictment contained six counts, the first three alleging subornation of an entryman to swear falsely concerning the bona fides of his entry in his preliminary affidavits, and the last three alleged subornation to swear falsely in his final proofs with reference to the same land. Notwithstanding the last three counts were insuf cient, the court charged that they we connected with the same timber clai referred to in the first and third count and that the jury should remember th they concerned the testimony on t same points involved in the first cou made at the time of final proof. A exception was taken with reference the fourth, fifth, and sixth counts the ground that the matters alleg therein were immaterial, which exce tion the court allowed. Held, that conviction on all but the second cou which was not submitted to the jury, which accused was sentenced to pay fine of $500 and costs and be impri oned for 18 months, was not sustai able on the theory that the judgme did not exceed that prescribed for single offense, and was therefore su ported by the first count alone. Dwy v. U. S. (1909) 170 Fed. 160, 95 C. A. 416.

Instructions considered and approv in a prosecution for subornation of pe jury, defining the elements of the fense. Hallock v. U. S. (1911) 185 F 417, 107 C. C. A. 487, writ of certi rari denied (1911) 31 Sup. Ct. 717, 2 U. S. 613, 55 L. Ed. 610.

In a prosecution for suborning a w ness to testify falsely, an instructi that the fact that she was subjected coercion by the commissioner and d trict attorney would not excuse fendant if the witness committed pe jury at his request or instigation w proper. Cohen v. U. S. (1914) 2 Fed. 23, 130 C. C. A. 417.

Cited without definite applicati Hendricks v. U. S. (1912) 32 Sup. 313, 314, 223 U. S. 178, 56 L. Ed. 3 Wise v. Williams (C. C. 1908) 162 F 161; U. S. v. Twining (D. C. 1904) 1 Fed. 129.

§ 10297. (Crim. Code, § 127.) Stealing or altering process; pr curing false bail, etc.; punishment for.

Whoever shall feloniously steal, take away, alter, falsify, or oth wise avoid any record, writ, process, or other proceeding, in a court of the United States, by means whereof any judgment is r versed, made void, or does not take effect; or whoever shall a knowledge, or procure to be acknowledged, in any such court, a recognizance, bail, or judgment, in the name of any other person r privy or consenting to the same, shall be fined not more than fi thousand dollars, or imprisoned not more than seven years, or bo but this provision shall not extend to the acknowledgment of a judgment by an attorney, duly admitted, for any person against wh such judgment is had or given.

R. S. § 5394. Act March 4, 1909, c. 321, § 127, 35 Stat. 1111.

Cited without definite application, Barber v. U. S. (D. C. 1887) 35 Fed. 886, 888 (reversed [1891] 11 Sup. Ct. 751, 140 U. S. 177, 35 L. Ed. 398); S. v. Crecilius (D. C. 1888) 34 Fed. 32.

§ 10298. (Crim. Code, § 128.) Destroying, etc., public recor punishment for.

Whoever shall willfully and unlawfully conceal, remove, mutila obliterate, or destroy, or attempt to conceal, remove, mutilate,

e, or destroy, or, with intent to conceal, remove, mutilate. ob-
, destroy, or steal, shall take and carry away any record,
ding, map, book, paper, document, or other thing, filed or de-
l with any clerk or officer of any court of the United States, or
public office, or with any judicial or public officer of the United
shall be fined not more than two thousand dollars, or imprisoned
ore than three years, or both.

. S. § 5403. Act March 4, 1909, c. 321, § 128, 35 Stat. 1111.

Notes of Decisions

lc intent as element of offense. pecific intent to destroy a pub-
rd, as such, is the essential ele-
the offense denounced by R. S. (embodied herein); and a de-
who had stolen papers belong-
he internal revenue office from
where they were stored, under
ef that they were old paper, or
knowledge of the fact that they
blic records, cannot be convict-
er that statute. U. S. v. De
D. C. 1887) 30 Fed. 764.

ng of "record" and "document." S. § 5403 (embodied herein),
nakes it a criminal offense to
destroy "any record, paper or
ing of a court of justice," or
per or document or record filed
osited in any public office or
y judicial or public officer," the
"record" and "document" are
ted in their meaning to the tech-
mmon-law records of courts as
, or to technical documents, but
d in the common and ordinary
nd include all and every part,
y of such technical records or
nts, but of any paper filed and
ecomes a part of the records of
rt or office, broadly speaking,
treated as a record of what it contains. McInerney v. U. S. (1906) 143 Fed. 729, 74 C. C. A. 655.

Record of court within statute.—The original application of an alien for naturalization filed in a court of the United States, together with the affidavits, certificates and record of proceedings thereon, preserved in the office of the clerk, bound in one of a series of books kept for the purpose, and which are evidence of the rights of the applicant as a citizen, constitute a record of the court within the meaning of R. S. § 5403 (embodied herein), and the stealing or destruction of any part thereof is a criminal offense thereunder. McInerney v. U. S. (1906) 143 Fed. 729, 74 C. C. A. 655.

Defense to prosecution for theft or destruction.—It is not a defense to a prosecution under R. S. § 5403 (embodied herein), for stealing or destroying a record of a court that such record was technically imperfect or incorrectly kept. McInerney v. U. S. (1906) 143 Fed. 729, 74 C. C. A. 655.

Cited without definite application, Mackin v. U. S. (1886) 6 Sup. Ct. 777, 117 U. S. 348, 29 L. Ed. 909; Mackin v. U. S. (C. C. 1885) 23 Fed. 334, 335, 337, 338.

9. (Crim. Code, § 129.) Destroying records by officer in harge; punishment for.

oever, having the custody of any record, proceeding, map,
document, paper, or other thing specified in the preceding
, shall willfully and unlawfully conceal, remove, mutilate, ob-
, falsify, or destroy any such record, proceeding, map, book,
ent, paper, or thing, shall be fined not more than two thousand
, or imprisoned not more than three years, or both; and shall
ver forfeit his office and be forever afterward disqualified from
g any office under the Government of the United States.

. S. § 5408. Act March 4, 1909, c. 321, § 129, 35 Stat. 1112.

Notes of Decisions

r within statute.—A clerk of the
sioner to the Five Civilized
employed at a salary of $1,200
under authority granted the
ry of the Interior, was not an
of the United States, and pun-
under R. S. § 5408 (embodied
, providing that any officer hav-
custody of any record or paper,
audulently takes away or de-
any such record or paper shall
the penalties there prescribed.
v. U. S. (1909) 168 Fed. 198, 93 C. C. A. 484, reversing judgment (Ind. T. 1907) 104 S. W. 678.

A clerk in the office of the Commissioner of the Five Civilized Tribes in Muskogee, Ind. T., appointed by the commissioner acting on behalf of the Secretary of the Interior, which appointment was approved by the Secretary of the Interior, was an officer within R. S. § 5408 (embodied herein), providing a punishment for any officer having the custody of any record filed in his office or deposited with him, or in

his custody, who fraudulently takes it away or destroys it. Martin v. U. S. (Ind. T. 1907) 104 S. W. 678.

Custody of record or document.—"Custody" means keeping, and implies responsibility for the protection and preservation of the thing in custody. Martin v. U. S. (1909) 168 Fed. 198, 93 C. C. A. 484.

A document in a public office in the general custody of a commissioner and in the particular custody of his chief clerk, under whom five or six subordinate clerks are employed who have access to it in order to discharge their duties, is not in the custody of one of them. Id.

A clerk in the office of the Commissioner of the Five Civilized Tribes in Muskogee, Ind. T., appointed by the commissioner acting on behalf of the Secretary of the Interior, which appointment was approved by the Secretary of the Interior, who kept a certain record in his office and could examine it whenever he wished, had the custody of the same within the meaning of R. S. § 5408 (embodied herein). Martin v. U. S. (Ind. T. 1907) 104 S. W. 678.

Fraudulent taking or destruction.—An attempt or an intent to injure the rights or interests of another, or an effect to so injure or alter some of them, is essential to a fraud, and, without such an attempt or effect, an act cannot be done "fraudulently" under R. S. § 5408 (embodied herein). Martin v. U. S. (1909) 168 Fed. 198, 93 C. C. A. 484.

The quoted words in R. S. § 5408 (embodied herein), subjecting an officer who fraudulently "takes away or withdraws" or destroys a record or document, mean a taking away or withdrawal whereby some injury is attempted or inflicted on the record or document, or on some one who has an interest in it and is entitled to use it. Id.

Where a clerk in the office of the commissioner of the Five Civilized Tribes in Muskogee, Ind. T., appointed by the commissioner acting for and on behalf of the Secretary of the Interior, who kept the Creek roll in his office, took the roll from the office with the intent to make a copy thereof, the taking was fraudulent within the meaning of R. S. § 5408 (embodied herein). Martin v. U. S. (Ind. T. 1907) 104 S. W. 678.

Indictment.—An allegation that an act innocent in itself, but criminal if done fraudulently, was performed fraudulently, or with an intent to defraud, without the averment of any acts tending to show fraud, is a legal conclusion, and insufficient to charge the offense of fraudulently taking away or removing a record or document, under this section. Martin v. U. S. (1909) 168 Fed. 198, 93 C. C. A. 484, reversing judgment (Ind. T. 1907) 104 S. W. 678.

§ 10300. (Crim. Code, § 130.) Forging signature of judge, etc.; punishment for.

Whoever shall forge the signature of any judge, register, or other officer of any court of the United States, or of any Territory thereof, or shall forge or counterfeit the seal of any such court, or shall knowingly concur in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, shall be fined not more than five thousand dollars and imprisoned not more than five years.

R. S. § 5419. Act March 4, 1909, c. 321, § 130, 35 Stat. 1112.

Cited without definite application,
Ex parte Parks (1876) 93 U. S. 18, 20, 23 L. Ed. 787.

§ 10301. (Crim. Code, § 131.) Bribery of judicial officer; punishment for.

Whoever, directly or indirectly, shall give or offer, or cause to be given or offered any money, property, or value of any kind, or any promise or agreement therefor, or any other bribe, to any judge, judicial officer, or other person authorized by any law of the United States to hear or determine any question, matter, cause, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision thereon, or because of any such action, vote, opinion, or decision, shall be fined not more than twenty thousand dollars, or imprisoned not more than fifteen years, or both; and shall forever

ualified to hold any office of honor, trust, or profit under the States.

S. § 5449. Act March 4, 1909, c. 321, § 131, 35 Stat. 1112.

2. (Crim. Code, § 132.) Judicial officer accepting bribe; nishment for.

ever, being a judge of the United States, shall in anywise or receive any sum of money, or other bribe, present, or re- or any promise, contract, obligation, gift, or security for ment of money, or for the delivery or conveyance of anything e, with the intent to be influenced thereby in any opinion, judg- r decree in any suit, controversy, matter, or cause depending be- m, or because of any such opinion, ruling, decision, judgment, ee, shall be fined not more than twenty thousand dollars, or ned not more than fifteen years, or both; and shall be forever ified to hold any office of honor, trust, or profit under the States.

S. § 5499. Act March 4, 1909, c. 321, § 132, 35 Stat. 1112.

3. (Crim. Code, § 133.) Juror, referee, etc., accepting bribe; nishment for.

ever, being a juror, referee, arbitrator, appraiser, assessor, , master, receiver, United States commissioner, or other authorized by any law of the United States to hear or deter- ny question, matter, cause, controversy, or proceeding, shall ceive, or agree to receive, any money, property, or value of nd, or any promise or agreement therefor, upon any agree- r understanding that his vote, opinion, action, judgment, or n shall be influenced thereby, or because of any such vote, , action, judgment, or decision, shall be fined not more than ousand dollars, or imprisoned not more than two years, or

t March 4, 1909, c. 321, § 133, 35 Stat. 1112.

4. (Crim. Code, § 134.) Witness accepting bribe; punishment .

ever, being, or about to be, a witness upon a trial, hearing, er proceeding, before any court or any officer authorized by vs of the United States to hear evidence or take testimony, eceive, or agree or offer to receive, a bribe, upon any agree- r understanding that his testimony shall be influenced there- that he will absent himself from the trial, hearing, or other ding, or because of such testimony, or such absence, shall be ot more than two thousand dollars, or imprisoned not more vo years, or both.

t March 4, 1909, c. 321, § 134, 35 Stat. 1113.

5. (Crim. Code, § 135.) Attempting to influence witness, ror, or officer; punishment for.

ever corruptly, or by threats or force, or by any threaten- ter or communication, shall endeavor to influence, intimidate, ede any witness, in any court of the United States or before nited States commissioner or officer acting as such commis- or any grand or petit juror, or officer in or of any court of ited States, or officer who may be serving at any examina- other proceeding before any United States commissioner or acting as such commissioner, in the discharge of his duty, or rruptly or by threats or force, or by any threatening letter or nication, shall influence, obstruct, or impede, or endeavor to ce, obstruct, or impede, the due administration of justice there-

in, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

R. S. §§ 5399, 5404. Act March 4, 1909, c. 321, § 135, 35 Stat. 1113.

Notes of Decisions

1. Offices created by statute in general.
2. Knowledge as element of offense.
3. Meaning of "obstruct" and "impede."
4. Meaning of "due administration of justice."
5. Case pending within statute.
6. Violation of injunction.
7. Taking vessel after attachment by marshal.
8. Assault on United States commissioner.
9. Influencing, intimidating, or inspecting witnesses.
10. Influencing juror.
11. Influencing grand jury.
12. Punishment as for contempt.
13. Indictment or information.
14. Evidence.
15. Verdict.

See notes under § 10201, ante.

1. Offices created by statute in general.—The provision of Act April 20, 1871, c. 22, incorporated into R. S. § 5406 (post, § 10306), was the first instance in our criminal laws where an injury done any one on account of past discharge of duty in the courts was made a penal offense. This statute did not include court officers within its protection, but specifically restricted it to parties, witnesses, and jurors. Its terms are persuasive, at least, to show that R. S. § 5399 (embodied herein), does not govern assaults upon officers of the court or any other person engaged therein in the administration of justice because of past discharge of duty. U. S. v. McLeod (C. C. 1902) 119 Fed. 416, 419.

2. Knowledge as element of offense.—It is essential that a person accused should know that the witness or officer was a witness or officer to support a conviction of the charge of influencing, intimidating, or impeding the witness or officer, and so it is necessary for him to have knowledge or notice or information of the pendency of proceedings in the United States court or the progress of the administration of justice before he can be found guilty of obstructing or endeavoring to obstruct the same. Pettibone v. U. S. (1893) 13 Sup. Ct. 542, 546, 148 U. S. 197, 37 L. Ed. 419.

Where defendant, not knowing that one C. is a witness in a case in which defendant's father is summoned as a witness, threatens and beats C. on account of insulting language used by him concerning his father in connection with the case, he is not guilty of a violation of section 5399. U. S. v. Kee (D. C. 1889) 39 Fed. 603.

3. Meaning of "obstruct" and "impede."—The expressions "obstruct" and "impede," as used in the act, refer only to direct acts of violence or menace, disturbing the ordinary functions of the court. U. S. v. Seeley (C. C. 1844) Fed. Cas. No. 16,248a.

4. Meaning of "due administration of justice."—In R. S. § 5399 (embodied herein), making it a criminal offense, inter alia, to corruptly or by threats or force "obstruct or impede, or endeavor to obstruct or impede the due administration of justice" in any court of the United States, the words "due administration of justice" import a free and fair opportunity to every litigant in a pending cause in a federal court to learn what he may learn (if not obstructed or impeded) concerning material facts, and to exercise his option as to introducing testimony as to such facts, and an offense is committed under such statute if a person corruptly endeavors to induce other persons who have knowledge of facts which may be material to a party to a pending cause to conceal or deny their knowledge, so as to prevent such party from obtaining knowledge or procuring evidence of such facts. Wilder v. U. S. (1906) 143 Fed. 433, 74 C. C. A. 567, writ of certiorari denied (1907) 27 Sup. Ct. 787, 204 U. S. 674, 51 L. Ed. 674.

5. Case pending within statute.—A case is pending, within the contemplation of the statute, when a complaint is lodged with a commissioner charging a violation of the laws of the United States. U. S. v. Bittinger (D. C. 1876) Fed. Cas. No. 14,598.

6. Violation of injunction.—The intent to obstruct the administration of justice could not be imputed from the intent to commit the unlawful act of compelling the master to discharge his servants, and that servants to leave the service of their master in violation of an injunction, since the unintended wrong was not a natural and probable consequence of the intended wrongful act, and the intended wrongful act was not an offense against the United States, but against a separate sovereignty, the state of Idaho. Pettibone v. U. S. (1893) 13 Sup. Ct. 542, 148 U. S. 197, 37 L. Ed. 419, distinguishing In re Coy (1888) 8 Sup. Ct. 1263, 127 U. S. 731, 32 L. Ed. 274.

7. Taking vessel after attachment by marshal.—The taking away of a vessel by her owner after she has been attached by a marshal, but while not in his actual custody, or that of a keeper, is not an offense under Act March 2, 1831, § 2. U. S. v. Seeley (C. C. 1844) Fed. Cas. No. 16,248a.

8. Assault on United States commissioner.—R. S. § 5399 (embodied herein), providing for the punishment of any person who "endeavors to influence, intimidate or impede any officer" in any court of the United States "in the discharge of his duty," does not include

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nmissioner, who had previous-
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l jury, where such assault did
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commissioner. U. S. v. Mc-
C. 1902) 119 Fed. 416.

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t or district court. Id.

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ucted or impeded) concerning
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have knowledge of facts which
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e to conceal or deny their
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aining knowledge or procuring
of such facts. Wilder v. U. S.
43 Fed. 433, 74 C. C. A. 567,
certiorari denied (1907) 27
787, 204 U. S. 674, 51 L. Ed.

piracy to corruptly obstruct
de the due administration of
a court of the United States
action between private par-
olation of R. S. § 5399 (em-
rein), is a conspiracy to com-
ense against the United States
e meaning of R. S. § 5440,
0201, and is indictable there-
d.

That a grand jury subpœna was indorsed by the marshal as of a particular day showing inability to find the witnesses does not show that the subpœna was returned that day, and hence that it had become functus officio the next day, when accused is charged to have impeded administration of justice by inducing a witness to flee. Heinze v. U. S. (1910) 181 Fed. 322, 104 C. C. A. 510.

A witness before a federal grand jury is within Cr. Code, § 135, providing that whoever corruptly or by threats or force attempts to influence, intimidate, or impede a witness in any court of the United States shall be punished, etc. Davey v. U. S. (1913) 208 Fed. 237, 125 C. C. A. 437.

The willful and corrupt violation of the statute as to a witness by a justice of the peace of a state in the exercise of his office will render him liable to indictment in a federal court. U. S. v. Kindred (C. C. 1880) 5 Fed. 43, 46.

The issuing of a subpœna for a person, or indorsing his name on a complaint, makes him a witness, within R. S. § 5399 (embodied herein), punishing the influencing or intimidation of witnesses by threats, force, or corrupt means. U. S. v. Bittinger (D. C. 1876) Fed. Cas. No. 14,598.

It is an offense under the statute to corruptly influence a witness to secrete or so dispose of himself as to prevent service of process upon him. Id.

Defendant is guilty of violating R. S. § 5399 (embodied herein), providing a punishment for intimidating a witness by threats, etc., when he beats one summoned as a witness before a United States commissioner for the purpose of intimidating or influencing him in giving his testimony. U. S. v. Kee (D. C. 1889) 39 Fed. 603.

R. S. § 5399 (embodied herein), providing that every person who by threats or force endeavors to intimidate or impede any witness "in any court of the United States," or by threats or force endeavors to impede the due administration of justice therein, "shall be punished," etc., does not apply to the act of one, who, two months after a prosecution against him before a United States commissioner has been dismissed, beats a person who had appeared therein as a witness against him. U. S. v. Thomas (D. C. 1891) 47 Fed. 807.

It is no ground for a plea in abatement to an indictment for conspiring to obstruct the justice of the United States by taking from a witness papers which he had been required by a subpœna duces tecum to produce before a grand jury of the United States that the defendants, as witnesses before the grand jury in behalf of the United States in an investigation of charges of violation of the interstate commerce law were interrogated and testified as to the matters upon which the indict-

ment was based. U. S. v. Price (D. C. 1899) 96 Fed. 960.

10. Influencing juror.—It is a crime, under Act March 2, 1831, § 2, to endeavor to influence a juror by conveying or imparting information to him, out of the jury box, for the purpose of affecting his conduct or judgment, or to endeavor to persuade him by arguments or appeals of any kind except those addressed to him by counsel in open court. Charge to Grand Jury (D. C. 1869) Fed. Cas. No. 18,251.

11. Influencing grand jury.—It is a crime, under the act of 1872, for a person, in violation thereof, and for the purpose of influencing the action of a grand jury, to send to them any letter or communication relating to any matter pending before them, or pertaining to their duties, without a previous order of the court. Charge to Grand Jury (C. C. 1872) Fed. Cas. No. 18,-255.

12. Punishment as for contempt.—This section does not include the power to punish for contempt under R. S. § 725, ante, § 1245. Ex parte Savin (1889) 9 Sup. Ct. 699, 701, 131 U. S. 267, 33 L. Ed. 150; U. S. v. Huff (D. C. 1913) 206 Fed. 700; Ex parte McLeod (D. C. 1903) 120 Fed. 130.

This section is declaratory of the law concerning contempts of court, though proceeding by indictment is not exclusive, if the offense of obstructing be committed under such circumstances as to bring it within the power of the court under R. S. § 725, ante, § 1245. Pettibone v. U. S. (1893) 13 Sup. Ct. 542, 546, 148 U. S. 197, 37 L. Ed. 419.

The statutes have prescribed the mode of punishment for contempt and directed that it shall be fine and imprisonment, and this operates as a negation of all other modes of punishment. U. S. v. Memphis & L. R. R. Co. (C. C. 1881) 6 Fed. 237, 240.

Where a party to an action being tried in the United States circuit court is guilty of a contempt in drawing a pistol and threatening to shoot one of the witnesses, the court may, if no special end in the administration of justice would be accomplished by proceeding summarily on process for contempt, waive such process, and leave the United States to proceed to punish the offense under the statute. Sharon v. Hill (C. C. 1885) 24 Fed. 726.

Bribing a person, who is known to be a material witness, to remain away from court, is a contempt of court, whether such person has been subpœnaed or not, and though punishable by indictment, under R. S. § 5399 (embodied herein), is also punishable under R. S. § 725, ante, § 1245, as a contempt committed by misbehavior "so near" the court "as to obstruct the administration of justice." In re Brule (D. C. 1895) 71 Fed. 943.

13. Indictment or information.—An injunction issued out of the United States circuit court, restraining defendants from endeavoring, by force or fraud, to procure a certain master to discharge his servants, or the servants to quit the employment of their master. Defendants were thereafter indicted, under R. S. §§ 5399, 5440 (this compilation, §§ 10201, 10305), for conspiring to obstruct the administration of justice in the federal courts. The indictment charged that defendants conspired to use force and fraud to break up the relation between the master and servants aforesaid, and did so do, pending the existence of such injunction; and, as a legal conclusion from this allegation, it stated that they conspired to obstruct the administration of justice by the violation of the injunction. The act charged was an offense against the laws of the state, but not against those of the United States. Held, that the indictment was fatally defective, in failing to aver, in terms, that the object of the conspiracy was to obstruct the administration of justice in the federal courts, and to aver that defendants were served with process, or in any manner notified of the issue of the writ. Pettibone v. U. S. (1893) 13 Sup. Ct. 542, 545, 148 U. S. 197, 37 L. Ed. 419.

An affidavit which states simply that the offense of obstructing the due administration of justice in a district court of the United States for a certain district has been committed, and that there is probable cause to believe that it was committed by a person named, but which neither sets out any act done nor avers any knowledge of the facts by affiant, is insufficient as the basis of an information. Johnston v. U. S. (1898) 87 Fed. 187, 30 C. C. A. 612.

An indictment under R. S. § 5440, ante, § 10201, for conspiring to commit an offense against the United States by obstructing the due administration of justice in a court of the United States, in violation of R. S. § 5399 (embodied herein), considered, and held good. Wilder v. U. S. (1906) 143 Fed. 433, 74 C. C. A. 567, writ of certiorari denied (1907) 27 Sup. Ct. 787, 204 U. S. 674, 51 L. Ed. 674.

An indictment for aiding and abetting the bribing of a witness held to sufficiently allege that the court had jurisdiction over the cause in which the person was to be a witness and to sufficiently designate him as a witness. Davey v. U. S. (1913) 208 Fed. 237, 125 C. C. A. 437.

Under this section, making it a misdemeanor to influence, intimidate, or impede a witness, and § 10506, post, providing that whoever directly commits an act constituting an offense against the United States or aids or abets or procures its commission is a

an indictment for aiding and
ne bribing of a witness was
ive for failure to brand ac-
. principal. Id.
n an indictment for obstruct-
e, it was alleged that, after
was held to the federal grand
Jnited States commissioner,
committed an assault on such
ner, but the indictment did
that the proceeding in which
was held was still pending in
l, circuit, or district court at
of the assault, it would be
that the matter had been
before the assault. U. S. v.
C. C. 1902) 119 Fed. 416.
mation under this statute for
witness held good on mo-
ash. U. S. v. Polite (D. C.
Fed. 58, 59.
sufficient to charge an en-
influence and obstruct justice
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g letter, in the general lan-
R. S. § 5404 (embodied here-
. v. Armstrong (D. C. 1894)
58.

ence.—In a trial for ob-
justice by inducing one to
country to avoid service of a
subpœna, it was not re-
ror to admit a telegram ob-
sending witness any more
ugh accused's responsibility
legram was not clearly es-
accused having advanced ex-
ney to witness; nor was it
error to admit a showing that
aded service before accused's
n. Heinze v. U. S. (1910)
322, 104 C. C. A. 510.
al for obstructing service of
in a grand jury investigation
g a witness to leave, testi-
erning the removal of a com-
oks and occurrences in the
office before issuance of the
nd involved in the investiga-
admissible to show accused's
of the investigation and of
the witness could testify
motive for inducing him to
it was proper to show that
in accused's presence his brother, the person investigated, asked witness if he had a good memory. Id.

In a trial for obstructing justice by inducing one to leave the country to avoid service of a grand jury subpœna, it was proper to admit testimony showing witness' presence within the jurisdiction when service was attempted and the efforts made. Id.

In a prosecution for obstructing justice by inducing one to leave the country to avoid service of a grand jury subpœna, any presumption that an indorsement on the subpœna showing inability to find witnesses was a record of all the serving officer's doing is rebutted by testimony that he subsequently tried to find the witnesses. Id.

An allegation that accused "feloniously" endeavored to influence, intimidate, or impede a witness was surplusage. Davey v. U. S. (1913) 208 Fed. 237, 125 C. C. A. 437.

15. Verdict.—Under this section making an endeavor to influence, intimidate, or impede a witness in a federal court a misdemeanor, and § 10506, post, making aiders and abettors in an offense against the United States principals, a verdict finding in favor of accused on a charge of endeavoring to influence a witness but convicting him of aiding and abetting another in doing so was not inconsistent with itself. Davey v. U. S. (1913) 208 Fed. 237, 125 C. C. A. 437.

Cited without definite application, Blake v. U. S. (1895) 71 Fed. 286, 290, 18 C. C. A. 117; Salla v. U. S. (1900) 104 Fed. 544, 546, 44 C. C. A. 26; Burchett v. U. S. (1912) 194 Fed. 821, 114 C. C. A. 525; Hillmon v. Mutual Life Ins. Co. (C. C. 1897) 79 Fed. 749, 750; In re Neagle (C. C. 1889) 39 Fed. 833, 858, 5 L. R. A. 78 (affirmed [1890] 10 Sup. Ct. 658, 135 U. S. 1, 34 L. Ed. 55); Chute v. Wisconsin Chemical Co. (C. C. 1911) 185 Fed. 115; U. S. v. Kilpatrick (D. C. 1883) 16 Fed. 765, 771; U. S. v. Terry (D. C. 1890) 41 Fed. 771, 773.

**(Crim. Code, § 136.) Conspiring to intimidate party, wit-
, or juror; punishment for.**

or more persons conspire to deter by force, intimidation,
t, any party or witness in any court of the United States,
ny examination before a United States commissioner or
cting as such commissioner, from attending such court or
tion, or from testifying to any matter pending therein,
ully, and truthfully, or to injure such party or witness in his
r property on account of his having so attended or testified,
luence the verdict, presentment, or indictment of any grand
juror in any such court, or to injure such juror in his person
rty on account of any verdict, presentment, or indictment law-
ented to by him, or on account of his being or having been such

juror, each of such persons shall be fined not more than five thousan dollars, or imprisoned not more than six years, or both.

R. S. § 5406. Act March 4, 1909, c. 321, § 136, 35 Stat. 1113.

Notes of Decisions

Power and duty of congress exercised by statute.—The power and duty of congress to protect parties, witnesses and jurors has been exercised by the adoption of this section. U. S. v. Sanges (C. C. 1891) 48 Fed. 78, 83, writ of error dismissed (1892) 12 Sup. Ct. 609, 144 U. S. 310, 36 L. Ed. 445.

Right statute designs to protect.—The right which this section designs to protect is the right of the United States to have its witnesses protected in coming to and returning from court, and the right arises not so much from the interest or right of those persons as from the necessity of the government that the judiciary should not be impeded in the official administration of the laws. U. S. v. Sanges (C. C. 1891) 48 Fed. 78, 84, writ of error dismissed (1892) 12 Sup. Ct. 609, 144 U. S. 310, 36 L. Ed. 445.

Proceeding in court.—A preliminar examination before a United State commissioner is not a proceeding "i any court of the United States," wit in the meaning of this section, impo ing a penalty for conspiring to deter witness from attending or testifyin in such a proceeding. Mr. Justice Ha lan dissenting. Todd v. U. S. (189 15 Sup. Ct. 889, 890, 158 U. S. 27 39 L. Ed. 982.

Cited without definite applicatio Wright v. U. S. (1901) 108 Fed. 80 48 C. C. A. 37 (writ of certiorari d nied [1901] 21 Sup. Ct. 924, 181 U. 620, 45 L. Ed. 1031); Burchett v. S. (1912) 194 Fed. 821, 114 C. C. 525; U. S. v. Cobb (D. C. 1890) Fed. 570, 573; U. S. v. Thomas (D. 1891) 47 Fed. 807, 808.

§ 10307. (Crim. Code, § 137.) Attempt to influence juror by wri ing; punishment for.

Whoever shall attempt to influence the action or decision of an grand or petit juror of any court of the United States upon an issue or matter pending before such juror, or before the jury of whic he is a member, or pertaining to his duties, by writing or sending t him any letter or any communication, in print or writing, in relatio to such issue or matter, shall be fined not more than one thousan dollars, or imprisoned not more than six months, or both.

R. S. § 5405. Act March 4, 1909, c. 321, § 137, 35 Stat. 1113.

Notes of Decisions

Influencing grand jury.—It is a crime, under the act of 1872, for a person, in violation thereof, and for the purpose of influencing the action of a grand jury, to send to them any letter or communication relating to any matter pending before them, or pertaining to their duties, without a previo order of the court. Charge to Gra Jury (C. C. 1872) Fed. Cas. No. 18,25

Cited without definite applicatio U. S. v. Kilpatrick (D. C. 1883) Fed. 765, 771.

§ 10308. (Crim. Code, § 138.) Allowing prisoner to escape.

Whenever any marshal, deputy marshal, ministerial officer, o other person has in his custody any prisoner by virtue of proces issued under the laws of the United States by any court, judg or commissioner, and such marshal, deputy marshal, ministerial office or other person voluntarily suffers such prisoner to escape, he shall b fined not more than two thousand dollars, or imprisoned not more tha two years, or both.

R. S. § 5409. Act March 4, 1909, c. 321, § 138, 35 Stat. 1113.

Notes of Decisions

Voluntary escape.—Where an arrest is made on a commissioner's warrant, the officer making the arrest has no authority in law to take bail, and if he voluntarily allows the defendant to depart from custody before the case has been heard by the magistrate, it is a voluntary escape; the liability of the officer is absolute, and cannot be relieved by subsequent arrest of defen ant, but the warrant is not invalida ed, and the defendant may be retak under the same warrant by the san officer. U. S. v. Ebbs (D. C. 188 10 Fed. 369, 370.

Conspiracy.—Under this section a § 10208, ante, an indictment chargi that petitioner conspired with his o

todian and another to permit
r to escape, held to state an
against the United States. Ex
yman (D. C. 1913) 202 Fed.

ng escape in civil case.—If in
vice of mesne process in civil
e officer allows the defendant
t out of custody without giving a bail bond, the officer becomes special bail; upon final process of execution, if there is a voluntary escape, the liability of the officer is absolute; if there is a negligent escape, the officer may retake the prisoner on fresh pursuit and hold him, so as to relieve his liability. U. S. v. Ebbs (D. C. 1881) 10 Fed. 369, 370.

9. (Crim. Code, § 139.) Application of provisions.

preceding section shall be construed to apply not only to
n which the prisoner who escaped was charged or found
of an offense against the laws of the United States, and to
n which the prisoner may be in custody charged with offens-
nst any foreign government with which the United States
eaties of extradition, but also to cases in which the prisoner
e held in custody for removal to or from the Philippine
as provided by law.

S. § 5410. Act Feb. 6, 1905, c. 454, § 2, 33 Stat. 698. Act March 4, c. 321, § 139, 35 Stat. 1113.

**0. (Crim. Code, § 140.) Obstructing process or assaulting
cer; punishment for.**

ever shall knowingly and willfully obstruct, resist, or oppose
icer of the United States, or other person duly authorized,
ing, or attempting to serve or execute, any mesne process
rant, or any rule or order, or any other legal or judicial
process of any court of the United States, or United States
sioner, or shall assault, beat, or wound any officer or other
duly authorized, knowing him to be such officer, or other per-
duly authorized, in serving or executing any such writ, rule,
process, warrant, or other legal or judicial writ or process, shall
d not more than three hundred dollars and imprisoned not
an one year.

S. § 5398. Act March 4, 1909, c. 321, § 140, 35 Stat. 1114.

Notes of Decisions

ting or obstructing process or of-
r in general.
or process within statute.
are officers of the United States.
ance as excuse or defense.
ts and acts intended to terrify
f a character to terrify.
f offensive and opprobrious lan-
ge.
r acting without warrant or au-
ity.
ant regular on its face.
writ.
executed after the return day.
of possession.
hment.
se of prisoner on habeas corpus.
g prisoners from custody of
shal.
tance of execution of order to re-
e disturber from courtroom.
ney and client as equally guilty.
ment or information.

**isting or obstructing process or
general.**—The offense of re-
n officer in executing a war-
arrest is complete when the
arrested refuses to come, and
will not come, though no as-
committed. U. S. v. Lukins
818) Fed. Cas. No. 15,639.
an indictable offense to combine to oppose the execution of a justice's warrant, without knowing its nature, and assaulting one of the parties attempting to execute it. U. S. v. O'Neale (C. C. 1819) Fed. Cas. No. 15,920.

Any obstruction to the free action of an officer or his lawful assistants in the service of process, willfully placed in their way, is sufficient to constitute the offense. Actual or threatened violence is not necessary. Charge to Grand Jury (C. C. 1854) Fed. Cas. No. 18,250.

Where a defendant has knowledge that the officers of justice are in pursuit of him for an offense committed by him against the law, he will not be justified in resisting such officers, even though such officers do not exhibit to him the warrant, or inform him of the particular cause of his arrest. Cross v. U. S. (C. C. 1857) Fed. Cas. No. 18,286.

While it is a criminal offense to resist an officer, the taking of property on which he has a mere constructive lien is not a crime. Steam Stone-Cutter Co. v. Windsor Mfg. Co. (C. C. 1880) 3 Fed. 298, 301.

As to what facts amount to resisting process. U. S. v. Buck (D. C. 1860) Fed. Cas. No. 14,680.

To sustain an indictment based on the first part of this section, it must appear that defendant obstructed, resisted, or opposed an officer of the United States in serving or executing some one of the writs, processes, rules, or orders named in the section. U. S. v. Mullin (D. C. 1895) 71 Fed. 682, 689.

2. Writ or process within statute.—Act April 30, 1790, § 22, for the punishment of persons obstructing the execution of process, includes every species of process, legal and judicial, whether issued by the court in session, or by a judge or magistrate acting in his official capacity out of court. U. S. v. Lukins (C. C. 1818) Fed. Cas. No. 15,639; Charge to Grand Jury (C. C. 1854) Fed. Cas. No. 18,250.

The provisions of Act 1790, § 22, apply equally to the execution of process under the fugitive slave law. Charge to Grand Jury, Fugitive Slave Law (C. C. 1851) Fed. Cas. No. 18,262.

A warrant of distress is not a legal process, within Act 1790, § 22, in relation to resisting officers. U. S. v. Myers (D. C. 1870) Fed. Cas. No. 15,-847.

Congress having provided for the punishment of murder committed in the Indian country (R. S. §§ 2145, 5339 [this compilation, §§ 4148, 10448]), the United States circuit court for the district of Oregon has jurisdiction of the crime of murder committed on the Umatilla reservation by an Indian upon a white man; and therefore it is a violation of R. S. § 5398 (embodied herein), for any one to resist or obstruct the execution of an order made by a circuit court commissioner, engaged in the examination of an Indian charged before him with the commission of murder, under such circumstances. U. S. v. Martin (D. C. 1883) 14 Fed. 817.

A written order of an Indian agent, acting in pursuance of instructions from the interior department, for the purpose of fulfilling the duty of the government to protect the Indians in the use and occupancy of their reservations, is a legal writ or process, within the meaning of R. S. § 5398 (embodied herein), imposing a penalty for resisting the service of such writ or process. U. S. v. Mullin (D. C. 1895) 71 Fed. 682.

3. Who are officers of the United States.—A deputy marshal is an officer of the United States authorized to serve process. U. S. v. Tinklepaugh (C. C. 1856) Fed. Cas. No. 16,526.

R. S. § 5398 (embodied herein), provides that "every person who knowingly and willfully obstructs, resists, or opposes any officer of the United States in serving, or attempting to serve, or execute, any mesne process or warrant or any rule or order of any court of the United States or any other legal or judicial writ or process, * * * shall be imprisoned not more than 12 months, and fined not less than $300." Held, that a keeper of the state jail, to whose custody a person is committed by legal process issued by a United States court or judicial officer with the consent of the state, is an officer of the United States within the purview of said section. U. S. v. Martin (D. C. 1883) 17 Fed. 150.

R. S. § 5398 (embodied herein), provides that "every person who knowingly and willfully obstructs, resists, or opposes any officer of the United States in serving, or attempting to serve, or execute, any mesne process or warrant or any rule or order of any court of the United States or any other legal or judicial writ or process, * * * shall be imprisoned not more than 12 months and fined not less than $300." Held, that a deputy marshal is an officer of the United States within the purview of said section. Id.

A member of the Indian police is not an officer of the United States, within the meaning of the first clause of R. S. § 5398 (embodied herein), imposing a penalty for resisting any officer of the United States in serving a writ or process, but such police are included among the other persons who may be authorized to serve writs or process, within the last clause of that section. U. S. v. Mullin (D. C. 1895) 71 Fed. 682.

4. Ignorance as excuse or defense.—The rule that ignorance of penal laws is no defense to an indictment for their violation has no application in a prosecution for obstructing justice, for the intent to obstruct the administration of justice can only be present when there is knowledge that justice is being administered. Pettibone v. U. S. (1893) 13 Sup. Ct. 542, 148 U. S. 197, 37 L. Ed. 419.

Ignorance is no excuse where the offender might readily have known the truth upon inquiry. U. S. v. Buck (D. C. 1860) Fed. Cas. No. 14,680.

5. Threats and acts intended to terrify or of a character to terrify.—A mere threat of resistance is not an offense. It must be accompanied by the exercise of force, or the capacity to employ it, whereby the officer is prevented from executing the writ; but it is not necessary that the officer should risk his person or proceed to personal conflict. U. S. v. Lowry (C. C. 1808) Fed. Cas. No. 15,636.

It is not an indictable offense to threaten to kill a constable if he should attempt to arrest a person whom he is searching for, with intent to arrest without a warrant. U. S. v. Goure (C. C. 1834) Fed. Cas. No. 15,240.

On an indictment for conspiring to resist an officer, actual violence need

hown, but threats, and acts in-
to terrify, or of a character to
a prudent officer, are sufficient,
ough he be not prevented there-
executing his process. U. S.
h (C. C. 1870) Fed. Cas. No.

e of offensive and opprobrious
e.—The use of offensive and op-
us language may, without any
act, constitute an interference
supervisor in the discharge of
y. Ex parte Geissler (C. C.
Fed. 188.

ficer acting without warrant or
ty.—It is not necessary that a
le should have a warrant to
s an affray, in order to make
ion to him unlawful. U. S. v.
(C. C. 1806) Fed. Cas. No.

ficer who is acting without or in
of authority may be lawfully re-
or obstructed. U. S. v. Fears
1878) Fed. Cas. No. 15,080.

arrant regular on its face.—
the warrant is regular on its
nd shows a case within the ju-
on of the magistrate, resistance
is unlawful, though the offense
t within the local jurisdiction of
gistrate. U. S. v. Thompson (C.
3) Fed. Cas. No. 16,484.

lias writ.—If the first writ be
d executed, plaintiff cannot is-
t an alias. If the writ, though
ed, has not been returned, and
s issues on the suggestion of the
f, resistance to such writ is an
. Aliter, if the first writ had
eturned. U. S. v. Slaymaker (C.
1) Fed. Cas. No. 16,313.

Writ executed after the return
The hac. fac. poss. cannot be ex-
after the return day, and, if it be
ted, resistance to it is no of-
against the act of congress. U.
laymaker (C. C. 1821) Fed. Cas.
,313.

Writ of possession.—Obstructing
s (in the case of habere facias)
ts in refusing to give up posses-
or in opposing or obstructing the
ion of the writ by threats of vio-
which it is in the power of the
to enforce. U. S. v. Lowry (C.
8) Fed. Cas. No. 15,636.

Attachment.—Willful resistance
warrant of attachment against a
, valid on its face, is indictable
Act April 30, 1790, § 22, though
el for forfeiture of the vessel, on
it is founded, is not sufficient to
rize its issue. U. S. v. Tinkle-
(C. C. 1856) Fed. Cas. No. 16,-

ler R. S. § 5398 (embodied herein),
an offense to resist an officer in
xecution of process, as well as in
g process. Holding attached
rty after seizure is executing pro-
and one resisting or obstructing
the officer therein commits the offense. U. S. v. McDonald (C. C. 1879) Fed. Cas. No. 15,667.

If an officer holding a writ of attachment, in good faith, and on reasonable grounds, seize the property of the wrong person, resistance by the latter is unlawful; contra, if the officer act in bad faith. Id.

Resistance to a special custodian of attached property, employed by the marshal, though not appointed a sworn deputy, is resistance to the marshal. Id.

13. Release of prisoner on habeas corpus.—A state court judge who, in pursuance of a conspiracy, and in bad faith, releases on habeas corpus, without any ground therefor, a prisoner held on examination before a United States commissioner to await the action of the grand jury, together with the other conspirators, is guilty of obstructing process. U. S. v. Doss (D. C. 1872) Fed. Cas. No. 14,985.

14. Taking prisoners from custody of marshal.—Where a United States commissioner, having adjudged certain persons deserting seamen from a British ship, on complaint of a British consul, instead of ordering them delivered to the consul, as required by the treaty and statute, in excess of his authority ordered them restored to the ship "under the directions" of the consul, the marshal, in carrying out the directions of the consul to deliver the seamen to the ship by delivering them to the master on board thereof, acts as the consul's agent, and not in the execution of any legal writ or process, and persons who interfere with him while so acting by forcibly taking his prisoners from his custody are not guilty of a violation of R. S. § 5398 (embodied herein), which makes it a criminal offense to knowingly and willfully obstruct or oppose an officer of the United States in attempting to execute any legal or judicial writ of process. U. S. v. Kelly (D. C. 1901) 108 Fed. 538.

15. Resistance of execution of order to remove disturber from courtroom.—Under this section, resisting a marshal in his execution of an oral order of the court to remove from the court room a person who has disturbed the proceedings of the court is indictable. U. S. v. Terry (D. C. 1890) 41 Fed. 771, 774.

If defendant knew the order for her removal from the court room was directed to the marshal, it is immaterial that the court addressed it to the clerk, if he immediately changed it to the marshal. Id., 42 Fed. 317.

Any unnecessary force or violence used by an officer in the execution of an order to remove one from the court room may be resisted by force sufficient to overcome it. Id.

Where defendant, under indictment for resisting an officer, alleges that she

did not knowingly and willfully resist the officer in the execution of an order to remove her from the court room, for the reason that she was rendered unconscious by the opinion of the court then being pronounced, the jury may consider the fact that she entered the court room with a loaded revolver, to hear the decision in a case to which she was a party. Id.

16. Attorney and client as equally guilty.—An attorney and client conspiring to resist an officer are equally guilty. U. S. v. Smith (C. C. 1870) Fed. Cas. No. 16,333.

17. Indictment or information.—An indictment under R. S. § 5398 (embodied herein), for assaulting a United States officer while engaged in the execution of a warrant, need not allege that the warrant was given to the officer to be by him executed, or that it was in his hands at the time of the alleged assault, or that the officer had any orders, directions, or authority to execute the warrant. Blake v. U. S. (1895) 71 Fed. 286, 18 C. C. A. 117.

An indictment under R. S. § 5398 (embodied herein), directed against one who "knowingly and willfully" assaults an officer engaged in executing any process or warrant, must allege the scienter as to all the elements involved in the offense. Id.

Nor need the indictment set out the warrant or its purport. Id.

But in an indictment for this class of offenses, in the usual form for the class, the words "knowingly and willfully," in the first part thereof, apply to all which follow them, though the grammatical connection is not strictly made. Id.

An information for attempting to obstruct the due administration of justice in a district court, by furnishing to one charged with a criminal offense a false certificate to enable him to obtain a continuance, is bad where it charges the making of such certificate by inference only, and fails to charge that it was furnished by defendant with a corrupt intent. Johnston v. U. S. (1898) 87 Fed. 187, 30 C. C. A. 612.

In an indictment for resisting a public officer it is not necessary to set forth the particular exercise of office in which he was engaged, or the particular act and circumstance of obstruction. U. S. v. Bachelder (C. C. 1814) Fed. Cas. No. 14,490.

A commissioner empowered to issue a warrant under Act Sept. 18, 1850, must be a commissioner particularly described therein; and an averment, in an indictment for resisting such a warrant, that it was issued by a commissioner of the circuit court of the United States, is not sufficient. U. S. v. Stowell (C. C. 1854) Fed. Cas. No. 16,409.

An indictment under Act April 30, 1790, § 22, must show by proper averments that the process was legal. Id.

An averment that a warrant was duly issued is insufficient. The facts constituting the due issue must be set forth. Id.

The want of an averment of the facts showing that the commissioner was authorized to issue the warrant cannot be aided by referring to the records of the court. Id.

Sufficiency of indictment for willfully resisting the execution of process under Act April 30, 1790, § 22. U. S. v. Tinklepaugh (C. C. 1856) Fed. Cas. No. 16,526.

An indictment for obstructing United States officers in the discharge of their duties, by ejecting them from the polls where an election for a member of congress is being held, is fatally defective, when it does not charge a scienter. U. S. v. Taylor (C. C. 1893) 57 Fed. 391.

In an indictment for resisting an officer serving an execution, it is unnecessary to set out the process in hæc verba, or to aver that it is in full force, when that fact appears from the description of it. U. S. v. Hudson (D. C. 1874) Fed. Cas. No. 15,412.

An averment that defendant "did knowingly, willfully and unlawfully obstruct, resist, and oppose" an officer, sufficiently states the manner and method of resistance. Id.

An averment that defendant procured the arrest "within this district" of his wife, who was living separate and apart from him, for the purpose of procuring from her "a dissolution of the bonds of matrimony existing between them, through such arrest," is insufficient, in that it fails to show that the arrest was under process issued out of a federal court. U. S. v. Armstrong (D. C. 1894) 59 Fed. 568.

It is not sufficient to charge an endeavor to influence and obstruct justice in a federal court, by means of a threatening letter in the general language of R. S. § 5404, post, § 10305. Id.

Cited without definite application, West Virginia v. Laing (1904) 133 Fed. 887, 66 C. C. A. 617; Buster v. Wright (1905) 135 Fed. 947, 68 C. C. A. 505; U. S. v. Cover (D. C. 1891) 46 Fed. 284, 285.

§ 10311. (Crim. Code, § 141.) Rescuing, etc., prisoner; concealing person from arrest; punishment for.

Whoever shall rescue or attempt to rescue, from the custody of any officer or person lawfully assisting him, any person arrested upon a warrant or other process issued under the provisions of

of the United States, or shall, directly or indirectly, aid, abet, t any person so arrested to escape from the custody of such or other person, or shall harbor or conceal any person for rrest a warrant or process has been so issued, so as to prevent overy and arrest, after notice or knowledge of the fact that a or process has been issued for the apprehension of such person, fined not more than one thousand dollars, or imprisoned not an six months, or both.

S. §§ 5401, 5516. Act March 4, 1909, c. 321, § 141, 35 Stat. 1114.

Notes of Decisions

of Indian woman committed e of adultery.—An Indian wo- sted, without written warrant, ndian police on the Umatilla on, on a charge of adultery d thereon, was committed to an jail for trial before the f Indian offenses," and while itted, was rescued by defend- eld, that they committed res- defined by R. S. § 5401 (this on, §§ 10311, 10313), by forci- g a person at liberty who was d for "a crime against the tates." U. S. v. Clapox (D. 35 Fed. 575.

acy to commit offense.—Since it is made an offense by federal statute for any person directly or indirectly to aid, abet, or assist another person to escape, and conspiracy to commit such an offense is a separate crime, an indictment, alleging that accused, together with other named persons, conspired to commit an offense against the United States, to wit, to aid, abet, and assist himself to escape from an officer, was not fatally defective on the theory that, inasmuch as there was no law making it an offense for a prisoner to escape or attempt to escape, he could not be guilty of aiding, abetting, or assisting himself to do so. U. S. v. Lyman (D. C. 1911) 190 Fed. 414.

. (Crim. Code, § 142.) Rescue at execution; punishment

ever, by force, shall set at liberty or rescue any person found n any court of the United States of any capital crime, while o execution or during execution, shall be fined not more venty-five thousand dollars and imprisoned not more than five years.

S. § 5400. Act March 4, 1909, c. 321, § 142, 35 Stat. 1114.

. (Crim. Code, § 143.) Rescue of prisoner; punishment for.

ever, by force, shall set at liberty or rescue any person who, conviction, stands committed for any capital crime; or who- force, shall set at liberty or rescue any person committed onvicted of any offense other than capital, shall be fined not an five hundred dollars and imprisoned not more than one

S. § 5401. Act March 4, 1909, c. 321, § 143, 35 Stat. 1114.

. (Crim. Code, § 144.) Rescue of dead body of executed ender; punishment for.

ever, by force, shall rescue or attempt to rescue, from the of any marshal or his officers, the dead body of an ex- offender, while it is being conveyed to a place of dissection, ided by section three hundred and thirty-one hereof, or by hall rescue or attempt to rescue such body from the place t has been deposited for dissection in pursuance of that sec- all be fined not more than one hundred dollars, or imprisoned e than one year, or both.

S. § 5402. Act March 4, 1909, c. 321, § 144, 35 Stat. 1114.

. (Crim. Code, § 145.) Extortion by informer; punishment

ever shall, under a threat of informing, or as a considera- r not informing, against any violation of any law of the States, demand or receive any money or other valuable thing,

shall be fined not more than two thousand dollars, or imprisoned not more than one year, or both.

R. S. § 5484. Act March 4, 1909, c. 321, § 145, 35 Stat. 1114.

Notes of Decisions

Offenses denounced by statute as repugnant.—The offenses denounced by R. S. § 5484 (embodied herein), are not necessarily repugnant but may constitute but one offense. U. S. v. Fero (D. C. 1883) 18 Fed. 901, 903.

Jurisdiction of state courts.—The offense of extorting money under a threat to accuse a person of a criminal violation of a federal internal revenue law, though made a crime by R. S. § 5484 (embodied herein), is excepted from the exclusive jurisdiction conferred on the federal courts by R. S. §§ 629, 711, ante, §§ 991, 1233, of "all crimes and offenses cognizable under the authority of the United States," by the provision of R. S. § 5328, post, § 10500, that "nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several states under the laws thereof." Sexton v. People of State of California (1903) 23 Sup. Ct. 543, 189 U. S. 319, 47 L. Ed. 833, affirming judgment People v. Sexton (1901) 64 P. 107, 132 Cal. 37.

In view of R. S. § 5328, post, § 10500, providing that nothing in this title shall impair the jurisdiction of the state courts, a state court had jurisdiction of a violation of a state statute against extortion committed by threats of prosecution for violation of the internal revenue laws, notwithstanding R. S. § 5484 (embodied herein) and R. S. §§ 629, 711, ante, §§ 991, 1233, giving the federal courts exclusive jurisdiction of all offenses cognizable under the authority of the United States. Id.

Information.—The defendant was indicted and convicted for violation of section 5484 of the Revised Statutes (embodied herein), providing that "every person who shall receive any money or other valuable thing under a threat of informing, or as a consideration for not informing, against any violation of any internal revenue law, shall, on conviction thereof, be punished by a fine not exceeding two thousand dollars, or by imprisonment not exceeding one year," etc. On a motion for arrest of judgment on the ground that the information charging the violation of the statute was bad for duplicity, in that it alleged that the defendant received money "under a threat of informing, and as a consideration for not informing," against a party who had violated the revenue law, it being argued that two independent offenses are charged, that of receiving money "under a threat of informing," and also receiving money as a consideration for not informing, held that, in this case, the two offenses as alleged should be regarded as successive acts in one transaction, thus making really but one offense, and that hence the pleading was good. Where a statute makes either of two or more distinct acts connected with the same general offense, and subject to the same measure and kind of punishment, indictable separately and as distinct crimes when committed by different persons, or at different times, they may, when committed by the same person at the same time, be coupled in one count as constituting one offense. U. S. v. Fero (D. C. 1883) 18 Fed. 901.

§ 10316. (Crim. Code, § 146.) Misprision of felony; punishment for.

Whoever, having knowledge of the actual commission of the crime of murder or other felony cognizable by the courts of the United States, conceals and does not as soon as may be disclose and make known the same to some one of the judges or other persons in civil or military authority under the United States, shall be fined not more than five hundred dollars, or imprisoned not more than three years, or both.

R. S. § 5390. Act March 4, 1909, c. 321, § 146, 35 Stat. 1114.

CHAPTER SEVEN

Offenses against the Currency, Coinage, etc.

Sec.
10317. "Obligation or other security of the United States" defined.
10318. Forging or counterfeiting securities; punishment for.
10319. Counterfeiting national-bank notes; punishment for.
10320. Using plates to print notes without authority, etc.; distinctive paper without authority; punishment for.
10321. Uttering, etc., forged obligations; punishment for.

Taking impressions of tools, implements, etc.; punishment for.
Having unlawful possession of impressions; punishment for.
Dealing in counterfeit securities; punishment for.
ecreting or embezzling tools and materials for printing securities; punishment for.
Counterfeiting foreign securities; punishment for.
Uttering counterfeit foreign securities; punishment for.
Counterfeiting notes of foreign banks; punishment for.
Uttering counterfeit notes of foreign banks; punishment for.
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Having in possession, etc., counterfeit plates of foreign securities, etc.; punishment for.
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Counterfeiting gold or silver coins or bars; punishment for.
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Falsifying, mutilating or lightening coins; punishment for.
Debasing coins by officers of the Mint; punishment for.

Sec.
10337. Making or uttering coins resembling money; punishment for.
10338. Making or uttering devices of minor coins; punishment for.
10339. Counterfeiting, etc., dies for United States coins; punishment for.
10340. Counterfeiting, etc., dies for foreign coins; punishment for.
10341. Making, importing, or having in possession tokens, prints, etc., similar to United States or foreign coins.
10342. Forfeiture of counterfeit obligations, securities, coins, and material; punishment for failing to deliver.
10343. Issue of search warrant for suspected counterfeits, etc.; forfeiture of seized articles.
10344. Circulating bills of expired banks; punishment for; circulation permitted.
10345. Imitating national-bank notes with advertisements thereon; punishment for.
10346. Mutilating, etc., national-bank notes; punishment for.
10347. Imitating securities or printing advertisements thereon; punishment for.
10348. Issuing notes less than one dollar; punishment for.

7. (Crim. Code, § 147.) "Obligation or other security of the nited States" defined.

words "obligation or other security of the United States" e held to mean all bonds, certificates of indebtedness, nabank currency, coupons, United States notes, Treasury notes, rtificates, silver certificates, fractional notes, certificates of deills, checks, or drafts for money, drawn by or upon authorized of the United States, stamps and other representatives of of whatever denomination, which have been or may be issued any Act of Congress.

S. § 5413, as amended, Act Feb. 18, 1875, c. 80, 18 Stat. 320. Act Feb. 1877, c. 69, 19 Stat. 253. Act Feb. 28, 1878, c. 20, § 3, 20 Stat. 26. Act ch 4, 1909, c. 321, § 147, 35 Stat. 1115.

Notes of Decisions

otes under §§ 10320, 10321.

lso, § 10191 et seq., ante, and ereunder.

ory definition as limited in ap-.—The definition given to the obligation or other security of ed States," in R. S. § 5413 (emherein), is not intended to be but is limited in its application. 22 Op. Atty. Gen. 40.

e as applying to and limiting of words in appropriation act. § 5413 (embodied herein), does ly to or limit the meaning of rds "other securities of the United States," as used in paragraph 4 of the act of March 3, 1877 (19 Stat. 344), making appropriations for labor and expenses of engraving and printing "notes, bonds, and other securities of the United States," etc. (1898) 22 Op. Atty. Gen. 40.

Postage stamps as obligations or securities.—When the word "securities" is used in the property sense, it refers to bonds, mortgages, certificates of deposit, certificates of stock, etc. In this sense postage stamps are not investments or securities. (1898) 22 Op. Atty. Gen. 40.

A canceled postage stamp is not an

obligation or security within the meaning of R. S. § 5413 (embodied herein). (1908) 27 Op. Atty. Gen. 125.

Postage stamps are securities or obligations. (1910) 28 Op. Atty. Gen. 201.

Military land warrant.—A military land warrant is neither an indenture nor a public security, within the meaning of Crimes Act March 3, 1825, c. 65, § 17, relating to forgery. U. S. v. Irwin (C. C. 1851) Fed. Cas. No. 15,-445.

Cited without definite application, Jolly v. U. S. (1898) 18 Sup. Ct. 624, 625, 170 U. S. 402, 42 L. Ed. 1085; Ex parte Houghton (D. C. 1881) 7 Fed. 657, 658; Id., 8 Fed. 897, 898; U. S. v. Howell (D. C. 1894) 64 Fed. 110, 114; U. S. v. Kuhl (D. C. 1898) 85 Fed. 624, 625.

§ 10318. (Crim. Code, § 148.) Forging or counterfeiting securities; punishment for.

Whoever, with intent to defraud, shall falsely make, forge, counterfeit, or alter any obligation or other security of the United States shall be fined not more than five thousand dollars and imprisoned not more than fifteen years.

R. S. § 5414. Act March 4, 1909, c. 321, § 148, 35 Stat. 1115.

Notes of Decisions

See notes under the preceding section.

Application to army officers.—This provision is comprehensive in its scope, and includes as well an officer of the army of the United States as all other persons within the jurisdiction of the United States, unless he is exempted from its operation by some provision of the constitution or some other statute. Neall v. U. S. (1902) 118 Fed. 699, 700, 56 C. C. A. 31.

Indorsement of post office warrant.—It is an offense against the United States, and forgery, under this section to falsely and fraudulently write the name of the payee upon the back of a post office warrant on the treasury of the United States; such indorsement being in a legal sense a part of the instrument itself. U. S. v. Jolly (D. C. 1888) 37 Fed. 108.

Indorsement on government draft.—The forging of an indorsement on a genuine government draft, and the uttering of the draft so indorsed, are each offenses punishable under the statutes of the United States. De Lemos v. U. S. (1899) 91 Fed. 497, 33 C. C. A. 655.

Indorsement on post note.—Counterfeiting an indorsement on a post note of the Bank of the United States was held not an offense under section 18 of its charter. U. S. v. Stewart (C. C. 1818) Fed. Cas. No. 16,402.

Jurisdiction and venue.—As to jurisdiction of state courts, see notes under Const. art. 1, § 8, cl. 6.

See, also, notes under §§ 991(2), 1233, ante.

A district court has jurisdiction to indict and try a person charged with having forged an obligation of the United States with intent to defraud, which is made an offense against the United States by this section, although he was at the time an officer of the army, and the alleged offense was committed at a military post, and with intent to defraud an enlisted soldier, where the accused has since been discharged from the army without any action against him having been taken by the military authorities; there being no provision, either constitutional or statutory, conferring exclusive jurisdiction on courts-martial to punish such offense. Neall v. U. S. (1902) 118 Fed. 699, 56 C. C. A. 31.

The place where forged papers are inclosed and sealed up with a letter and put in the post office is the place where they are uttered, and not the place of their destination. U. S. v. Wright (C. C. 1822) Fed. Cas. No. 16,-773; Same v. Plympton (C. C. 1833) Fed. Cas. No. 16,058.

Indictment, proof, and variance.—In an indictment under R. S. § 5414 (embodied herein), for the forgery of an indorsement on a draft of the United States, it should be distinctly charged that the genuine draft, with the forged indorsement, constituted together a forged obligation of the United States; and an indictment which avers that the draft itself constituted the obligation which was forged, when further averments show that the forgery consisted in the false making of the indorsement, is repugnant, and does not properly lay the offense; nor is it good, under R. S. § 5421, ante, § 10193, because it does not lay the charge on the indorsement itself, under the requirements of R. S. § 5421. De Lemos v. U. S. (1899) 91 Fed. 497, 33 C. C. A. 655.

An indictment under this section for the forgery of an obligation of the United States with intent to defraud, is not bad for duplicity because it charges in a single count an intent to defraud both the United States and a soldier in the army, where the instrument charged to have been forged purported to be a certificate of deposit issued by the United States to the soldier. It being impossible in such case to aver or prove with certainty a

ntent to defraud either one an the other, the law will im- he act an intent to defraud all it have been thereby defraud- l v. U. S. (1902) 118 Fed. 699, A. 31.

ndictment for forging a cer- f deposit purporting to have ned on behalf of the United an enlisted soldier, by sign- to the name of a person de- s an officer and deputy pay- eneral, with intent to defraud sitor named therein, need not the person whose name was as in fact the officer he was ed to be in the instrument.

or of the instrument need not rth where it is stated in the t that the instrument has been or suppressed by the prison- v. Britton (C. C. 1822) Fed. 14,650.

nor of the instrument must be set forth in the indict- l it must be proved as alleg-

tes stated in the indictment in evidence as counterfeited, alleged to be counterfeited, shown to be the same, but ral variances are not fatal. Moses (C. C. 1827) Fed. Cas. 5; Same v. Hall (C. C. 1832) No. 15,283; Same v. Rouden- C. 1832) Fed. Cas. No. 16,- e v. Mason (C. C. 1875) Fed. 15,736.

indictment for counterfeiting he Bank of the United States, to defraud some corporation must be shown. U. S. v. . C. 1827) Fed. Cas. No. 15,-

orrect description in respect l number of a bill which de- s indicted for uttering is a iance. U. S. v. Mason (C. Fed. Cas. No. 15,736.

ctment, in setting out counter- , did not exhibit any imprint al of the treasury, while the in evidence on the trial ex- ch imprint. Held, not a ma- iance. U. S. v. Bennett (C. Fed. Cas. No. 14,572.

e which requires a setting out tire instrument or its tenor ictment in the federal courts l mainly, if not wholly, to forgery, counterfeiting and hreatening letters. U. S. v. C. C. 1908) 161 Fed. 425.

ctment for forging a treasury l not aver that it was made in ce of the genuine note. U. nt (D. C. 1867) Fed. Cas. No.

ctment for forging a treasury l not, in terms, give it that ere a copy is set out. Id.

In the indictment for falsely making and forging an obligation of the United States, it is sufficient to aver in the general language of the statute an intent to defraud, and the name of any person sought to be defrauded need not be mentioned, nor is any more specific averment necessary, such as might be required if the offense charged were that of passing or attempting to pass, uttering or publishing, the forged security. Guilty knowledge, and an intention to defraud the United States, if no one else, are necessarily implied from the language of this section. U. S. v. Jolly (D. C. 1888) 37 Fed. 108.

Evidence.—Where the instrument alleged to have been forged has been destroyed or suppressed by the prisoner, the tenor may be proved by parol evidence. U. S. v. Britton (C. C. 1822) Fed. Cas. No. 14,650.

Where the prisoner is connected with others, evidence is admissible that different parts of the machine employed in counterfeiting were found in the possession of such other persons. U. S. v. Craig (C. C. 1827) Fed. Cas. No. 14,883.

The scienter may be proved by the fact of similar forged orders found in possession of defendant or of an accomplice in passing them. U. S. v. Hinman (C. C. 1831) Fed. Cas. No. 15,370.

An order on the cashier of the Bank of the United States is evidence in support of an indictment for forging an order on the cashier of the corporation of the Bank of the United States. Id.

If there be a concert between two or more to pass counterfeit notes, or any joint or concurrent action in passing them, the act of one is evidence against the other. Id.

After evidence that a note of the description laid in the indictment has been forged and passed, evidence may be given of delivering or passing other counterfeited notes on the same bank before or after the passing the one in question irrespective of time. U. S. v. Doebler (C. C. 1832) Fed. Cas. No. 14,977.

No notice is necessary to produce a paper in the hands of defendant, an accomplice, or a third person, who secretes it to protect defendant, or that evidence of its contents will be offered at the trial, though such paper is not the subject of the indictment. Id.

Under an indictment charging defendant with uttering and publishing a certain false, forged, and altered United States treasury warrant, evidence that defendant negotiated a genuine check drawn by an authorized officer of the United States upon an assistant treasurer, directing payment of money, upon which there was the forged indorsement of the name of the payee, is insuffi-

cient to sustain a verdict of guilty. U. S. v. Albert (C. C. 1891) 45 Fed. 552.

In a prosecution for counterfeiting bills of the Bank of the United States, the corporate existence of the bank and its franchises need not be shown, since courts, because of the fact of its existence and operation being a matter of knowledge and notoriety, will judicially notice it. State v. Randall (Vt. 1827) 2 Aikens, 89.

Repeal of former law inflicting capital punishment.—Act April 30, 1790, § 14, punishing forgery of public securit with death, was impliedly repealed Act March 3, 1825, § 17. U. S. v. Irv (C. C. 1851) Fed. Cas. No. 15,445.

Cited without definite applicati Calicchio v. U. S. (1911) 189 Fed. 3 111 C. C. A. 37 (certiorari den [1912] 32 Sup. Ct. 842, 225 U. S. 7 56 L. Ed. 1269); U. S. v. Coppersm (C. C. 1880) 4 Fed. 198, 208; U. S. Crecilius (D. C. 1888) 34 Fed. 30, 3 U. S. v. Barrett (D. C. 1901) 111 F 369.

§ 10319. (Crim. Code, § 149.) Counterfeiting national-bank note punishment for.

Whoever shall falsely make, forge, or counterfeit, or cause procure to be made, forged, or counterfeited, or shall willingly a or assist in falsely making, forging, or counterfeiting, any no in imitation of, or purporting to be in imitation of, the circulati notes issued by any banking association now or hereafter authoriz and acting under the laws of the United States; or whoever sha pass, utter, or publish, or attempt to pass, utter, or publish, a false, forged, or counterfeited note, purporting to be issued by a such association doing a banking business, knowing the same to falsely made, forged, or counterfeited; or whoever shall falsely alte or cause or procure to be falsely altered, or shall willingly aid or a sist in falsely altering, any such circulating notes, or shall pass, utte or publish, or attempt to pass, utter, or publish as true, any false altered or spurious circulating note issued, or purporting to ha been issued, by any such banking association, knowing the same to falsely altered or spurious, shall be fined not more than one thousa dollars and imprisoned not more than fifteen years.

R. S. § 5415. Act March 4, 1909, c. 321, § 149, 35 Stat. 1115.

Notes of Decisions

What constitutes forgery under statute.—The unauthorized signing of names to notes of a national bank, purporting to be those of the president and cashier, constitutes the crime of forging such notes, under this section, whether the names so signed are in fact those of the president and cashier or of fictitious persons. Logan v. U. S. (1903) 123 Fed. 291, 59 C. C. A. 476.

The fact that national bank notes to which the signatures have been forged, and which have been put in circulation, are made redeemable by Act July 28, 1892 (ante, § 9755), does not relieve one who forges the names of the president and cashier of a national bank to genuine, but unsigned, notes, from the crime of forging such notes, as defined in R. S. § 5415 (embodied herein). Id.

Passing bank bill knowing it to be false.—Passing a counterfeited national bank bill knowing the same to be false, with intent to defraud, is a different offense from that made punishable by the laws of the United States, which consists merely in passing such counterfeited bill knowing it to be counterfeited. Ex parte Houghton (D. C. 1881) 8 Fed. 897, 901.

Passing note of Confederate States as lawful money.—The putting off a note of the late Confederate States of Ame ica as lawful money upon an ignora man, in the nighttime, is not the offen contemplated by this section, punishi the passing, uttering, or publishing any note in imitation of the circulati notes "issued by the banking associ tions acting under the laws of the Uni ed States," and it is not indictab thereunder. U. S. v. Wilson (D. 1891) 44 Fed. 751.

Jurisdiction of offense.—See, als notes under Const. art. 1, § 8, cl. and ante, §§ 991 (2), 1233.

A state court has no jurisdiction ov the offense of passing counterfeit n tional bank notes with knowledge their counterfeit character. Ther fore, where one has been convicted that offense by a state court and se tenced to imprisonment, he will be di charged on motion in habeas corp proceedings taken in the district cou Ex parte Houghton (D. C. 1881) Fed. 657; Id. (D. C. 1881) 8 Fed. 89

Indictment, proof, and variance.—T offense of attempting to pass a know ingly falsely altered national bank no (R. S. § 5415 [embodied herein]) is n a felony, and the indictment need n charge such offense to have been felon

ommitted. U. S. v. Shepherd 1875) Fed. Cas. No. 16,274.

ating notes of a national bank-ociation are properly admissible ence under an indictment for feiting, setting them out at and calling them "national bank y notes." U. S. v. Bennett (C.) Fed. Cas. No. 14,572.

ule which requires a setting out ntire instrument or its tenor in ctment in the federal courts is mainly, if not wholly, to cases ery, counterfeiting, and sending ning letters. U. S. v. Heinze (C.) 161 Fed. 425.

rosecution for forging a nation- note, the copy thereof set out indictment contained the name Chittenden, Register of the y," while the note presented in e showed that the name was "L. tenden," etc. Held, that the e was material and fatal, and the admissible. State v. Pease 74 Ind. 263.

nce.—A fact supplying a motive crime charged may be shown, it may tend to show the accused f another offense. Thompson v. U. S. (1906) 144 Fed. 14, 75 C. C. A. 172, 7 Ann. Cas. 62.

On the trial of a defendant charged with counterfeiting bank notes in connection with another person, such person testified that prior to the making of the notes defendant stated to him that, on account of his business, he was liable to be arrested for abortion, and desired the notes to deposit as bail in case of such arrest. Held, that such evidence was competent on the question of motive. Id.

In a prosecution under this section for passing false or forged national bank notes, knowledge that they were falsely made is an essential element of the offense, and there must be some evidence of such knowledge, circumstantial or otherwise, aside from proof merely that the spurious note was passed. Gallagher v. U. S. (1906) 144 Fed. 87, 75 C. C. A. 245.

Cited without definite application, U. S. v. Owens (C. C. 1888) 37 Fed. 112, 113; Ex parte Houghton (D. C. 1881) 76 Fed. 657, 662; U. S. v. Crecilius (D. C. 1888) 34 Fed. 30, 32; U. S. v. Lehman (D. C. 1889) 39 Fed. 768, 770; U. S. v. Kuhl (D. C. 1898) 85 Fed. 624, 630.

0. (Crim. Code, § 150.) Using plates to print notes without thority, etc.; distinctive paper without authority; punishent for.

oever, having control, custody, or possession of any plate, or other thing, or any part thereof, from which has been l, or which may be prepared by direction of the Secretary of easury for the purpose of printing, any obligation or other y of the United States, shall use such plate, stone, or other or any part thereof, or knowingly suffer the same to be used e purpose of printing any such or similar obligation or other y, or any part thereof, except as may be printed for the use United States by order of the proper officer thereof; or who- any way, art, or means shall make or execute, or cause or pro- be made or executed, or shall assist in making or executing ate, stone, or other thing in the likeness of any plate desig- for the printing of such obligation or other security; or who- all sell any such plate, stone, or other thing, or bring into the States or any place subject to the jurisdiction thereof, from reign place, any such plate, stone, or other thing, except under ection of the Secretary of the Treasury or other proper officer, any other intent, in either case, than that such plate, stone, or hing be used for the printing of the obligations or other se- of the United States; or whoever shall have in his control, , or possession any plate, stone, or other thing in any manner after or in the similitude of any plate, stone, or other thing, which any such obligation or other security has been printed, tent to use such plate, stone, or other thing, or to suffer the o be used in forging or counterfeiting any such obligation or ecurity, or any part thereof; or whoever shall have in his pos- or custody, except under authority from the Secretary of the ry or other proper officer, any obligation or other security made cuted, in whole or in part, after the similitude of any obligation r security issued under the authority of the United States, with o sell or otherwise use the same; or whoever shall print, photo-

graph, or in any other manner make or execute, or cause to be printed, photographed, made, or executed, or shall aid in printing, photographing, making, or executing any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or shall sell any such engraving, photograph, print, or impression, except to the United States, or shall bring into the United States or any place subject to the jurisdiction thereof, from any foreign place any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States; or whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than fifteen years, or both.

R. S. § 5430. Act March 4, 1909, c. 321, § 150, 35 Stat. 1116.

Notes of Decisions

Obligation or security or similitude contemplated by statute.—A national bank note placed in circulation without signature of the president and cashier of the bank being redeemable under Act June 20, 1874, and Act July 28, 1892 (ante, § 9755), held an obligation or security after the similitude of an "obligation or security" issued under authority of the United States within this section. Wiggains v. U. S. (1914) 214 Fed. 970, 131 C. C. A. 266.

An indictment will lie under Act June 30, 1864, § 11, for aiding and assisting in the making of a counterfeit plate from which national counterfeit bank notes could be printed. U. S. v. Rossvally (D. C. 1869) Fed. Cas. No. 16,197.

The defendants were convicted, under this section, of the offense of having in their possession an instrument engraved and printed after the similitude of an obligation issued under the authority of the United States, with intent to sell or otherwise use the same. The alleged fraudulent instrument, though in the similitude of a United States bond, was not, nor did it purport to be, executed or signed. The court, in granting a new trial, held that the words of the statute, "any obligation or other security," must be construed to mean an executed instrument, or one which on its face purports to be executed, and that, it appearing that the alleged fraudulent obligation or security is not an obligation or security at all, within the meaning of the statute, a conviction cannot be sustained, though the paper, in its body and general form, be made after the similitude of a United States bond. It is for the court to determine whether the case made is within the statute. U. S. v. Williams (D. C. 1882) 14 Fed. 550.

The expression in this section, denouncing a punishment against any one having in possession "any obligation or other security" after the similitude of any obligation issued by the United States, with intent to sell or otherwise use the same, means an executed instrument; one which on its face purports to be executed by somebody. U. S. v. Sprague (D. C. 1882) 48 Fed. 828.

To constitute the offense it is not necessary that the instrument should purport to be an obligation of the United States, or bear such a likeness thereto as to deceive experts or cautious men. It is sufficient if it is calculated to deceive a sensible and unsuspecting man of ordinary observation and care dealing with a man supposed to be honest. Id.

Under this section, denouncing a punishment against any one having in possession "any obligation or other security" after the similitude of any obligation issued by the United States with intent to sell or otherwise use the same it is no offense to so have in possession a bond issued by a mining company, and resembling a United States bond, but not purporting to be executed by any party whatever. The want of execution is not merely a fact which the jury may consider in determining as to the degree of similitude, but is a complete bar to a conviction. Id.

An ordinary Confederate States $5 note does not bear to the national currency the "similitude" contemplated in this section, notwithstanding such notes are frequently accepted by mistake as money. U. S. v. Kuhl (D. C. 1898) 85 Fed. 624.

The "similitude" contemplated in this section, which makes criminal the having in one's possession, with intent to sell or use the same, "any obligation or security engraved and printed after the similitude of any obligation or other security issued under the authority of the United States," is such a likeness or resemblance as to be calculated to deceive an honest, sensible, and unsuspecting man of ordinary care and observation, when dealing with a supposed honest man. Id.

This section, in making it a crime for

to have in his possession, with sell or use the same, any ob- engraved and printed after the of an obligation issued under of the United States, does e the worthless character of ation material in constituting e. Id.

ify a conviction under the pro- this section, which makes it e for any person to have in ssion or custody, except under of a proper officer of the gov- any obligation or other se- graved and printed after the of any obligation or other issued under the authority of ed States, with intent to sell wise use the same, it must be hat the paper in question is and printed after the simili- ome government obligation or in such degree that it could be eceive a person of ordinary in-, acting with ordinary care, in ss transaction, which resem- to be determined from a con- of the paper as an entirety. Fitzgerald (D. C. 1898) 91

ify a conviction under the pro- this section, which makes it e for any person to have in ssion or custody, except under of a proper officer of the nt, any obligation or other se- graved and printed after the of any obligation or other issued under the authority of d States, with intent to sell or use the same, it must be hat the paper in question is encing an obligation of some corporation, or an interest in which would be regarded as y. Id.

ssage of a Confederate bill as not a violation of the fourth this section, which makes it e for any person, except under of a proper officer, to have in ssion "any obligation or other engraved and printed after itude of any obligation or oth- ty issued under the authority nited States, with intent to sell wise use the same"; but, to a violation of such provision, ument used must in its incep- e been intended to simulate gation or security of the Unit- . The general likeness which of paper money bears to an- not sufficient. U. S. v. Barrett 901) 111 Fed. 369.

ssued by a bank for circula- not obligations or securities d and printed after the simili- an obligation and security is- er the authority of the Unit- ," within the meaning of this since they do not purport to tions or securities of the Unit- s, and an indictment for a of said section does not charge an offense where it shows that the instruments referred to are such bank bills. U. S. v. Conners (D. C. 1901) 111 Fed. 734.

It is not a necessary element of the offense of having in possession an obligation or security, made after the similitude of an obligation or security issued by the authority of the United States with intent to sell, and in violation of this section, that the fraudulent obligation should purport on its face to be an obligation or security of the United States, or that the similarity should be so great as to deceive experts or cautious persons. U. S. v. Weber (D. C. 1913) 210 Fed. 973.

An uncanceled postage stamp is an obligation or security of the United States within the meaning of this section. (1894) 20 Op. Atty. Gen. 697.

A canceled postage stamp is not an obligation or security of the United States within the meaning of this section. (1893) 20 Op. Atty. Gen. 691.

Obligations referred to by words "adapted to the making of any such obligation."—The statute contemplates the adoption by the secretary of the treasury of a distinctive paper for government obligations, and the words "adapted to the making of any such obligation" refer to the obligations of the United States. Krakowski v. U. S. (1908) 161 Fed. 88, 88 C. C. A. 252.

Photographing United States treasury note.—It is a crime to photograph a United States treasury note, though the similarity between the photograph and the original be not such that it is calculated to deceive the public. Ex parte Holcomb (C. C. 1871) Fed. Cas. No. 6,598.

Possession of obligation or security or similar paper.—See, also, notes, ante.

The provision of this section making it a criminal offense for any person to have or retain in his control or possession "after a distinctive paper has been adopted by the secretary of the treasury for the obligations and other securities of the United States any similar paper adapted to the making of any such obligation or other security, except under the authority of the secretary of the treasury or some other proper officer of the United States," includes the having in possession without authority of the distinctive paper itself and of similar paper adapted to the making of government obligations and securities; and it is not sufficient to warrant a conviction thereunder to prove that defendant has in possession paper which might be used to make counterfeit obligations or securities. Krakowski v. U. S. (1908) 161 Fed. 88, 88 C. C. A. 252.

This section, in making it a crime for a person to have in his possession, with intent to sell or use the same, any obligation engraved and printed after the similitude of an obligation issued

under authority of the United States, does not make the intent to defraud, by its use, material in constituting the crime. U. S. v. Kuhl (D. C. 1898) 85 Fed. 624.

To justify a conviction under the provision of this section, which makes it an offense for any person to have in his possession or custody, except under authority of a proper officer of the government, any obligation or other security engraved and printed after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same, it must be proved that defendant had the paper in question in his possession or custody without the required authority, and with an intent to use it, by a sale or in some other way, to make a profit out of it. U. S. v. Fitzgerald (D. C. 1898) 91 Fed. 374.

Indictment.—See, also, notes, ante.

Where an indictment charged defendant with having in possession an obligation after the similitude of an obligation issued under authority of the United States, setting out a national bank note which was complete except it was unsigned by the president and cashier of the bank, the indictment was not demurrable in that the note was not after the similitude of the oblig tion issued under authority of the Un ed States. Wiggains v. U. S. (191 214 Fed. 970, 131 C. C. A. 266.

Description of a forged instrume in an indictment under this section, having in possession an obligation, ma after the similitude of an obligation sued under authority of the Unit States, held not such as to show, as matter of law, that the requisite semblance or similarity did not ex so as to render the indictment demu rable. U. S. v. Weber (D. C. 1913) 2 Fed. 973.

Question for jury.—See, also, not ante.

Whether, in a prosecution for viol ing this section, fraudulent obligati is of such similarity or resemblance a genuine obligation issued by authori of the United States as to deceive ordinarily prudent person is for t jury. U. S. v. Weber (D. C. 1913) 2 Fed. 973.

Cited without definite applicati Calicchio v. U. S. (1911) 189 Fed. 3 111 C. C. A. 37 (certiorari denied [191 32 Sup. Ct. 842, 225 U. S. 713, 56 L. 1269); U. S. v. Smith (C. C. 1889) Fed. 755, 758; U. S. v. White (D. 1885) 25 Fed. 716, 717.

§ 10321. (Crim. Code, § 151.) Uttering, etc., forged obligation punishment for.

Whoever, with intent to defraud, shall pass, utter, publish, sell, or attempt to pass, utter, publish, or sell, or shall bring in the United States or any place subject to the jurisdiction thereo with intent to pass, publish, utter, or sell, or shall keep in possessio or conceal with like intent, any falsely made, forged, counterfeite or altered obligation or other security of the United States, shall b fined not more than five thousand dollars and imprisoned not mo than fifteen years.

R. S. § 5431. Act March 4, 1909, c. 321, § 151, 35 Stat. 1116.

Notes of Decisions

1. Passing and uttering in general.
2. Meaning of "intent to pass, utter, or sell."
3. Intent to defraud as element of offense.
4. Obligation or other security of the United States.
5. Passing genuine state bank note.
6. Possession of forged or counterfeit obligation or security.
7. Former jeopardy.
8. Prosecution in state court.
9. Indictment, proof, and variance.
10. Evidence.
11. Questions for jury.
12. State laws as depriving convicted person of right of suffrage.

1. Passing and uttering in general.—Passing a paper is putting it off in payment or exchange. Uttering it is a declaration that it is good, with an intention to pass it, or an offer to pass it. U. S. v. Mitchell (C. C. 1831) Fed. Cas. No. 15,787.

One accused of passing or uttering counterfeit paper must be present when the act is done, privy to it, or aidin consenting, or procuring it to be don If done by consent, all are equal guilty. Id.

Passing a counterfeit note in the nam of a fictitious person, an assumed nam or on a bank which never existed, is violation of law. It is not necessa that the note, if genuine, would be o ligatory on the parties whose names a counterfeited. Id.

Intoxication is no defense to an i dictment for passing counterfeit note if defendant was possessed of his re son, and was capable of knowing whet er the note he passed was good or ba U. S. v. Roudenbush (C. C. 1832) Fe Cas. No. 16,198.

Defendant may be convicted of u tering or passing spurious notes upo proof that he sold and delivered the as spurious, with intent that th should be passed upon the public as ge uine. Act June 30, 1864, § 10. U. S.

. C. 1867) Fed. Cas. No. 15,-

. 5, 1861 (12 Stat. 313, § 3), the issue of $5 treasury an indictment charging the f a counterfeit of such a note U. S. v. Marcus (C. C. 1893) 784, writ of error dismissed . U. S. (1895) 15 Sup. Ct. U. S. 259, 40 L. Ed. 145.

ing of "intent to pass, utter, -The words "intent to pass, sell," in this section, mean e of the forged obligation as nd thus defraud the taker or U. S. v. Provenzano (C. C. Fed. 675.

t to defraud as element of of-ne law presumes the intention g counterfeit paper to be to ny person who may suffer a eceiving it as genuine. U. S. ire (C. C. 1831) Fed. Cas. No.

whether an intent to defraud ssary ingredient of the offense ng in possession counterfeit ith intent to sell the same. U. nk (C. C. 1875) Fed. Cas. No.

crime, under this section, to er, publish, or sell any counter-ation of the United States, if h intent to defraud, or to at-do so with like intent, or to h a counterfeited obligation in-United States, with intent to blish, utter, or sell it, irrespec-n intent to defraud. U. S. v. no (C. C. 1909) 171 Fed. 675.

gation or other security of the States.—An indictment which that a genuine pension check y an authorized officer of the tates on an assistant treasurer, the payment of money, was and forged by the name of the eing forged and fraudulently hereon as his indorsement, and fendant knowingly and fraudu-ttered and published it as true, ent thereby to defraud the Unit-es, does not state an offense R. S. § 5431 (embodied herein), such an instrument is not "an n or other security of the States." U. S. v. Albert (1891) 552.

ssing genuine state bank note.—ndant cannot be convicted of a counterfeit United States note his section, where the note pass-a genuine note issued by a state naltered, although it may have orthless and may have had some ance by reason of its color to a States note. U. S. v. Beebe (D.) 149 Fed. 618.

ssession of forged or counter-ligation or security.—Under this a defendant may be convicted of a separate offense for each one of the forged obligations he keeps in possession with intent to pass. Logan v. U. S. (1903) 123 Fed. 291, 59 C. C. A. 476.

Possession of forged bank notes with intent to utter them as true is not an indictable offense. U. S. v. Wright (C. C. 1812) Fed. Cas. No. 16,772.

Under this section, it is a crime to keep in possession or to control any counterfeit obligation or other security of the United States with intent to defraud. U. S. v. Provenzano (C. C. 1909) 171 Fed. 675.

The charge that the prisoner had in possession "divers" such forged instruments is too indefinite. U. S. v. Fisler (D. C. 1865) Fed. Cas. No. 15,105.

7. Former jeopardy.—That defendant had been acquitted of passing a counterfeit note was no bar to his subsequent prosecution for passing another counterfeit note. U. S. v. Randenbush (1834) 8 Pet. 288, 289, 8 L. Ed. 948.

8. Prosecution in state court.—See, also, notes under Const. art. 1, § 8, cl. 6.

The regularity of an indictment in a state court for passing, with intent to defraud, a United States treasury note, and the rightfulness of the judgment rendered thereon, cannot be investigated in a habeas corpus proceeding, as that can be done alone through proceedings operating directly on the judgment itself. In re Truman (1869) 44 Mo. 181.

9. Indictment, proof, and variance.—Indictment for passing counterfeit treasury notes charging the offense in the language of the statute held not bad as being repugnant. U. S. v. Howell (1870) 11 Wall. 432, 435, 20 L. Ed. 195.

An indictment under this section, which alleged that accused did publish a falsely made, forged, counterfeited, and altered obligation of the United States, with intent to defraud a bank named, is defective in failing to allege knowledge that the instrument was forged and counterfeited. U. S. v. Carll (1881) 105 U. S. 611, 26 L. Ed. 1135.

If there is a variance of a letter in any word between the paper alleged to be forged and the indictment, the paper will be received in evidence if the variance does not make another word, or one differing in sense and grammar. U. S. v. Hinman (C. C. 1831) Fed. Cas. No. 15,370.

Contents and sufficiency of an indictment for uttering as true a forged note of the Bank of the United States after the expiration of the term for which the corporation was created. U. S. v. Noble (C. C. 1837) Fed. Cas. No. 15,-895.

In an indictment for uttering a counterfeit bill, if the bill is incorrectly described as to its bill number, the vari-

ance is fatal. U. S. v. Mason (C. C. 1875) Fed. Cas. No. 15,736.

Where such an indictment purports to set forth an exact copy of the bill, the description set forth, though needlessly particular, must conform to the instrument given in evidence. But a mere literal variance will not be fatal. A variance is literal when it does not make a word different in sense and grammar, but leaves the sound and sense, in substance, the same. Id.

Different offenses under R. S. §§ 5431, 5434 (this compilation, §§ 10321, 10324), for which different punishments are prescribed, held properly charged in different counts, and joined in the same indictment, under section 1690, ante. U. S. v. Bennett (C. C. 1879) Fed. Cas. No. 14,572.

It is not essential, in an indictment for counterfeiting United States compound-interest treasury notes, to aver that the alleged counterfeits are in the likeness and similitude of genuine notes authorized by the act of congress under which they purport to have been issued. This may sometimes be necessary under special statutes creating specific offenses as to particular issues of government securities, but not under R. S. § 5431 (embodied herein), as interpreted by R. S. § 5413, ante, § 10317, providing a general law for punishing the forgery of any and all of the obligations or securities of the United States. U. S. v. Owens (C. C. 1888) 37 Fed. 112.

Under R. S. §§ 5413, 5431 (this compilation, §§ 10317, 10321), defining an obligation or other security of the United States to mean, among other things, checks or drafts for money drawn by or upon authorized officers of the United States, an indictment charging that defendant did willfully, knowingly, and fraudulently utter and publish as true a certain false, forged, and altered United States treasury warrant, with intent thereby to defraud the United States, then and there knowing the same to be false, forged, and altered, adequately states an offense against the United States, and minor defects therein will be cured by verdict. U. S. v. Albert (C. C. 1891) 45 Fed. 552.

Where the matter set forth in an indictment for uttering a counterfeit $5 note is proved as laid, and the indictment does not charge that the matter set forth constituted all the matter printed on the note, proof of a mere notice, which is no part of the contract, but is required by law to be placed on such notes, does not constitute a variance, although such notice was not alleged in the indictment. U. S. v. Marcus (C. C. 1893) 53 Fed. 784, writ of error dismissed Marcus v. U. S. (1895) 15 Sup. Ct. 1041, 159 U. S. 259, 40 L. Ed. 145.

The allegation in an indictment for passing a counterfeit note that the note was "in the words and figures f lowing," does not mean that all t words and figures printed on the ba of the note, and forming no part the contract set forth on its face, a stated. Id.

Where an indictment for passi counterfeit money sets forth the cou terfeit note by its tenor, but misd scribes it as a treasury note, when fact it is a United States note, the m description is immaterial. Id.

The rule which requires a setting o of an entire instrument or its tenor an indictment in the federal courts limited mainly, if not wholly, to cas of forgery, counterfeiting, and sendi threatening letters. U. S. v. Hein (C. C. 1908) 161 Fed. 425.

The words "with like intent," as us in the part of the section prohibiti the bringing into the United Stat with intent to pass, any forged, cou terfeited, or altered obligation of t United States, refers only to the i tent to defraud, and not to the inte to pass, so that an indictment chargi possession with knowledge of the cou terfeit character of the obligation w not defective for failure to charge intent to pass the same, in addition an intent to defraud. U. S. v. Prove zano (C. C. 1909) 171 Fed. 675.

An indictment for possessing forg treasury notes and postal curren with intent to pass them, must profe to give, and must actually give, ex copies of them, or allege a reasonal excuse for not doing so. U. S. v. F ler (D. C. 1865) Fed. Cas. No. 15,1

An indictment for the felonious po session of a forged national bank no which sets out the note, need not av the purport of the instrument. U. v. Williams (D. C. 1869) Fed. Cas. N 16,706.

An indictment under R. S. §§ 54 5457 (this compilation, §§ 103 10333), for possessing and passi counterfeit notes and coins, sufficient excuses the failure to set them out alleging that the grand jury did n have them under their control, and not know where they were. U. S. Howell (D. C. 1894) 64 Fed. 110.

In such case it is sufficient, in co nection with allegations as to the pla time, and person to whom passed, allege that the counterfeit notes a obligations were "United States note of a certain denomination. Id.

10. Evidence.—Where one is charg with uttering forged notes and simi crimes, evidence as to other offenses admissible. Ex parte Glaser (191 176 Fed. 702, 100 C. C. A. 254.

In a prosecution for passing a rais United States silver certificate, e dence that, over a month later, anot er, in accused's company, sought pass a similar certificate, was admis ble. Schultz v. U. S. (1912) 200 F 234, 118 C. C. A. 420.

Where intent, motive, knowledge,

s an element of the crime, oth-
conduct of accused at or near
is admissible; the question of
ess being within the discretion
ourt. Id.

ce is admissible of the passing
r counterfeit notes, or of pass-
s of a different bank, at the
ne, or of having them in pos-
U. S. v. Mitchell (C. C. 1831)
s. No. 15,787; U. S. v. Rou-
(C. C. 1832) Fed. Cas. No.

ce is admissible that a parcel
terfeit checks and drafts on
nks than that alleged in the in-
, and others printed on bank
ot filled up, were found in de-
s possession. U. S. v. Noble
837) Fed. Cas. No. 15,895.

an indictment charging defend-
uttering and publishing a cer-
se, forged, and altered United
reasury warrant, evidence that
t negotiated a genuine check
y an authorized officer of the
States upon an assistant treas-
ecting payment of money, up-
there was the forged indorse-
the name of the payee, is in-
t to sustain a verdict of guilty.
Albert (C. C. 1891) 45 Fed.

an indictment for uttering
eit money with intent to de-
e corpus delicti is sufficiently
y showing that the counterfeit
been uttered as true, and the
of the accused in passing the
y then be proved by his con-
U. S. v. Marcus (C. C. 1893)
784, writ of error dismissed
v. U. S. (1895) 15 Sup. Ct.
9 U. S. 259, 40 L. Ed. 145.

indictment charging the de-
and others with passing coun-
ills, after evidence that he had
the bills to persons who dis-
them, the situation and rela-
defendant with persons in
ossession bills from the same
d been found are admissible as
res gestæ. U. S. v. Taranto (C. C. 1896) 74 Fed. 219.

Good character may be shown as evidence that counterfeit notes found in defendant's possession were innocently received. U. S. v. Kenneally (D. C. 1870) Fed. Cas. No. 15,522.

On an indictment for having in possession, with intent to utter, counterfeit treasury notes, accused may show that he received them accidentally, or in ordinary course of business. Id.

Failure of accused when arrested to make any explanation of how he got the counterfeit money, or to assert his innocence, is a circumstance which the jury may consider against him. Id.

11. Questions for jury.—The similitude of a note of an insolvent state bank to the treasury notes or other obligations of the United States, and whether defendant had the note in his possession with intent to sell or otherwise use the same, and whether he knew at the time that said note was worthless, should be determined by the jury. U. S. v. Stevens (D. C. 1891) 52 Fed. 120.

12. State laws as depriving convicted person of right of suffrage.—The laws of New York do not deprive of the right of suffrage a person who has been convicted in the federal courts of a mere statutory offense against the United States, such as uttering a counterfeited security of the United States. R. S. § 5431 (embodied herein). U. S. v. Barnabo (C. C. 1876) Fed. Cas. No. 14,522.

Cited without definite application, Salla v. U. S. (1900) 104 Fed. 544, 545, 44 C. C. A. 26; Calicchio v. U. S. (1911) 189 Fed. 305, 111 C. C. A. 37 (certiorari denied [1912] 32 Sup. Ct. 842, 225 U. S. 713, 56 L. Ed. 1269); U. S. v. Clarke (D. C. 1889) 38 Fed. 500, 503; U. S. v. Barrett (D. C. 1901) 111 Fed. 369; U. S. v. Green (D. C. 1905) 136 Fed. 618, 651 (affirmed [1905] 26 Sup. Ct. 748, 199 U. S. 601, 50 L. Ed. 328).

**2. (Crim. Code, § 152.) Taking impressions of tools, imple-
ents, etc.; punishment for.**

ever, without authority from the United States, shall take,
e, or make, upon lead, foil, wax, plaster, paper, or any other
nce or material, an impression, stamp, or imprint of, from,
the use of any bedplate, bedpiece, die, roll, plate, seal, type,
r tool, implement, instrument, or thing used or fitted or in-
to be used in printing, stamping, or impressing, or in making
ools, implements, instruments, or things to be used or fitted
nded to be used in printing, stamping, or impressing any kind
cription of obligation or other security of the United States
thorized or hereafter to be authorized by the United States, or
ting note or evidence of debt of any banking association under
vs thereof, shall be fined not more than five thousand dollars,
risoned not more than ten years, or both.

S. § 5432. Act March 4, 1909, c. 321, § 152, 35 Stat. 1117.

§ 10323. (Crim. Code, § 153.) Having unlawful possession of im pressions; punishment for.

Whoever, with intent to defraud, shall have in his possessio keeping, custody, or control, without authority from the Unite States, any imprint, stamp, or impression, taken or made upon an substance or material whatsoever, of any tool, implement, instru ment, or thing, used, or fitted or intended to be used, for any o the purposes mentioned in the preceding section; or whoever, with in tent to defraud, shall sell, give, or deliver any such imprint, stamp or impression to any other person, shall be fined not more than fiv thousand dollars, or imprisoned not more than ten years, or both.

R. S. § 5433. Act March 4, 1909, c. 321, § 153, 35 Stat. 1117.

§ 10324. (Crim. Code, § 154.) Dealing in counterfeit securities punishment for.

Whoever shall buy, sell, exchange, transfer, receive, or delive any false, forged, counterfeited, or altered obligation or other se curity of the United States, or circulating note of any banking as sociation organized or acting under the laws thereof, which has bee or may hereafter be issued by virtue of any Act of Congress, wit the intent that the same be passed, published, or used as true an genuine, shall be fined not more than five thousand dollars, or im prisoned not more than ten years, or both.

R. S. § 5434. Act March 4, 1909, c. 321, § 154, 35 Stat. 1117.

Notes of Decisions

Indictment.—Different offenses under R. S. §§ 5431, 5434 (this compilation, §§ 10321, 10324), for which different punishments are prescribed, held properly charged in different counts, and joine in the same indictment, under sectio 1690, ante. U. S. v. Bennett (C. C 1879) Fed. Cas. No. 14,572.

§ 10325. (Crim. Code, § 155.) Secreting or embezzling tools an materials for printing securities; punishment for.

Whoever, without authority from the United States, shall secret within, embezzle, or take and carry away from any building, room office, apartment, vault, safe, or other place where the same i kept, used, employed, placed, lodged, or deposited by authority o the United States, any bedpiece, bedplate, roll, plate, die, seal, type or other tool, implement, or thing used or fitted to be used in stamp ing or printing, or in making some other tool or implement used o fitted to be used in stamping or printing, any kind or description o bond, bill, note, certificate, coupon, postage stamp, revenue stamp fractional currency note, or other paper, instrument, obligation, de vice, or document, now or hereafter authorized by law to be printed stamped, sealed, prepared, issued, uttered, or put in circulation o behalf of the United States; or whoever, without such authority shall so secrete, embezzle, or take and carry away any paper, parch ment, or other material prepared and intended to be used in the mak ing of any such papers, instruments, obligations, devices, or docu ments; or whoever, without such authority, shall so secrete, embezzle or take and carry away any paper, parchment, or other material print ed or stamped, in whole or part, and intended to be prepared, issued or put in circulation on behalf of the United States as one of the pa pers, instruments, or obligations hereinbefore named, or printed o stamped, in whole or part, in the similitude of any such paper, instru ment, or obligation, whether intended to issue or put the same in ci culation or not, shall be fined not more than five thousand dollars, o imprisoned not more than ten years, or both.

R. S. § 5453. Act March 4, 1909, c. 321, § 155, 35 Stat. 1117.

§ 10326. (Crim. Code, § 156.) Counterfeiting foreign securities punishment for.

Whoever, within the United States or any place subject to th

ction thereof, with intent to defraud, shall falsely make, orge, or counterfeit any bond, certificate, obligation, or other in imitation of, or purporting to be an imitation of, any bond, ate, obligation, or other security of any foreign government, or put forth under the authority of such foreign government, treasury note, bill, or promise to pay issued by such foreign ment, and intended to circulate as money, either by law, order, ee of such foreign government; or whoever shall cause or pro- be so falsely made, altered, forged, or counterfeited, or shall gly aid or assist in making, altering, forging, or counterfeiting, ch bond, certificate, obligation, or other security, or any such y note, bill, or promise to pay, intended as aforesaid to circu- money, shall be fined not more than five thousand dollars and ned not more than five years.

t May 16, 1884, c. 52, § 1, 23 Stat. 22. Act March 4, 1909, c. 321, § 156, tat. 1117.

Notes of Decisions

tutionality and validity.—The 884, incorporated into this and g sections, is not an invalid ex- f authority under Const. art. cl. 10, because it fails to de- at the offense is one "against of nations." U. S. v. Arjona 7 Sup. Ct. 628, 632, 120 U. S. L. Ed. 728.

Iay 16, 1884, to prevent and counterfeiting within the Unit- es of the securities of foreign ents, although it does not re- roof that the engraving and of such securities was done udulent intent, is valid, the in- alleging such intent. U. S. v. C. C. 1886) 27 Fed. 200.

erfeiting the securities of a nation is an offense against the nations," within the meaning t. art. 1, § 8, giving congress o punish such offenses. Id.

and abetting offense.—It is essary to the conviction of a nt indicted under this section, ing and abetting another in eiting notes of a foreign gov- , intended to circulate as mon- the alleged principal should have been convicted; the offense being a misdemeanor, in which all who are concerned are principals. Bliss v. U. S. (1900) 105 Fed. 508, 44 C. C. A. 324.

Former jeopardy.—The counterfeiting of notes at different times, although all apparently of the same series and printed from the same plate, constitutes distinct offenses, and a conviction for one is no bar to a prosecution for the other. Bliss v. U. S. (1901) 105 Fed. 508, 44 C. C. A. 324.

Indictment.—The rule which requires a setting out of an entire instrument or its tenor in an indictment in the federal courts is limited mainly, if not wholly, to cases of forgery, counterfeiting, and sending threatening letters. U. S. v. Heinze (C. C. 1908) 161 Fed. 425.

An indictment charging that defendant caused to be printed certain impressions, "each in the likeness of a certain part, to wit, the face, except the signatures," of a treasury note of the empire of Brazil, with intent to defraud, charges an offense under Act May 16, 1884. U. S. v. White (D. C. 1885) 25 Fed. 716.

7. (Crim. Code, § 157.) Uttering counterfeit foreign se- rities; punishment for.

ever, within the United States or any place subject to the ction thereof, knowingly and with intent to defraud, shall pass, or put off, in payment or negotiation, any false, forged, nterfeited bond, certificate, obligation, security, treasury ill, or promise to pay, mentioned in the section last preceding, r the same was made, altered, forged, or counterfeited within ited States or not, shall be fined not more than three thousand and imprisoned not more than three years.

t May 16, 1884, c. 52, § 2, 23 Stat. 23. Act March 4, 1909, c. 321, § 157, tat. 1118.

Notes of Decisions

See notes under the preceding section.

8. (Crim. Code, § 158.) Counterfeiting notes of foreign nks; punishment for.

ever, within the United States or any place subject to the

jurisdiction thereof, with intent to defraud, shall falsely make, alte forge, or counterfeit, or cause or procure to be so falsely mad altered, forged, or counterfeited, or shall knowingly aid and assist i the false making, altering, forging, or counterfeiting of any bank not or bill issued by a bank or corporation of any foreign country, an intended by the law or usage of such foreign country to circulate a money, such bank or corporation being authorized by the laws c such country, shall be fined not more than two thousand dollars an imprisoned not more than two years.

Act May 16, 1884, c. 52, § 3, 23 Stat. 23. Act March 4, 1909, c. 321, § 15 35 Stat. 1118.

Notes of Decisions

See notes under § 10326, ante.

Constitutionality. — Congress, under its authority to define and punish offenses against the law of nations and to regulate commerce with foreign nations, may provide for punishing as a crime the counterfeiting within tl United States of the notes of foreig banks or corporations, although suc notes are not the issue of the foreig government. U. S. v. Arjona (188 120 U. S. 479, 7 Sup. Ct. 628, 30 Ed. 728.

§ 10329. (Crim. Code, § 159.) Uttering counterfeit notes of foreig banks; punishment for.

Whoever, within the United States or any place subject to th jurisdiction thereof, shall utter, pass, put off, or tender in paymen with intent to defraud, any such false, forged, altered, or counte feited bank note or bill, as mentioned in the preceding sectio knowing the same to be so false, forged, altered, and counterfeite whether the same was made, forged, altered, or counterfeited withi the United States or not, shall be fined not more than one thousan dollars and imprisoned not more than one year.

Act May 16, 1884, c. 52, § 4, 23 Stat. 23. Act March 4, 1909, c. 321, § 159, 3 Stat. 1118.

Notes of Decisions

See notes under § 10326, ante.

§ 10330. (Crim. Code, § 160.) Having in possession counterfe foreign securities, etc.; punishment for.

Whoever, within the United States or any place subject to th jurisdiction thereof, shall have in his possession any false, forge or counterfeit bond, certificate, obligation, security, treasury not bill, promise to pay, bank note, or bill issued by a bank or corpo ration of any foreign country, with intent to utter, pass, or put o the same, or to deliver the same to any other person with inten that the same may thereafter be uttered, passed, or put off as tru or shall knowingly deliver the same to any other person with suc intent, shall be fined not more than one thousand dollars and im prisoned not more than one year.

Act May 16, 1884, c. 52, § 5, 23 Stat. 23. Act March 4, 1909, c. 321, § 16 35 Stat. 1118.

Notes of Decisions

See notes under § 10326, ante.

§ 10331. (Crim. Code, § 161.) Having in possession, etc., counte feit plates of foreign securities, etc.; punishment for.

Whoever, within the United States or any place subject to th jurisdiction thereof, except by lawful authority, shall have contro custody, or possession of any plate, stone, or other thing, or an part thereof, from which has been printed or may be printed an counterfeit note, bond, obligation, or other security, in whole or i part, of any foreign government, bank, or corporation, or shall us such plate, stone, or other thing, or knowingly permit or suffer th same to be used in counterfeiting such foreign obligations, or an part thereof; or whoever shall make or engrave, or cause or procur

de or engraved, or shall assist in making or engraving, any ne, or other thing, in the likeness or similitude of any plate, other thing designated for the printing of the genuine issues ligations of any foreign government, bank, or corporation; er shall print, photograph, or in any other manner make, or sell, or cause to be printed, photographed, made, executed, r shall aid in printing, photographing, making, executing, or ny engraving, photograph, print, or impression in the like- ny genuine note, bond, obligation, or other security, or any eof, of any foreign government, bank, or corporation; or shall bring into the United States or any place subject to diction thereof any counterfeit plate, stone, or other thing, ving, photograph, print, or other impressions of the notes, bligations, or other securities of any foreign government, corporation, shall be fined not more than five thousand dol- nprisoned not more than five years, or both.

May 16, 1884, c. 52, § 6, 23 Stat. 23. Act March 4, 1909, c. 321, § 161, t. 1118.

Notes of Decisions

s under § 10326, ante.

of statute.—This section U. S. v. White (C. C. 1886) 0, 203.

part of obligation as offense. t necessary to constitute an der this section that the ob- tempted to be counterfeited te, but the making of any part thereof is sufficient. U. S. v. White (D. C. 1885) 25 Fed. 716.

Indictment.—An indictment charging that defendant caused to be printed certain impressions, "each in the likeness of a certain part, to wit, the face, except the signatures," of a treasury note of the empire of Brazil, with intent to defraud, charges an offense under this section. U. S. v. White (D. C. 1885) 25 Fed. 716.

(Crim. Code, § 162.) Connecting parts of different bills, punishment for.

ver shall so place or connect together different parts of two notes, bills, or other genuine instruments issued under the of the United States, or by any foreign government, or on, as to produce one instrument, with intent to defraud, deemed guilty of forgery in the same manner as if the parts together were falsely made or forged, and shall be fined than one thousand dollars, or imprisoned not more than five both.

March 4, 1909, c. 321, § 162, 35 Stat. 1119.

(Crim. Code, § 163.) Counterfeiting gold or silver coins ars; punishment for.

ver shall falsely make, forge, or counterfeit, or cause or to be falsely made, forged, or counterfeited, or shall willing- r assist in falsely making, forging, or counterfeiting any ars in resemblance or similitude of the gold or silver coins or ch have been, or hereafter may be, coined or stamped at the d assay offices of the United States, or in resemblance or e of any foreign gold or silver coin which by law is, or here- y be, current in the United States, or are in actual use and n as money within the United States; or whoever shall pass, blish, or sell, or attempt to pass, utter, publish, or sell, or o the United States or any place subject to the jurisdiction from any foreign place, knowing the same to be false, forged, erfeit, with intent to defraud any body politic or corporate, erson or persons whomsoever, or shall have in his possession false, forged, or counterfeited coin or bars, knowing the same se, forged, or counterfeited, with intent to defraud any body r corporate, or any person or persons whomsoever, shall be

fined not more than five thousand dollars and imprisoned not mo than ten years.

R. S. § 5457, as amended, Act Jan. 16, 1877, c. 24, 19 Stat. 223. Act Mar 4, 1909, c. 321, § 163, 35 Stat. 1119.

Notes of Decisions

1. Constitutionality of provision as to bringing counterfeited coin into country.
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4. Coin of original design.
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6. Coins subject of counterfeit.
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8. Passing counterfeit coin.
9. Passing with intent to use, etc.
10. Infamous crime.
11. Jurisdiction.
12. Punishment under state laws.
13. Indictment, proof and variance.
14. Evidence.
15. Verdict.

1. Constitutionality of provision as to bringing counterfeited coin into country.—Every subject falling within the legitimate sphere of commercial regulation may be partially or wholly excluded, when either measure is demanded by the safety or interests of the entire nation, and the exclusion cannot be limited to particular classes of subjects, but may embrace manufactures, bullion, coin, or any other thing. U. S. v. Marigold (1850) 9 How. 560, 566, 13 L. Ed. 257.

2. Counterfeiting in general.—On a trial for passing counterfeit money, the jury should be satisfied that the resemblance of the forged to the genuine piece is such as might deceive one using ordinary caution. U. S. v. Morrow (C. C. 1827) Fed. Cas. No. 15,819.

The base coin need not have been made in exact resemblance of the true coin to constitute the offense of counterfeiting, under Act March 3, 1825, c. 65, § 20. It is sufficient if the resemblance is strong enough to deceive persons exercising ordinary caution. U. S. v. Aylward (D. C. 1853) Fed. Cas. No. 14,482.

When the purpose and act are otherwise guilty within the statute, the similitude suffices if, according to the mode of use apparently designed, the coin would have a probable tendency to mislead persons whom it might be intended in this manner to defraud into a belief of its genuineness. U. S. v. Bricker (D. C. 1859) Fed. Cas. No. 14,642.

A person who procures or facilitates the making of counterfeit coin in his house by harboring the guilty persons therein is guilty of assisting in making such coin. Act March 3, 1825, § 20. U. S. v. Tarr (D. C. 1861) Fed. Cas. No. 16,434.

A counterfeit coin is one made in imitation of a genuine coin. It is not necessary that the resemblance should be exact in all respects. The resemblance is sufficient if the coins are so far alike that the counterfeit coin is calculated to deceive a person exerc ing ordinary caution and observation the transaction of business, althou the counterfeit would not deceive person who was expert or had pa ticular experience in such matters. S. v. Hopkins (D. C. 1885) 26 Fed. 4

3. Intent to defraud or deceive Where the spurious coin for any reas is not fitted to deceive persons of t most ordinary precaution and intel gence, the inference of a criminal i tention in making it does not arise. S. v. Burns (C. C. 1849) Fed. Ca No. 14,691.

On an indictment for counterfeiti silver coin, etc., under 4 Stat. 121, intention to pass such coin fraudulen as genuine must be proved. U. S. King (C. C. 1851) Fed. Cas. No. 15,5

See, also, notes post.

4. Coin of original design.—It is crime to manufacture a coin adapted be used to circulate as money, thou of original design. Ex parte Holco (C. C. 1871) Fed. Cas. No. 6,598.

5. Change of metal by manipulati —To change, by any kind of manipu tion, silver, copper, or any other me into the resemblance of some coin the United States, or foreign coin ma current by law, or current as money the United States, by gilding, elect plating, or any other process, or col ing it so that it resembles gold, is indictable offense, under the statu and a party so doing cannot exc himself by showing what was his tention, or that he did not intend to u the coins he so made for fraudul purposes, or that they should be used by others, or that he was ig rant of the law. U. S. v. Russell (C. 1884) 22 Fed. 390.

6. Coins subject of counterfeit.—T statute punishes the counterfeiting such foreign gold or silver coin as law then in existence or which m subsequently be adopted is made c rent in the United States, but does punish the counterfeiting of a sil coin of Spain called a head pistare which is no part of the Spanish mil dollar, and which is not made curr by law in the United States. U. S. Gardner (1836) 10 Pet. 618, 623, 9 Ed. 556.

The provision making it a felony counterfeit any gold or silver co which by law now are or hereafter sh be made current or be in actual and circulation as money within United States embraces money in c culation not made current by law, embraces small silver coins under cents in circulation. Id.

Act March 3, 1825, § 20, on wh

on is based, and which was ereto, punished counterfeiting and silver coin of the United nd also foreign gold and silmade current by the laws of d States. U. S. v. Brown (C. Fed. Cas. No. 14,667.

ished counterfeit.—A party made false coins with intent te them, and has carried the ire so far as to produce coins of being uttered as genuine y be convicted of the offense in this section, notwithstandended to coat such coins with ore putting them in circula- S. v. Abrams (C. C. 1883) 18

ing counterfeit coin.—The de- counterfeit money to a per- e passed off generally for the the prisoner, is not a passing ent," within Act Va. Dec. 19, S. v. Venable (C. C. 1807) No. 16,615.

or attempting to pass counney by an agent employed for ose by defendant is the same ndant had done it himself. U. rrow (C. C. 1827) Fed. Cas. 9.

rmining whether defendant is passing counterfeit coin, the is not whether the coin was ould deceive a person of ordi- and caution, but whether it ble of and designed to be used ving the uncautious and un- U. S. v. Hargrave (D. C. d. Cas. No. 15,306.

nterfeit coin must be passed ntent to deceive, before a dean be convicted of the crime U. S. v. Hopkins (D. C. 1885) 43.

ing with intent to use, etc.— rb "falsely" in the opening ne section qualifies only the kes," since the verbs "forges" nterfeits" carry in themselves f falsity, and hence the intent d is only an element of the having in possession with ise, etc. Kaye v. U. S. (1910) 147, 100 C. C. A. 567.

amous crime.—Passing counoney in violation of R. S. § odied herein), being punishae or by imprisonment at hard a term of years, or both, is ous crime, to be prosecuted ough indictment, pursuant to of the amendments to the con- Ex parte Wilson (1885) 5 935, 937, 114 U. S. 417, 29 ; U. S. v. Petit (1885) 5 Sup. 114 U. S. 429, 29 L. Ed. 93. , see U. S. v. Field (C. C. Fed. 778; Same v. Yates (D. 3 Fed. 861.

isdiction.—The jurisdiction of l courts over offenses against of congress providing for the punishment of counterfeiting the current coin of the United States is not exclusive of the jurisdiction of the state courts over offenses against state laws, making it punishable to counterfeit such coin. Harlan v. People (Mich. 1843) 1 Doug. 207.

See, also, notes under Const. art. 1, § 8, cl. 6.

12. Punishment under state laws.—The same act of counterfeiting may be punishable under the laws of the state, as well as of the United States. Sexton v. California (1903) 23 Sup. Ct. 543, 544, 189 U. S. 319, 47 L. Ed. 833.

Under Penal Law N. Y. § 1941, providing punishment for second offense of felony, sections 881, 894, defining forgery and the offense of possessing counterfeit coin, and R. S. § 5457 (embodied herein), making it an offense to possess counterfeit coin with intent to defraud, held that there was no distinction between the federal offense and the state offense, so that, after conviction under the federal statute, defendant might be convicted of forgery as a second offense. People v. Carlesi (1913) 139 N. Y. S. 309, 154 App. Div. 481, judgment affirmed (1913) 101 N. E. 1114, 208 N. Y. 547.

Under Penal Law N. Y. § 1941, providing punishment for the second offense of felony, held, that a conviction under the federal law of an offense amounting to a felony in this state, after pardon and restoration to civil rights, might be the basis of a conviction of a subsequent felony as a second offense. Id.

See, also, notes under Const. art. 1, § 8, cl. 6.

13. Indictment, proof, and variance.—In an indictment for violation of the law against counterfeiting, a general averment that the defendant did the acts charged "with intent to defraud" is sufficient; the pleader in a case where intent is the essence of the crime not being required to set out the facts going to prove such intent, or the particular means by which the intent was to be effected. McCarty v. U. S. (1900) 101 Fed. 113, 41 C. C. A. 242.

An indictment charging accused with unlawfully, etc., making and forging a large number, to wit, 110 coins, in resemblance and similitude of the true and genuine coin theretofore coined at the mint of the United States, called a "dollar," contrary to the form of the statute, etc., was not objectionable for failure to charge the kind of dollar alleged to have been counterfeited, whether silver or gold. Hauger v. U. S. (1909) 173 Fed. 54, 97 C. C. A. 372.

Alleging the coins as 50-cent pieces and 25-cent pieces instead of the half dollar and quarter dollar, as named in the coinage act, is not a material variance. U. S. v. Burns (C. C. 1849) Fed. Cas. No. 14,691.

It is not a misjoinder to add to the

counts charging the making of false coin a count for aiding and assisting in making such coins and one for procuring them to be made. Id.

The offenses of passing counterfeit coin at different times and on different occasions may be joined in the same indictment. U. S. v. O'Callahan (C. C. 1855) Fed. Cas. No. 15,910.

It is not necessary, in an indictment for counterfeiting under this section to allege that the act of counterfeiting was done with intent to defraud; and such intent, if an element of the crime as defined by the statute, is implied in the allegation of "falsely" making, and need not be specifically alleged. U. S. v. Otey (C. C. 1887) 31 Fed. 68.

An indictment under this section for counterfeiting, which states that the defendant "did falsely make, forge, and counterfeit four pieces of silver coin, of the coinage of the United States, called a dollar," is sufficient after verdict; the words of the section, "in resemblance or similitude of the coins coined at the mints of the United States," being a mere variation or exposition of the principal phrase, "falsely make, forge, or counterfeit," such coins, and the phrase, "coinage of the United States" being the exact legal equivalent of "coins coined at the mints of the United States." Id.

An indictment for circulating counterfeit coin need not charge the offense to have been committed in territory within the jurisdiction of the United States. Campbell v. U. S. (D. C. 1847) Fed. Cas. No. 2,373.

An indictment for counterfeiting United States coin, under section 20 of the crimes act of 1825, need not aver an intent to pass the coin as true, nor an intent to defraud. U. S. v. Peters (D. C. 1870) Fed. Cas. No. 16,035.

An indictment under R. S. §§ 5431, 5457 (this compilation, §§ 10321, 10333), for possessing and passing counterfeit notes and coins, sufficiently excuses the failure to set them out by alleging that the grand jury did not have them under their control, and did not know where they were. U. S. v. Howell (D. C. 1894) 64 Fed. 110.

In such case it is sufficient, in connection with allegations as to the place, time, and person to whom passed, to allege that the counterfeit notes and obligations were "United States notes" of a certain denomination. Id.

An indictment for having counterfeit money in possession may charge the offense in several separate counts, each alleging the possession of a different denomination of coin. Id. (D. C. 1895) 65 Fed. 402.

Under this statute there must be a specification in the indictment of a particular coin counterfeited, otherwise accused is not informed of the nature and cause of accusation against him. U. S. v. Pupke (D. C. 1904) 133 F 248.

14. **Evidence.**—In a prosecution counterfeiting, permitting a plating m chine taken from defendants to be o erated in the presence of the jury an expert, to demonstrate that it cou be used for plating coins such as d fendants were charged with havi made and uttered, was not error. Ta lor v. U. S. (1898) 89 Fed. 954, 32 C. A. 449.

Declarations of an alleged co-co spirator to a witness are inadmissil to prove the existence of the conspi acy as against another party there Hauger v. U. S. (1909) 173 Fed. 54, C. C. A. 372.

In a prosecution for counterfeitin counterfeit coin alleged to have be obtained by witness from a police of cer, whose name he could not remem ber, and who said he obtained the sam from M., whom the government claim was an accomplice, and others obtain from various persons in the same plac whose names the witness could not r member, also claiming to have obtain them from M. before his arrest, we inadmissible against defendant; the being no proof to connect him wi them. Id.

In a prosecution of defendant f counterfeiting, the confession of an a leged co-conspirator while in jail his keeper, implicating accused in scheme to manufacture and pass cou terfeit money, was inadmissible as r gestæ prior to or in the absence competent testimony to establish th conspiracy. Id.

Where two persons were jointly in dicted for passing and uttering counte feit money with intent to defraud, co versations between one of them and d tectives in the employ of the Unit States, not in the presence of the ot er, were inadmissible against the a sent defendant. Tresca v. U. S. (191 183 Fed. 736, 106 C. C. A. 174.

Evidence held insufficient to susta a conviction of accused for passing a uttering counterfeit money with inte to defraud, or for keeping and conce ing such money, with intent to utt and pass the same, knowing it to counterfeit. Id.

Proof that a quantity of spurio coin and instruments and applianc for making it were found in defendan possession, where unexplained by e idence rebutting the presumption guilt, is sufficient to sustain a convi tion. U. S. v. Burns (C. C. 1849) Fe Cas. No. 14,691.

Possession of spurious coins, wi tools and instruments for the manufa ture thereof, warrants a prima fac presumption of guilt. U. S. v. King (C. 1851) Fed. Cas. No. 15,535.

Evidence of a fraudulent sale is co petent to support a charge of fraud

session under a count in an nt. U. S. v. Biebusch (C. C. Fed. 213, 214.

trial of an indictment for as- n making counterfeit coin by g the guilty persons, a wit- y testify that the machines the premises could not col- be applied to other uses, hey might separately be oth- sed. U. S. v. Tarr (D. C. 1861) . No. 16,434.

possession of coin of different ition, see U. S. v. Goughnour 862) Fed. Cas. No. 15,238.

indictment for passing counter- possession of counterfeit bank not admissible to prove the Id.

re act of passing a counterfeit ne occasion is not of itself ev- a purpose to deceive; but the n which it was done and the circumstances are to be taken sideration. U. S. v. Hopkins 885) 26 Fed. 443.

ce that the defendant had ther counterfeit coins at other ther before or after the offense he is indicted, is admissible that he knew the money pass- m in the particular case was it money. The proof, how- t the coins passed at such other times were counterfeit, should be positive and direct. Peek v. State (1840) 21 Tenn. (2 Humph.) 78.

15. **Verdict.**—The first count of an indictment charged defendant with having counterfeit coin in his possession, with intent to defraud, etc. Defendant, by written plea, indorsed on the indictment, admitted having counterfeit coins in his possession, with knowledge that they were counterfeit, but denied any intent to pass the same, or to defraud any person. The jury returned a verdict of "guilty in the first count for having in possession counterfeit minor coin." Held, that this was a general, and not a special, verdict, and that consequently all except the words "guilty in the first count" were to be rejected as mere surplusage, not affecting the validity of the verdict. Statler v. U. S. (1895) 157 U. S. 277, 15 Sup. Ct. 616, 39 L. Ed. 700.

Cited without definite application, Peters v. U. S. (1899) 94 Fed. 127, 136, 36 C. C. A. 105 (writ of certiorari denied [1900] 20 Sup. Ct. 1026, 176 U. S. 684, 44 L. Ed. 638); U. S. v. Coppersmith (C. C. 1880) 4 Fed. 198; U. S. v. De Quilfeldt (C. C. 1881) 5 Fed. 276, 279; U. S. v. Owens (C. C. 1888) 37 Fed. 112, 114; U. S. v. Lehman (D. C. 1889) 39 Fed. 768, 770.

. (Crim. Code, § 164.) Counterfeiting minor coins; punishnt for.

ever shall falsely make, forge, or counterfeit, or cause or pro- be falsely made, forged, or counterfeited, or shall willingly assist in falsely making, forging, or counterfeiting any coin resemblance or similitude of any of the minor coins which en, or hereafter may be, coined at the mints of the United or whoever shall pass, utter, publish, or sell, or bring into the States or any place subject to the jurisdiction thereof, from eign place, or have in his possession any such false, forged, or feited coin, with intent to defraud any person whomsoever, fined not more than one thousand dollars and imprisoned not an three years.

S. § 5458. Act March 4, 1909, c. 321, § 164, 35 Stat. 1119.

Notes of Decisions

ent.—An indictment under Act 1825, § 21, which names the tended to be defrauded by the of counterfeit coin, need not person to whom the coin was U. S. v. Bejandio (C. C. 1873) . No. 14,561.

ce.—In a prosecution for ut- unterfeit 5-cent pieces, where completely and satisfactorily at defendant had in his pos- nd passed certain counterfeit eces, evidence that molds for 5-cent pieces were found in a t used jointly by defendant her was admissible to show a intent in passing the 5-cent Bryan v. U. S. (1904) 133 Fed. . C. A. 369.

Evidence held sufficient to sustain a verdict finding defendant guilty of counterfeiting, and having in his possession counterfeit coins. Riggio v. U. S. (1915) 223 Fed. 529, 139 C. C. A. 77.

Verdict.—Where defendant, by written plea indorsed on an indictment, the first count of which charged him with having counterfeit coin in his possession with intent to defraud, etc., admitted having counterfeit coin in his possession with knowledge that they were counterfeit, but denied any intent to defraud, a verdict of "guilty in the first count for having in possession counterfeit minor coin" was a general and not a special verdict, so that all except the words "guilty in the first count" were surplusage, not af-

fecting its validity. Statler v. U. S. (1895) 15 Sup. Ct. 616, 157 U. S. 277, 39 L. Ed. 700.

Cited without definite application, U. S. v. Lehman (D. C. 1889) 39 Fed. 768, 770.

§ 10335. (Crim. Code, § 165.) Falsifying, mutilating or lightening coins; punishment for.

Whoever, fraudulently, by any art, way, or means, shall deface, mutilate, impair, diminish, falsify, scale, or lighten, or cause or procure to be fraudulently defaced, mutilated, impaired, diminished, falsified, scaled, or lightened, or willingly aid or assist in fraudulently defacing, mutilating, impairing, diminishing, falsifying, scaling, or lightening, the gold or silver coins which have been, or which may hereafter be, coined at the mints of the United States, or any foreign gold or silver coins which are by law made current or are in actual use or circulation as money within the United States or in any place subject to the jurisdiction thereof; or whoever shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, knowing the same to be defaced, mutilated, impaired, diminished, falsified, scaled, or lightened, with intent to defraud any person whomsoever, or shall have in his possession any such defaced, mutilated, impaired, diminished, falsified, scaled, or lightened coin, knowing the same to be defaced, mutilated, impaired, diminished, falsified, scaled, or lightened, with intent to defraud any person whomsoever, shall be fined not more than two thousand dollars and imprisoned not more than five years.

R. S. § 5459, as amended, Act March 3, 1897, c. 377, 29 Stat. 625. Act March 4, 1909, c. 321, § 165, 35 Stat. 1119.

Notes of Decisions

Punching and mutilating.—Where a coin regularly coined at the mint was afterwards punched and mutilated, and an appreciable amount of silver removed from it, and the hole plugged up with base metal, or with any substance other than silver, it is an act of counterfeiting; but otherwise where the hole was punched with a sharp instrument, leaving all the silver in the coin, though crowding it into a different shape. U. S. v. Lissner (C. C. 1882) 12 Fed. 840.

Under this section where a coin which had been regularly coined at the mint was afterwards punched and mutilated and an appreciable amount of silver removed from it, and the hole plugged up with base metal, or with any substance other than silver, it was an act of counterfeiting; but it is otherwise where the hole was punched with a sharp instrument, leaving all the silver in the coin, though crowding it into a different shape. Id.

Cited without definite application, Ling Su Fan v. U. S. (1910) 31 Sup. Ct. 21, 218 U. S. 302, 54 L. Ed. 1049, 30 L. R. A. (N. S.) 1176.

§ 10336. (Crim. Code, § 166.) Debasing coins by officers of the Mint; punishment for.

If any of the gold or silver coins struck or coined at any of the mints of the United States shall be debased, or made worse as to the proportion of fine gold or fine silver therein contained, or shall be of less weight or value than the same ought to be, pursuant to law, or if any of the scales or weights used at any of the mints or assay offices of the United States shall be defaced, altered, increased, or diminished through the fault or connivance of any officer or person employed at the said mints or assay offices, with a fraudulent intent; or if any such officer or person shall embezzle any of the metals at any time committed to his charge for the purpose of being coined, or any of the coins struck or coined at the said mints, or any medals, coins, or other moneys of said mints or assay offices at any time committed to his charge, or of which he may have assumed the charge, every such officer or person who commits any of the said offenses

fined not more than ten thousand dollars and imprisoned not an ten years.

S. § 5460. Act March 4, 1909, c. 321, § 166, 35 Stat. 1120.

Notes of Decisions

ent.—Under R. S. § 1024, ante, providing that, when there are harges against a person for the , or for two or more acts con- gether, or of the same class of which may be properly joined, e may be joined in one indict- separate counts, an indictment ain a count under R. S. § 5456, 0213, relating to the felonious way by any one of anything be- to the United States, and a nder R. S. § 5460 (embodied herein), referring to the felonious taking and embezzlement of metals at the United States mint, though one offense be classed as larceny and the other as embezzlement, and the punishments are different. U. S. v. Jones (D. C. 1895) 69 Fed. 973.

An indictment for larceny or embezzlement of metal from the United States mint sufficiently described the property as "gold metal of the value of $23,000." Id.

7. (Crim. Code, § 167.) Making or uttering coins resembling oney; punishment for.

ever, except as authorized by law, shall make or cause to le, or shall utter or pass, or attempt to utter or pass, any f gold or silver or other metal, or alloys of metals, intended for and purpose of current money, whether in the resemblance of f the United States or of foreign countries, or of original de- all be fined not more than three thousand dollars, or imprisoned re than five years, or both.

S. § 5461. Act March 4, 1909, c. 321, § 167, 35 Stat. 1120.

Notes of Decisions

not purporting to be an imita- in substitution, of coin known -R. S. § 5461 (embodied here- not extend to the uttering of a hich does not purport to be an , or in substitution, of any coin known to the law, and does not cover a piece of metal bearing the device of an Indian and the inscription "¼ dollar." U. S. v. Bogart (D. C. 1878) Fed. Cas. No. 14,617.

8. (Crim. Code, § 168.) Making or uttering devices of minor ins; punishment for.

ever, not lawfully authorized, shall make, issue, or pass, or o be made, issued, or passed, any coin, card, token, or de- metal, or its compounds, which may be intended to be used ey for any one-cent, two-cent, three-cent, or five-cent piece, hereafter authorized by law, or for coins of equal value, shall l not more than one thousand dollars and imprisoned not more e years.

S. § 5462. Act March 4, 1909, c. 321, § 168, 35 Stat. 1120.

Notes of Decisions

s to which statute applies.— tion applies only to tokens in- o be used as money. U. S. v. nlous (D. C. 1899) 95 Fed. 977, McCarty v. U. S. (1900) 101 Fed. 113, 41 C. C. A. 242.

nent.—In an indictment for vio- f the law against counterfeit- eneral averment that the de- did the acts charged "with in- lefraud" is sufficient, the plead- case where intent is the es- the crime not being required t the facts going to prove such or the particular means by he intent was to be effected.

Where an indictment for counterfeiting alleged in one count the passing of counterfeit 5-cent pieces, and, in another count, charged defendant with possessing molds for counterfeiting 25-cent pieces, the dismissal of the latter count did not operate to withdraw from the jury evidence introduced thereunder, where such evidence was admissible to show criminal intent under the former count. Bryan v. U. S. (1904) 133 Fed. 495, 66 C. C. A. 369.

See, also, Kaye v. U. S. (1910) 177 Fed. 147, 100 C. C. A. 567.

§ 10339. (Crim. Code, § 169.) Counterfeiting, etc., dies for United States coins; punishment for.

Whoever, without lawful authority, shall make, or cause or procure to be made, or shall willingly aid or assist in making, any die, hub, or mold, or any part thereof, either of steel or plaster, or any other substance whatsoever, in likeness or similitude, as to the design or the inscription thereon, of any die, hub, or mold designated for the coining or making of any of the genuine gold, silver, nickel, bronze, copper, or other coins of the United States, that have been or hereafter may be coined at the mints of the United States; or whoever, without lawful authority, shall have in his possession any such die, hub, or mold, or any part thereof, or shall permit the same to be used for or in aid of the counterfeiting of any of the coins of the United States hereinbefore mentioned, shall be fined not more than five thousand dollars and imprisoned not more than ten years.

Act Feb. 10, 1891, c. 127, § 1, 26 Stat. 742. Act March 4, 1909, c. 321, § 169, 35 Stat. 1120.

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Intent.—This section establishes two offenses, to wit, the making and having in possession of any mold, etc., and the intent is material only with reference to the having of such things in possession, and not as to the making thereof. Kaye v. U. S. (1910) 177 Fed. 147, 100 C. C. A. 567.

Indictment.—An indictment is not bad because it spells the word "mold," in the statute, "mould," for the two words have the same meaning. McCarty v. U. S. (1900) 101 Fed. 113, 115, 41 C. C. A. 242.

An indictment under the first clause of this section which makes it a criminal offense to make any die, hub, or mold in the likeness of any die, hub, or mold designed for the coining of any of the coins of the United States "without authority from the secretary of the treasury," must aver the want of such authority, and a general averment that the die, hub, or mold was "unlawfully and feloniously" made by defendant is not sufficient. Wroclawsky v. U. S. (1910) 183 Fed. 312, 105 C. C. A. 524.

§ 10340. (Crim. Code, § 170.) Counterfeiting, etc., dies for foreign coins; punishment for.

Whoever, within the United States or any place subject to the jurisdiction thereof, without lawful authority, shall make, or cause or procure to be made, or shall willingly aid or assist in making, any die, hub, or mold, or any part thereof, either of steel or of plaster, or of any other substance whatsoever, in the likeness or similitude, as to the design or the inscription thereon, of any die, hub, or mold designated for the coining of the genuine coin of any foreign government; or whoever, without lawful authority, shall have in his possession any such die, hub, or mold, or any part thereof, or shall conceal, or knowingly suffer the same to be used for the counterfeiting of any foreign coin, shall be fined not more than two thousand dollars, or imprisoned not more than five years, or both.

Act Feb. 10, 1891, c. 127, § 2, 26 Stat. 742. Act March 4, 1909, c. 321, § 170, 35 Stat. 1120.

§ 10341. (Crim. Code, § 171, as amended, Act Feb. 15, 1912, c. 38.) Making, importing, or having in possession tokens, prints, etc., similar to United States or foreign coins.

Whoever within the United States or any place subject to the jurisdiction thereof shall make, or cause or procure to be made, or shall bring therein from any foreign country, or shall have in possession with intent to sell, give away, or in any other manner use the same, any business or professional card, notice, placard, token, device, print, or impression, or any other thing whatsoever, in the likeness or similitude as to design, color, or the inscription thereon of any of the coins of the United States or of any foreign country that have been or hereafter may be issued as money, either under the authority of the United States or under the authority of any foreign Government, shall be fined not more than one hundred

. But nothing in this section shall be construed to forbid or t the printing and publishing of illustrations of coins and or the making of the necessary plates for the same to be n illustrating numismatic and historical books and journals hool arithmetics and the circulars of legitimate publishers alers in the same.

t Feb. 10, 1891, c. 127, § 3, 26 Stat. 742, as amended, Act March 3, 1903, 915, 32 Stat. 1223. Act March 4, 1909, c. 321, § 171, 35 Stat. 1121. Act 15, 1912, c. 38, 37 Stat. 64.

is section was amended by Act Feb. 15, 1912, c. 38, cited above, by in- ng, in the last sentence thereof, after the words "historical books and jour- " the words "and school arithmetics," as set forth here.

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e as covering counterfeit The words, "device, print, or on, or any other thing whatso- nust be read in connection with trued as being of the same gen- ure as their companion words "business or professional card, notice, placard, token," and not to cover counterfeit molds, the making of which is punishable under section 10339, ante, as a felony. Kaye v. U. S. (1910) 177 Fed. 147, 100 C. C. A. 567.

2. (Crim. Code, § 172.) Forfeiture of counterfeit obligations, curities, coins, and material; punishment for failing to de- er.

counterfeits of any obligation or other security of the United or of any foreign government, or counterfeits of any of the of the United States or of any foreign government, and all al or apparatus fitted or intended to be used, or that shall een used, in the making of any such counterfeit obligation er security or coins hereinbefore mentioned, that shall be in the possession of any person without authority from the ry of the Treasury or other proper officer to have the same, e taken possession of by any authorized agent of the Treasury ment and forfeited to the United States, and disposed of in nner the Secretary of the Treasury may direct. Whoever hav: e custody or control of any such counterfeits, material, or us shall fail or refuse to surrender possession thereof upon re- by any such authorized agent of the Treasury Department, e fined not more than one hundred dollars, or imprisoned not han one year, or both.

t Feb. 10, 1891, c. 127, § 4, 26 Stat. 742. Act March 4, 1909, c. 321, § 35 Stat. 1121.

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otes under § 10320, ante.

tutionality.—The seizure and e pursuant to this statute is aking of property without due of law within the meaning of amendment to the constitution. feit coin is neither property subject of property; it is the of a felonious act, and outside (1901) 23 Op. Atty. Gen. 458. ne process of law required by endment was never designed to such rights as a person unlaw- possession of counterfeit coin ve in it, but was intended for tection of substantial rights in roperty. Id.

rity of the secretary of the in general.—Under this sec- treasury department has au- to seize counterfeit coin, to decide that it is counterfeit, to determine that it was unlawfully in possession of the party from whom taken, and to forfeit it, and, after forfeiture, to direct in what manner it shall be disposed of. No judicial condemnation is necessary. (1901) 23 Op. Atty. Gen. 458.

What may be seized under statute.—The secretary of the treasury is not authorized by law to seize pictures of coins. (1891) 20 Op. Atty. Gen. 210.

The counterfeiting of an uncanceled foreign postage stamp comes within the meaning of the phrase "obligation or other securities * * * of any foreign government," in this section. (1895) 21 Op. Atty. Gen. 136.

Lithographic prints bearing fac simile imprints of canceled postage stamps of foreign countries are not liable to seizure under this section; but if the marks of cancellation are imposed by a sep-

arate impression upon the fac similes of the canceled stamps, the apparatus for making such uncanceled stamps would be liable to seizure, as well as the stamps themselves in their uncanceled state. (1908) 27 Op. Atty. Gen. 125.

Return of counterfeit or value of bullion contained therein.—This section does not authorize the secretary of the treasury to return the counterfeit or the value of the bullion it contained to the person from whom such coin was taken. (1901) 23 Op. Atty. Gen. 458.

§ 10343. (Crim. Code, § 173.) Issue of search warrant for suspected counterfeits, etc.; forfeiture of seized articles.

The several judges of courts established under the laws of the United States and United States commissioners may, upon proper oath or affirmation, within their respective jurisdictions, issue a search warrant authorizing any marshal of the United States, or any other person specially mentioned in such warrant, to enter any house, store, building, boat, or other place named in such warrant, in which there shall appear probable cause for believing that the manufacture of counterfeit money, or the concealment of counterfeit money, or the manufacture or concealment of counterfeit obligations or coins of the United States or of any foreign government, or the manufacture or concealment of dies, hubs, molds, plates, or other things fitted or intended to be used for the manufacture of counterfeit money, coins, or obligations of the United States or of any foreign government, or of any bank doing business under the authority of the United States or of any State or Territory thereof, or of any bank doing business under the authority of any foreign government, or of any political division of any foreign government, is being carried on or practiced, and there search for any such counterfeit money, coins, dies, hubs, molds, plates, and other things, and for any such obligations, and if any such be found, to seize and secure the same and to make return thereof to the proper authority; and all such counterfeit money, coins, dies, hubs, molds, plates, and other things, and all such counterfeit obligations so seized shall be forfeited to the United States.

Act Feb. 10, 1891, c. 127, § 5, 26 Stat. 743. Act March 4, 1909, c. 321, § 173, 35 Stat. 1121.

§ 10344. (Crim. Code, § 174.) Circulating bills of expired banks; punishment for; circulation permitted.

In all cases where the charter of any corporation which has been or may be created by Act of Congress has expired or may hereafter expire, if any director, officer, or agent of the corporation, or any trustee thereof, or any agent of such trustee, or any person having in his possession or under his control the property of the corporation for the purpose of paying or redeeming its notes and obligations, shall knowingly issue, reissue, or utter as money, or in any other way knowingly put in circulation any bill, note, check, draft, or other security purporting to have been made by any such corporation whose charter has expired, or by any officer thereof, or purporting to have been made under authority derived therefrom, or if any person shall knowingly aid in any such act, he shall be fined not more than ten thousand dollars, or imprisoned not more than five years, or both. But nothing herein shall be construed to make it unlawful for any person, not being such director, officer, or agent of the corporation, or any trustee thereof, or any agent of such trustee, or any person having in his possession or under his control the property of the corporation for the purpose hereinbefore set forth, who has received or may hereafter receive such bill, note, check, draft, or other security, bona fide and in the ordinary transactions of business, to utter as money or otherwise circulate the same.

R. S. § 5437. Act March 4, 1909, c. 321, § 174, 35 Stat. 1122.

5. (Crim. Code, § 175.) Imitating national-bank notes with vertisements thereon; punishment for.

all not be lawful to design, engrave, print, or in any man-ke or execute, or to utter, issue, distribute, circulate, or use siness or professional card, notice, placard, circular, handbill, rtisement in the likeness or similitude of any circulating note r obligation or security of any banking association organized g under the laws of the United States which has been or may ed under any Act of Congress, or to write, print, or otherwise upon any such note, obligation, or security, any business or ional card, notice or advertisement, or any notice or adver-t of any matter or thing whatever. Whoever shall violate vision of this section shall be fined not more than one hundred or imprisoned not more than six months, or both.

S. § 5188. Act March 4, 1909, c. 321, § 175, 35 Stat. 1122.

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ement by indictment.—No in-lies under R. S. §§ 3708, 5188 mpilation, §§ 10345, 10347), t unlawful to make and utter cards in the likeness of a gov-bond or national bank note; the only penalty imposed being "recoverable one-half to the informer." The punishment by qui tam action is exclusive. U. S. v. Laescki (D. C. 1887) 29 Fed. 699.

5. (Crim. Code, § 176.) Mutilating, etc., national-bank notes; nishment for.

ever shall mutilate, cut, deface, disfigure, or perforate with or unite or cement together, or do any other thing to any ll, draft, note, or other evidence of debt, issued by any nation-ing association, or shall cause or procure the same to be done, tent to render such bank bill, draft, note, or other evidence of fit to be reissued by said association, shall be fined not more e hundred dollars, or imprisoned not more than six months, or

S. § 5189. Act March 4, 1909, c. 321, § 176, 35 Stat. 1122.

without definite application, Fan v. U. S. (1910) 31 Sup. Ct. 21, 218 U. S. 302, 54 L. Ed. 1049. 30 L. R. A. (N. S.) 1176.

7. (Crim. Code, § 177.) Imitating securities or printing ad-rtisements thereon; punishment for.

all not be lawful to design, engrave, print, or in any man-ke or execute, or to utter, issue, distribute, circulate, or use, siness or professional card, notice, placard, circular, handbill, rtisement, in the likeness or similitude of any bond, certifi-indebtedness, certificate of deposit, coupon, United States reasury note, gold certificate, silver certificate, fractional note, r obligation or security of the United States which has been be issued under or authorized by any Act of Congress hereto-ssed or which may hereafter be passed; or to write, print, or se impress upon any such instrument, obligation, or security, siness or professional card, notice, or advertisement, or any or advertisement of any matter or thing whatever. Whoever olate any provision of this section shall be fined not more than ndred dollars.

S. § 3708. Act March 4, 1909, c. 321, § 177, 35 Stat. 1122.

8. (Crim. Code, § 178.) Issuing notes less than one dollar; nishment for.

erson shall make, issue, circulate, or pay out any note, check, andum, token, or other obligation for a less sum than one intended to circulate as money or to be received or used of lawful money of the United States; and every person

so offending shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both.

R. S. § 3583. Act March 4, 1909, c. 321, § 178, 35 Stat. 1122.

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Obligations to pay in goods.—This section does not apply to obligations to pay in goods at a store. U. S. v. Van. Auken (1877) 96 U. S. 366, 367, 24 L. Ed. 852.

Issuance of passenger tickets by carriers.—Bridge, railroad, and passenger railway companies may issue tickets good for one trip, without violating this section. U. S. v. Monongahela Bridge Co. (D. C. 1863) Fed. Cas. No. 15,-796.

Issuance of interest-bearing bonds by county commissioners.—The proposed issue of interest-bearing bonds by the county commissioners of Floyd county, Ga., will not be in conflict with the banking laws of the United States. (1894) 21 Op. Atty. Gen. 70.

A proposed issue of interest-bearing bonds by the county commissioners of Floyd county, Ga., will not conflict with the banking laws of the United States. Id.

Notes prohibited by statute as subject to tax.—No tax, as such, is imposed on notes prohibited by this section. The violation of this section is vindicated by fine or imprisonment, or both. (1888) 19 Op. Atty. Gen. 98.

Indictment.—Sufficiency of indictment under Act July 7, 1838, c. 212, § 1, to restrain the circulation of small notes and currency in the District of Columbia. Stettinius v. U. S. (C. C. 1839) Fed. Cas. No. 13,387.

Cited without definite application, Hollister v. Zion's Co-operative Mercantile Inst. (1884) 4 Sup. Ct. 263, 264, 111 U. S. 62, 28 L. Ed. 352; Hibernia Savings & Loan Society v. City and County of San Francisco (1906) 26 Sup. Ct. 265, 267, 200 U. S. 310, 50 L. Ed. 495, 4 Ann. Cas. 934.

CHAPTER EIGHT

Offenses against the Postal Service

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10350. Illegal carrying of mail by officials, etc.; punishment for.
10351. Conveying mail by private express; punishment for; delivery to post-office, etc., allowed.
10352. Transporting persons unlawfully conveying mail; penalty.
10353. Sending letters by private express; penalty.
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10357. Wearing carrier's uniform without authority; punishment for.
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10366. Postmasters, etc., detaining or destroying newspapers; by other persons; punishment for.
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Sec.
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10391. Inclosing higher in lower class matter; punishment for.
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10394. Inducing or prosecuting false claims for losses; punishment for.
10395. Misappropriating postal funds or property; punishment for; prima facie evidence; deposits, etc., permitted.
10396. Employees interested in mail contracts; punishment for.
10397. Fraudulent use of official envelopes; penalty.
10398. Fraudulently increasing weight of mail; punishment for.
10399. Offenses against foreign mail in transit; punishment for; indictments.
10400. Omission to take oath.
10401. Definition.

9. (Crim. Code, § 179.) Conducting post-office without authority; penalty.

ever, without authority from the Postmaster-General, shall or profess to keep any office or place of business bearing the ame, or title of post-office, shall be fined not more than five d dollars.

S. § 3829. Act March 4, 1909, c. 321, § 179, 35 Stat. 1123.

0. (Crim. Code, § 180.) Illegal carrying of mail by officials, c.; punishment for.

ever, being concerned in carrying the mail, shall collect, , or carry any letter or packet, or cause or procure the same lone, contrary to law, shall be fined not more than fifty dol- imprisoned not more than thirty days, or both.

S. § 3981. Act March 4, 1909, c. 321, § 180, 35 Stat. 1123.

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ng package containing execu- Act March 3, 1825, § 21, pro- mail carriers carrying letters kets, does not prohibit their a package containing execu- ly. U. S. v. Chaloner (D. C. ed. Cas. No. 14,777.

bank notes in sealed envelope vering the same for hire.—The of the United States (Acts 11th . 37), making it unlawful for carrier to take any letter or and deliver it to the person to was sent, does not apply where a mail carrier for hire takes bank notes in a sealed envelope and delivers them according to the direction, and in an action against a common carrier for the loss of the package he cannot set up such statute as a defense. Dwight v. Brewster (1822) 18 Mass. (1 Pick.) 53, 11 Am. Dec. 133.

Information.—An information under the act of 1845 for carrying a letter out of the mail need not negative the fact that it was stamped. U. S. v. Tilden (C. C. 1859) Fed. Cas. No. 16,523.

1. (Crim. Code, § 181.) Conveying mail by private express; nishment for; delivery to post-office, etc., allowed.

ever shall establish any private express for the conveyance ers or packets, or in any manner cause or provide for the con- e of the same by regular trips or at stated periods over any

post route which is or may be established by law, or from any city, town, or place, to any other city, town, or place, between which the mail is regularly carried, or whoever shall aid or assist therein shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both: Provided, That nothing contained in this section shall be construed as prohibiting any person from receiving and delivering to the nearest post-office, postal car, or other authorized depository for mail matter, any mail matter properly stamped.

R. S. § 3982. Act March 3, 1879, c. 180, § 1, 20 Stat. 356. Act March 4, 1909, c. 321, § 181, 35 Stat. 1123.

Notes of Decisions

1. Constitutionality.
2. "Post routes" within statute.
3. Getting up of post by railroad or steamboat service.
4. Postmaster general's order as establishing post roads.
5. Carriage of letters, packages, etc., in general.
6. Deliveries "by regular trips and at stated periods."
7. "Packet" within statute.
8. Carriage of letters by passengers.
9. Carriage of letters in express car.
10. Carriage of letters in city wherein free delivery has not been established.
11. Transportation of matter excluded from the mails.
12. Liability under former law of persons procuring, advising and assisting.
13. Remedies of post office department.
14. Suit for penalty.

1. Constitutionality.—While congress has full constitutional power to reserve to the postal department a monopoly of the business of receiving, transmitting, and delivering mails, and in the exercise of such right may enact such rules, regulations, and laws as will effectively preserve its monopoly and prescribe fines, penalties, forfeitures, and punishments therefor, yet this monopoly is intended to extend only to letters, packets of letters, and the like mailable matter; and congress has never attempted to extend its monopoly to the transportation of merchandise in parcels weighing less than four pounds, nor to prohibit private express companies making regular trips over established post routes from engaging in the business of carrying such parcels for hire. Williams v. Wells Fargo & Co. Express (1910) 177 Fed. 352, 101 C. C. A. 328, 35 L. R. A. (N. S.) 1034, 21 Ann. Cas. 699.

The postal law of 1845, prohibiting the establishing of private expresses, held constitutional. U. S. v. Thompson (D. C. 1846) Fed. Cas. No. 16,489.

2. "Post routes" within statute.—Upon reference to pre-existing legislation it is made clear that letter carriers' routes are to be considered post routes, within the meaning of R. S. § 3982 (embodied herein), providing that no person shall cause or provide for the conveyance of letters or packets by regular trips over any post route. By Act March 3, 1851, § 10 (9 Stat. 591), the postmaster general was empowered to establish post routes within cities and towns, for receiving, conveying, and delivering of letters by carriers to be appointed by him. Blackham v. Gresham (C. C. 1883) 16 Fed. 609.

The streets of New York City being post routes, R. S. § 3982 (embodied herein), providing that no person shall cause or provide for the conveyance of letters or packets by regular trips over any post route, imposes a penalty upon persons making provision by express or otherwise for a delivery of letters by regular trips or at stated periods. U. S. v. Easson (D. C. 1883) 18 Fed. 590.

3. Setting up of post by railroad or steamboat service.—The setting up of a post by railroad or steamboat service is not setting up a foot post, within Act 1827, § 3. U. S. v. Kimball (D. C. 1844) Fed. Cas. No. 15,531.

4. Postmaster general's order as establishing post roads.—An order of the postmaster general declaring the streets of a city to be post roads does not make them so, within the act of 1827, or render the business of private letter carriers therein unlawful. U. S. v. Kochersperger (C. C. 1860) Fed. Cas. No. 15,541.

5. Carriage of letters, packages, etc., in general.—Act March 2, 1827, § 3, and Act March 3, 1845, § 9, prohibit the business of private letter carriers on mail routes, but not within the limits of a post town. U. S. v. Kochersperger (C. C. 1860) Fed. Cas. No. 15,541.

It is not unlawful for an express company to carry with a money letter or package an unstamped letter of advice concerning such money. Act March 3, 1845, § 9. U. S. v. United States Exp. Co. (C. C. 1869) Fed. Cas. No. 16,602.

The carrier of letters by private express, in a package, is not liable to the penalty under the act of 1825, unless he knew that the package contained letters. U. S. v. Adams (D. C. 1843) Fed. Cas. No. 14,421.

The carrying of letters, though without distinct compensation, which are not in the form of receipts, etc., is a violation of the law. U. S. v. Thompson (D. C. 1846) Fed. Cas. No. 16,489.

The transmission by a private express of letters, packages, etc., over mail routes, is a violation of Act March 3,

84, and Act March 2, 1827, c. the district attorney should to prosecute the offenders. Op. Atty. Gen. 159.

not competent for any stage vehicle which regularly per- ips on a post road, or on a allel to a post road, to convey nor may such conveyance be any packet boat or other ves- regularly plies on a water de- be a post road, except in re- the letters that may relate to o, or some part thereof, trans- by such packet boat or other (1843) 4 Op. Atty. Gen. 276.

iveries "by regular trips and at periods."—The defendant, the or of Hussey's Express, main- corps of messengers employed t letters daily from the offices customers, prepaid by private sold beforehand for that pur- take the letters as collected entral office, there sort over all received, make them up into s, and dispatch them by mes- from once to thrice daily. such deliveries were not by nger employed for the particu- asion only," but were deliveries gular trips and at stated pe- within the meaning of R. S. § embodied herein), for which the nt was liable to the statutory . U. S. v. Easson (D. C. 1883) . 590.

acket" within statute.—The 'packet," as used in R. S. § 3982 ied herein), prohibiting the es- ment of any private express for nveyance of letters or packets ost routes, is limited to its orig- neaning throughout the postal o cover only a written communi- of four or more sheets, which t March 2, 1827, c. 61, § 5, 4 238, was required to pay quad- postage, and does not include a t of merchandise" not exceeding ounds sent by mail. Williams v. Fargo & Co. Express (1910) 177 52, 101 C. C. A. 328, 35 L. R. A. .) 1034, 21 Ann. Cas. 699.

arriage of letters by passengers. proprietor of a post road is not for the penalty (Act March 3, § 19), where letters are carried his line by a passenger without nowledge. U. S. v. Hall (C. C. Fed. Cas. No. 15,281; Same v. all (D. C. 1844) Fed. Cas. No. 1; Same v. Pomeroy (D. C. 1844) Cas. No. 16,065.

owner of the line is liable where, ublic advertisement, he has notice e fact that certain persons or s are thus sending letters; and in case the persons employing the s are liable, under Act March 3, § 24. U. S. v. Hall (C. C. 1844) Cas. No. 15,281.

9. Carriage of letters in express car.—An expressman conveying letters in an express car is punishable, under Act 1825, c. 275. U. S. v. Gray (D. C. 1840) Fed. Cas. No. 15,253.

10. Carriage of letters in city wherein free delivery has not been established.—The citizens of the city of Davenport, Iowa, are not prohibited by the act June 8, 1872, c. 335, from employing a private dispatch company to carry and deliver, within the city limits, sealed letters on which no United States postage has been paid; it appearing that the free delivery of mail matter has not been established there, and that, accordingly, the streets of the city are not post routes. (1871) 13 Op. Atty. Gen. 481; (1872) 14 Op. Atty. Gen. 152.

11. Transportation of matter excluded from the mails.—When printed matter is excluded from the mails, its transportation in any other way cannot be forbidden by congress. It does not possess the power to prevent transportation in other ways, as merchandise, of matter which it excludes. Ex parte Jackson (1877) 96 U. S. 727, 733, 735, 24 L. Ed. 877.

12. Liability under former law of persons procuring, advising, and assisting.—Act March 3, 1825, c. 64, § 24, providing that every person who from and after the passage of that act shall procure and advise or assist in the acts or crimes forbidden therein shall be punished the same as the actual perpetrators, does not embrace the offense denounced by Act March 2, 1827, c. 61, § 3, providing that no person other than the post master general shall set up any post for conveyance of letters, etc. (1844) 4 Op. Atty. Gen. 311.

13. Remedies of post office department.—Letters transported on the mail routes by private carriers cannot be charged with postage. Nor is it competent to detain a carpet bag containing letters carried on a mail route contrary to law. (1844) 4 Op. Atty. Gen. 349.

All that the post office department can do is to enforce the penalties to which all unauthorized carriers of letters are subjected. Id.

14. Suit for penalty.—Rev. St. § 3982 (embodied herein), prohibits the establishment of a private express for the conveyance of letters or packets over any post road, and provides that any person violating the section shall be liable to a penalty of $150 for each offense; R. S. § 4059, ante, § 7608, declares that all penalties imposed for a violation of law affecting the post office department shall be recoverable one half to the use of the person informing and prosecuting the same and the other half to the use of the post office

department; but R. S. § 919, ante, 1545, constituting part of the act regulating procedure in federal courts, commands that all suits for the enforcement of a penalty arising under the postal laws shall be brought in the name of the United States. Held, that a suit to recover a penalty for the alleged violation of R. S. § 3982 could not be brought by a private prosecutor, but was maintainable only by and in the name of the United States. Wil liams v. Wells Fargo & Co. Expres (1910) 177 Fed. 352, 101 C. C. A. 32 35 L. R. A. (N. S.) 1034, 21 Ann. Ca 699.

Cited without definite applicatio Lewis Publishing Co. v. Morgan (1913 33 Sup. Ct. 867, 229 U. S. 288, 57 L Ed. 1190; Commerford v. Thompso (C. C. 1880) 1 Fed. 417, 419.

§ 10352. (Crim. Code, § 182.) Transporting persons unlawfull conveying mail; penalty.

Whoever, being the owner, driver, conductor, master, or othe person having charge of any stagecoach, railway car, steamboa or other vehicle or vessel, shall knowingly convey or knowingl permit the conveyance of any person acting or employed as a privat express for the conveyance of letters or packets, and actually in pos session of the same for the purpose of conveying them, contrary t law, shall be fined not more than one hundred and fifty dollars.

R. S. § 3983. Act March 4, 1909, c. 321, § 182, 35 Stat. 1124.

§ 10353. (Crim. Code, § 183.) Sending letters by private expres penalty.

Whoever shall transmit by private express or other unlawfu means, or deliver to any agent thereof, or deposit or cause to b deposited at any appointed place, for the purpose of being so tran mitted, any letter or packet, shall be fined not more than fifty dollar

R. S. § 3984. Act March 4, 1909, c. 321, § 183, 35 Stat. 1124.

Notes of Decisions

See notes under § 10351, ante.

§ 10354. (Crim. Code, § 184.) Carrying letters out of the mail ov post routes; penalty.

Whoever, being the owner, driver, conductor, master, or oth person having charge of any stage-coach, railway car, steamboa or conveyance of any kind which regularly performs trips at stat periods on any post route, or from any city, town, or place to a other city, town, or place between which the mail is regularly ca ried, and which shall carry, otherwise than in the mail, any lette or packets, except such as relate to some part of the cargo of su steamboat or other vessel, to the current business of the carrier, to some article carried at the same time by the same stage-coac railway car, or other vehicle, except as otherwise provided by la shall be fined not more than fifty dollars.

R. S. § 3985. Act March 4, 1909, c. 321, § 184, 35 Stat. 1124.

Notes of Decisions

1. Purpose of statute.
2. Construction in general.
3. "Current business" within statute in general.
4. Rights of railroad companies in general.
5. Right of railroad companies to set up "common right."
6. Carriage of letters between officers and members of railroad employés relief association.
7. Letters neither written by, nor addressed to, company.
8. Carriage of letters between connecting lines of railroad company.
9. Letters between connecting lines of different companies.
10. Letters of telegraph superintendent to station agent and telegraph operator.
11. Different companies of association railroads.
12. Distinct corporations merged in system of railways.
13. Steamboat carrying letter contain banknotes, and relating only to mission thereof.
14. Persons liable.

1. Purpose of statute.—Congress not mean to do more than to perm carriers themselves, and particula corporate carriers, to carry their o messages, which necessarily would limited to their own business. (191 28 Op. Atty. Gen. 537.

By this section congress intended adopt rather than set aside the op

' Attorney General Harmon 21 Op. Atty. Gen. 394). Id.

nstruction in general.—This sec- nd § 7476, ante with regard to rriage of letters by other than nent agencies are not in dero- of common right. They are e laws, and are not to be strict- trued, though they impose pen- (1896) 21 Op. Atty. Gen. 394.

urrent business" within stat- general.—Where a state by val- lawful authority requires a com- rrier to furnish reports rela- its traffic, the fulfillment of the aus imposed constitutes a part current business of the carrier, se reports may be carried out- e mail without payment of post- nsistently with the provisions section. (1910) 28 Op. Atty. 37.

ent business," within the mean- the statute, is presumably any s of the carrier when it comes such a way as to call for cur- mmunication. (1910) 28 Op. Gen. 537; (1912) 29 Op. Atty. 37.

ghts of railroad companies in —A railroad company has the carry outside of the mails and government stamped envelopes and packets relating to the s of the railroad on which they rried, but it has no right to rt letters for a third person. ght includes letters written and the officers and agents of the company which carries and them, about its business, and nly. They may be letters to of its officers and agents, to f connecting lines, or to any e, so long as no other carrier nes. (1896) 21 Op. Atty. Gen.

ght of railroad companies to set mmon right."—Railroad compa- not set up any "common right" the conditions which the law rates in their contracts with ernment. (1896) 21 Op. Atty. 5.

rriage of letters between offi- d members of railroad employés association.—The Erie Railroad y has the right under this sec- transport over its lines, other- an in the mail, letters written secretary of the Erie Employés' Association, an organization ed of officers and employés of lroad, to the railroad company, not transport letters written by cers of said relief association nembers. (1912) 29 Op. Atty. 8.

tters neither written by nor ad- to, company.—Any company, officer or employé thereof, car- etters which are neither written by that company nor addressed to it, is liable to the penalties imposed by law. (1896) 21 Op. Atty. Gen. 395.

8. Carriage of letters between connecting lines of railroad company.—A railroad company may not carry letters from one of its connecting lines to another although they relate to through business over the lines of all. Such letters do not "relate to its business" within the meaning of the postal regulations. (1896) 21 Op. Atty. Gen. 395.

Letters of a company, addressed to officers or agents of a connecting line on company business and delivered to an agent of the latter at the point of connection, may be carried by the latter to any point on its line, because such letters become its own on receipt by any one of its agents. Id.

9. Letters between connecting lines of different companies.—The denial of the right of railroad companies to carry letters between other companies with whose lines their own connect applies also to the carrying of letters by railroad companies, for companies, corporations, or private individuals, operating car lines, transportation lines, hotels, restaurants, or any class of business that may either be connected with or not connected with the railroad proper. (1896) 21 Op. Atty. Gen. 395.

A railroad company may not carry letters from one of its connecting lines to another although they relate to through business over the lines of all. Such letters do not "relate to its business" within the meaning of the postal regulations. Id.

10. Letters of telegraph superintendent to station agent and telegraph operator.—Letters of telegraph superintendent, written to a station agent and telegraph operator, held within exceptions of this section prohibiting the carriage of letters otherwise than in the mails, except such as relate to freight or the current business of the carrier. U. S. v. Erie R. Co. (1915) 35 Sup. Ct. 193, 235 U. S. 513, 59 L. Ed. 335.

11. Different companies of association of railroads.—The different companies of an association of railroads, which is without corporate or legal existence, formed for the purpose of weighing carload shipments moving over the lines of the railroads that are members of the association, should be treated as separate organizations in their relation to the mail service, and their right to send letters without payment of postage is not extended by this section. (1910) 28 Op. Atty. Gen. 537.

12. Distinct corporations merged in one system of railways.—Companies which are distinct corporations, but have been merged into one system of railways, are limited in their right to carry letters outside the mail without payment of postage to the distinct cor-

porations composing the system. Thus, one such company may carry its own letters addressed to another company to the point of connection and deliver them, and the second company may carry them to any point on its lines, but the latter could not act as an intervening company, and carry and deliver letters written by the first company to a third company, although the latter belonged to the same system. (1910) 28 Op. Atty. Gen. 537.

13. Steamboat carrying letter containing bank notes and relating only to remission thereof.—5 Laws U. S. §§ 10, 13, p. 736, forbidding a steamboat to carry letters not relating to its cargo or some article conveyed, does not prohibit it from taking a letter containing bank notes, if its contents relate only to their remission, and it is to be persumed that its contents does relate only thereto, where no evidence thereof is given. Chouteau v. The St. Anthony (1847) 11 Mo. 226.

14. Persons liable.—Every person who aids and abets in the violation of Act March 3, 1825, c. 64, § 19, prov ing that no stage or other vehicle whi regularly performs trips on a post ro or parallel road, shall convey lette nor shall any packet boat or other v sel regularly plying on water declare post road, except such as relate some part of the cargo, is liable to t penalty thereby incurred by the own of stages, or persons having charge stages or other vehicles, packet bo or other vessels therein described; a a person paying for the transportati of a letter by such stage, vessel, e is an aider and abettor within sect 24 thereof. (1844) 4 Op. Atty. G 311.

Where the owner of the line is not able under Act March 3, 1825, § 19, penalty is incurred, under section by the person who sends such lette U. S. v. Hall (C. C. 1844) Fed. C No. 15,281; Same v. Kimball (D. 1844) Fed. Cas. No. 15,531.

The officer or agent of the person company sending letters to be carr contrary to law is, it seems, also liab (1896) 21 Op. Atty. Gen. 395.

§ 10355. (Crim. Code, § 185.) Carrying letters out of the mail vessels; punishment for.

Whoever shall carry any letter or packet on board any ves which carries the mail, otherwise than in such mail, except as oth wise provided by law, shall be fined not more than fifty dollars, imprisoned not more than one month, or both.

R. S. § 3986. Act March 4, 1909, c. 321, § 185, 35 Stat. 1124.

§ 10356. (Crim. Code, § 186.) When conveyance by private p sons is lawful.

Nothing in this chapter shall be construed to prohibit the co veyance or transmission of letters or packets by private hands wi out compensation, or by special messenger employed for the p ticular occasion only.

R. S. § 3992. Act March 4, 1909, c. 321, § 186, 35 Stat. 1124.

Notes of Decisions

Meaning of "private hands."—The expression "private hands," in R. S. § 3992 (embodied herein), was intended to cover all except common carriers on post routes. Neither the latter nor their employés can be considered as "private hands" under this section, and, if they could be, the express or implied obligation of railroads to carry lett for each other to remotely connect lines would amount to "compensati within the meaning of the statu (1896) 21 Op. Atty. Gen. 395.

Cited without definite applicati U. S. v. Easson (D. C. 1883) 18 F 590, 591.

§ 10357. (Crim. Code, § 187.) Wearing carrier's uniform witho authority; punishment for.

Whoever, not being connected with the letter-carrier branch the postal service, shall wear the uniform or badge which may prescribed by the Postmaster-General, to be worn by letter c riers, shall be fined not more than one hundred dollars, or impr oned not more than six months, or both.

R. S. § 3867. Act March 4, 1909, c. 321, § 187, 35 Stat. 1124.

§ 10358. (Crim. Code, § 188.) Vehicles, etc., claiming to be m carriers; punishment for.

It shall be unlawful to paint, print, or in any manner to pl upon or attach to any steamboat or other vessel, or any car, sta coach, vehicle, or other conveyance, not actually used in carryi

ail, the words "United States Mail," or any words, letters, racters of like import; or to give notice, by publishing in any aper or otherwise, that any steamboat or other vessel, or any age-coach, vehicle, or other conveyance, is used in carrying the vhen the same is not actually so used; and every person who iolate, and every owner, receiver, lessee, or managing operator f, who shall cause, suffer, or permit the violation of any provi- f this section, shall be liable, and shall be fined not more than ousand dollars, or imprisoned not more than two years, or both. S. § 3979. Act March 4, 1909, c. 321, § 188, 35 Stat. 1124.

9. (Crim. Code, § 189.) Injuring mail bags, etc.; punishment r.

oever shall tear, cut, or otherwise injure any mail bag, pouch, er thing used or designed for use in the conveyance of the or shall draw or break any staple or loosen any part of any hain, or strap attached thereto, with intent to rob or steal any nail, or to render the same insecure, shall be fined not more ve hundred dollars, or imprisoned not more than three years, or

S. § 5476. Act March 4, 1909, c. 321, § 189, 35 Stat. 1124.

Notes of Decisions

ct offenses.—Each successive into different mail bags with in- steal the mail therefrom by one s successively a number of such bags, is a distinct offense, punishable under this section. Ebeling v. Morgan (1915) 35 Sup. Ct. 710, 237 U. S. 625, 59 L. Ed. 1151.

0. (Crim. Code, § 190.) Stealing post-office property; pun- hment for.

oever shall steal, purloin, or embezzle any mail bag or other ty in use by or belonging to the Post-Office Department, or appropriate any such property to his own or any other than oper use, or shall convey away any such property to the nce or detriment of the public service, shall be fined not more wo hundred dollars, or imprisoned not more than three years, n.

S. § 5475. Act March 4, 1909, c. 321, § 190, 35 Stat. 1124.

Notes of Decisions

ing and entering and larceny ery—Distinct offenses.—Persons stamps and postal funds from office after breaking commit two offenses which may be separate- ed and punished, under this sec- d § 10362, post. Morgan v. (1915) 35 Sup. Ct. 712, 237 U. 59 L. Ed. 1153.

try into a postmaster's room in t office building, and a theft of stamps by opening the locked which they were kept, consti- forcible breaking and entry into office in a part of the post office , punishable under R. S. § 5478, 10362. Breaking into such a vith the intent to commit lar- d the actual stealing of stamps, te separate offenses under R. S. 5, 5478 (this compilation, §§ 10362), but when both are parts same transaction, a single count these facts is not fatally bad; objection thereto is a question tice not sufficient to prevent re- of the prisoner to the proper r trial. U. S. v. Yennie (D. C. 74 Fed. 221.

—— **Conviction of different offenses.**—One indicted in one count for violation of R. S. § 5478, post, § 10362, and in another count for a violation of R. S. §§ 5456, 5475 (this compilation, §§ 10213, 10360), may be convicted of the offense charged in the first count without a conviction of the offense charged in the second count, or may be convicted of the offense charged in the second count without a conviction of the offense charged in the first count, and sentence may be imposed accordingly. Munson v. McClaughry (1912) 198 Fed. 72, 117 C. C. A. 180, 42 L. R. A. (N. S.) 302.

A defendant cannot be convicted of breaking and entering a post office with intent to commit larceny, and also of committing the larceny, where both acts were committed at the same time and as a continuous transaction. O'Brien v. McClaughry (1913) 209 Fed. 816, 126 C. C. A. 540.

—— **Sentence and punishment.**—A sentence under R. S. § 5475 (embodied herein), for stealing post office property, or under R. S. § 5478, post, § 10362, for breaking and entering a post

office, is fatally defective, unless it imposes imprisonment "at hard labor," as required by each section. Sorenson v. U. S. (1909) 168 Fed. 785, 94 C. C. A. 181.

Where defendant was convicted of burglary of a post office building with intent to commit larceny, and of larceny committed at the same time and as a part of a continuous act, under separate counts of the same indictment, pursuant to R. S. §§ 5456, 5475, 5478 (this compilation, §§ 10213, 10360, 10362), and was sentenced to separ punishments, the sentence for larc was void, so that, after defendant satisfied the sentence for burglary, was entitled to release. Munson v. Claughry (1912) 198 Fed. 72, 117 C. A. 180, 42 L. R. A. (N. S.) 302.

Cited without definite applicat In re Lange (1873) 18 Wall. 163, 21 L. Ed. 872 (in dissenting opinion Clifford, J.); Anderson v. Moyer (D. 1912) 193 Fed. 499.

§ 10361. (Crim. Code, § 191.) Stealing or forging mail locks keys; punishment for.

Whoever shall steal, purloin, embezzle, or obtain by any fa pretense, or shall aid or assist in stealing, purloining, embezzli or obtaining by any false pretense, any key suited to any lock adop by the Post-Office Department and in use on any of the mails or ba thereof, or any key to any lock box, lock drawer, or other authori receptacle for the deposit or delivery of mail matter; or whoever sh knowingly and unlawfully make, forge, or counterfeit, or cause to unlawfully made, forged, or counterfeited, any such key, or shall ha in his possession any such mail lock or key with the intent unla fully or improperly to use, sell, or otherwise dispose of the same, to cause the same to be unlawfully or improperly used, sold, or oth wise disposed of; or whoever, being engaged as a contractor or oth wise in the manufacture of any such mail lock or key, shall deliver cause to be delivered, any finished or unfinished lock or key used or signed for use by the department, or the interior part of any su lock, to any person not duly authorized under the hand of the Po master-General and the seal of the Post-Office Department, to rece the same, unless the person receiving it is the contractor for furni ing the same or engaged in the manufacture thereof in the mann authorized by the contract, or the agent of such manufacturer, sh be fined not more than five hundred dollars and imprisoned not mo than ten years.

R. S. § 5477. Act March 4, 1909, c. 321, § 191, 35 Stat. 1125.

§ 10362. (Crim. Code, § 192.) Breaking into and entering po office.

Whoever shall forcibly break into or attempt to break into a post-office, or any building used in whole or in part as a post-offi with intent to commit in such post-office, or building, or part the of, so used, any larceny or other depredation, shall be fined more than one thousand dollars and imprisoned not more than f years.

R. S. § 5478. Act March 4, 1909, c. 321, § 192, 35 Stat. 1125.

Notes of Decisions

1. Constitutionality.
2. Nature and elements of offense in general.
3. Intent.
4. Part of building not used as post office.
5. Jurisdiction of offense under state law.
6. Felony or misdemeanor.
7. Indictment.
8. Evidence.
9. Money found on person of burglar.
10. Conviction as bar to prosecution by state for burglary.
11. Conviction of burglary and larceny or robbery.
12. Sentence and punishment.

1. Constitutionality.—This section was enacted pursuant to the power conferred on congress by Const. art. 1 8, cls. 6, 18. U. S. v. Campbell (C. 1883) 16 Fed. 233, 234; U. S. v. M tin (C. C. 1905) 140 Fed. 256. also, Considine v. U. S. (1901) Fed. 342, 50 C. C. A. 272, writ of tiorari denied (1902) 22 Sup. Ct. 184 U. S. 699, 46 L. Ed. 765.

2. Nature and elements of offense general.—The object of the statute to protect the postal service of United States, and to secure the bu ings used for such purpose from felo ous entry with a criminal intent, defi in the statute, and it is this feature

which gives the federal gov-
the right to punish such of-
der the powers granted by the
on. Considine v. U. S. (1901)
342, 50 C. C. A. 272, writ of
denied (1902) 22 Sup. Ct.
U. S. 699, 46 L. Ed. 765.
ense was complete when de-
broke into a post office or
used in whole or in part as a
e with intent to commit lar-
other depredation. Anderson
(D. C. 1912) 193 Fed. 499.

nt.—Under R. S. § 5478 (em-
rein), making it a criminal of-
forcibly break into, or attempt
into, any post office or any
used in whole or in part as a
e, with intent to commit there-
y or other depredation," in-
ommit larceny or other depre-
the part used as a post office
sential ingredient; and where
ffice was kept within a room
mercantile purposes, separated
remainder by a fence or par-
eaking and entering such room
ing property from a safe there-
gh including post office funds,
warrant a conviction thereun-
s it is shown that the safe was
he inclosure used as the post
Sorenson v. U. S. (1909) 168
, 94 C. C. A. 181.
S. § 5478 (embodied herein),
g for the punishment of any
who shall break into any build-
in part as a post office, "with
to commit therein larceny,"
" refers to that part of the
used for a post office, and the
is committed by breaking into
t of the building with intent to
larceny in the part so used. U.
unders (D. C. 1896) 77 Fed.

lso, preceding note.

t of building not used as post
A contention that an offense
the post office, situated in a
used for other purposes and
ned by the United States, is
inst the property of the United
held untenable. In re Byron
1883) 18 Fed. 722, 723.
endant cannot be convicted un-
S. § 5478 (embodied herein),
it an offense against the Unit-
es to "forcibly break into, or
to break into, any post office,
building used in whole or in
a post office, with intent to
therein larceny, * * *"
the uncontradicted evidence
hat the breaking into, the entry,
larceny were neither of them
part of the building used as a
fice. U. S. v. Shelton (C. C.
00 Fed. 831.

risdiction of offense under state
. S. § 5328 (post, § 10500), pro-
hat nothing in this title shall im-
pair the jurisdiction of the courts of the several states under the laws thereof. Comp. Laws Mich. § 11547, provides the punishment for any person who shall break and enter an office, not adjoining to or occupied as a dwelling house, with intent to commit larceny. Held that, where an information charged an offense within section 11547, the state courts had jurisdiction, and the description of the apartment entered as a post office, in conformity with the fact, would not give the federal courts exclusive jurisdiction. People v. Burke (Mich. 1910) 126 N. W. 446.

6. Felony or misdemeanor.—R. S. § 5478 (embodied herein), making the breaking into a post office a crime punishable by a fine and by imprisonment at hard labor for not more than five years, creates a purely statutory offense "against the operation of the government," which was unknown to the common law, and is therefore not within the class of crimes known as felonies at the common law, and in the absence of any definition in the statute must be classed as a misdemeanor, and not a felony. Considine v. U. S. (1901) 112 Fed. 342, 50 C. C. A. 272, writ of certiorari denied (1902) 22 Sup. Ct. 938, 184 U. S. 699, 46 L. Ed. 765.

7. Indictment.—An indictment charging that defendant "in the county of Licking, in the state of Ohio, * * * did then and there * * * break into a building, then and there used in part as a post office of the United States, to wit, the post office at Granville," etc., is sufficiently specific in locating the place of the offense. Considine v. U. S. (1901) 112 Fed. 342, 50 C. C. A. 272, writ of certiorari denied (1902) 22 Sup. Ct. 938, 184 U. S. 699, 46 L. Ed. 765.

R. S. § 5478 (embodied herein), which provides for the punishment of any person who breaks into a building used in part as a post office, with intent to commit larceny therein, interpreted as if it read with intent to commit larceny in the part of said building used as a post office, and a demurrer sustained to an indictment drawn upon said section in the words thereof, because in effect it charged that the breaking was done with the intent to commit larceny anywhere in the building. U. S. v. Campbell (C. C. 1883) 16 Fed. 233.

An indictment does not charge an offense under R. S. § 5478 (embodied herein), making it a criminal offense against the United States to "forcibly break into, or attempt to break into, any post office, or any building used in whole or in part as a post office, with intent to commit therein larceny," where it charges the breaking into a building used in part as a post office

with intent to commit larceny "in said building," but fails to charge an intent to commit larceny in that part of the building used as a post office, to which part only the statute applies. U. S. v. Martin (C. C. 1905) 140 Fed. 256.

An indictment under R. S. § 5478 (embodied herein), charging that defendant broke into a building used in part as a post office, "with intent to commit therein larceny," and did then and there steal moneys belonging to the post office department of the United States, is sufficient without charging that the intent was to commit larceny in that part of the building used as a post office, and that the breaking and entering was into that part. U. S. v. Williams (D. C. 1893) 57 Fed. 201, distinguishing U. S. v. Campbell (C. C. 1883) 16 Fed. 233.

An entry into a postmaster's room in the post office building, and a theft of postage stamps by opening the locked vault in which they were kept, constitute a forcible breaking and entry into a post office in a part of the post office building, punishable under R. S. § 5478 (embodied herein). Breaking into such a room with the intent to commit larceny, and the actual stealing of stamps, constitute separate offenses under R. S. §§ 5475, 5478 (this compilation, §§ 10360, 10362); but when both are parts of the same transaction, a single count stating these facts is not fatally bad, and any objection thereto is a question of practice not sufficient to prevent removal of the prisoner to the proper place for trial. U. S. v. Yennie (D. C. 1896) 74 Fed. 221.

8. Evidence.—In a prosecution for breaking into a post office the government introduced testimony tending to show that defendant and three others registered at a hotel in a city a few miles from the place where the offense was committed, on the preceding day, and went together to such place in the evening, the offense being committed that night. There was also evidence tending to show that defendant had registered for himself and another of the party under assumed names. Held, that proof of such registration was competent, as a circumstance bearing on the guilt of the accused, and that on proof that the leaf containing the names had been removed from the register by some person unknown, and could not be found, a tracing made by a government inspector before the mutilation of the register, and shown to be an accurate representation of the signatures, was admissible as secondary evidence. Considine v. U. S. (1901) 112 Fed. 342, 50 C. C. A. 272, writ of certiorari denied (1902) 22 Sup. Ct. 938, 184 U. S. 699, 46 L. Ed. 765.

The competent evidence on a trial for breaking and entering a building used in part as a post office, and stealing property therein, held insuffic to sustain a conviction. Sorenson U. S. (1909) 168 Fed. 785, 94 C. C. 181.

On a trial for breaking and ente a building used in part as a post of weapons and implements found on cused's person when arrested, 18 d after the burglary and 19 miles dist from the place, were not admissible evidence against him, where it was shown that such articles were u when the burglary was committed, that accused was in the vicinity at near the time of its commission.

Coin or bank notes, found in possession of a defendant after a ceny has been committed, must clearly identified as the stolen prop ty, in order to give rise to a presu tion of guilt. U. S. v. Candler (D. 1894) 65 Fed. 308.

9. Money found on person of burg—The United States cannot retain m ey found on the person of one pleads guilty to burglary of a post fice without identifying it as that s en; and money so retained may be covered. Ferguson v. U. S. (D. 1894) 64 Fed. 88, judgment affirm U. S. v. Ferguson (1897) 78 Fed. 1 24 C. C. A. 1.

See, also, preceding note.

10. Conviction as bar to prosecut by state for burglary.—That accu was prosecuted and convicted of fo bly breaking and entering a post fice with intent to commit larc therein, would not justify a plea former conviction to bar a subsequ prosecution by state authorities burglary under an indictment charg the same facts. State v. Moore (Io 1909) 121 N. W. 1052.

11. Conviction of burglary and ceny or robbery.—Persons steal stamps and postal funds from a p office after breaking commit two tinct offenses which may be separat charged and punished, under this tion and § 10360, ante. Morgan v. vine (1915) 35 Sup. Ct. 712, 237 S. 632, 59 L. Ed. 1153.

One indicted in one count for vi tion of R. S. § 5478 (embodied here and in another count for a violation R. S. §§ 5456, 5475 (this compilati §§ 10213, 10360), may be convicted the offense charged in the first co without a conviction of the offe charged in the second count, or be convicted of the offense charged the second count without a convict of the offense charged in the f count, and sentence may be imposed cordingly. Munson v. McClaug (1912) 198 Fed. 72, 117 C. C. A. 1 42 L. R. A. (N. S.) 302.

A defendant cannot be convicted breaking and entering a post office w intent to commit larceny, and also

ng the larceny, where both e committed at the same time a continuous transaction. v. McClaughry (1913) 209 , 126 C. C. A. 540.

so, note post.

ntence and punishment.—A under R. S. § 5475, ante, § or stealing post office proper- nder R. S. § 5478 (embodied for breaking and entering a e, is fatally defective unless it imprisonment "at hard labor" ed by each section. Sorenson (1909) 168 Fed. 785, 94 C. C.

defendant was convicted of of a post office building with commit larceny, and of lar- nmitted at the same time and rt of a continuous act, under counts of the same indictment, to R. S. §§ 5456, 5475, 5478 mpilation, §§ 10213, 10360, and was sentenced to separate nts, the sentence for larceny , so that, after defendant had the sentence for burglary, he was entitled to release. Munson v. McClaughry (1912) 198 Fed. 72, 117 C. C. A. 180, 42 L. R. A. (N. S.) 302.

Where petitioner was indicted for breaking and entering a post office in violation of R. S. §§ 5456, 5478 (this compilation, §§ 10213, 10362), and in another count of the same indictment with larceny of postage stamps, and was convicted on both counts, the court had jurisdiction to impose a cumulative sentence on each. Anderson v. Moyer (D. C. 1912) 193 Fed. 499.

Where accused was convicted on two counts of burglarizing different post offices, in violation of R. S. § 5478 (embodied herein), a single sentence imposing double the maximum penalty for a single offense, though erroneous, was not a nullity. Howard v. Moyer (D. C. 1913) 206 Fed. 555; Blake v. Same, Id. 559, decree affirmed (1913) 208 Fed. 678, 125 C. C. A. 576.

Cited without definite application, Ex parte Peters (C. C. 1880) 12 Fed. 461, 464; U. S. v. Hall (D. C. 1892) 53 Fed. 352, 355; U. S. v. Hughes (D. C. 1902) 175 Fed. 238.

3. (Crim. Code, § 193.) Unlawfully entering post-office car, .; punishment for.

ever, by violence, shall enter a post-office car, or any apart- n any car, steamboat, or vessel, assigned to the use of the ervice, or shall willfully or maliciously assault or interfere y postal clerk in the discharge of his duties in connection with r, steamboat, vessel, or apartment thereof, or shall willfully aid st therein, shall be fined not more than one thousand dollars, isoned not more than three years, or both.

t March 3, 1903, c. 1009, § 5, 32 Stat. 1176. Act March 4, 1909, c. 321, , 35 Stat. 1125.

4. (Crim. Code, § 194.) Stealing, secreting, embezzling, ., mail matter; punishment for.

ever shall steal, take, or abstract, or by fraud or deception from or out of any mail, post-office, or station thereof, or uthorized depository for mail matter, or from a letter or rrier, any letter, postal card, package, bag, or mail, or shall t or remove from any such letter, package, bag, or mail, any or thing contained therein, or shall secrete, embezzle, or destroy h letter, postal card, package, bag, or mail, or any article or ontained therein; or whoever shall buy, receive, or conceal, in buying, receiving, or concealing, or shall unlawfully have in session, any letter, postal card, package, bag, or mail, or any or thing contained therein, which has been so stolen, taken, em- or abstracted, as herein described, knowing the same to have stolen, taken, embezzled, or abstracted; or whoever shall take ter, postal card, or package, out of any post-office or station , or out of any authorized depository for mail matter, or from er or mail carrier, or which has been in any post-office or sta- reof, or other authorized depository, or in the custody of any r mail carrier, before it has been delivered to the person to whom directed, with a design to obstruct the correspondence, or to the business or secrets of another, or shall open, secrete, em-

bezzle, or destroy the same, shall be fined not more than two thousa dollars, or imprisoned not more than five years, or both.

R. S. §§ 3892, 5469, 5470. Act March 4, 1909, c. 321, § 194, 35 Stat. 112

Notes of Decisions

1. Validity of statute.
2. Purpose or design of statute.
3. Larceny or embezzlement in general.
4. Intent.
5. Stealing letter from postal car as felony.
6. Decoy letters or packets.
7. Letter adressed to fictitious person.
8. Post office.
9. Branch post office.
10. Meaning of term "mail."
11. Mail carrier.
12. Promissory notes within meaning of former law.
13. Receiving or buying stolen property.
14. Taking and opening letters or packets in general.
15. Misdemeanor at common law.
16. Publication of contents of letter.
17. Letter as within custody of United States in general.
18. Surrender of letter to writer or his agent.
19. Delivery of letter to addressee or his agent.
20. Depositories for mail.
21. Remedies of government.
22. Principals and accessories.
23. Infamous crime.
24. Venue.
25. Indictment, proof, and variance.
26. Evidence.
27. Questions for jury.
28. Sentence and punishment.
29. Civil liability.

See notes under the following section.

1. Validity of statute.—R. S. § 3892 (embodied herein), is a valid exercise of the power of congress to protect the mails of the United States. U. S. v. Bullington (C. C. 1908) 170 Fed. 121.

2. Purpose or design of statute.—The purpose of R. S. §§ 5467-5470 (this compilation, §§ 10364, 10365), is to protect the mails against plundering, pilfering, or other interference, or meddling with their contents. Thompson v. U. S. (1913) 202 Fed. 401, 120 C. C. A. 575, 47 L. R. A. (N. S.) 206.

The act of congress was designed to protect letters sent by mail from embezzlement, and from interference with the improper designs therein enumerated, until they reached their destination by actual delivery to the person entitled to receive them. U. S. v. McCready (C. C. 1882) 11 Fed. 225.

3. Larceny or embezzlement in general.—A post office clerk who steals a letter or package from the post office is punishable under Act March 3, 1825, § 22. U. S. v. Marselis (C. C. 1849) Fed. Cas. No. 15,724; Id. (D. C. 1848) Fed. Cas. No. 15,725.

A person who receives a letter from a letter carrier, addressed to another, without fraud or artifice, is not liable to indictment under Act March 3, 1825, § 22, where he opens the same and embezzles money therefrom. U. S. Parsons (C. C. 1849) Fed. Cas. N 16,000.

The word "person," as used in act of congress punishing any pers who shall steal, etc., held to inclu slaves as well as freemen; and su construction does not render the unconstitutional. U. S. v. Amy (C. 1859) Fed. Cas. No. 14,445.

An errand boy authorized to recei letters from the mail, who embezzl the contents of a letter so received, not liable under Act March 3, 1825, 22, as the taking was lawful. U. S. Driscoll (D. C. 1869) Fed. Cas. N 14,994.

A person is not guilty of taking a embezzling a letter (R. S. § 3892, e bodied herein) where he took from t post office and retained a register letter addressed in his care to a pers who was dead, and retained a draft closed therein. U. S. v. Thoma (D. 1879) Fed. Cas. No. 16,471.

The offenses denounced by R. S. 5469, 5470 (embodied herein), are confined to the larceny of articles fr the mails, or receiving articles stol therefrom; and it is not essential aver or prove all the ingredients of th offense to sustain the indictment. A taking or abstracting the articles, receiving them, when so taken, wi the object described in the statute "open," "secrete," "destroy," "emb zle," or "steal," is within the statu U. S. v. Jolly (D. C. 1888) 37 Fed. 1

4. Intent.—The stealing or taking letter, etc., under Act March 3, 1825 22, means a taking with a criminal tent, and not a taking through mistal or with an innocent intent. U. S. Pearce (C. C. 1837) Fed. Cas. No. 1 020.

To constitute the crime of steali the mail, under R. S. § 5469 (embodi herein), there must be an intent to st at the time the mail matter is tak U. S. v. Inabnet (D. C. 1890) 41 F 130.

5. Stealing letter from postal car felony.—Stealing a letter from a pos car is not a felony. U. S. v. Falk hainer (C. C. 1884) 21 Fed. 624.

6. Decoy letters or packets.—In indictment charging a letter carri with embezzling and stealing lett containing money, it is no defense t such letters were decoy letters. Mo gomery v. U. S. (1896) 16 Sup. 797, 162 U. S. 410, 40 L. Ed. 1020.

A "decoy or test" was prepared follows: A post-office inspector wr a letter, placed it in an envelope, seal and directed it to a fictitious pers and to a place where there was

e; then wrapped it up in a r, and inclosed both letter and an ordinary newspaper wrap- wrapper sealed, and properly and directed as the envelope This packet was then handed -office official, to be placed by a "decoy or test," in what is the "nixes basket," a recep- apparently worthless and un- matter, said "nixes" to be nd examined by a postal em- ho was to send any letter or f value found therein to an- ficial to be forwarded to the er office. Held, that this was nailing of the packet, and it become "mail matter," within ning of R. S. §§ 5467, 5469 mpilation, §§ 10364, 10365), g theft of mail matter. U. S. (C. C. 1887) 30 Fed. 818.

ter addressed to fictitious per- letter addressed to a fictitious known to be such, is a "letter," he meaning of R. S. §§ 5467, his compilation, §§ 10364, 10- aking the stealing of a letter e mail or post office a penal Goode v. U. S. (1895) 16 Sup. 138, 159 U. S. 663, 40 L. Ed.

t office.—To constitute a post nder Act March 3, 1825, § 22, eed not be a building or room rt. The post office may be a unk, or box, carried from one r building to another. U. S. v. s (C. C. 1849) Fed. Cas. No.

place of deposit of the mailable would, in such case, constitute t office, so that taking anything m would be within Act March , § 22. Id.

anch post office.—The term post office," as used in R. S. (embodied herein), making the of a letter from the mail or fice or "branch post office" a fense, includes every place with- office where letters are kept regular course of business, for on, stamping, sorting, or deliv- Goode v. U. S. (1895) 16 Sup. 138, 159 U. S. 663, 40 L. Ed.

onvict a post office employé of g a letter from a branch post here being evidence that the of- s been known as a post office , and has been used as such for and is a post office de facto, it is ssary to show that it was regu- stablished as a branch post office . Id.

Meaning of term "mail."—The "mail," as used in R. S. § 5469 died herein), relative to larceny the mails, may mean either the body of matter transported by stal agents, or any letter or pack- orming a component part of it. U. S. v. Inabnet (D. C. 1890) 41 Fed. 130.

11. Mail carrier.—A letter carrier who delivers letters from house to house is a mail carrier, within Act March 3, 1825, § 22. U. S. v. Parsons (C. C. 1849) Fed. Cas. No. 16,000.

12. Promissory notes within meaning of former law.—Treasury notes held to be promissory notes within the meaning of the former law. U. S. v. Hardyman (1839) 13 Pet. 176, 178, 10 L. Ed. 113.

13. Receiving or buying stolen property.—It is an offense under Act March 3, 1825, § 45, to receive or buy an article knowing it to have been stolen from the mail. U. S. v. Keene (C. C. 1853) Fed. Cas. No. 15,512.

The possession of gold coin received at the mint in exchange for gold dust stolen from the mails is not a possession of such dust. U. S. v. Montgomery (D. C. 1875) Fed. Cas. No. 15,800.

14. Taking and opening letters or packets in general.—The provision in the statute that nothing therein shall authorize any person to open any letter or sealed matter of the first class "not addressed to himself" does not vitiate the evidence of a post office inspector, who opens a letter addressed to himself under a fictitious name. Andrews v. U. S. (1896) 16 Sup. Ct. 798, 799, 162 U. S. 420, 40 L. Ed. 1023.

Act March 3, 1825, § 22, in relation to opening letters to obstruct correspondence, etc., applies only where the possession of letters was obtained wrongfully from the post office, or from a mail carrier. U. S. v. Parsons (C. C. 1849) Fed. Cas. No. 16,000.

A person who takes a letter out of the post office and reads it by authority of the addressee, where it was also intended for him, does not violate the post office law. U. S. v. Tanner (C. C. 1854) Fed. Cas. No. 16,430.

It is an offense to open a letter, which has been in the post office, before delivery to the addressee, with intent to obstruct his correspondence, or pry into his business or secrets, though the letter was not sealed, and was written by defendant himself, and the addressee's name was not correctly given. Act March 3, 1825, § 22. U. S. v. Pond (C. C. 1855) Fed. Cas. No. 16,067.

A person who, without artifice, receives a letter for another, addressed in his care, and opens and destroys the same, cannot be convicted of opening the same with the design to obstruct the correspondence, etc., of another. U. S. v. Mulvaney (C. C. 1859) Fed. Cas. No. 15,833.

Where a letter carrier left a letter in the hall of the residence of the person to whom it was addressed, and the defendant opened it with intent to pry into the business and secrets of the owner of the letter, held to be a violation of section 3892 of the Revised

Statutes (embodied herein), and that the protection of a letter so situated is within the constitutional power of congress. U. S. v. McCready (C. C. 1882) 11 Fed. 225.

After the deposit of a letter in the post office, no one except the writer or the addressee, or some one authorized by them, has the right, while it is there, to open it, for the mere purpose of ascertaining its contents. U. S. v. Eddy (D. C. 1858) Fed. Cas. No. 15,024.

Neither the postmaster nor other officers have any authority to open a letter once placed in the post office under the pretext that there might be something improper or even criminal therein. Id.

The delivery of a letter to an errand boy is a delivery to his employer, within Act March 3, 1825, § 22, and he cannot be convicted of opening the same "before it shall have been delivered to the person to whom it is directed." U. S. v. Driscoll (D. C. 1869) Fed. Cas. No. 14,994.

The writer of a letter which has passed from the office where mailed has no right to intercept it, or authorize its delivery to a person other than the one to whom it is directed. U. S. v. Nutt (D. C. 1877) Fed. Cas. No. 15,904.

It is no defense that the letter related in part to defendant's business, or that in good faith he believed that the letter was of no value to the person to whom it was addressed, even if such be the fact, or that the letter was voluntarily delivered to defendant by the postman. Id.

Proof of an intentional nondelivery of a letter so taken from a post office may be sufficient. Id.

On an indictment for taking a letter from the post office with intent to obstruct correspondence (R. S. § 3892, embodied herein), defendant may be convicted without evidence of an unlawful, clandestine, or fraudulent taking. Id.

A person indicted for such taking of a letter with intent to pry into the business or secrets of another cannot be convicted if he knew the contents of the letter before he received it. Id.

Where a letter is addressed to a person, "care of A. B.," one who, without authority, takes the letter from A. B. and opens it, is liable to the penalty prescribed by R. S. § 3892 (embodied herein), for taking a letter "with a design to obstruct the correspondence or pry into the business secrets of another." U. S. v. Hilbury (D. C. 1887) 29 Fed. 705.

The expression in R. S. § 5469 (embodied herein), "take the mail or any letter or packet therefrom or from any postoffice * * * with or without the consent of the person having custody thereof," means a wrongful, or unlawful taking. In re Burkhardt (D. C. 1887) 33 Fed. 25. 27.

Act March 3, 1825. § 22 (4 Stat. 108), punishes one who shall take the mail, or any letter or packet therefrom, from any post office, whether with without the consent of the person h ing custody thereof, and shall open, e bezzle, or destroy any such mail packet, the same containing any arti of value or evidence of any debt, Held, that it was not material to an fense thereunder that the property leged to have been taken in violat thereof was mailable or not. Beery U. S. (1873) 2 Colo. 186.

15. Misdemeanor at common law Breaking open a private letter, publishing its contents, is a misdeme or at common law. In re Noah (N. 1818) 3 City Hall Rec. 13; In re G Id. 61.

16. Publication of contents of lett —It is not a public offense, however, publish the contents of a letter wh came innocently into the possession the publisher after being opened. In Noah (N. Y. 1818) 3 City Hall Rec.

17. Letter as within custody of U ed States in general.—A letter is wi in the custody of the United Sta from the time it is received by the po al authorities until its possession surrendered to the person entit thereto. U. S. v. Bullington (C. 1908) 170 Fed. 121.

R. S. § 3892 (embodied here makes it an offense to take any let out of the post office before delivery the addressee, with a design to obstr the correspondence, or to pry into business or secrets of another, or secrete or embezzle the same. A po master, having written, stamped, deposited a letter in the mail, withdr it and delivered it to defendant, agreed to take it to the addressee; defendant, instead secreted or destr ed the letter. Held, that the postm ter's withdrawal of the letter termin ed the government's authority over and that its subsequent destruct constituted no offense. Id.

18. Surrender of letter to writer his agent.—A letter must be surrend ed by the postal authorities to the w er or his rightful agent, if called for any time before it is placed in tran and such a delivery terminates the thority of the government over it. S. v. Bullington (C. C. 1908) 170 F 121.

19. Delivery of letter to addressee his agent.—A letter directed to a p son, "care Kimball House," when livered by a postal carrier at the of of the Kimball House, is "delivered the person to whom it was address within the meaning of R. S. § 3892 (bodied herein); and the duty of postal authorities with respect to s letter having been fully performed accordance with the direction of sender, a subsequent wrongful tak of such letter by another is not an fense under said section, nor one nizable by the courts of the Un

U. S. v. Lee (C. C. 1898) 90
6.
language of R. S. § 3892 (em-
herein), is very broad and is
t to cover the secretion or em-
ent of a letter before it has
the addressee, though it may
een rightfully delivered by the
authorities. U. S. v. Bullington
1908) 170 Fed. 121.
ery of a letter by the postal au-
s to the agent of the addressee
tes the government's authority
Id.
§ 3892 (embodied herein), re-
to the abstraction or embezzle-
f letters, does not extend to the
a letter stolen from the desk
addressee after being placed
y the mail carrier. U. S. v. Saf-
. C. 1895) 66 Fed. 942.
a letter has been delivered by
tal authorities to the person in
care it is addressed, it is no lon-
he custody of the United States,
ject to its jurisdiction; and the
and destruction of such letter,
abstraction of its contents, after
been so delivered, though read-
to be forwarded, but before it
en again deposited in the mail,
an offense, under R. S. § 3892
ied herein). U. S. v. Huilsman
1899) 94 Fed. 486.

Depositories for mail.—The top
ide of a letter box, attached to
post, is not an authorized de-
y for mail matter, the taking of
therefrom is punishable under
5469 (embodied herein). (1883)
Atty. Gen. 524.
postmaster general cannot by an
to letter carriers directing them
ard to the collection of papers
they may find upon the outside
r boxes, make the tops of those
authorized depositories for mail
. Id.

Remedies of government.—The
ment, as intrusted with a com-
m, so to speak, by the sender
etter, and as parens patriæ, is
and legally entitled to pursue its
es against the thief, not only un-
criminal law and by the admin-
e method of search and seizure
covery, but through the civil tri-
as well. (1901) 23 Op. Atty.
76.

Principals and accessories.—See
under § 10506, post.

Infamous crime.—The crime de-
d by R. S. § 5469 (embodied
), is not an infamous crime and
e prosecuted by information. U.
Vynn (D. C. 1882) 9 Fed. 886.

Venue.—Where defendant was
d with larceny of the United
mails committed in Park county,
First judicial district, he may be
d and tried in Arapahoe county,
same district. Beery v. U. S.
2 Colo. 186.

25. Indictment, proof, and variance.—When a note is given payable in foreign coin, the value of such coin in current money must be averred, and under such averment evidence of the value may be received. U. S. v. Hardyman (1839) 13 Pet. 176, 178, 10 L. Ed. 113.

In an indictment for embezzling a letter, failure to allege that the letter had not been delivered is not a jurisdictional error, that may be taken advantage of on habeas corpus. Wight v. Nicholson (1890) 10 Sup. Ct. 487, 490, 134 U. S. 136, 33 L. Ed. 865.

Where an indictment for embezzling letters containing money charged that the letters came into defendant's possession as a railroad postal clerk, to be delivered to the persons addressed, and the evidence showed that the letters and money belonged to inspectors, who mailed them and intercepted them before they reached the addressee, the variance was immaterial. Montgomery v. U. S. (1896) 16 Sup. Ct. 797, 162 U. S. 410, 40 L. Ed. 1020.

Where an indictment charged defendant with extracting from the mails, embezzling, and stealing the contents of a package addressed to "L. Krowder," evidence that the package was addressed to "L. Krower" did not constitute a variance, such names being idem sonans. Alexis v. U. S. (1904) 129 Fed. 60, 63 C. C. A. 502.

The provision of R. S. § 5469 (embodied herein), which makes it a criminal offense to steal from a post office any letter, is designed to preserve the sanctity of the mails, and not merely to punish the theft of another's property and an indictment thereunder is not governed by the rules applicable to one for larceny, but is sufficient if it charges that the defendant unlawfully stole from a designated post office a letter, described sufficiently for its identification, and it is unnecessary to aver that it contained anything of value, or whose property it was, or that it was in the post office for transmission through the mails. Bowers v. U. S. (1906) 148 Fed. 379, 78 C. C. A. 193.

An indictment for receiving and concealing money stolen from the mails in violation of R. S. § 5470 (embodied herein), held not objectionable for failure to charge the intent with which the money was received and concealed or the name of the owner. Thompson v. U. S. (1913) 202 Fed. 401, 120 C. C. A. 575, 47 L. R. A. (N. S.) 206.

In prosecutions under R. S. §§ 5467, 5469, 5470 (this compilation, §§ 10364, 10365), providing for the protection of mail matter, it is not necessary to allege or prove all the ingredients of larceny. Id.

The indictment need not allege any venue of the lawful intent, nor that the opening was unlawful, nor that the addressee was a real person. U. S. v.

Pond (C. C. 1855) Fed. Cas. No. 16,-067.

An indictment under Act March 3, 1825, § 22, which alleges that defendant did secrete "and" embezzle a certain letter, is not defective. U. S. v. Sander (C. C. 1855) Fed. Cas. No. 16,219.

Where the offense charged is stealing a letter containing a treasury note, it is not necessary for the indictment to allege the ownership of the note. U. S. v. Falkenhainer (C. C. 1884) 21 Fed. 624.

Where two are indicted together for receiving, etc., stolen property, one may be found guilty of a separate receiving, etc., when the other has been discharged on a plea of prior conviction. U. S. v. Montgomery (D. C. 1875) Fed. Cas. No. 15,800.

An indictment for receiving, concealing, and aiding in concealing, gold dust stolen from the mails, charges but one crime, and proof of either warrants a conviction. Id.

An indictment charged that "at Fife Lake, in Grand Traverse county, within this division of the district, defendant took from the United States post office a letter mailed at said post office at Fife Lake, directed to a person named, at Kalamazoo, which is also within the district." Held, that this charged with reasonable certainty that the letter was taken from the post office at Fife Lake. U. S. v. Davis (D. C. 1888) 33 Fed. 865.

R. S. § 5469 (embodied herein), defines a class of crimes which consist, essentially, in an abstracting from the United States mails of letters and packages containing things of value, whereas R. S. § 3892 (embodied herein), under which the indictment against defendant was found, declares the taking of a letter from the mails an offense, "although it does not contain any article of value, or evidence thereof." Held, that the nonexistence of anything of value in the letter taken is not an essential characteristic of the offense intended by R. S. § 3892, so as to make an indictment under it defective which does not allege that the letter taken contained nothing of value. Id.

Indictments against postal employés for embezzling and secreting valuable letters need not allege a fraudulent intent. The offense is a mere misdemeanor, and it is sufficient to set it forth in the language of the statute. U. S. v. Atkinson (D. C. 1888) 34 Fed. 316.

An indictment under R. S. § 5470 (embodied herein), imposing a penalty for aiding in buying or receiving articles of value stolen or embezzled from the mail, which charged that defendant aided in buying a draft knowing that the same was so stolen "and" embezzled, was insufficient. U. S. v. Thomas (D. C. 1895) 69 Fed. 588.

Where an indictment for abstracti mail matter from the mails, in viol tion of R. S. § 5469 (embodied herein charged that the defendant did "stea and take from out of a mail the pac age described, it sufficiently charged felonious intent. U. S. v. Trosper (1 C. 1904) 127 Fed. 476.

An indictment for violating R. S. 5469 (embodied herein), prohibiti the abstracting of mail matter from t mails, was not objectionable for failu to charge the ownership of the pro erty contained in the package abstrac ed, since the offense defined in su section, though including larceny common law, is not restricted to su offense. Id.

To constitute an offense under R. § 5469 (embodied herein), which mak punishable as a crime the stealin taking, or obtaining by fraud of a letter or other mail matter containi anything of value from any post offi or other depository of mail, and t embezzlement of the same or its co tents, the taking must be either frau ulent or unlawful, and must be charged in the indictment. An indic ment which leaves it open to inferen that the letter charged to have be taken may have been delivered to a received by defendant, though a mutu mistake, is insufficient to charge an o fense thereunder. U. S. v. Meye (D. C. 1906) 142 Fed. 907.

Since every stealing involves a ta ing, an indictment under Act March 1825 (4 Stat. 108), for taking the ma or any letter or packet therefrom, from any post office, and embezzling destroying it, charging that defenda "stole" from the post office a pack containing specified matter, intended be conveyed by post, etc., is sufficie Beery v. U. S. (1873) 2 Colo. 186.

An indictment under R. S. § 54 (embodied herein), providing that "a person who shall take the mail * * from any postoffice, * * * a * * * embezzle * * * such mai containing "any note, draft," etc., "sh be punished," etc., which failed to a lege that the taking was wrongful a unlawful, is defective. U. S. v. Smi (1895) 11 Utah, 433, 40 Pac. 708.

26. Evidence.—To convict a post o fice employé of stealing a letter fro a branch post office, there being ev dence that the office has been known a post office station, and has been us as such for years, and is a post offi de facto, it is unnecessary to sho that it was regularly established as branch post office by law. Goode v. S. (1895) 16 Sup. Ct. 136, 138, 159 S. 663, 40 L. Ed. 297.

On a trial for larceny from the ma the best evidence of mailing is that the person who mailed the letter, a of its loss of the person to whom was addressed. U. S. v. Crow (C. 1856) Fed. Cas. No. 14,895.

e a postal clerk was charged ealing letters from a postal car, ere was testimony tending to at the letters stolen were taken straight package, which he had t to disturb, held, that evidence missible to show what the con- f the package was when it was d, and that the letters it con- which were not stolen, were ad- in evidence for that purpose, . Falkenhainer (C. C. 1884) 21 4.

§ 5468, providing that the fact y letter has been deposited in t office shall be evidence that er "was intended to be convey- mail," does not make such de- onclusive evidence of that fact. Matthews (C. C. 1888) 35 Fed. L. R. A. 104.

nce is not admissible that the nt was caught in the act of money from the post office six months after the letter had olen, especially as it was not that he could have had access to tter in the course of his official or otherwise. U. S. v. Mulhol- . C. 1892) 50 Fed. 413.

uestions for jury.—Where a boy 12 years is tried under R. S. § embodied herein), for stealing from the mail, and it appears took them from boxes in the fice, carried them home, threw arelessly aside, without opening ilating them, and, when asked hem by the postmaster, at once them back, it is a question for y whether he took them with l intent, or from a spirit of mischief, and they may convict acquit him accordingly. U. S. on (D. C. 1891) 44 Fed. 593.

entence and punishment.—The e of a defendant, convicted un- arate counts of an indictment, R. S. § 5469 (embodied herein), eny of a mail pouch containing ed letters, and larceny of regis- etters and embezzlement of their s at the same time and place, to separate punishments is void as to the excess above the maximum punishment imposed for a single offense. Stevens v. McClaughry (1913) 207 Fed. 18, 125 C. C. A. 102.

The stealing of letters from a postal car by one in the postal service is an offense punishable by imprisonment, under R. S. § 5469 (embodied herein). U. S. v. Falkenhainer (C. C. 1884) 21 Fed. 624.

29. Civil liability.—The writer of a letter has the property therein, and may control its use, and is entitled to an injunction to restrain an improper use thereof by the addressee. Folsom v. Marsh (C. C. 1841) Fed. Cas. No. 4,901; U. S. v. Tanner (C. C. 1854) Fed. Cas. No. 16,430.

Where defendant got a letter from the post office addressed to plaintiff, and negligently retained possession of it for several days, he owed plaintiff the duty enjoined by R. S. § 3892 (embodied herein), providing that any person who shall obstruct the correspondence of another shall be punishable by a fine, and on breach of this duty he was liable for damages proximately resulting therefrom. Cohen v. Cohen (1901) 63 S. W. 544, 26 Tex. Civ. App. 315.

Where a letter addressed to plaintiff was delivered by mistake to defendant, who negligently retained possession thereof for several days, defendant was liable for the damages sustained by reason of plaintiff's failure to sell certain property which would have been sold but for the negligent retention of the letter. Id.

Cited without definite application, Crowley v. U. S. (1904) 24 Sup. Ct. 731, 732, 194 U. S. 461, 48 L. Ed. 1075; Ex parte Peters (C. C. 1880) 12 Fed. 461, 464; U. S. v. Denicke (C. C. 1888) 35 Fed. 407, 408; U. S. v. Delany (C. C. 1893) 55 Fed. 475, 476; U. S. v. Mayfield (C. C. 1893) 59 Fed. 118, 119; Ex parte Rickelt (C. C. 1894) 61 Fed. 203, 204; In re Fox (D. C. 1892) 51 Fed. 427, 428.

55. (Crim. Code, § 195.) Postmaster or postal employee de- ining, destroying, or embezzling mail matter; punishment for.

oever, being a postmaster or other person employed in any tment of the postal service, shall unlawfully detain, delay, or ny letter, postal card, package, bag, or mail intrusted to him ich shall come into his possession, and which was intended to veyed by mail, or carried or delivered by any carrier, messenger, or other person employed in any department of the postal serv- forwarded through or delivered from any post-office or sta- hereof established by authority of the Postmaster-General; or ecrete, embezzle, or destroy any such letter, postal card, package, r mail; or shall steal, abstract, or remove from any such let- ckage, bag, or mail, any article or thing contained therein, shall

be fined not more than five hundred dollars, or imprisoned not mo than five years, or both.

R. S. §§ 3890, 3891, 5467. Act March 4, 1909, c. 321, § 195, 35 Stat. 11

Notes of Decisions

1. Nature and elements of offenses in general.
2. Distinct offenses.
3. Mail carrier as employé.
4. Deputy postmaster as employé.
5. Stage driver as employé.
6. Intention to convey letters by mail.
7. Detention of mail.
8. Letter delivered to authorized agent.
9. Letters not containing value.
10. Letters not mailable.
11. Letter as ceasing to be mail matter.
12. Decoy letters or packages.
13. Letter with fictitious address.
14. Venue of offense.
15. Indictment or information, and issues, proof, and variance.
16. Evidence.
17. Question for jury.

1. Nature and elements of offenses in general.—A silver certificate issued by the United States is a "pecuniary obligation or security of the government," and "an article of value," within the meaning of R. S. § 5467 (embodied herein), and the secreting or destroying of a letter containing such a certificate, and the taking of such certificate from the letter, by a mail carrier, constitute embezzlement and larceny under said section. Bromberger v. U. S. (1904) 128 Fed. 346, 63 C. C. A. 76.

To constitute the offense, it is not necessary that the letters stolen should have been taken out of the post office building. U. S. v. Nott (C. C. 1839) Fed. Cas. No. 15,900.

A person who can discriminate a right from a wrong act is liable to punishment, and his acts are the best test of his sanity. U. S. v. Shults (C. C. 1854) Fed. Cas. No. 16,286.

R. S. § 5467 (embodied herein), is not confined to the offense of stealing or taking things out of a letter packet or bag, but includes the taking of the letter itself. U. S. v. Pelletreau (C. C. 1877) Fed. Cas. No. 16,023.

Under R. S. § 5467 (embodied herein), that only is embezzlement where the letter is in postal custody, is not yet delivered to the person to whom addressed, contains some one of the valuable things named in the statute, and such valuable thing is taken out of the letter or stolen. U. S. v. Baugh (C. C. 1880) 1 Fed. 784, 785.

By an omission in the statute (section 5467, R. S. [embodied herein]), the section does not cover the offense of embezzling a letter with valuable contents. It applies to the contents merely. U. S. v. Long (C. C. 1881) 10 Fed. 879.

It is a criminal offense, under R. S. § 3891 (embodied herein), for any one in the employ of any department of the postal service to unlawfully detain, delay, or open any mailable packet of merchandise which has come into his possession, and which is intended to conveyed by mail. U. S. v. Blackm (C. C. 1883) 17 Fed. 837.

A postmaster who takes money out a letter will be held guilty of embezz ment, though the addressee was an literate person, whose letters he w in the habit of reading to him. U. v. Bramham (D. C. 1878) Fed. C No. 14,636.

It is not material, under section 54 R. S. (embodied herein), how a lett intended to be conveyed by mail com into the possession of a post office e ployé. U. S. v. Hamilton (D. C. 188 9 Fed. 442.

The purpose of R. S. § 5467 (embo ied herein), is to prevent and puni any interference with the contents a letter in the custody of the mail; a a postmaster who takes money out a registered letter, and borrows it, wi the hope and expectation of returni it, and does return it, is within t terms of the statute. To authorize conviction, it need not be shown th the taking was with intent to ste U. S. v. Thompson (D. C. 1887) 29 Fe 706.

The only offense punishable under S. § 5467 (embodied herein), is "t stealing or taking" by a postal emplo of the articles enumerated in this se tion from the mail intrusted to hi which mail has been embezzled, secre ed, or destroyed by him. U. S. v. Gr ver (D. C. 1888) 35 Fed. 59.

R. S. § 5467 (embodied herein), pr vides: "Any person employed in a department of the postal service wh shall secrete, embezzle, or destroy a letter * * * which shall contain a note, bond, * * *"—but provides penalty after such clause. After semicolon, it further provides: "A such person who shall steal or ta away of the things aforesaid out of a letter, * * * shall be punished," et Held that, since there is no penalty a tached to the first clause, the sectio only covers the offense described in th second clause, of stealing or takin away. U. S. v. Hartley (D. C. 189 42 Fed. 835.

2. Distinct offenses.—Two classes offenses—one for embezzling lette containing articles of value, the oth for stealing the contents—were creat by R. S. § 5467 (embodied herein), pr viding that any person employed in t postal service who shall secrete, embe zle, or destroy any letter intrusted him, or which shall come into his po session, and which was intended to conveyed by mail, and which shall co tain any note, bond, draft, or any oth article of value, or who shall steal take any of such things out of any le

h shall have come into his pos- "and provided the same shall e been delivered to the parties n it is directed, shall be punish- imprisonment at hard labor for than one year nor more than rs," as is seen by resort to 17 18, § 279, for which the above was a substitute, and which, e words "to whom it is direct- ds "every such person shall, on on thereof, for every such of- e imprisoned at hard labor not n one nor more than five years." colon should be substituted for nma after the word "directed." Lacher (1890) 10 Sup. Ct. 625, S. 624, 33 L. Ed. 1080; Same v. (C. C. 1893) 55 Fed. 475; Same t (D. C. 1889) 38 Fed. 106.

§ 5467 (embodied herein), held te two distinct offenses so that not a necessary element of the described in the second clause e letter embezzled or the con- f which were stolen should be d to be conveyed by mail or de- by letter carrier, etc., as re- by the first clause, it being only ry that an indictment under the clause show that the letter was ich had come under the jurisdic- d into the possession of the post epartment and had not yet been ed to the person addressed. Hall S. (1898) 18 Sup. Ct. 237, 238, S. 632, 42 L. Ed. 607.

embezzlement of a letter and the of its contents are distinct of- under R. S. § 5467 (embodied . U. S. v. Taylor (C. C. 1874) as. No. 16,438.

r R. S. § 5467 (embodied here- ere may be a prosecution for a valuable thing out of a letter al custody, and also a prosecu- r embezzling the letter itself. U. Baugh (C. C. 1880) 1 Fed. 784,

ail carrier as employé.—A mail is within Act April 30, 1810, § nishing embezzlement by any per- employed in any of the depart- of the general post office." U. S. ew (C. C. 1826) Fed. Cas. No.

eputy postmaster as employé.— worn in as a deputy postmaster, andled the mail whenever he was the post office and felt inclined to is an employé within the meaning law. U. S. v. Brent (D. C. 1873) Cas. No. 14,640.

tage driver as employé.—Under R. 5467 (embodied herein) providing ny person employed in any depart- of the postal service who shall zle any letter intrusted to him, or shall come into his possession, as intended to be conveyed by mail ivered by any carrier, mail agent, agent, letter carrier, or other person employed in any department of the postal service, shall be guilty of robbing the mails, it was held that a stage driver employed by a stage company, which had a contract for carrying the mails, and who was sworn as a mail carrier, was an employé of the postal service, within the meaning of this section, though he was hired and paid by the stage company. U. S. v. Hanna (1887) 4 N. M. (Johns.) 216, 17 Pac. 79.

6. Intention to convey letters by mail.—A letter properly stamped, with the receiving stamp of the office thereon, and placed in a carrier's pigeonhole at a postal station with other letters addressed to a real person on his route, is "intended to be conveyed by mail," and its abstraction by the carrier and the taking of money therefrom constitutes an offense under R. S. § 5467 (embodied herein), although it was placed there by a postal inspector for the purpose of testing the carrier's honesty. Bromberger v. U. S. (1904) 128 Fed. 346, 63 C. C. A. 76.

To convict a postal employé, under R. S. § 5467 (embodied herein), of the offense of secreting, embezzling, and destroying a letter intrusted to him or which came into his possession, such letter must have "been intended to be conveyed by mail," or carried or delivered by a mail carrier, or other person employed in the postal service, or forwarded through or delivered from some post office established by the postmaster general. A letter is not intended to be conveyed by mail, when the postal authorities, acting in co-operation with the sender, intend, after the letter is put in the mail, to resume possession of it themselves, or to permit the sender to do so, before the letter reaches the hands of some carrier, messenger, or other postal employé, for delivery to the proper person. U. S. v. Matthews (C. C. 1888) 35 Fed. 890, 1 L. R. A. 104.

Letters stamped and postmarked as coming from other offices, but which in fact are placed upon the distributing table by the postmaster and an inspector, addressed to a company in the same town, which gets its mail from the office in a pouch of its own, are, if the postmaster and inspector do not intend to intercept them before they are delivered to the proper address, letters "intended to be conveyed by mail," within the meaning of R. S. § 5467 (embodied herein), making it an offense for any postal employé to embezzle any letter coming into his possession which was intended to be conveyed by mail, or to be forwarded through or delivered from any post office. Walster v. U. S. (C. C. 1890) 42 Fed. 891.

Unless the word "deposited" has some limited meaning a letter handed by one clerk to another at any stage of transmission for the purpose of forwarding

its delivery is intended to be conveyed by mail. Id.

See, also, Goode v. U. S. (1895) 16 Sup. Ct. 136, 138, 159 U. S. 663, 40 L. Ed. 297; Ennis v. U. S. (1907) 154 Fed. 842, 844, 83 C. C. A. 478; U. S. v. Hall (D. C. 1896) 76 Fed. 566, 567.

7. Detention of mail.—Act 1825, § 21, which prescribes a punishment for the detention of a letter or packet, refers to a letter or packet detained before it reaches the place of destination. U. S. v. Pearce (C. C. 1837) Fed. Cas. No. 16,020.

No one can be convicted under Act 1825, § 21, who is not employed in the post office department. U. S. v. Nott (C. C. 1839) Fed. Cas. No. 15,900.

The officers of the postoffice department are the agents of the public, and no postmaster, whether acting under the direction of the postmaster general or not, can lawfully refuse to deliver letters addressed to his office, unless authority for so doing is found in some act of congress. Commerford v. Thompson (C. C. 1880) 1 Fed. 417, 419.

A letter dropped in a post office, intended for a person at such place, is not a letter intended to be "conveyed" by post. Act 1825, c. 275, § 21. U. S. v. Oliver (D. C. 1841) Fed. Cas. No. 15,917.

The indictment alleging that the letter was detained two days, "with intent to prevent the arrival and delivery of the same" to the person addressed, the offense was complete, although, at the expiration of that period, there may have been a change of purpose. U. S. v. Holmes (D. C. 1889) 40 Fed. 750.

8. Letter delivered to authorized agent.—A letter delivered to an authorized agent cannot be charged to have been embezzled. U. S. v. Sander (C. C. 1855) Fed. Cas. No. 16,219.

9. Letters not containing value.—It was only where letters containing nothing of value were embezzled that the offense was cognizable under R. S. § 3891 (embodied herein), providing that any person employed in the postal service who shall secrete, embezzle, or destroy any such letter, although it does not contain any security or other thing of value, shall be punishable, etc., at 17 Stat. § 146, on which the above section is founded, in place of "although it does not contain any security," etc., reads, "which shall not contain any security," etc. U. S. v. Lacher (1890) 10 Sup. Ct. 625, 134 U. S. 624, 33 L. Ed. 1080.

R. S. § 3891 (embodied herein), creates and punishes the offense of unlawfully detaining, delaying, or opening a letter and of secreting, embezzling, and destroying a letter, though it does not contain anything of value. U. S. v. Delany (C. C. 1893) 55 Fed. 475, 476.

If a postal employé secretes, embezzles, or destroys mail matter intrust to him, he can be punished under R. § 3891 (embodied herein), although does not contain value, or represent tive of value. U. S. v. Gruver (D. 1888) 35 Fed. 59, 61.

10. Letter not mailable.—An emplo in a post office, who steals gold du from a letter in the mail, is liable indictment, whether the same be ma able or not, under Act July 1, 1864, § U. S. v. Randall (D. C. 1869) Fed. Ca No. 16,118.

11. Letter as ceasing to be mail ma ter.—A post office superintendent d covered a misboxed letter, which h been placed in a "dead" pigeonhole the top of the case, where defendant clerk, was engaged in sorting mail. T letter was removed by the superinten ent and handed to a post office insp tor, who took it to the addressee, a without delivering it, obtained pe mission to open it. He then return to the post office, unsealed the lett and took from it an express order f $2, a statement of account, and a l ter from the sender of the money der. After making a copy of the l ter, he placed it in the envelope w two marked $1 bills, and forwarded t money order and the statement to t addressee. The envelope containing t letter and bills having been duly seal was returned to the dead pigeonho and a short time thereafter was e bezzled by defendant. Held, that t letter at the time it was returned the inspector to the dead pigeonhole h not ceased to be mail matter, and th defendant was therefore properly co victed of embezzling a letter containi inclosures, in violation of R. S. § 54 (embodied herein). Ennis v. U. (1907) 154 Fed. 842, 83 C. C. A. 478.

12. Decoy letters or packages.—Cri inal prosecutions for abstracting mo ey from the mails may be based up the taking of money from decoy lette mailed by post office inspectors. Goo v. U. S. (1895) 16 Sup. Ct. 136, 159 S. 663, 40 L. Ed. 297; Montgome v. Same (1896) 16 Sup. Ct. 797, 162 S. 410, 40 L. Ed. 1020; Walster v. S. (C. C. 1890) 42 Fed. 891; U. S. Jones (C. C. 1897) 80 Fed. 513; Sa v. Wight (D. C. 1889) 38 Fed. 10 Same v. Dorsey (D. C. 1889) 40 F 752.

Embezzling or stealing the conte of a "decoy" letter, mailed by gove ment officials or detectives to a fic tious person and address, is within S. § 5467 (embodied herein). Goode U. S. (1895) 16 Sup. Ct. 136, 159 U. 663, 40 L. Ed. 297; Hall v. U. S. (189 18 Sup. Ct. 237, 238, 168 U. S. 632, L. Ed. 607.

On a prosecution for the stealing a letter from the post office, the f that the letter was a decoy is no d fense. Goode v. U. S. (1895) 16 S

, 137, 159 U. S. 663, 40 L. Ed.

coy letter containing marked States currency, addressed to a s person, and deposited in the post office inspectors, intended ntercepted and withdrawn from ls, is a "letter," within R. S. § mbodied herein), providing that t office employé who shall em- or destroy any letter or steal g out of a letter coming into his ion shall be punished, etc. Scott . (1899) 19 Sup. Ct. 209, 211, S. 343, 43 L. Ed. 471.

coy letter, containing money, for the purpose of entrapping an in a post office, who opens it, kes the money, is within Act 3, 1825, § 21. U. S. v. Cotting- . C. 1852) Fed. Cas. No. 14,872; . Foye (C. C. 1853) Fed. Cas. 157.

ecoy or test" was prepared as : A post office inspector wrote , placed it in an envelope, seal- directed it to a fictitious per- d to a place where there was no fice; then wrapped it up in a per and inclosed both letter and n an ordinary newspaper wrap- id wrapper sealed, and proper- ped, and directed as the enve- nside. This packet was then to a post office official, to be by him, as a "decoy or test," in known as the "nixes basket," a cle for apparently worthless and able matter, said "nixes" to be and examined by a postal em- who was to send any letter or of value found therein to anoth- ial, to be forwarded to the dead- office. Held, that this was not a of the packet, and it did not be- mail matter," within the mean- R. S. §§ 5467, 5469 (this com- , §§ 10364, 10365). U. S. v. C. C. 1887) 30 Fed. 818.

abstracting, from a letter in a red mail package, of a silver cer- , by a railway postal clerk, after received it as such, and while possession, to be conveyed by other registered mail, though there to give him opportunity to , if he so chooses, is a violation S. § 5467 (embodied herein), re- o larceny from the mails. U. S. ey (D. C. 1889) 40 Fed. 752.

stal car employé who takes from il under his charge a package ing things of value, although in the mail as decoy, and ad- l to a person having no exist- punishable under R. S. §§ 3891, embodied herein), denouncing a against any postal employé kes any letter or packet "intrust- im * * * and which was in- to be conveyed by mail. " U. S. v. Bethea (D. C. 1891) 802, following U. S. v. Wight (D. C. 1889) 38 Fed. 106, U. S. v. Dorsey (D. C. 1889) 40 Fed. 752, and U. S. v. Whittier (C. C. 1878) Fed. Cas. No. 16,688, and refusing to follow U. S. v. Denicke (C. C. 1888) 35 Fed. 407, and U. S. v. Matthews (C. C. 1888) 35 Fed. 890, 1 L. R. A. 104.

It makes no difference with respect to the duty of a letter carrier in the employment of the United States, when a letter comes into his hands in the course of his official employment, whether it be genuine, or a decoy letter, or have a fictitious address, or whether it bears the pretended postmark of a fictitious post office. The opening, detention, destruction, or the embezzlement of the contents of either kind of letter is equally punishable. Byram v. U. S. (1905) 25 App. D. C. 546.

13. Letter with fictitious address.—See, also, preceding note.

A letter addressed to a fictitious person, known to be such, is a "letter" within the meaning of R. S. §§ 5467, 5469 (this compilation, §§ 10364, 10365), making the stealing of a letter from the mail or post office a penal offense. Goode v. U. S. (1895) 16 Sup. Ct. 136, 138, 159 U. S. 663, 40 L. Ed. 297.

A letter with a fictitious address, which cannot therefore be delivered, is not "intended to be conveyed by mail," within the meaning of R. S. § 3891 (embodied herein), providing a penalty for embezzling such a letter. U. S. v. Denicke (C. C. 1888) 35 Fed. 407.

14. Venue of offense.—Offense of stealing contents of letter, under this section, held committed in district, regardless of particular point where money was taken, if it was brought within that district with the intent of appropriating it. Perara v. U. S. (1915) 221 Fed. 213, 136 C. C. A. 623.

15. Indictment or information, and issues, proof, and variance.—Where a postmaster is indicted for embezzling a letter, it is enough to allege that the letter came into his hands, without showing where it was mailed, and by what route it was conveyed. U. S. v. Lancaster (C. C. 1841) Fed. Cas. No. 15,556; U. S. v. Okie (C. C. 1867) Fed. Cas. No. 15,916; U. S. v. Laws (D. C. 1872) Fed. Cas. No. 15,579.

In an indictment for larceny from a letter under Act 1825, § 21, the property stolen must be laid on some person other than the prisoner. U. S. v. Foye (C. C. 1853) Fed. Cas. No. 15,-157; U. S. v. Cummings (D. C. 1855) Fed. Cas. No. 14,901a.

In an indictment against a post office clerk for embezzling a letter containing a bank note, the letter being described as directed to a person other than defendant, it is unnecessary to allege that the letter or note was the property of any one. U. S. v. Okie (C. C. 1867)

Fed. Cas. No. 15,916; U. S. v. Laws (D. C. 1872) Fed. Cas. No. 15,579.

Failure of an indictment of a postal employé under R. S. § 5467 (embodied herein), for secreting and embezzling a letter containing United States treasury notes, to allege that the letter had not been delivered to the person to whom it was directed, held not to be a jurisdictional error that could be taken advantage of on habeas corpus. Wight v. Nicholson (1890) 10 Sup. Ct. 487, 134 U. S. 136, 33 L. Ed. 865.

An indictment for embezzling letters containing money charged that the letters in question came into defendant's possession as a railway postal clerk, to be delivered to the persons addressed. The evidence disclosed that the letters and money belonged to inspectors, who mailed them, and were intercepted by them before reaching the person to whom they were addressed. Held, that this was an immaterial variance. Montgomery v. U. S. (1896) 16 Sup. Ct. 797, 162 U. S. 410, 40 L. Ed. 1020, applying Goode v. U. S. (1895) 16 Sup. Ct. 136, 159 U. S. 663, 40 L. Ed. 297.

An indictment under R. S. § 5467 (embodied herein), charged a postal clerk with having destroyed a certain letter, and a draft, therein contained, "for fifty francs, D. O. Mills & Co., No. d.08250, on Paris, France," a more particular description of which was to the grand jurors unknown. Held a sufficient description of the draft. Rosecrans v. U. S. (1897) 17 Sup. Ct. 302, 305, 165 U. S. 257, 41 L. Ed. 708.

In an indictment under R. S. § 5467, cl. 2 (embodied herein), making it an offense for a postal employé to steal anything of value out of any letter or package, an averment that the letter from which the thing of value had been taken was to be delivered by a letter carrier is surplusage, and need not be proved. Hall v. U. S. (1898) 18 Sup. Ct. 237, 168 U. S. 632, 42 L. Ed. 607.

The statute creates two distinct offenses, and it is not a necessary element of the offense described by the second clause that the letter embezzled or the contents of which are stolen shall be intended to be conveyed by mail or delivered by letter carrier, etc., as required by the first clause; and an indictment under the second clause need only show that the letter was one which had come under the jurisdiction and into the possession of the post office department, and had not yet been delivered to the person addressed. Id.

An unnecessary averment in an indictment under the second clause that the letter embezzled or the contents of which had been stolen was intended to be delivered by a letter carrier need not be proved. Id.

An indictment under R. S. § 5467 (embodied herein), charging a mail carrier with embezzlement of a letter containing an article of value, and w stealing such article, is sufficiently s cific where it describes the letter describes the article contained ther as a silver certificate of the Uni States, giving its denomination, wi out setting out specifically the ma and numbers thereon. Bromberger U. S. (1904) 128 Fed. 346, 63 C. C. 76.

An indictment under R. S. § 54 (embodied herein), contained counts, the first charging that defe ant did unlawfully and willfully secre embezzle, and destroy a certain let intended to be conveyed by mail, wh came into defendant's possession virtue of his office and employment a letter carrier, and which contai articles of value described, and the s ond charging that defendant did st take, and carry away such articles value described therein. Held, t such counts were not repugnant to e other as charging both embezzlem and theft of the same article, the being for the embezzlement of the l ter and the other for stealing its v uable contents. Id.

In a prosecution under R. S. § 54 (embodied herein), for larceny from mails, an indictment charging that stolen package had been placed in mail, and came into defendant's poss sion in his capacity as a mail clerk, w sufficient to authorize the admiss of evidence that the package had be stamped, and the manner of su stamping. Alexis v. U. S. (1904) 1 Fed. 60, 63 C. C. A. 502.

The provisions of R. S. § 5467 (e bodied herein), making it a criminal fense for an employé in the postal se ice to embezzle a letter, necessar implies that the letter must have co into his possession in his official ch acter; and an indictment thereunc which fails to allege such fact is fata defective. Shaw v. U. S. (1908) 1 Fed. 174, 91 C. C. A. 208.

Money is comprehended by the te "article of value" within an indi ment of a railway postal clerk for creting and embezzling a letter co taining "articles of value." Shaw v. S. (1910) 180 Fed. 348, 103 C. C. 494.

An indictment of a railway pos clerk for secreting and embezzling letter containing an article of val need not describe the article with same precision as in a prosecution forgery or larceny, but the article mu be stated. Id.

An indictment of a railway pos clerk for secreting and embezzling letter containing an article of value su ciently describes the article if it a prises defendant of the charge agai him and protects him against a se ond prosecution for the same offen Id.

An indictment of a railway post

r embezzling a letter containing
of value," to wit, "$12 in
of the United States," which
as addressed to a specified per-
a specified address, it being al-
at a further description of the
nd its contents is unknown to
nd jurors, sufficiently describes
ney. Id.

osecutions under R. S. §§ 5467,
70 (this compilation, §§ 10364,
providing for the protection of
tter, it is not necessary to al-
prove all the ingredients of
Thompson v. U. S. (1913) 202
1, 120 C. C. A. 575, 47 L. R. A.
206.

dictment against a post office
for embezzling letters intrust-
him, and stealing bank notes
m, need not aver that the let-
re intended to be conveyed by
J. S. v. Golding (C. C. 1820)
s. No. 15,224.

nvict a person of stealing a
tc., who is employed in the de-
t, such employment must be
y alleged and proved. U. S.
(C. C. 1839) Fed. Cas. No.

dictment for abstracting a let-
aining bank notes is good if it
that the letter was put into the
ce to be conveyed by post, and
ng so conveyed, and came into
nt's possession, as driver of
stage. U. S. v. Martin (C. C.
ed. Cas. No. 15,731.

in an indictment for embez-
the letter or bank note is de-
it must be proved as laid.
Lancaster (C. C. 1841) Fed.
. 15,556.

unnecessary to particularly de-
he letter or the bank notes
Id.

of a third person, sent by a
ry with notes of his own, and
rom the mail, may be laid in
ctment as the property of the
ry. U. S. v. Burroughs (C. C.
ed. Cas. No. 14,695.

dictment charging a mail car-
h stealing a letter out of the
sufficient without alleging that
ined an article of value. U. S.
er (C. C. 1849) Fed. Cas. No.

lescription of the termini be-
hich the letter was intended to
by post cannot be rejected as
ge, but must be proved as laid.
Foye (C. C. 1853) Fed. Cas.
57.

indictment for embezzlement,
ficiently certain to charge that
nt was "a person employed in
he departments of the post of-
blishment of the United States."
Patterson (C. C. 1855) Fed.
. 16,011.

the embezzlement is of a let-
taining a banknote, it is not
y to describe the note. Id.

In an indictment for embezzling a letter containing money (Act July 1, 1864, § 12), it is not necessary to aver that the letter embezzled was intended to be conveyed to any particular place, but only that it was intended to be conveyed by post. U. S. v. Okie (C. C. 1867) Fed. Cas. No. 15,916.

An indictment under R. S. § 5467 (embodied herein), against a letter carrier, for embezzling a letter, is not defective, though it does not aver that the letter was not delivered to the addressee. U. S. v. Jenther (C. C. 1876) Fed. Cas. No. 15,476.

Certain variances as to the address upon a letter alleged to have been embezzled by a letter carrier, held not material. Id.

An indictment against a post office employé for stealing money from a letter (R. S. § 5467, embodied herein), which did not aver that the letter was one intended to be conveyed by mail, or that it had been deposited in any post office, or in charge of defendant, or that it came into his possession in the regular course of his official duty, held bad. U. S. v. Winter (C. C. 1876) Fed. Cas. No. 16,744.

In a prosecution by information under R. S. § 5467 (embodied herein), for the embezzlement of a letter containing treasury notes, by a person in the employ of the postal service, it is not necessary to allege ownership of the notes in some person other than the accused, where the taking or stealing of the notes is alleged by way of description, for the purpose of bringing the offense fully within the terms of the definition employed by the statute. U. S. v. Baugh (C. C. 1880) 1 Fed. 784, 786.

The statutory offence of embezzlement of a letter is not an "infamous crime" within the meaning of the fifth amendment to the constitution, precluding a prosecution by information. Id.

Rev. St. § 5467 (embodied herein), punishing any employé of the post office department who shall steal or take from a letter any note, bond, draft, promissory note, contract, or agreement for or relating to the payment of money, an indictment under this section against such an employé for stealing a check payable to a certain person need not allege that the check was indorsed by the payee, so as to be negotiable by or of value to another person. The check was "an agreement relating to the payment of money," and within the statute, without any allegation or proof of value. Jones v. U. S. (C. C. 1886) 27 Fed. 447.

In an indictment for stealing under this section, if the thing within the statute be prescribed, no value need be alleged, nor proved, if alleged. Id.

In such an indictment for stealing a check, the check stolen out of a letter need not be set forth in hæc verba. A

substantive description of the check will suffice, if it is sufficient to inform the accused of what he was charged with stealing, and to protect him from being again put in jeopardy for the same taking. Id.

R. S. § 5467 (embodied herein), provides for the punishment of any employé of the post office department who shall steal or take from a letter any note, bond, draft, or contract for the payment of money. Held, the offense intended to be punished by the statute is the common-law offense of larceny, when committed by an employé of the postal service; and the words of the statute do not specifically set forth all the elements necessary to constitute the offense intended to be punished, and therefore an indictment which merely follows the words of the statute is insufficient. Id.

The indictment being in the words of the statute, those words must, of themselves, fully, directly, expressly, and without uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished. Id.

R. S. § 5467 (embodied herein), punishing any employé of the post office department who shall steal or take from a letter any note, bond, draft, or contract for the payment of money, an indictment under this section for stealing a check need not describe the check in hæc verba. A description full enough to identify the check to inform the accused of what he was charged with stealing and taking, and to protect him from being again put in jeopardy for the same taking, is sufficient. Id.

When the indictment alleges ownership in the person to whom a registered letter was directed, and it appears in proof that when it was stolen the sender had deposited it with the postmaster, taking his receipt therefor, and it had, by due course of mail, left the mailing office, held, that its custody by the post office department was for the benefit of the person to whom it was addressed, that it was his property (the sender had no control over it), and there was no variance. U. S. v. Jackson (C. C. 1886) 29 Fed. 503.

Where it is charged, in an indictment for larceny from the mails, that the letter and an inclosed check are the property of the person to whom it is addressed, if it appears in proof that the check was sent for the benefit of that person, and was stolen while in the mails, the proof will support the allegation of ownership. U. S. v. Jones (C. C. 1887) 31 Fed. 718.

Where it appears that a check was sent through the mails by a debtor to a creditor, with instructions to credit the amount on his debt, the ownership of the check may properly be laid in the latter. Id.

If the check is correctly described as it was at the time it was stolen, subsequent indorsements or other terations thereon will not make a v ance. Id.

If it appears in proof that the p son to whom the letter is addres has a special property in the check, certain trusts or duties to perf with reference to it, this will supp the allegation of ownership in him.

A check was indorsed in blank the payee, and mailed to a third p son. Held, that an indictment for larceny of the check while in cust of the postal officers properly alle the ownership to be in the addres as the regulations of the post office partment constitute the postal auth ties trustees for the person to wh a letter is addressed. U. S. v. Jo (C. C. 1887) 31 Fed. 725.

In an indictment for embezzling letter containing a bank note (March 3, 1825) it is not necessary state the particular office held by accused, or that the note was of an corporated bank, or of any value. S. v. Clark (D. C. 1846) Fed. Cas. 14,801.

An indictment against a postmas for embezzling bank notes from mail must aver that the note wa thing of value. U. S. v. Cummings C. 1856) Fed. Cas. No. 14,901.

In an indictment against a post of clerk for embezzlement a description the letter as directed to A. B. is su cient where it is inclosed in an envel directed to A. B. U. S. v. Laws C. 1872) Fed. Cas. No. 15,579.

The indictment need not allege t the clerk obtained the letter by vir of his employment; it is enough th being a clerk, he has obtained poss sion of the letter. Id.

R. S. § 5467 (embodied herein), c ers the offenses of secreting and bezzling valuable letters, as well stealing their contents; and the on sion in the indictment of the wo "every such person shall on convict thereof for every such offense," use Act June 8, 1872, § 279, is immater U. S. v. Atkinson (D. C. 1888) 34 F 316.

It is not necessary, in an indictm under R. S. § 5467, cl. 1 (embod herein), for secreting and embezzlin valuable letter, to allege that the let had not been delivered to the party whom it was directed; nor, under second clause, for stealing the conte to allege that the letter was inten to be conveyed by mail or mail carr U. S. v. Wight (D. C. 1889) 38 F 106.

An indictment against a postmas under R. S. § 3890 (embodied herei for detaining mail, is sufficient if it lege in the words of the statute t the letter in question was unlawfu detained, with intent to prevent its rival. It need not aver that the let was knowingly and willfully detain U. S. v. Holmes (D. C. 1889) 40 F 750.

ere an indictment under R. S. § (embodied herein), charges that dant "did secrete, embezzle, and by" certain letters, etc., "within tent and meaning of section 5467, ed Statutes of the United States," ecital of such section will be con- d surplusage, and the indictment, h not good under said section will be considered sufficient under § 3891 (embodied herein), which les that "any person employed in lepartment of the postal service shall unlawfully detain, delay, or any embezzle, or destroy any such , packet, letter, packet, * * * o shall secrete, * * * shall be ned," etc. U. S. v. Hartley (D. C. 42 Fed. 835.

ugh, under R. S. § 5467 (embodied n), "embezzling a letter" and ing its contents" are separate of- s, and may be charged as such, the es are of the same grade and et to the same penalty; and hence may both be charged in a single of the indictment, stating the transaction as a single offense, both acts are committed by the person at the same time, and tute a single continuous act. U. Byrne (D. C. 1890) 44 Fed. 188. rments in such an indictment that tter was secreted, embezzled, and oyed, and that its contents were , are not repugnant. Id.

ere an indictment under the first lauses of R. S. § 5467 (embodied n), avers the embezzling of a let- ntended to be delivered by a letter r," it is necessary to prove this ent, and the same is not sustain- ere it appears that the letter was by addressed to a fictitious person, not intended to be delivered to but such an averment will be re- d as mere surplusage in a count on the last clause of said section. v. Hall (D. C. 1896) 76 Fed. 566.

ler Act July 1, 1864, § 12 (13 337), providing that any post employé who shall secrete or em- e any letter or packet intrusted to shall be punished, and providing ent punishment according as the or packet does or does not con- rticles of value, in order to pun- efendant for embezzling a letter ining articles of value, it must be d and proved that the letter em- ed contained an article of value. m v. U. S. (1871) 1 Colo. 309.

indictment against a mail carrier mbezzling letters intrusted to him carried need not allege to whom etters were addressed or by whom were written. Id.

S. § 5467 (embodied herein), pro- that "any person employed in any rtment of the postal service, who secrete, embezzle, or destroy any * * * containing any note, draft, check," etc., shall be pun- in a certain manner. Held, that dictment thereunder, describing a silver certificate as being for one dollar, deposited, "with the treasurer of the United States," is sufficient, though the words "deposited in the treasury" are used in the certificate. U. S. v. Eliason (D. C. 1889) 7 Mackey, 104.

R. S. § 5467 (embodied herein), prescribes the punishment for any one who embezzles any package intended to be conveyed by mail, and which contains certain enumerated articles, or "any other article of value." Held, that an indictment which charged the embezzlement of a package containing "eight hundred dollars" was sufficient, without setting out the kind of dollars, or that such dollars possessed value. U. S. v. Fuller (1888) 4 N. M. (Johns.) 358, 20 Pac. 175.

In a prosecution for the embezzlement of a registered package, where there is proof that such a package was actually put in the mail, and afterwards taken by the accused, a variance as to the name of the sender, or of the person to whom the package was directed, is immaterial. Id.

R. S. § 5467 (embodied herein), provides that "any person employed in any department of the postal service, who shall secrete, embezzle, or destroy any letter, packet, bag, or mail of letters intrusted to him, or which shall come into his possession, and which was intended to be conveyed by mail; * * * any such person who shall steal or take any of the things aforesaid out of any letter, packet, bag, or mail of letters which shall have come into his possession, either in the regular course of his official duties, or in any other manner whatever, and provided the same shall not have been delivered to the party to whom it is directed, shall be punishable," etc. Held, that an indictment against a postmaster for embezzling a registered package was sufficient without negativing the proviso. Id.

In a prosecution under R. S. § 5467 (embodied herein), punishing any person employed in the postal service who shall embezzle any letter intrusted to him, or which shall come into his possession intended to be conveyed by mail, etc., an indictment is fatally defective which fails to show that the letter embezzled came into accused's possession as an employé of the postal service. U. S. v. Aurandt (N. M. 1910) 107 Pac. 1064, 27 L. R. A. (N. S.) 1181.

16. Evidence.—On the trial of a mail carrier for embezzling a letter and stealing a bill therefrom, the letter being one of two decoy letters bearing a printed address to the same person, a witness for the government testified that he placed both the decoy letters in defendant's pigeonhole, with others, for delivery. Another carrier, as a witness for defendant, testified that he found two letters so addressed in his own pigeonhole, and placed them in the "misbox." Held that, to prevent an

inference by the jury that they were the decoy letters, and that the one embezzled may have been retained by the last witness, it was competent for the government to show in rebuttal by a clerk in the office that he found two such letters in the misbox, and redistributed them into defendant's pigeonhole. Bromberger v. U. S. (1904) 128 Fed. 346, 63 C. C. A. 76.

On the trial of a defendant charged, under R. S. § 5467 (embodied herein), as a post-office clerk with having secreted and embezzled letters containing articles of value, and stealing such articles from letters, the government produced witnesses who testified that they saw defendant open a letter and take therefrom an article of value, which he placed in a pigeonhole. Defendant in his own behalf testified that the letter referred to was open when received, and that the article which he placed in the pigeonhole he found lying loose on his table when assorting mail and laid it away for proper disposition. Held, that he was entitled to show by other employés that the mails at the office had been very heavy for some time prior to this occurrence, and that many letters and packages came in bad condition, with the edges worn and broken, so that articles could readily fall out, as evidence tending to support his defense. Chitwood v. U. S. (1907) 153 Fed. 551, 82 C. C. A. 505, 11 Ann. Cas. 814.

In a trial of a railway postal clerk for embezzling a letter containing money, the fact that the letter which was introduced in evidence was found in his pocket was some evidence tending to show intent to embezzle. Shaw v. U. S. (1910) 180 Fed. 348, 103 C. C. A. 494.

Evidence held to sustain a conviction of a mail carrier for larceny from the mails. Welsing v. U. S. (1914) 218 Fed. 369, 134 C. C. A. 177.

To support conviction under this section relative to detention of mail matter by persons in the postal service, some evidence that defendant acted unlawfully and with a guilty intent held necessary. Fliashnick v. U. S. (1915) 223 Fed. 736, 139 C. C. A. 266.

Evidence held insufficient to support conviction of letter carrier for detaining decoy letter found in letter box after he had collected mail therefrom. Id.

On trial of letter carrier for detaining letter, admission of evidence as to disappearance of another letter, with which the carrier was not sufficiently connected, held error. Id.

Upon a prosecution under Act 1825, § 21, for the embezzlement by an employé of the post office, some evidence is necessary of the genuineness and value of bank notes charged to have been stolen out of a letter. U. S. v. Nott (C. C. 1839) Fed. Cas. No. 15,-900.

Evidence that the prisoner uttered, as genuine, what purported on its face to be a bank note, is competent proof that it was a bank note, though it is not otherwise shown that such a bank existed. U. S. v. Foye (C. C. 1853) Fed. Cas. No. 15,157.

To show that the article has been stolen, the conviction of the person who stole it is sufficient if the article be identified. U. S. v. Keene (C. C. 1853) Fed. Cas. No. 15,512.

The postmasters through whose offices the embezzled letters were passed or distributed must be called as witnesses on a prosecution for stealing letters out of the mail. U. S. v. Emerson (C. C. 1855) Fed. Cas. No. 15,051. Same v. Whitaker (C. C. 1855) Fed. Cas. No. 16,672.

A railway mail clerk, on trial for theft from the mail, is presumed to have done his duty, and to have safely delivered the mail, unless there is proof to the contrary. U. S. v. Jones (C. C. 1887) 31 Fed. 718.

The possession of stolen property recently after the theft, and not explained, prima facie, is guilty possession. Id.

The presumption of theft arising from the disappearance of mail matter may be repelled by evidence of the miscarrying of mails sent through the same office after defendant's removal. U. S. v. Sterland (D. C. 1858) Fed. Cas. No. 16,387.

The second count in an indictment under R. S. § 5467 (embodied herein), charged defendant, a clerk in the L. A. post office, with stealing a registered letter addressed to the postmaster at S. M., and intended to be conveyed by mail to him. The evidence showed that defendant received the letter, receipted for it, and in the presence of witnesses put it in the S. M. pouch and locked it; that the pouch was received locked at the railway station, and delivered safely at S. M. locked; that, on opening it, the card of notification was found, but not the letter; and that other persons had access to the L. A. post office besides defendant. Held, that the jury, if they believed this evidence, must believe beyond a reasonable doubt that defendant removed the letter from the pouch before it left the L. A. post office, before they could find him guilty. U. S. v. McKenzie (D. C. 1887) 35 Fed. 826.

Where a postmaster received $15 in paper money and $3 in silver, which were handed to him, with a request that he send it in a registered letter, and he took the money, put it in an envelope, which he addressed, wrote a letter to accompany the remittance, delivered to the sender the usual receipt, received the fee for registration, and said it would be all right, but there was no evidence that the silver money had been exchanged for paper, or that the letter was ever stamped or sealed, or put in the special envelope used for registered letters, he cannot be convicted of em-

a "letter" under Rev. St. § nbodied herein). U. S. v. Tay- C. 1888) 37 Fed. 200.

sufficient evidence that letters ended to be carried by a letter that they are deposited in pil- s, to be carried to the post of- hough it be intended to inter- em after they have passed the hands of a suspected em- U. S. v. Wight (D. C. 1889) 38 6.

nce of an admission of the theft istered letter, made by a person ceased, is not admissible upon l of a postmaster for the em- ent of such letter, as it is not declaration against interest as of the introduction of hearsay . U. S. v. Mulholland (D. C. 0 Fed. 413, appeal dismissed nd v. U. S. (1893) 13 Sup. Ct. 9 U. S. 782, 37 L. Ed. 963.

nce is not admissible that the t was caught in the act of steal- ey from the post office nearly ths after the letter had been especially as it was not shown could have had access to such the course of his official duties wise. Id.

ficiently appears that the accus- in the employ of the post office ent where it is shown that de- as made on him as postmaster registered package, both by the and the post office inspectors; gave a receipt for the package stal official; that he claimed to rwarded the package to another fficial; and that his resignation naster was demanded. U. S. v. 1888) 4 N. M. (Johns.) 358, 20 5.

See, also, U. S. v. Hall (D. C. 1896) 76 Fed. 566, 567.

17. Question for jury.—On the trial of a defendant charged, under R. S. § 5467 (embodied herein), as a post office clerk with having secreted and embezzled letters containing articles of value and stealing such articles from letters, the government produced witnesses who testified that they saw defendant open a letter and take therefrom an article of value, which he placed in a pigeonhole. Defendant in his own behalf testified that the letter referred to was open when received, and that the article which he placed in the pigeonhole he found lying loose on his table when assorting the mail, and laid it away for proper disposition. Held, that the weight of evidence of other employés that the mails at the office had been very heavy for some time prior to this occurrence, and that many letters and packages came in bad condition, with the edges worn and broken, so that articles could readily fall out, was for the jury. Chitwood v. U. S. (1907) 153 Fed. 551, 82 C. C. A. 505, 11 Ann. Cas. 814.

Whether letter carrier detained decoy letter, with intent to delay delivery, found in a different letter box from that in which it was deposited, held a question for the jury. Fliashnick v. U. S. (1915) 223 Fed. 736, 139 C. C. A. 266. See, also, Ennis v. U. S. (1907) 154 Fed. 842, 844, 83 C. C. A. 478.

Cited without definite application, Crowley v. U. S. (1904) 24 Sup. Ct. 731, 732, 194 U. S. 461, 48 L. Ed. 1075; New Orleans Nat. Bank v. Merchant (C. C. 1884) 18 Fed. 841, 847.

6. (Crim. Code, § 196.) Postmasters, etc., detaining or de- roying newspapers; by other persons; punishment for.

oever, being a postmaster or other person employed in any ment of the postal service, shall improperly detain, delay, zle, or destroy any newspaper, or permit any other person ain, delay, embezzle, or destroy the same, or open, or permit her person to open, any mail or package of newspapers not d to the office where he is employed; or whoever shall open, zle, or destroy any mail or package of newspapers not being d to him, and he not being authorized to open or receive the or whoever shall take or steal any mail or package of newspa- om any post-office or from any person having custody thereof, e fined not more than one hundred dollars, or imprisoned not han one year, or both.

S. § 5471. Act March 4, 1909, c. 321, § 196, 35 Stat. 1126.

7. (Crim. Code, § 197.) Assaulting mail custodian with in- nt to rob, and robbing mail; punishment for; using weapon, c.; punishment for.

oever shall assault any person having lawful charge, con- r custody of any mail matter, with intent to rob, steal, or such mail matter or any part thereof, or shall rob any such of such mail or any part thereof, shall, for a first offense, be oned not more than ten years; and if in effecting or attempting

to effect such robbery, he shall wound the person having custody of the mail, or put his life in jeopardy by the use of a dangerous weapon, or for a subsequent offense, shall be imprisoned twenty-five years.

R. S. §§ 5472, 5473. Act March 4, 1909, c. 321, § 197, 35 Stat. 1126.

Notes of Decisions

Nature and elements of offense.—R. S. § 5472 (embodied herein), imposing penalties for robbing the mails, uses the word "rob" in its common-law sense; and hence the crime specified is a felony, within R. S. § 819, ante, § 1264, giving defendant, on a trial for felony, the right to 10 peremptory challenges. Harrison v. U. S. (1896) 16 Sup. Ct. 961, 163 U. S. 140, 41 L. Ed. 104.

The offense of robbing the mail is a capital crime if effected by the use of dangerous weapons. U. S. v. Hare (C. C. 1818) Fed. Cas. No. 15,304; Same v. Wood (C. C. 1818) Fed. Cas. No. 16,757.

The offer or threat to shoot with a pistol is within the law without proof that the pistol was loaded. U. S. v. Wood (C. C. 1818) Fed. Cas. No. 16,-756; U. S. v. Wilson (C. C. 1830) Fed. Cas. No. 16,730.

A sword or pistol in the hand of a robber, by terror of which the robbery is effected, is a dangerous weapon, within the law, though the sword be not drawn, and the pistol be not pointed. U. S. v. Wood (C. C. 1818) Fed. Cas. No. 16,756.

Putting the person in custody of the mails in fear and his life in peril is putting his life in jeopardy. U. S. v. Wood (C. C. 1818) Fed. Cas. No. 16,-757.

The possession and exhibition of dangerous weapons in effecting the robbery of the mail is within Act April 30, 1810, § 19, cl. 2. U. S. v. Bernard (C. C. 1819) Fed. Cas. No. 14,584.

Robbers of a mail stage held not to intend to effect the robbery by the use of dangerous weapons which would put the guard's life in jeopardy, where, though armed, and dangerously wounded, they took precautions against injuring the guard. U. S. v. Aminhisor (C. C. 1823) Fed. Cas. No. 14,442.

"Jeopardy" means a well-grounded apprehension of danger to life in case of refusal or resistance. U. S. v. Wilson (C. C. 1830) Fed. Cas. No. 16,730.

The word "rob," in Act March 3, 1825, § 22, is used in its common-law sense. Id.

Carrier of the mail need not have taken the oath prescribed by section 2, nor need the whole mail be taken, to authorize a conviction. Id.

Under R. S. § 5472 (embodied herein), punishing "any person who shall rob any carrier, agent, or other person intrusted with the mail," the offense is committed where it is shown that the mail, or any part thereof, is taken violently from the possession of the carrier, against his will, by violence, or putting him in fear. U. S. v. Reeves (C. C. 1889) 38 Fed. 404.

To constitute the crime of robbery by putting in jeopardy the life of the person having the custody of the mail, by the use of dangerous weapons, within the meaning of R. S. § 5472 (embodied herein), it is sufficient if the acts of the offenders created in the mind of the person having the mail in his custody a well-grounded apprehension of danger to his life in case of resistance or refusal to give up the mail. Id.

A "dangerous weapon," within the meaning of that provision, is one likely to produce death or great bodily harm. Id.

Under the statute punishing an "attempt to rob the mail by assaulting the person having the custody thereof," the attempt means an endeavor to accomplish it, carried beyond mere preparation, but falling short of the ultimate design. The attempt must also be to rob the mail, and not merely an attempt to rob the express car, or the passengers on the train carrying such mail. Id.

To constitute the assault it is not necessary that serious bodily injury should be inflicted. Drawing a gun, with a threat to use it, or forcibly ejecting the person in possession of the mails from the mail car, is sufficient. Id.

Where the evidence proves that the accused took by force, from the postmaster, a package directed to another person, which was a part of the United States mail, though such package was not in the postoffice, and had been removed to some other place, and though the postmaster may have intended to appropriate the same for a private debt due to himself, the accused is guilty of robbing the mail, within R. S. § 5472 (embodied herein). U. S. v. Bowman (1884) 3 N. M. (Johns.) 201, 5 Pac. 333.

Principals.—All persons present at the commission of the crime, consenting thereto, aiding, assisting, or abetting therein, or in doing any act which is a constituent of the offense, are principals. U. S. v. Wilson (C. C. 1830) Fed. Cas. No. 16,730.

If the accused was present on the occasion of the robbery of the mail charged, aiding, advising, and procuring its commission, it becomes immaterial whether he actually entered the car containing the mail or not, as he is to be regarded as a principal, and convicted as such. U. S. v. Reeves (C. C. 1889) 38 Fed. 404.

Indictment. — An indictment under this section for advising, procuring, an

ng one S., a mail carrier, to rob ail sufficiently sets out that the had been committed by S., and tinct and independent averment fact is necessary. U. S. v. Mills 7 Pet. 138, 141, 8 L. Ed. 636.

indictment under this section, ng that defendant attempted to mail clerk having mail matter in stody, and that in the course of ttempt put the life of the clerk ardy by the use of a dangerous n, held not bad for duplicity. v. U. S. (1914) 218 Fed. 149, 132 A. 1.

ndictment charging an attempt to e mails by threatening the per- custody thereof with dangerous ns, in violation of R. S. § 5473 lied herein), which only alleges lefendant "did unlawfully, will- nd feloniously attempt to rob the States mail by assaulting the in custody thereof," etc., is not ective, in failing to allege an in- rob the mails, as to authorize rest of a judgment of conviction rosecution in which the instruc- required a finding of such intent; e defect is merely of form, and by verdict, under Rev. St. Ariz. 1887, par. 1467, providing that no defect as to form which does not prejudice the substantial rights of defendant shall render an indictment insufficient, or affect the trial, judgment, or other proceedings thereon. Downing v. U. S. (1902) 68 Pac. 555, 8 Ariz. 31.

Evidence.—Evidence considered and held sufficient to sustain a conviction under R. S. § 5472 (embodied herein), for holding up a train and robbing the mail. Matthews v. U. S. (1911) 192 Fed. 490, 113 C. C. A. 96.

Sufficiency of evidence to sustain conviction for robbing the mail. U. S. v. Cummings (D. C. 1855) Fed. Cas. No. 14,900.

Instructions.—In a case of robbery, the jury were charged "that if they believe from the evidence that the defendants feloniously took possession of the United States mail, or any part thereof, by force or intimidation of or from a carrier of the mail, then the offense of robbery is complete." Held, that this was simply a definition of the term robbery as applied to the case, and was not erroneous. U. S. v. Mays (1880) 1 Idaho, 763.

68. (Crim. Code, § 198, as amended, Act May 18, 1916, c. 26, § 10, and Act July 28, 1916, c. 261, § 1.) Injury to letter oxes, etc.; punishment for.

ioever shall willfully or maliciously injure, tear down, or de- any letter box or other receptacle intended or used for the ot or delivery of mail on any mail route, or shall break open ame, or shall willfully or maliciously injure, deface, or destroy nail deposited therein, or shall willfully take or steal such mail or out of such letter box or other receptacle, or shall willfully r assist in any of the aforementioned offenses, shall for every offense be punished by a fine of not more than $1,000 or by sonment for not more than three years.

R. S. §§ 3869, 5466. Act April 21, 1902, c. 563, § 1, 32 Stat. 113. Act rch 3, 1903, c. 1009, § 3, 32 Stat. 1175. Act March 4, 1909, c. 321, § 198, Stat. 1126. Act May 18, 1916, c. 126, § 10, 39 Stat. 162. Act July 28, 16, c. 261, § 1, 39 Stat. 418.

This section, as enacted in the Criminal Code, was as follows:

"Whoever shall willfully injure, tear down, or destroy any letter box, pillar x, lock box, lock drawer, or other receptacle established or approved by the stmaster-General for the safe deposit of matter for the mail or for delivery, any lock or similar device belonging or attached thereto, or any letter box or er receptacle designated or approved by the Postmaster-General for the eipt or delivery of mail matter on any rural free-delivery route, star route, other mail route, or shall break open the same; or shall willfully injure, de- e, or destroy any mail matter deposited in any letter box, pillar box, lock x, lock drawer, or other receptacle established or approved by the Postmaster- neral for the safe deposit of matter for the mail or for delivery; or shall llfully take or steal such matter from or out of any such letter box, pillar x, lock box, lock drawer, or other receptacle, or shall willfully and malicious- assault any letter or mail carrier, knowing him to be such, while engaged his route in the discharge of his duty as such carrier, or shall willfully aid assist in any offense defined in this section, shall be fined not more than one ousand dollars, or imprisoned not more than three years, or both."

It was amended by Act May 18, 1916, c. 126, § 10, cited above, the enacting use of which read as follows: "That the Act of March fourth, nineteen hun- ed and nine (Thirty-fifth Statutes, page eleven hundred and twenty-six), be ended to read as follows," followed by the amendatory clause, making the tion read as set forth here.

It was further amended by Act July 28, 1916, c. 261, § 1, also cited above,

by inserting in the enacting clause of said amendatory Act May 18, 1916, 126, § 10, after the first word "That," the words "section one hundred an ninety-eight of the," so that said section of the Criminal Code was amende to read as set forth here.

§ 10369. (Crim. Code, § 199.) Deserting the mail; punishment fo

Whoever, having taken charge of any mail, shall voluntarily qu or desert the same before he has delivered it into the post-office a the termination of the route, or to some known mail carrier, messen ger, agent, or other employee in the postal service authorized t receive the same, shall be fined not more than five hundred dollars, o imprisoned not more than one year, or both.

R. S. § 5474. Act March 4, 1909, c. 321, § 199, 35 Stat. 1126.

Notes of Decisions

Carrier employing express company to carry mail.—Semble that it is a violation of R. S. § 5474 (embodied herein), for a mail contractor to employ an express company not under his control to carry mail matter committed t his charge. (1875) 15 Op. Atty. Gen. 7

Cited without definite applicatio U. S. v. Shackelford (1855) 18 Hov 588, 589, 15 L. Ed. 495.

§ 10370. (Crim. Code, § 200.) Delivery of letters by master o vessel; penalty for failure.

The master or other person having charge or control of an steamboat or other vessel passing between ports or places in the Unite States, arriving at any such port or place where there is a post-offic shall deliver to the postmaster or at the post-office, within three hour after his arrival, if in the daytime, and if at night, within two hour after the next sunrise, all letters and packages brought by him o within his power or control and not relating to the cargo, addresse to or destined for such port or place, for which he shall receive fron the postmaster two cents for each letter or package so delivered, unles the same is carried under a contract for carrying the mail; and fo every failure so to deliver such letters or packages, the master or othe person having charge or control of such steamboat or other vessel, sha be fined not more than one hundred and fifty dollars.

R. S. § 3977. Act March 4, 1909, c. 321, § 200, 35 Stat. 1126.

Notes of Decisions

Failure to deliver letter in general.—The master or owner of a steamboat is not liable to the penalty of $150 (Act 1845, § 13) for failure to deliver a letter, unless it has been brought to him, or intrusted to his care, or is within his power. U. S. v. Beaty (C. C. 1847) Fed. Cas. No. 14,555.

Negligence of clerk.—The master o owner is not liable for the neglect of clerk in failing to deliver a letter o which the former had no knowledge, un less they fail to exercise reasonabl diligence. U. S. v. Beaty (C. C. 1847 Fed. Cas. No. 14,555.

§ 10371. (Crim. Code, § 201.) Obstructing the mail; punishmen for.

Whoever shall knowingly and willfully obstruct or retard th passage of the mail, or any carriage, horse, driver, or carrier, o car, steamboat, or other conveyance or vessel carrying the same, sha be fined not more than one hundred dollars, or imprisoned not mor than six months, or both.

R. S. § 3995. Act March 4, 1909, c. 321, § 201, 35 Stat. 1127.

Notes of Decisions

1. Constitutionality.
2. Nature and elements of offense in general.
3. Meaning of "knowingly and willfully."
4. Meaning of "passage of the mails."
5. Assaulting postmaster.
6. Arrest of carrier.
7. Mail coach or wagon.
8. Levy on and sale of ferryboat.
9. Mail trains in general.
10. Boys placing obstructions on tracks electric railway.
11. Conspiracy.
12. Indictment.

1. Constitutionality.—Congress ha authority to enact this section. U. S v. Sears (D. C. 1893) 55 Fed. 268, 27

2. Nature and elements of offense i general.—An intention to obstruct th

ws from an unlawful act that so
, although its primary object
ccomplish another purpose. U.
tevens (C. C. 1877) Fed. Cas.
92.

nstitute a knowing and willful
ion of the passage of the mails,
vehicle, horse, or carrier carry-
same, prohibited by this section,
must be in itself unlawful. The
of persons operating a toll road,
franchise which does not ex-
il carriers from payment of toll
to permit a mail carrier to
eir gates without payment of
not unlawful, or within such
so as to sustain the jurisdic-
a federal court over a suit by
l contractor for an injunction
ages, on the ground that it in-
a federal question. Harper v.
(C. C. 1900) 103 Fed. 911.

nts of the offense of obstruct-
mails stated in a charge to the
J. S. v. Lawhead (D. C. 1877)
s. No. 15,570.

§ 3995 (embodied herein), re-
o the obstruction of the mails,
to all persons who obstruct the
of the mails, though the at-
t of other ends was their pri-
bject. U. S. v. Cassidy (D. C.
7 Fed. 698.

aning of "knowingly and willi-
In the act of congress defining
e of obstructing the passage of
il, the terms "knowingly and
" are intended to signify that,
time of committing the offense,
nt must have known what he
ing, and with such knowledge
ed to commit the offense charg-
are used in the statute in con-
nction to "innocent," "igno-
r "unintentional." U. S. v. Clay-
. C. 1882) 14 Fed. 127.

aning of "passage of the mails."
e terms "passage of the mails"
nt the transmission of mail mat-
n the time the same is deposited
ce designated by law or by the
f the post office department up
time the same is delivered to
rson to whom it is addressed.
Claypool (D. C. 1882) 14 Fed.

matter in the post office, ready
ivery, and there for that pur-
s on its passage, within the
g of the law, and to interfere
so as to obstruct and retard its
is an offense. Id.

saulting postmaster.—Where a
commits an unprovoked assault
postmaster, the necessary re-
ereof was an obstruction and re-
of the passage of the mail, the
esumes that the defendant in-
by his act the result which
d, and the offense is complete;
s otherwise if the act was inde-
t and disconnected from the post
nd matters pertaining thereto.
U. S. v. Claypool (D. C. 1882) 14 Fed. 127.

A postmaster carried the mail to a station in a bag, and, while waiting for the train, laid it on a truck, and walked down the track to see some bricks unloaded from a car. On his return he met defendant, the owner of the bricks, who began quarreling with him as to the manner of unloading them, and finally struck him. Bystanders separated them, and the mail was duly delivered to the train on its arrival. Held that, before defendant could be convicted of obstructing the mails, the jury must believe that he knew his acts would have that effect, and intended that they should. U. S. v. Woodward (D. C. 1891) 44 Fed. 592.

6. Arrest of carrier.—The temporary detention of the mail, caused by the arrest of its carrier under a warrant, issued by a state court of competent jurisdiction, on an indictment for murder, is not a violation of the act which applies only to those who know that the acts performed by them obstructing or retarding the passage of the mail, or of its carrier, will have that effect, and perform them with such intention. U. S. v. Kirby (1868) 7 Wall. 482, 485, 19 L. Ed. 278.

A mail carrier driving through a crowded city at such a rate as to endanger the lives of the inhabitants may be arrested by a constable without a warrant. U. S. v. Hart (C. C. 1817) Fed. Cas. No. 15,316.

A warrant in a civil suit against a mail carrier is no justification to the officer executing it, on an indictment for obstructing the mail. U. S. v. Harvey (C. C. 1845) Fed. Cas. No. 15,320.

A driver and carrier of the United States mail is exempt from arrest on civil process while engaged in the service, which includes waiting for the mail. U. S. v. Bean (D. C. 1876) Fed. Cas. No. 14,550.

A mail carrier cannot justify, by virtue of his public employment, an assault on an officer who attempts to serve on him a warrant for his arrest for a violation of the liquor law. Penny v. Walker (1874) 64 Me. 430, 18 Am. Rep. 269.

7. Mail coach or wagon.—The offense of obstructing the mail, under R. S. § 3995 (embodied herein), is not committed unless the mail is in transitu, and the horse or vehicle taken is employed in carrying the mail. U. S. v. McCracken (C. C. 1878) Fed. Cas. No. 15,664.

To constitute a knowing and willful obstruction of the passage of the mails, or of a vehicle, horse, or carrier carrying the same, which is prohibited by R. S. § 3995 (embodied herein), the act must be in itself unlawful. The refusal of persons operating a toll road, under a franchise which does not exempt mail carriers from payment of toll

thereon, to permit a mail carrier to pass their gates without payment of toll, is not unlawful, or within such section, so as to sustain the jurisdiction of a federal court over a suit by the mail contractor for an injunction and damages, on the ground that it involves a federal question. Harper v. Endert (C. C. 1900) 103 Fed. 911.

The lien of a private citizen against horses for their livery cannot be enforced so as to stop the United States mail in a stage coach drawn by such horses. U. S. v. Barney (D. C.) Fed. Cas. No. 14,525.

On indictment for obstructing the mail, the defendant, a toll-gate keeper on a gravel road, cannot justify his act on the ground that the driver of the mail wagon refused to pay toll in advance, and that by statute (Gen. St. Ky. c. 110, § 3, subsec. 2) toll-gate keepers on gravel roads are authorized to stop persons who refuse to pay in advance. U. S. v. Sears (D. C. 1893) 55 Fed. 268.

The attachment, knowingly, of a mail coach and horses, while carrying the mail, is void, being an obstruction of the mail within Act March 3, 1825, § 9. Harmon v. Moore (1871) 59 Me. 428.

The holding of stage horses by locking the stable door, by virtue of a lien which a tavern keeper had thereon, was not a willful retarding of the passage of the mail, within Act March 3, 1825, which only applies to persons, horses, and stages when actually engaged in carrying the mail. U. S. v. Lingle (Pa. 1832) 9 Haz. Reg. 78.

A mail stagecoach, while protected by act of congress from obstruction, is in all other respects on a footing with other carriages, and is subject to the laws of the road. Bolton v. Colder (Pa. 1833) 1 Watts. 360.

8. Levy on and sale of ferryboat.—A levy on and sale of a ferryboat used on a mail route to convey the mail across a stream is not an obstruction of the passage of the mail within the meaning of the statute, making it a penal offense to "knowingly and willfully obstruct or retard the passage of the mail, or of any driver or carrier, or of any horse or carriage carrying the same." Lathrop v. Middleton (1863) 23 Cal. 257, 83 Am. Dec. 112.

9. Mail trains in general.—Murder committed by derailing a mail train is punishable as such in the state courts, though the act is also an offense against the laws of the United States. Crossley v. State of California (1898) 18 Sup. Ct. 242, 168 U. S. 640, 42 L. Ed. 610.

The unlawful stopping of a passenger train by persons who are willing to permit the passage of the mail car detached from the passenger car is punishable under R. S. § 3995 (embodied herein), as a willful obstruction or retarding of the passage of the mail. U. S. v. Clark (D. C. 1877) Fed. Cas. 14,805.

The defendant and others, discha ed railway laborers, to the number 150, assembled at Pendleton, Or., by threats of violence prevented daily train of the Oregon Railway Navigation Company, including the car with the United States mail the in, from proceeding to Portland, cause the conductor would not per them to ride thereon to Portland f of charge, on the ground that they no money, and the company, hav "passed them up," ought to "pass th down," and, for the same reason by the same means prevented the c ductor from detaching said mail from said train and sending it to Po land with the United Staes mail there Held that, whether the company under any legal obligation to carry defendant to Portland free of cha or not, he had no right to prevent conductor from sending the mail car to Portland as he did, and that, conduct of the defendant and his sociates being unlawful and necessa causing the passage of the mail to obstructed, the law imputes to him intention, whatever the primary p pose of his conduct was, to cause s obstruction, and therefore he is gu of obstructing and retarding the p sage of the mail, contrary to R. S 3995 (embodied herein). U. S. v. K (D. C. 1884) 19 Fed. 42.

A person who is entitled to tra on a railway car may go upon the sa peacefully, and remain therein until arrives at his destination, and if conductor undertakes to put him on the ground that he is not entitled travel thereon he may resist force v force; but if the conductor stops train on his account, and underta to detach the mail car therefrom send it on with the mail, he has right to prevent him from so doing, if he does his act is unlawful. Id.

Where the mail has been interrup by the refusal of railroad employés move the regular trains hauling cert cars, the railroad company must m the mail trains without such cars, a failure to do so is a violation of laws against the obstruction of ma In re Grand Jury (D. C. 1894) 62 F 834.

Where the regular passenger tra of a railroad have been designated the carrying of mail, failure of the r road to run other trains for that p pose, on the refusal of its employés move the regular trains so long as c tain cars are attached, is not in vi tion of the statute against obstruct of the mail. Id.

It is a violation of this section one to prevent the running of a r train as made up, though he is will that the mail car shall go without c tain other cars. In re Grand Jury C. 1894) 62 Fed. 840.

ail train is a train as usually and rly made up, including a Pullar, if usually hauled, which carail under the sanction of the posthorities. U. S. v. Cassidy (D. 5) 67 Fed. 698.

ough R. S. § 3995 (embodied), making it an offense to ob- the mails, was originally enprior to the use of railroads for urposes, it is applicable to the ge of mail by trains. Id.

municipal ordinances of a city, iting the passage of railroad cars h its limits at a greater speed ix miles per hour, do not conflict ct March 3, 1825, c. 64, relative willful obstruction of mail car- and the carriers of the mail on ailroads are not exempt from operation. (1852) 5 Op. Atty. 54.

willful obstruction or retarding sage of a train carrying the mail usual and ordinary way is a vio- of R. S. § 3995 (embodied herein). no excuse that such person is to have the mail car detached un separately. (1894) 21 Op. Gen. 9.

Boys placing obstructions on of electric railway.—Boys who obstructions on the track of an c railway whereon the United mails are carried, and by so delay the mail, or force it to be d in some other way, are guilty of ime of obstructing the mails, un- S. § 3995 (embodied herein). U. homas (D. C. 1893) 55 Fed. 380.

Conspiracy.—Where two or more wrongfully agree among them- either for the purpose of creatmpathy in a threatened strike, or y other purpose, to cause trains g mail to be stopped, or to dis- their employés or refuse to emew men, so as to stop such they are guilty of conspiracy. v. Debs (C. C. 1894) 63 Fed. In re Charge to Grand Jury (D. 4) 62 Fed. 828.

onspiracy to obstruct the mail in on of R. S. § 3995 (embodied), is a violation of section 5440, conspiracy to commit an offense t the United States. U. S. v. s (C. C. 1877) Fed. Cas. No.

loyés, if acting without any illerpose, may quietly and peaceably the service of their employer by ted action at a given time, so s they do not violate any conto remain longer. Id.

s unlawful for employés whose ment is at an end to combine ce others to quit the same serv- the same time, but before their ment has expired. Id.

ombination of railway employés, the members intend to stop all rains as well as other trains, and ay many, in violation of R. S. § 3995 (embodied herein), punishing any one willfully and knowingly obstructing or retarding the passage of the mails, is an unlawful conspiracy, though the obstruction is effected by merely quitting employment. Thomas v. Cincinnati, N. O. & T. P. Ry. Co. (C. C. 1894) 62 Fed. 803.

Where two or more men wrongfully agree among themselves, either for the purpose of creating sympathy in a threatened strike, or for any other purpose, to cause trains carrying mail or interstate commerce to be stopped, or to discharge their employés or refuse to employ new men, so as to stop such trains, they are guilty of conspiracy. U. S. v. Debs (C. C. 1894) 63 Fed. 436.

An agreement between two or more persons that the employés of railroads carrying mails and interstate commerce should quit, and that all others should, by threats or violence, be prevented from taking their places, constitutes a criminal conspiracy to obstruct the mails and interstate commerce. In re Charge to Grand Jury (D. C. 1894) 62 Fed. 828.

Railway employés cannot combine to quit work in order to compel their employer to withdraw from contractual relations with a third party, for the purpose of injuring such third party. U. S. v. Cassidy (D. C. 1895) 67 Fed. 698.

Where two or more persons combine to interfere with passage of a mail train, and one or more does any act to effect such object all are liable for conspiracy under R. S. § 5440, ante, § 10201. (1894) 21 Op. Atty. Gen. 9.

12. Indictment.—An indictment charging defendants with conspiring to "unlawfully, willfully, maliciously, and knowingly" delay and obstruct, etc., the passage of a railway car and train, "which said railway car and train were then and there carrying and transporting the mails of the United States," is insufficient to charge a conspiracy to violate R. S. § 3995 (embodied herein), by "knowingly and willfully" obstructing the passage of the mails, since it fails to charge that defendants knew that said car and train were carrying the mails, without which there could be no conspiracy to violate the statute. Salla v. U. S. (1900) 104 Fed. 544, 44 C. C. A. 26.

R. S. § 5440, as amended by Act May 17, 1879 (ante, § 10201), provides that if two or more persons conspire either to commit any offense against the United States, or to defraud the United States, etc., and one or more do any act to effect the object of the conspiracy, all shall be liable to a penalty, etc. Held, that an indictment for conspiracy to commit the offense described in this section, which failed to allege that defendants conspired to "knowingly and willfully" obstruct or retard the passage of the mails, in the

manner set out, was fatally defective. Conrad v. U. S. (1904) 127 Fed. 798, 62 C. C. A. 478.

The defect was not cured by the allegation that they did "knowingly, unlawfully, and feloniously combine, conspire," etc., to obstruct the mails, or that the part of the indictment charging the overt act alleged that such act was "knowingly and willfully" committed. Id.

An indictment for obstructing the mails need not allege that the act was feloniously done, nor that defendants knew that the trains they retarded carried the mails, nor that the acts of overturning cars on a railroad track were not done in the exercise of a lawful right, but it must allege such acts were knowingly, willfully, or unlawfully done. U. S. v. Debs (D. C. 1895) 65 Fed. 210.

An indictment charging that accused unlawfully, etc., retarded the passage of the United States mails and a car carrying the same, by unlawfully, etc., beating the engineer and fireman, without whose services the train and car could not move, sufficiently charged defendant's knowledge that the train contained a mail car, and that the assault operated to obstruct the passage of the mail. U. S. v. Hall (D. C. 1913) 206 Fed. 484.

Cited without definite application. Clune v. U. S. (1895) 16 Sup. Ct. 125, 126, 159 U. S. 590, 40 L. Ed. 269; Blake v. U. S. (1895) 71 Fed. 286, 290, 18 C. C. A. 117.

§ 10372. (Crim. Code, § 202.) Ferryman delaying mail; penalty.

Whoever, being a ferryman, shall delay the passage of the mail by willful neglect or refusal to transport the same across any ferry, shall be fined not more than one hundred dollars.

R. S. § 3996. Act March 4, 1909, c. 321, § 202, 35 Stat. 1127.

§ 10373. (Crim. Code, § 203.) Letters carried in foreign vessel to be deposited in post-office; penalty for failure.

All letters or other mailable matter conveyed to or from any part of the United States by any foreign vessel, except such sealed letters relating to such vessel or any part of the cargo thereof as may be directed to the owners or consignees of the vessel, shall be subject to postage charge, whether addressed to any person in the United States or elsewhere, provided they are conveyed by the packet or other ship of a foreign country imposing postage on letters or other mailable matter conveyed to or from such country by any vessel of the United States; and such letters or other mailable matter carried in foreign vessels, except such sealed letters relating to the vessel or any part of the cargo thereof as may be directed to the owners or consignees, shall be delivered into the United States post-office by the master or other person having charge or control of such vessel when arriving, and be taken from the United States post-office when departing, and the postage justly chargeable by law paid thereon; and for refusing or failing to do so, or for conveying such letters or other mailable matter, or any letters or other mailable matter, intended to be conveyed in any vessel of such foreign country, over or across the United States, or any portion thereof, the party offending shall be fined not more than one thousand dollars.

R. S. § 4016. Act March 4, 1909, c. 321, § 203, 35 Stat. 1127.

Cited without definite application. U. S. v. Huggett (C. C. 1889) 40 Fed. 636, 642.

§ 10374. (Crim. Code, § 204.) Vessels to deliver letters at post-office before entry; oath; penalty for failure.

No vessel arriving within a port or collection district of the United States shall be allowed to make entry or break bulk until all letters on board are delivered to the nearest post-office, and the master or other person having charge or control thereof has signed and sworn to the following declaration before the collector or other proper customs officer:

I, A. B., master ———, of the ———, arriving from ———, and now lying in the port of ———, do solemnly swear (or affirm) that I have to the best of my knowledge and belief delivered to the post-

at ——— every letter and every bag, packet, or parcel of letters
ı was on board the said vessel during her last voyage, or which
in my possession or under my power or control.
d any master or other person having charge or control of such
l who shall break bulk before he has delivered such letters shall
ıed not more than one hundred dollars.
R. S. § 3988. Act March 4, 1909, c. 321, § 204, 35 Stat. 1127.

375. (Crim. Code, § 205.) Using, etc., canceled stamps; punshment for; postal employees; other persons.

hoever shall use or attempt to use in payment of postage, any
eled postage stamp, whether the same has been used or not;
all remove, attempt to remove, or assist in removing, the can-
g or defacing marks from any postage stamp, or the super-
tion from any stamped envelope, or postal card, that has once
used in payment of postage, with the intent to use the same for
e purpose, or to sell or offer to sell the same, or shall knowingly
in possession any such postage stamp, stamped envelope, or postal
with intent to use the same, or shall knowingly sell or offer to
ny such postage stamp, stamped envelope, or postal card, or use
empt to use the same in payment of postage; or whoever unlaw-
and willfully shall remove from any mail matter any stamp at-
d thereto in payment of postage; or shall knowingly use or cause
used in payment of postage, any postage stamp, postal card, or
ped envelope, issued in pursuance of law, which has already been
for a like purpose; shall, if he be a person employed in the postal
ce, be fined not more than five hundred dollars, or imprisoned not
than three years, or both; and if he be a person not employed
e postal service, shall be fined not more than five hundred dollars,
prisoned not more than one year, or both.
R. S. §§ 3922–3925. Act March 3, 1879, c. 180, § 28, 20 Stat. 362. Act
arch 4, 1909, c. 321, § 205, 35 Stat. 1127.

Notes of Decisions

otment.—Counts in an indictment R. S. §§ 3922, 3924 (embodied), may be properly joined, under § 1024, ante, § 1690, although the former be a misdemeanor and the latter a felony. U. S. v. Spintz (C. C. 1883) 18 Fed. 377.

376. (Crim. Code, § 206.) False returns by postmasters to ncrease compensation; punishment for.

hoever, being a postmaster or other person employed in any
ch of the postal service, shall make, or assist in making, or
to be made, a false return, statement, or account to any officer
e United States, or shall make, assist in making, or cause to be
, a false entry in any record, book, or account, required by law
e rules of regulations of the Post-Office Department to be kept in
ct of the business or operations of any post-office or other branch
e postal service, for the purpose of fraudulently increasing his
ensation or the compensation of the postmaster or any employee
post-office; or whoever, being a postmaster or other person em-
d in any post-office or station thereof, shall induce, or attempt
luce, for the purpose of increasing the emoluments or compensa-
of his office, any person to deposit mail matter in, or forward in
nanner for mailing at, the office where such postmaster or other
n is employed, knowing such matter to be properly mailable at
ıer post-office, shall be fined not more than five hundred dollars,
prisoned not more than two years, or both.
Act June 17, 1878, c. 259, § 1, 20 Stat. 141. Act Aug. 4, 1886, c. 901, § 3,
Stat. 221. Act March 4, 1909, c. 321, § 206, 35 Stat. 1128.

Notes of Decisions

e return in general.—A postmas- cluding in his report as a part of his gross receipts under which his salary is fixed under Act March 3, 1883,

the receipts from the sales of stamps in large quantities used at another post office, is punishable under this section, for making a false return, even though the regulations of the postmaster general adopted under supposed authority of section 235, ante, that, in determining gross receipts, unusual sales shall not be included, are invalid; section 10378, post, regarding as criminal sales made outside the delivery of the office and otherwise than as provided by law. U. S. v. Foster (1914) 34 Sup. Ct. 666, 233 U. S. 515, 58 L. Ed. 1074, reversing judgment (D. C. 1913) 211 Fed. 206.

The making of a false return by a postmaster by failing to report large and irregular sales of postage stamps for use outside the district served by his office, the receipts from which, under departmental regulations, would be excluded in fixing his salary if so reported, was not punishable under this section, since, as under the statute such receipts should not be excluded, the purpose of the false return was to secure for the postmaster only what he was legally entitled to receive; and hence a conspiracy, the object of which was the making of such false retur was not punishable as a conspiracy defraud the government. U. S. v. Fo ter (D. C. 1913) 211 Fed. 206.

Misdemeanor.—Any postmaster wl shall make a false return to the aud tor for the purpose of fraudulently i creasing his compensation shall deemed guilty of a misdemeanor, an on conviction thereof, shall be punis ed, under the provisions of 20 Stat. 259. U. S. v. Snyder (C. C. 1882) Fed. 554.

Aider and abetter as principal.—O who aids and abets a postmaster committing the offense provided again by the provisions of the statute, whi declares that a postmaster making false return shall be deemed guilty a misdemeanor, etc., is guilty of t same offense, and liable to the san punishment, as his principal. U. S. Snyder (C. C. 1881) 8 Fed. 805.

Acquittal as bar to suit on bond. The acquittal of a postmaster indict for making false returns held no b to a suit on his official bond. U. S. Jaedicke (D. C. 1896) 73 Fed. 10 104.

§ 10377. (Crim. Code, § 207.) Collecting unlawful postage; punisl ment for.

Whoever, being a postmaster or other person authorized to r ceive the postage of mail matter, shall fraudulently demand or r ceive any rate of postage or gratuity or reward other than is pr vided by law for the postage of such mail matter, shall be fined n more than one hundred dollars, or imprisoned not more than s months, or both.

R. S. § 3899. Act March 4, 1909, c. 321, § 207, 35 Stat. 1128.

§ 10378. (Crim. Code, § 208.) Unlawful pledging or sale of stamp inducing purchases to increase pay; punishment for.

Whoever, being a postmaster or other person employed in a branch of the postal service, and being intrusted with the sa or custody of postage stamps, stamped envelopes, or postal cards, sha use or dispose of them in the payment of debts, or in the purchase merchandise or other salable articles, or pledge or hypothecate t same, or sell or dispose of them except for cash; or sell or dispose postage stamps or postal cards for any larger or less sum than t values indicated on their faces; or sell or dispose of stamped envelop for a larger or less sum than is charged therefor by the Post-Offi Department for like quantities; or sell or dispose of, or cause to sold or disposed of, postage stamps, stamped envelopes, or postal car at any point or place outside of the delivery of the office where su postmaster or other person is employed; or induce or attempt induce, for the purpose of increasing the emoluments or compens tion of such postmaster, or the emoluments or compensation of a other person employed in such post-office or any station thereof, the allowances or facilities provided therefor, any person to purcha at such post-office or any station thereof, or from any employee of su post-office, postage stamps, stamped envelopes, or postal cards; or s or dispose of postage stamps, stamped envelopes, or postal cards, othe wise than as provided by law or the regulations of the Post-Office D

ent, shall be fined not more than five hundred dollars, or impris-
not more than one year, or both.

. S. § 3920. Act June 17, 1878, c. 259, § 1, 20 Stat. 141. Act March 4, 9, c. 321, § 208, 35 Stat. 1128.

Notes of Decisions

of stamps and postal cards in .—The authority of a postmas-eral under § 235, ante, to make ions for the government of the nent includes power to prescribe determining the gross receipts st office on which under the Act ch 3, 1883 (ante, § 7217), the of the postmaster is to be fixed, sold in unusual quantities for offices shall not be considered; ent being to make lawful sales, e measure of the postmaster's and including receipts in viola- this section. U. S. v. Foster 34 Sup. Ct. 666, 233 U. S. 515, d. 1074, reversing judgment (D.) 211 Fed. 206.

stmaster including in his report art of his gross receipts under his salary is fixed under Act 3, 1883, the receipts from the f stamps in large quantities us-nother post office, is punishable section 10376, ante, for making return, even though the regula-f the postmaster general adopt-er supposed authority of sec-35, ante, that, in determining eceipts, unusual sales shall not uded, are invalid; this section ng as criminal sales made out-e delivery of the office and oth-than as provided by law. Id.

gross receipts of a post office hich under Act March 3, 1883, compensation of a postmaster is to be fixed, do not include receipts from violations of this section, making it a crime to dispose of stamps outside the delivery of the post office or to induce purchase thereof to increase his compensation. Id.

Under Act March 3, 1879, c. 180, § 26, it is unlawful for a postmaster to make any disposition of stamps intrusted to him, except the sale of them at their face value for cash to third persons. U. S. v. Douglass (C. C. 1888) 33 Fed. 381.

R. S. § 3920 (embodied herein), provided that no postmaster or other person connected with the postal service shall sell or dispose of postage stamps or postal cards, for any larger or less sum than the values indicated on their faces. (1905) 25 Op. Atty. Gen. 354.

Sale of stamps on credit.—A sale of stamps on credit is not a sale for cash within this section. Palliser v. U. S. (1890) 10 Sup. Ct. 1034, 1035, 136 U. S. 257, 34 L. Ed. 514.

Using stamps to purchase merchandise.—In prosecutions of postmasters for using postage stamps in the purchase of merchandise, under 20 Stat. 141, c. 259, the government must prove that the stamps so used had been received by the postmaster from the post-office department. U. S. v. Williamson (D. C. 1886) 26 Fed. 690.

79. (Crim. Code, § 209.) Failing to account for postage due, tc.; punishment for.

oever, being a postmaster or other person engaged in the service, shall collect and fail to account for the postage due any article of mail matter which he may deliver, without having usly affixed and canceled the special stamp provided by law, ll fail to affix such stamp, shall be fined not more than fifty dol-

ct March 3, 1879, c. 180, § 27, 20 Stat. 362. Act March 4, 1909, c. 321, § , 35 Stat. 1128.

80. (Crim. Code, § 210.) Issuing unpaid-for money orders; unishment for.

oever, being a postmaster or other person employed in any h of the postal service, shall issue a money order without g previously received the money therefor, shall be fined not more ive hundred dollars.

. S. § 4030. Act March 4, 1909, c. 321, § 210, 35 Stat. 1129.

Notes of Decisions

ity of recipient for value of us-r order.—The recipient of a order issued without payment e to the United States for its U. S. v. Bolognesi (C. C. 1908) d. 159.

iction as bar to subsequent in-t.—Where accused was indicted, ed, and fined for issuing money orders in violation of this section, such conviction was no bar to a subsequent indictment for issuing the same orders in violation of section 10388, post. U. S. v. Komie (D. C. 1912) 194 Fed. 567.

Cited without definite application, Ex parte Hibbs (D. C. 1886) 26 Fed. 421, 432.

§ 10381. (Crim. Code, § 211, as amended, Act March 4, 1911, 241, § 2.) Obscene, etc., matter unmailable; punishment f mailing or taking from mails to circulate.

Every obscene, lewd, or lascivious, and every filthy, book, pa phlet, picture, paper, letter, writing, print, or other publicati of an indecent character, and every article or thing designed, adapte or intended for preventing conception or producing abortion, or f any indecent or immoral use; and every article, instrument, substan drug, medicine, or thing which is advertised or described in a mann calculated to lead another to use or apply it for preventing conce tion or producing abortion, or for any indecent or immoral purpos and every written or printed card, letter, circular, book, pamphlet, a vertisement, or notice of any kind giving information directly or i directly, where, or how, or from whom, or by what means any of t hereinbefore-mentioned matters, articles, or things may be obtain or made, or where or by whom any act or operation of any kind f the procuring or producing of abortion will be done or performed, how or by what means conception may be prevented or abortion pr duced, whether sealed or unsealed; and every letter, packet, or pac age, or other mail matter containing any filthy, vile, or indecent thin device, or substance; and every paper, writing, advertisement, or re resentation that any article, instrument, substance, drug, medicine, thing may, or can be, used or applied for preventing conception producing abortion, or for any indecent or immoral purpose; a every description calculated to induce or incite a person to so use apply any such article, instrument, substance, drug, medicine, thing, is hereby declared to be nonmailable matter and shall not conveyed in the mails or delivered from any post-office or by a letter carrier. Whoever shall knowingly deposit, or cause to be d posited for mailing or delivery, anything declared by this section be nonmailable, or shall knowingly take, or cause the same to be take from the mails for the purpose of circulating or disposing thereof, of aiding in the circulation or disposition thereof, shall be fined n more than five thousand dollars, or imprisoned not more than fi years, or both. And the term "indecent" within the intendment of th section shall include matter of a character tending to incite arso murder, or assassination.

R. S. § 3893, as amended, Act July 12, 1876, c. 186, § 1, 19 Stat. 90, A Sept. 26, 1888, c. 1039, § 2, 25 Stat. 496, and Act May 27, 1908, c. 206, Stat. 416. Act March 4, 1909, c. 321, § 211, 35 Stat. 1129. Act March 1911, c. 241, § 2, 36 Stat. 1339.

This section, as enacted in the Criminal Code, did not contain the last se tence thereof as set forth here, defining the term "indecent," within the i tendment of the section. That provision was added by amendment by A March 4, 1911, c. 241, § 2, last cited above.

Provisions punishing the importation and the interstate transportation prize-fight films were made by Act July 31, 1912, c. 263, post, §§ 10416–10418.

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1. Constitutionality and validity.
2. Amendment of statute.
3. Meaning and purpose of statute in general.
4. Word "or" as meaning "and."
5. Statute as extending to filthy publications and communications.
6. Meaning of "obscene," "lewd," "lascivious," and "indecent."
7. Obscene, lewd, and lascivious letters.
8. Lewd, obscene, or lascivious books.
9. Indecent and obscene pamphlets.
10. Giving information or notice as to preventing conception or procuring abortion or mailing article to be used therefor.
11. —— Quack medical advertisements.
12. Information as to obscene pictures publications.
13. Absence of criminal intent.
14. Purpose and motive in general.
15. Matters sent in interest of scien philosophy, or morality.
16. Mailing matter to person under fic tious name.
17. Newspaper accurately reporting tes mony.
18. Publications counseling crimes.
19. Letters, not lewd or indecent, writt to seduce or obtain meetings for i moral purposes.
20. Part of mail matter unobjectionab
21. Paper containing single obscene artic

nunications between husband and
e.
on authorizing nonmailable matter
be mailed.
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nstitutionality and validity.— ction is not in derogation of the tional right of freedom of the Tyomies Pub. Co. v. U. S. 211 Fed. 385, 128 C. C. A. 47; n v. U. S. (C. C. 1892) 50 Fed. llowing Ex parte Jackson (1877) S. 727, 24 L. Ed. 877, and Ex Rapier (1892) 12 Sup. Ct. 374, S. 110, 36 L. Ed. 93, and af- U. S. v. Harmon (D. C. 1891) l. 414.

§ 3893, as amended by Act Sept. 88, § 2 (embodied herein), which he punishment for depositing ob- lewd, or lascivious matter in the t a fine of not more than $5,000, risonment at hard labor for not han five years, or both, is not in on of the eighth constitutional ment, as imposing or authorizing cessive fine or a cruel and un- punishment. Rinker v. U. S. 151 Fed. 755, 81 C. C. A. 379.

constitutional guaranties of m of the press and of religious m have no application to R. S. , as amended in 1888 (embodied), excluding from the mails, pa- or writings that are obscene, or lascivious. Knowles v. U. S. 170 Fed. 409, 95 C. C. A. 579.

e the offense of depositing ob- and filthy matter in the mails, ited by this section, is made a by section 10509, this section objectionable for failure to pro- that persons who shall deposit ailable matter are guilty of a or misdemeanor. Tyomies Pub. U. S. (1914) 211 Fed. 385, 128 A. 47.

s section, making it an offense posit in the mails obscene and matter, is not invalid for failure escribe a standard by which the e may be ascertained, nor as fail- o restrict the offense to the deposit of matter in the United States mails. Tyomies Pub. Co. v. U. S. (1914) 211 Fed. 385, 128 C. C. A. 47.

Pen. Code, § 211, making it an offense to mail obscene and filthy matter, is not unconstitutional as an ex post facto law. Tyomies Pub. Co. v. U. S. (1914) 211 Fed. 385, 128 C. C. A. 47.

This section is a valid exercise of the power to establish a postal system. Coomer v. U. S. (1914) 213 Fed. 1, 129 C. C. A. 617.

This section held to apply only to the deposit of nonmailable matter in the mails, and hence it is not invalid as prohibiting such deposit in places over which congress has no control. Coomer v. U. S. (1914) 213 Fed. 1, 129 C. C. A. 617.

This section held not invalid as failing to provide any test of guilt thereby denying equal protection of the laws, and due process of law and violating the guaranty against ex post facto laws. Coomer v. United States (1914) 213 Fed. 1, 129 C. C. A. 617.

R. S. § 3893 (embodied herein), forbidding the depositing in the mail of any obscene or indecent publication, is not repugnant to any constitutional provision. U. S. v. Bennett (C. C. 1879) Fed. Cas. No. 14,571.

2. Amendment of statute. — The amendment of September 26, 1888, by which the word "letter" was inserted in the list of unmailable matter enumerated in R. S. § 3893 (embodied herein), makes nonmailable an obscene letter, sealed in an envelope, on which nothing appears but the name and address. Andrews v. U. S. (1896) 16 S. Ct. 798, 162 U. S. 420, 40 L. Ed. 1023, following Grimm v. U. S. (1895) 15 Sup. Ct. 470, 156 U. S. 604, 39 L. Ed. 550, and affirming U. S. v. Andrews (D. C. 1893) 58 Fed. 861.

Section 3893 of the Revised Statutes of the United States, as amended by the act of July 12, 1876 (embodied herein), declares that every obscene, lewd, or lascivious book, pamphlet, picture, paper, writing, print, or other publication, of an indecent character, shall be nonmailable matter and shall not be conveyed in the mails, nor delivered from any post office, nor by any letter carrier, and that any person who shall knowingly deposit, or cause to be deposited, for mailing or delivery, anything therein declared to be nonmailable matter, shall be subject to fine or imprisonment, or both. U. S. v. Gaylord (C. C. 1883) 17 Fed. 438.

Since R. S. § 3893 (embodied herein), relating to mailing nonmailable matter, was amended by the insertion of the word "writing," all writings, whether inclosed under a sealed envelope or not, signed or unsigned, that are of an obscene, lewd, or lascivious character, are nonmailable matter, and covered by

the statute. U. S. v. Gaylord (D. C. 1883) 50 Fed. 410.

3. Meaning and purpose of statute in general.—All that was meant by the act of March 3, 1873, was that the mail should not be used to transport such corrupting publications and articles, and that any one who should attempt to use it for that purpose should be punished. Ex parte Jackson (1877) 96 U. S. 727, 736, 24 L. Ed. 877.

This section refers only to publications which are immoral by reason of their relation to sexual impurity. Swearingen v. U. S. (1896) 16 Sup. Ct. 562, 563, 161 U. S. 446, 40 L. Ed. 765.

The purpose of this section is to prevent evil-minded persons from corrupting the morals of the people by making it unlawful to send obscene, lewd, and lascivious letters through the mails. Toothman v. U. S. (1912) 203 Fed. 218, 121 C. C. A. 424.

This section is not a mere direction to the post office officials and violations thereof are punishable as crimes in view of the enacting clause and section 10509, post. Coomer v. U. S. (1914) 213 Fed. 1, 129 C. C. A. 617.

Unmailable matter must be a publication or an article or thing intended to prevent conception or procure an abortion, or an article or thing intended or adapted for an indecent or immoral use, or a written or printed card, circular, book, pamphlet, advertisement or notice of any kind giving information where, how, of whom, or by what means, any of these articles may be obtained or made, or a letter on the envelope of which or postal card on which the objectionable terms, language, or delineations may appear. U. S. v. Mathias (C. C. 1888) 36 Fed. 892, 896.

R. S. § 3893 (embodied herein), declaring every obscene, lewd, or lascivious book, etc., to be nonmailable matter is directed against the use of the mails as an instrument for the circulation of obscene matter. It does not prohibit its publication, nor does it enter into the motives of the circulators, or the truth or falsity of the matter. U. S. v. Bebout (D. C. 1886) 28 Fed. 522.

The purpose of this section is to prevent the mails from being used to circulate matter to corrupt the morals and to exclude impure and immodest writings, without excluding rough and coarse language. Ex parte Doran (D. C. 1887) 32 Fed. 76, 78.

4. Word "or" as meaning "and."—Under the provision of R. S. § 3893 (embodied herein), imposing a penalty for knowingly mailing any "obscene, lewd, or lascivious" book or paper, in which the word "or" has been construed by the supreme court to mean "and," it is not sufficient to bring a publication within the prohibition that it is obscene, but it must also be lewd and lascivious. Nor is an article nonmailable because it offends the religious sentiments of a majority of the people by attacking the doctrine of the immaculate conceptio of Christ in coarse or even obscen language, where it has no tendency induce sexual immorality; that bein the class of publications against whi it is the purpose of the statute to pr tect the public. U. S. v. Moore (D. 1900) 104 Fed. 78.

5. Statute as extending to filthy pu lications and communications.—This se tion is not limited to publications a writings relating to sexuality, but e tended to other publications and co munications which were within the de inition of the term "filthy." U. S. Dempsey (D. C. 1911) 188 Fed. 450.

6. Meaning of "obscene," "lewd "lascivious," and "indecent."—The te of obscenity, within the meaning of t statute, is whether the tendency of t matter is to deprave and corrupt t morals of those whose minds are op to such influences, and into whose han a publication of the sort may fall. S. v. Bennett (C. C. 1879) Fed. Ca No. 14,571; U. S. v. Bebout (D. 1886) 28 Fed. 522.

R. S. § 3893 (embodied herein), ma ing it a criminal offense to place in t mails any "obscene, lewd, or lascivio publication," refers only to publicatio which are immoral by reason of the relation to sexual impurity, the wor having the same meaning as is giv them at common law in prosecutions f obscene libel. Swearingen v. U. (1896) 16 Sup. Ct. 562, 161 U. S. 44 40 L. Ed. 765.

R. S. § 3893 (embodied herein), d clares every obscene, lewd, or lascivio book, pamphlet, print, or other public tion of an indecent character, or n tices giving information for obtaini such publications, to be nonmailab matter, and prescribes a punishment f the use of the mails to transmit or ci culate the same. Held, that the wor "obscene," "lewd," and "lascivious," used in such section, signify that for of immorality which has relation to se ual impurity, having the same meani as is given them at common law prosecutions for obscene libel. Hans v. U. S. (1907) 157 Fed. 749, 85 C. A. 325.

The true test to determine whether writing is nonmailable under R. S. 3893, as amended in 1888 (embodi herein), as obscene, lewd, or lasciviou is whether its language has a tenden to deprave and corrupt the morals those whose minds are open to su influences, and into whose hands it m fall, by arousing or implanting in su minds obscene, lewd, or lascivio thoughts or desires. Knowles v. U. (1909) 170 Fed. 409, 95 C. C. A. 579.

The word "obscene" should be giv in this statute as broad a significan as it had at common law. Id.

The words "obscene, lewd, and la civious," as used in Pen. Code, § 21 prohibiting the sending of obscene, lew and lascivious matter through the mai

that form of immorality that has
n to sexual impurity. Tyomies
o. v. U. S. (1914) 211 Fed. 385,
C. A. 47.

term "indecent," in section 3893,
(embodied herein), in connection
e offense defined in said section
ling any book, letter, envelope,
card, etc., containing any inde-
etc., delineations, epithets, etc.,
written or printed, taken with
tory of the legislation upon the
, means immodest, impure; and
ge which is coarse or unbecom-
even profane, is not within the
on of the act. U. S. v. Smith
1882) 11 Fed. 663.

test of obscenity, within the
g of R. S. § 3893 (embodied
, is whether the tendency of the
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32 Fed. 691.

words "obscene," "lewd," "las-
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r obscene libel. U. S. v. Clarke
1889) 38 Fed. 500.

word "obscene," within the mean-
ct Sept. 26, 1888 (25 Stat. 496),
ng the sending of nonmailable
through the mails, when used to
a book, pamphlet, or paper,
a publication containing im-
and indecent matter, the read-
ereof would have a tendency to
or corrupt the minds of those
ose hands the publication might
ose minds are open to such im-
nfluences. U. S. v. Clarke (D.
) 38 Fed. 732.

wd" book, pamphlet, or paper,
the meaning of the statute, is
t describes dissolute or unchaste
enes, or incidents, or one the
whereof, by reason of its con-
calculated to excite lustful and
desires in those whose minds
n to such influences. Id.

effect of pamphlets and papers
rough the mails, as a whole,
be to deprave and corrupt the
f those into whose hands they
ome, whose minds are open to
fluences, or to excite lustful or
desires, they are obscene and
hether such effect on the minds
ers is produced by single pas-
r portions of them or by many
s or portions. Id.

word "lascivious," within the
of the statute, is synonymous
e word "lewd." Id.

r is "obscene," within the mean-
the statute, when it is offensive
common sense of decency and
modesty of the community, and is of such a character as to deprave and corrupt those whose minds are open to such immoral influences. Whether the particular matter in question comes within that definition is a question for the jury. U. S. v. Harmon (D. C. 1891) 45 Fed. 414.

"Obscene," within the meaning of the act, is that which is offensive to chastity and modesty. U. S. v. Martin (D. C. 1892) 50 Fed. 918 following U. S. v. Harmon (D. C. 1891) 45 Fed. 414.

"Lasciviousness," as used in R. S. § 3893 (embodied herein), punishing the mailing of any obscene, lewd, or lascivious book, etc., means that form of immorality which has reference to sexual impurity. U. S. v. Males (D. C. 1892) 51 Fed. 41.

R. S. § 3893 (embodied herein), punishing the mailing of any "obscene, lewd, or lascivious book," etc., applies only to matters tending to excite impure and unchaste thoughts, and not to language which is merely coarse, vulgar, and indecent. Id.

"Obscenity," as used in R. S. § 3893 (embodied herein), punishing the mailing of any obscene book, etc., means that form of indecency which is calculated to promote the general corruption of morals. Id.

Certain printed matter set forth in the indictment, being an article entitled "Ripe and Unripe Women," and a druggist's advertisement, addressed in part to the "Ladies of the Tenderloin District," held to be obscene matter, within the meaning of R. S. § 3893 (embodied herein). U. S. v. Janes (D. C. 1896) 74 Fed. 545.

7. Obscene, lewd, and lascivious letters.—A private letter containing obscene matter, inclosed in an envelope, on which there is nothing written but the address, is not within the inhibition of Act 1876, § 1 (19 Stat. 90), which makes it a misdemeanor to deposit in the mails any "obscene, lewd, or lascivious book, pamphlet, picture, paper, writing, print, or other publication of an indecent character," or any "letter upon the envelope of which" indecent language is written or printed. United States v. Chase (1890) 10 Sup. Ct. 756, 757, 135 U. S. 255, 34 L. Ed. 117.

The amendment of September 26, 1888, by which the word "letter" was inserted in the list of unmailable matter enumerated in R. S. § 3893 (embodied herein), makes nonmailable an obscene letter, sealed in an envelope, on which nothing appears but the name and address. Andrews v. U. S. (1896) 16 Sup. Ct. 798, 799, 162 U. S. 420, 40 L. Ed. 1023.

Prior to the recent acts of congress, letters were not included in the inhibitions of R. S. § 3893 (embodied herein), against the use of obscene language in matter deposited in the mails. U. S. v. Huggett (C. C. 1889) 40 Fed. 636.

If an act of congress denounces the

mailing of letters containing obscene language (R. S. § 3893, as amended by Act July 12, 1876) (embodied herein), and does not also denounce the mailing of letters written for an obscene purpose, then an indictment founded on letters containing no obscene language, and charging only obscenity of purpose, cannot be maintained. U. S. v. Lamkin (C. C. 1896) 73 Fed. 459.

A letter held not to contain matter which was "obscene, lewd, or lascivious" within the meaning of R. S. § 3893 (embodied herein), so as to render its mailing an indictable offense thereunder. U. S. v. O'Donnell (C. C. 1908) 165 Fed. 218.

A letter considered, and held to contain matter of such obscene, lewd, and lascivious character as to render its mailing an indictable offense under R. S. § 3893 (embodied herein). U. S. v. Benedict (C. C. 1908) 165 Fed. 221.

A sealed letter is not within the prohibition of R. S. § 3893 (embodied herein), however indecent or obscene in its contents; but if there is any such delineation or language put upon the envelope containing it, it thereby becomes nonmailable, and the person depositing it in the mail thereby commits a crime. U. S. v. Loftis (D. C. 1882) 12 Fed. 671.

Depositing in the mails a sealed letter containing obscene matter was not an offense under R. S. § 3893 (embodied herein). U. S. v. Comerford (D. C. 1885) 25 Fed. 902.

An obscene letter, sealed, is within the meaning of R. S. § 3893 (embodied herein), which prohibits the mailing of every obscene writing, print, or other publication of an indecent character, etc. U. S. v. Thomas (D. C. 1886) 27 Fed. 682.

A letter, although exceedingly coarse and vulgar, and grossly libelous, imputing to the person addressed an atrocious crime, but which has no tendency to excite libidinous thoughts or impure desires, or to deprave and corrupt the morals of those whose minds are open to such influences, is not "obscene, lewd, or lascivious," within the meaning of R. S. § 3893, cl. 1 (embodied herein), defining nonmailable matter. U. S. v. Wightman (D. C. 1886) 29 Fed. 636.

R. S. § 3893, as amended by act of Sept. 26, 1888 (embodied herein), making it an offense to deposit in the post office, for mailing or delivery, any "obscene, lewd, or lascivious book, pamphlet, picture, paper, letter, * * * of an indecent character, * * * whether sealed as first-class matter or not," includes a private letter, inclosed in a sealed envelope, and containing such prohibited matter. In re Wahll (D. C. 1890) 42 Fed. 822.

Under R. S. § 3893, as amended by Act 1888 (embodied herein), an obscene letter, sealed or unsealed, is nonmailable; the provision that no person shall open any sealed matter not addressed to himself being a sufficient protect to private correspondence. U. S. Martin (D. C. 1892) 50 Fed. 918, lowing In re Wahll (D. C. 1890) Fed. 822.

A letter from a man to an unmar woman, proposing a clandestine trip a neighboring town, to return the morning, he to pay her expenses five dollars besides, is an obscene ter within the meaning of the act m ing such matter nonmailable, altho it contains no words which are of th selves obscene. Id.

The mailing of an obscene, priv sealed letter is not within the proh tion of R. S. § 3893, as amended S tember 26, 1888 (embodied herein), the insertion of the word "letter," all the words of enumeration are ited in character by the conclu words, "or other publication." U. S Wilson (D. C. 1893) 58 Fed. 768; S v. Warner (D. C. 1894) 59 Fed. 3 Same v. Jarvis (D. C. 1894) Id. 35

The amendment of September 1888, by which the word "lett was inserted in the list of nonmail matter enumerated in R. S. § 3893 (bodied herein), brings within the pr bition thereof an obscene, private, s ed letter. U. S. v. Andrews (D. 1893) 58 Fed. 861, disapproving U. v. Wilson (D. C. 1893) 58 Fed. 7 and judgment affirmed Andrews v. S. (1896) 16 S. Ct. 798, 162 U. S. 4 40 L. Ed. 1023.

An obscene letter constitutes n mailable matter (25 Stat. 496), tho no obscene matter appears on the velope. U. S. v. Nathan (D. C. 18 61 Fed. 936.

A sealed private letter containing decent matter is within the provisi of R. S. § 3893, as amended by July 12, 1876 (embodied herein), t "every obscene * * * book, p phlet, picture, paper, letter, writi print or other publication of an decent character, * * * whet sealed as first-class matter or not, hereby declared to be nonmailable m ter." U. S. v. Ling (D. C. 1894) Fed. 1001.

The mailing of a private sealed let directed to and containing indec charges against the mother of the w er, does not constitute the offense mailing a letter containing obsce lewd, and lascivious matter, under R. § 3893 (embodied herein). U. S. Wroblenski (D. C. 1902) 118 Fed. 4

This section did not originally incl a letter, but by the amendment of 1 such omission was supplied, and amended includes the mailing of a p vate sealed letter. Id.

The words "obscene," "lewd," "lascivious," as used in R. S. § 38 as amended (embodied herein), h reference to that form of immoral which relates to sexual impurity; if a sealed letter, not written in proper exercise of professional du or of any legitimate calling render

e of its language necessary, con-
matter offensive to the sense of
y, and naturally calculated or
to suggest to or create in the
of the addressee of the letter
ous thoughts, or to excite or
se to sexually impure desires in
dressee, it is an offense against
atute to deposit it in the mails.
v. Wyatt (D. C. 1903) 122 Fed.

tter was written by a married
a married woman, not his wife,
he had never met, suggesting
hoped the same would come to
"a ray of sunshine on a cloudy
that his attention had been call-
her "by a friend of ours," and
her to meet him on an afternoon
house of an old lady who kept
to rent "for such meetings";
is proposition was "all straight
and that he would be "a good
to her, and, though he had
been at such proposed meeting
he knew others who had been
and had been informed by them
was "all O. K." Held, that
rpose of such letter was an in-
and solicitation to the addres-
meet the writer for illicit inter-
and was therefore obscene,
R. S. § 3893 (embodied herein),
ting the sending of any obscene
through the mails. U. S. v.
(D. C. 1904) 129 Fed. 159.
§ 3893 (embodied herein), pro-
that every obscene, lewd, or
ous book, pamphlet, writing, or
publication of an indecent char-
hall be nonmailable. Held, that
the necessary inference from
guage used in a letter was ob-
and tended to offend the sense
ency, purity, and chastity of so-
t was immaterial that the words
ere not themselves obscene. Id.
word "paper," in R. S. § 1997,
3953, making it an offense to
in any post office, etc., any ob-
paper, etc., includes a letter.
onstruction of such a statute
be reasonable and the legisla-
ntent considered. Thomas v.
1885) 103 Ind. 419, 2 N. E. 808.

Lewd, obscene, or lascivious
—Where the acts described and
as conveyed in a book are cal-
to deprave the morals of the
by exciting sensual desires and
ous thoughts, the book is ob-
under R. S. § 3893 (embodied
, and it is immaterial that the
ation conveyed is accurate and
ic and tends to prevent disease
her ills resulting from existing
ce upon the topics discussed;
s a whole, the book is calculated
of value to the medical practi-
and to men and women in the
ge relation, that its publication
pproved by several physicians;
at some portions of it are ex-
from standard medical works.

Burton v. U. S. (1906) 142 Fed. 57, 73 C. C. A. 243.

Whether or not a book is obscene within the provision of R. S. § 3893 (embodied herein), prohibiting the depositing of obscene matter in the mails, should be determined upon a consideration of such parts of it as are claimed to be obscene, together with so much of the context as may be necessary to a proper understanding of the parts referred to, but not necessarily upon an inspection of the entire book with reference to all its contents. Id.

A pamphlet of 24 pages, consisting of a sheet and a half, secured together by stitching, with a cover of four pages, and a title page, is properly described as a book. U. S. v. Bennett (C. C. 1879) Fed. Cas. No. 14,571.

Lewdness, as used in R. S. § 3893 (embodied herein), punishing the mailing of any lewd book, etc., means that form of immorality which has relation to sexual impurity. U. S. v. Males (D. C. 1892) 51 Fed. 41.

A lewd, obscene, or lascivious book is not mailable and it cannot be made mailable by sealing it in an envelope or otherwise wrapping it up. U. S. v. Nathan (D. C. 1894) 61 Fed. 936, 937.

9. Indecent and obscene pamphlets.—Accused mailed a pamphlet entitled "Sexual Debility, Its Cause and Cure," containing matter relevant to the title, and another, entitled "Syphilis and Gonorrhea, Their Origin, Effect, and Cure," which was similarly comprehensive of the matters treated of, except that it extended to other venereal diseases. A third pamphlet was entitled "A Guide to Full Pockets," and was intended to attract readers to subscribe for stock in a corporation engaged in selling medicines and prescriptions intended to relieve sexual disorders. Held that, though such pamphlets contained vulgar terms and were coarse in expression, they did not, in the absence of a design to pander to lascivious curiosity or corrupt morals, constitute nonmailable matter, under R. S. § 3893 (embodied herein), prohibiting the mailing of obscene, lewd, or lascivious publications. Hanson v. U. S. (1907) 157 Fed. 749, 85 C. C. A. 325.

An illustrated pamphlet, purporting to be a work on the subject of the treatment of spermatorrhœa and impotency, and consisting partially of extracts from standard books upon medicine and surgery, but of an indecent and obscene character, and intended for general circulation, held to come within the provisions of section 3893 of the Revised Statutes (embodied herein). U. S. v. Chesman (C. C. 1881) 19 Fed. 497.

A pamphlet purporting to be a printed medical treatise touching certain foul private diseases and their cure, and a list of 120 printed questions

touching some 7 private diseases, to be answered by any one afflicted with such disorders, after reading the pamphlet, though without illustration, and expressed in clean and wholesome language, if intended for promiscuous circulation through the mails, is an obscene publication, within R. S. § 3893, as amended by 25 Stat. 496 (embodied herein). U. S. v. Smith (D. C. 1891) 45 Fed. 476.

Such publications will not, because of their character, be considered privileged communications by a physician to a patient, in the absence of a showing that the defendant is a physician, and that the persons to whom they were addressed were his patients. Id.

10. Giving information or notice as to preventing conception or procuring abortion or mailing article to be used therefor.—Sending of information through the mail calculated to lead another to use an article to prevent conception is in violation of this section, though the article may have legitimate use and may not prevent conception. Ackley v. U. S. (1912) 200 Fed. 217, 118 C. C. A. 403.

Under an indictment for mailing an article "designed or intended for the prevention of conception or procuring of abortion" (Act June 8, 1872, § 148, amended March 3, 1873, § 2), it is no defense that the article would not in fact have such effect, if it was put up in a manner and described so as to insure its use for such purpose by one desiring to accomplish such result. U. S. v. Bott (C. C. 1873) Fed. Cas. No. 14,626.

Under such acts, making it a misdemeanor to mail any advertisement or notice giving information where or of whom such article may be obtained, it it immaterial whether the article was in fact at the place designated. Id.

A notice in the form of a letter inclosed in a sealed envelope, if it give the prohibited information, is within the scope of the statute. U. S. v. Foote (C. C. 1876) Fed. Cas. No. 15,-128.

A written slip of paper giving the prohibited information is a "notice," within the meaning of the statute, although not volunteered, but sent in reply to a letter asking for the information. Id.

The fact that what was sent in answer to a letter asking for something to procure abortion or prevent conception would not, of itself, have the effect intended, is no defense to an indictment charging defendant with sending circulars by mail giving information as to where an article to prevent conception could be obtained. Bates v. U. S. (C. C. 1881) 10 Fed. 92.

The offense denounced by this statute has the following elements: The giving of information about a certain thing designed or intended to prevent conception, and the offense does not consist merely in giving informat generally. U. S. v. Pupke (D. C. 19 133 Fed. 243.

An obscure reply letter should be terpreted in the light of the letter which it is a reply, in ascertain whether it comes within this secti making it an offense to send throu the mails a letter giving information to how or where an abortion may procured. Kemp v. U. S. (1914) App. D. C. 539.

For the purpose of determini whether a reply letter gave inform tion as to where or how an aborti could be procured so as to render nonmailable under this section, t test is whether the letter, consider with the one to which it was a rep gave the addressee information u which he could act intelligently, s it is immaterial whether the wri intended to give the treatment hims or to get another to do it. Id.

A letter reading, "Your letter ceived, and would say that it wo cost about two hundred and wo have to stay about one week," wh interpreted in the light of a letter which it was a reply and which sta that the writer had gotten a girl i trouble and that, "If you can and w take this matter for us and relieve girl of her trouble, will you please us know what it will cost and ab how long she would have to sta comes within this section, making it offense to send through the mails letter giving information as to how where an abortion may be procur the interpretation being confirmed the testimony of a detective who int viewed the writer of the reply lett as to its subject-matter. Id.

11. —— Quack medical advertisements.—A publisher knowingly depos ing in the mails a newspaper conta ing a quack medical advertisement how and where to obtain article to p duce abortion, etc., is guilty of a v lation of R. S. § 3893 (embodied he in). U. S. v. Kelly (C. C. 1876) F Cas. No. 15,514.

Upon a prosecution for depositing the mail a newspaper containing quack medicine advertisement of wh to obtain an article to obtain aborti it is not necessary that the adverti ment indicate any particular article thing or its properties. Id.

12. Information as to obscene p tures or publications.—It is not nec sary, to constitute the offense of m ing a letter or circular giving inform tion where obscene, lewd, and lasci ous pictures or publications may be tained, under R. S. § 3893, as amen by Act July 12, 1876 (embodied herei that the writing mailed should descr the objectionable matter or state character. It is sufficient if the writi although unobjectionable on its fa in fact gives information where mat

aracter specified in the statute obtained, and the indictment plead all the words constitut- nformation with the particular- red in cases of libel or forgery. ac v. U. S. (1902) 113 Fed. C. C. A. 71.

secutions under R. S. § 3893 d herein), for mailing letters nformation where obscene pic- n be obtained, where the let- plained of, to a casual reader, to be harmless, the govern- entitled to allege and prove by evidence that they in fact give ion concerning obscene pic- literature, and were so in- U. S. v. Grimm (D. C. 1892) 528, judgment affirmed Grimm (1895) 15 S. Ct. 470, 156 U. 9 L. Ed. 550.

sence of criminal intent.—he obscene matter in question tained in a newspaper intended ellaneous circulation, and re- the prevalence of sexual abus- was expressed in blunt, coarse oo indecent for repetition, it is se that defendant was actuated riminal intent, but solely by to improve the sexual habits, abuses, and thereby benefit the ace. U. S. v. Harmon (D. C. Fed. 414.

rpese and motive in general.—secution under R. S. § 3893, as in 1888 (embodied herein), for g obscene matter in the mails, ose of the defendant is immate- l that his motive was good is se. Knowles v. U. S. (1909) 409, 95 C. C. A. 579.

tter sent in interest of science, hy, or morality.—Where the papers, and publications sent the mail by the accused are de- and corrupting, and tend to ex- ful thoughts, the fact that they sent in the real or supposed of science, philosophy, or mo- immaterial. U. S. v. Slenker 887) 32 Fed. 691.

iling matter to person under name.—The mailing of non- matter to a person under a name is an offense against the U. S. v. Duff (C. C. 1881) 6 ; Bates v. U. S. (C. C. 1881) 92.

wspaper accurately reporting y.—The mailing of copies of a er containing accurate reports mony given by witnesses in ld not to constitute a criminal under this section. U. S. v. Co. (D. C. 1912) 197 Fed. 415.

blications counseling crimes.— no statute directing the exclu- m the mails of a publication ng such crimes as murder, ar- t, and treason, and making its deposit in the mails an offense against the United States; and in the absence of such a statute, it is not an offense to print and deposit in the mails a publication of such a character. (1908) 26 Op. Atty. Gen. 555.

The publication in question is not "indecent," in the sense in which that word is used in R. S. § 3893, as amended by Act July 12, 1876, 19 Stat. 90, and Act Sept. 26, 1888, 25 Stat. 496 (embodied herein), nor is it an "article or thing intended * * * for * * * immoral use," in the sense of the particular immoral purposes which congress intended should render such matter unmailable under the provisions of that law. Id.

The printing and circulation of such a paper was clearly an offense at common law, but it constitutes no offense against the United States, in the absence of a federal statute making it one. Id.

19. Letters, not lewd or indecent, written to seduce or obtain meetings for immoral purposes.—There is no federal statute providing a punishment for the mailing of letters which are free from lewd and indecent language, expressions, or words, although they may have been written for the purpose of seduction, or to obtain meetings for immoral purposes. U. S. v. Lamkin (C. C. 1896) 73 Fed. 459.

20. Part of mail matter unobjectionable.—It is not essential to the commission of the offense prescribed by R. S. § 3983 (embodied herein), in depositing obscene matter in the mails, that the entire contents of a parcel deposited in the mail be objectionable. Demolli v. U. S. (1906) 144 Fed. 363, 75 C. C. A. 365, 6 L. R. A. (N. S.) 424, 7 Ann. Cas. 121.

An order of the postmaster general issued under Act Sept. 26, 1888, 25 Stat. 496, excluding a book from the mails on the ground of indecency would not justify the exclusion from the mails of every copy of certain newspapers which were republishing the book in installments or parts, as some of the parts or installments of the book appearing therein may be unobjectionable. (1890) 19 Op. Atty. Gen. 667.

21. Paper containing single obscene article.—Under R. S. § 3893 (embodied herein), providing that "every obscene, lewd, or lascivious book, pamphlet, picture, paper, writing, print, or other publication of an indecent character," is nonmailable matter, etc., the offense is committed by mailing a paper containing a single obscene article, among other articles not objectionable. U. S. v. Harman (D. C. 1889) 38 Fed. 827.

22. Communications between husband and wife.—R. S. § 3893, as amended by Act Sept. 26, 1888, § 2 (embodied herein), forbidding the mailing of obscene, lewd, or lascivious books, etc.,

prohibits the use of the mails to all persons for the transmission of matters which are lewd, lascivious, or indecent, regardless of the relationship between sender and addressee—e. g., husband and wife—and regardless of the effect of the receipt of the article sent may have on the mind of the particular addressee. If it is of such nature that the reading would, in the opinion of reasonable persons, or the jurors selected to try one charged with violating the section, tend to deprave or corrupt the morals of reasonable persons, and would suggest to the minds of either sex thoughts of an impure or libidinous character, it is within the prohibition of the statute. U. S. v. Musgrave (D. C. 1908) 160 Fed. 700.

23. Person authorizing nonmailable matter to be mailed.—If a person authorized nonmailable matter to be mailed, he is guilty of an offense against the statute. Bates v. U. S. (C. C. 1881) 10 Fed. 92.

24. Capacity of corporation to commit crime.—See § 10511, post.

A corporation has capacity to commit the crime of mailing obscene, nonmailable matter, prohibited by R. S. § 3893, as amended (embodied herein). U. S. v. New York Herald Co. (C. C. 1907) 159 Fed. 296.

R. S. § 3893, as amended (embodied herein), describes certain nonmailable matter, and provides that any person who shall knowingly deposit, or cause to be deposited for mailing or delivery, anything declared by the section to be nonmailable, shall for each offense be fined, on conviction, or imprisoned at hard labor or both, etc. Held, that such section was applicable to a corporation organized for the purpose of publishing a newspaper, and that proof of the mailing by such corporation of its newspaper, containing obnoxious matter, was sufficient to show that the corporation had knowledge thereof. Id.

25. Publication.—The writing in order to come within the inhibition must be a publication, that is, a notification to the public at large, the statute being directed at those writings which are open to inspection by the postmasters. U. S. v. Comerford (D. C. 1885) 25 Fed. 902, 903.

Under R. S. § 3893 (embodied herein), declaring that "every obscene, lewd, or lascivious book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character, * * * are hereby declared to be nonmailable matter," and declaring that any person who knowingly mails any such matter shall be liable to punishment, the mailing of a letter of indecent character, but which is not obscene, lewd, or lascivious, is not an offense, for it is not a "publication" within the meaning of the statute. U. S. v. Clark (D. C. 1890) 43 Fed. 574.

26. Knowledge.—On a prosecution mailing obscene matter, defendan not entitled to an acquittal merely cause he did not know that the ma might be characterized as obsc Rosen v. U. S. (1896) 16 Sup. Ct. 438, 161 U. S. 29, 40 L. Ed. 606.

In a prosecution under R. S. § (embodied herein), prohibiting the positing of obscene matter in the m the inquiry is whether or not the lication charged to have been obs was in fact of that character, and was, and the defendant knew its tents at the time he deposited it in mail, it is not material that he hin did not regard it as obscene. Bu v. U. S. (1906) 142 Fed. 57, 73 C A. 243.

Inclosing an obscene, lewd, or las ious writing in a sealed envelope, mailing it to another, constitutes a lication of the writing, within the m ing of the statute. U. S. v. Gay (D. C. 1883) 50 Fed. 410.

Under that provision of R. S. § 3 as amended (embodied herein), w makes it a penal offense to mail a vate sealed letter containing obsc lewd, and lascivious matter, there i question of publication, and, to be w in the statute, the letter must to corrupt the morals of the perso whom it is addressed, there being presumption that it was intended t or will be read by others, and such t ency is dependent upon circumstan the import and presumed motive, not upon the mere terms of the c munication; a letter which might b violation of the statute if sent to person may not be when sent to an er. U. S. v. Wroblenski (D. C. 19 118 Fed. 495.

In a prosecution for misuse of mails in sending out information a where articles intended to prevent ception might be obtained, the art being designed and adapted for purpose, it was not necessary to s that defendant knew they were nonn able. U. S. v. Currey (D. C. 1913) Fed. 322.

27. Deposit for mailing as compl offense.—The offense of misuse of mails, in violation of this section complete on proof of deposit for m ing of the nonmailable matter, wit evidence that it was ever delivere the addressee or any other per Ackley v. U. S. (1912) 200 Fed. 118 C. C. A. 403.

The offense of depositing obs matter in the mails is completed by act of depositing, and the indictm and prosecution must be had in district where the matter was ma U. S. v. Comerford (D. C. 1885) 25 902.

28. Inclosing in wrapper newsp containing obscene matter.—The in ing of a newspaper, containing obs

er, in a wrapper, does not prevent mailing thereof from falling under lenunciation of the statute. U. S. nes (D. C. 1896) 74 Fed. 545.

Prepayment of postage.—Prepay- of the postage on obscene matter uited in the mails is not a constitu- of the offense created by the stat- U. S. v. Janes (D. C. 1896) 74 545.

Depositing or causing matter to posited in the mail.—It is no de- to an indictment for mailing a advertising obscene pictures, that etter was deposited in the mails at nstance of an officer of the gov- ent, where it does not appear that fficer intended to induce the com- on of a crime, nor that the letter lirected to a fictitious person, and fore there could be, in law, no in- to give information to any one, it been mailed with a view of giv- formation to the receiver, no mat- hat his name. Grimm v. U. S.) 15 Sup. Ct. 470, 156 U. S. 604, Ed. 550, affirming U. S. v. Grimm . 1892) 50 Fed. 528.

who causes objectionable matter n by him to be printed in a news- , intending to bring it to the at- n of the readers of the paper, and ng that the regular and establish- thod of transmitting the paper to aders is by mail, knowingly causes jectionable matter to be deposited mail within R. S. § 3893 (em- l herein), when in such regular the paper with the objectionable r printed herein is deposited in st office for mailing and delivery. lli v. U. S. (1906) 144 Fed. 363, 75 A. 365, 6 L. R. A. (N. S.) 424, 7 Cas. 121.

not essential to the commission offense prescribed by R. S. § (embodied herein), that the ob- able matter be deposited in the y the offender himself, or by an- acting under his express direc- he being equally responsible if it osited therein as a natural conse- of an act intentionally done by ith knowledge of its probable ef- Id.

his section the intentional pro- ent of the conveying of a letter e mail is described as causing to osited. Louisiana Lottery Cases 1884) 20 Fed. 625, 628.

Sending through the mails.—Send- written communication of a per- nd private nature from one per- another, under cover of a sealed e, is not sending obscene matter h the mails, within the meaning S. § 3893 (embodied herein), the letter contains indecent or matter. U. S. v. Mathias (C. C. 36 Fed. 892.

Taking publication from the -The clause in R. S. § 3893 (embodied herein) and Act July 12, 1876, "for the purpose of circulating or disposing of, or of aiding in the circulation or disposition of, the same," applies only to the offense of taking an obscene publication from the mails, and not to that of depositing one in them. U. S. v. Chase (C. C. 1886) 27 Fed. 807, 808.

33. **Transportation of excluded matter in other ways than through the mails.**—When printed matter is excluded from the mails, its transportation in any other way cannot be forbidden by congress. It does not possess the power to prevent transportation in other ways, as merchandise, of matter which it excludes. Ex parte Jackson (1877) 96 U. S. 727, 733, 735, 24 L. Ed. 877.

34. **Answering decoy letters.**—It is no objection to a conviction of mailing matter prohibited by this section that the government inspector, who instigated the prosecution on being informed that the law was being violated, wrote decoy letters, in answer to which defendant mailed the prohibited matter. Price v. U. S. (1897) 17 Sup. Ct. 366, 368, 165 U. S. 311, 41 L. Ed. 727.

It was not a valid objection that defendant was induced to send information as to articles designed to prevent conception by a decoy letter written by a post office inspector. Ackley v. U. S. (1912) 200 Fed. 217, 118 C. C. A. 403.

It was not material whether the inducement to defendant was sent by mail or otherwise. Id.

A sealed letter, written by defendant to a person who had no existence, in answer to a decoy letter of a detective, and which, on its face, gives no information of the prohibited character, is not within Act July 12, 1876. U. S. v. Whittier (C. C. 1878) Fed. Cas. No. 16,688.

Whether mailing a notice stating the place where an article to prevent conception may be obtained, in an envelope addressed to a fictitious person, in response to a decoy letter from a detective, is an indictable offense, and whether such a notice taken from the post office at the place to which it was addressed, by the writer of the decoy letter, is admissible in evidence against the party who sent it, at the trial of an indictment against him for depositing it in the mail, quære. U. S. v. Kaltmeyer (C. C. 1883) 16 Fed. 760.

Mailing a letter giving information as to medicines for the prevention of conception is not criminal when written in answer to a decoy letter by a government inspector under an assumed name, inviting correspondence and inclosing postage stamps. U. S. v. Adams (D. C. 1894) 59 Fed. 674, following U. S. v. Whittier (C. C. 1878) Fed. Cas. No. 16,688, and distinguishing U. S. v. Grimm (D. C. 1892) 50 Fed. 528.

That a letter was elicited by a gov-

ernment detective's decoy letter, signed with a fictitious name, does not prevent the sender's prosecution under this section; and it is therefore immaterial whether the detective acted upon his own initiative or upon complaints from others. Kemp v. U. S. (1914) 41 App. D. C. 539.

The offense denounced by this section is complete when such a letter is deposited in the mail; and it is immaterial that the letter, having been sent in response to a decoy letter signed by a fictitious name, was addressed in the same name and could therefore never reach the person addressed. Id.

The motive of a government detective in writing a decoy letter does not affect the guilt of the addressee in replying to the same in violation of this section. Id.

35. How regulations excluding matter from the mails may be enforced.—In enforcing regulations as to what shall constitute mail matter, a distinction is to be made between different kinds, between what is intended to be kept free from inspection, such as letters, and sealed packages subject to letter postage; and what is open to inspection, such as newspapers, magazines, etc., purposely left in a condition to be examined. Ex parte Jackson (1877) 96 U. S. 727, 732, 24 L. Ed. 877.

Whilst regulations excluding matter from the mail cannot be enforced so as to require or permit examination into letters or sealed packages subject to letter postage, without warrant, they may be enforced on competent evidence of violation in other ways, as from the parties receiving or agents depositing the matter, or others, and as to printed matter open to examination, in a similar way, by imposing penalties through the courts, and by direct action of postal officers, acting on their own inspection, and when postage is not prepaid, or the object is exposed, etc. Id.

36. Indictment, proof, and variance.—Where an indictment charges that defendant "knowingly deposited in the post office the obscene matter," the word "knowingly" qualifies the whole act charged, and it is not necessary to allege that he knew the matter to be obscene. U. S. v. Clark (C. C. 1888) 37 Fed. 106; Same v. Nathan (D. C. 1894) 61 Fed. 936.

An indictment for mailing nonmailable matter, in violation of R. S. § 3893, as amended by Act Sept. 26, 1888, § 2 (embodied herein), alleged that defendant had in his possession a large number of obscene pictures, and deposited in a certain post office a letter giving information where such pictures might be obtained. Held that, the gravamen of the complaint being the use of the mails for transmitting such information, the indictment was not bad because the possession alleged constituted no offense, that allegation being merely the statement of a fact tending to i terpret the letter, nor because the l ter was not in itself obscene, nor b cause the pictures referred to were n incorporated or fully described in t indictment, it being sufficient to alle their character, and unnecessary ev to charge or prove unlawful intent to any particular picture. Grimm U. S. (1895) 15 Sup. Ct. 470, 471, 1 U. S. 604, 39 L. Ed. 550, affirming S. v. Grimm (D. C. 1892) 50 Fed. 5

The right of the accused to be i formed of the nature and cause of t accusation with reasonable certainty not infringed by the omission from t indictment of indecent and obsce matter, alleged not to be proper to spread upon the record of the cou provided the crime charged, howev general the language used, is yet so scribed as reasonably to inform the cused of the nature of the charge. I sen v. U. S. (1896) 16 Sup. Ct. 4 480, 161 U. S. 29, 40 L. Ed. 606.

An indictment under R. S. § 38 (embodied herein), for depositing obscene paper in the mails, which all es that it was done "unlawfully, w fully, and knowingly," sufficiently sta knowledge by defendant of the conte of the paper, as against an object first made after verdict. Id.

The accused may apply to the cou before the trial is entered upon, fo bill of particulars, showing what pa of the paper would be relied on by prosecution as being obscene, lewd, lascivious, which motion the court m grant or refuse, as it may, in the ercise of a sound legal discretion, f necessary to the ends of justice. Id

Refusal to require prosecutor to a copy of the matter on which prosecution is based, when the indi ment alleges that it is too obscene indecent to be set out in the record discretionary with the court, and its tion is not reviewable. Dunlop v. S. (1897) 17 Sup. Ct. 375, 165 U. 486, 41 L. Ed. 799.

A charge that defendant "knowin deposited" in the mails a printed bo etc., "the character of which is so scene, lewd, and lascivious," that would be offensive to set it forth in indictment, sufficiently charges, a verdict, both that the book is in obscene, etc., and that defendant kn it to be so. Price v. U. S. (1897) Sup. Ct. 366, 367, 165 U. S. 311, 41 Ed. 727.

Any defect in a charge that defe ant knowingly deposited in the ma printed book, etc., the character which is so obscene, lewd, and las ious that it would be offensive to it forth in the indictment, should regarded as a defect of form unde 1691, ante. Id.

An indictment specifically charg that the accused had knowingly viol the laws of the United States by positing upon a day named, in a

ecifically named, a letter of cent character as to render it e set forth in detail, inclosed velope bearing a definite spec- ress, must be deemed, in the of a demand for a bill of par- to advise the accused suffi- the nature and cause of the n against him, so that he may h accusation and prepare for artell v. U. S. (1913) 33 Sup. 227 U. S. 427, 57 L. Ed. 583.

harge in an indictment specif- eging that the accused know- lated the laws of the United y depositing upon a day nam- post office specifically named, a such indecent character as to unfit to be set forth in detail, in an envelope bearing a defi- cified address, cannot be said, in nce of a demand for a bill of rs, to be so indefinite that the could not plead the record and n in bar of another prosecu- ce in such case it is the right ccused to resort to parol testi- show the subject-matter of her conviction. Id.

dictment charging that accused the laws by depositing in a ce an obscene letter, unfit to be ough the mails in an envelope a specified address, sufficiently the accused, in absence of a for a bill of particulars, of the ion against him. Id.

harge in an indictment alleging cused knowingly violated the the United States by depositing ene letter in the mails, is not finite that accused could not onviction in bar of another pros- , as in such case accused could to parol evidence to show the -matter of the former convic- Id.

r R. S. § 3893, as amended Sept. 88 (embodied herein), declaring lable every obscene, lewd, or ous book, letter, etc., of an inde- haracter, an indictment for de- g in the mails a letter described scene, lewd, and lascivious" is nt, without adding "and of an nt character." Timmons v. U. 98) 85 Fed. 204, 30 C. C. A. 74.

ndictment for mailing an obscene, and lascivious letter is not de- because it fails to set out such where it is alleged that its con- are too obscene to be spread upon cords of the court. Tubbs v. U. 00) 105 Fed. 59, 44 C. C. A. 357.

harge that defendant "knowingly ted" in the mails a printed book, 'the character of which is so ob- lewd, and lascivious" that it be offensive to set it forth in the ment, sufficiently charges, after t, both that the book is in fact ne, etc., and that defendant knew be so. King v. U. S. (1902) 112 988, 50 C. C. A. 647.

indictment under Rev. St. § 3893, as amended by Act July 12, 1876 (embodied herein), charged the defendants with having deposited for mailing a circular, and, after setting out the circular in hæc verba, averred: "Which said circular then and there was a circular which gave information, as they, the said * * * then and there well knew, where and of whom might be obtained certain obscene, lewd, and lascivious photographic pictures, in the said circular called 'views'; that is to say, information that the said pictures might be obtained of * * * at * * *." Held, that such indictment was sufficient, although the circular set out was merely an advertisement of a machine for exhibiting "views," and of different sets of views for exhibition therein; the character of the pictures not being described. De Gignac v. U. S. (1902) 113 Fed. 197, 52 C. C. A. 71.

An indictment under R. S. § 3893, as amended by Act July 12, 1876 (embodied herein), charging the defendant with having deposited in a post office for mailing a letter or circular giving information where and of whom might be obtained obscene, lewd, and lascivious pictures, is sufficient if it specifies the place where and of whom the letter or circular gave information, and alleges the character of the information, leaving further disclosures to the evidence. It is not necessary to aver ownership or possession of the objectionable matter, nor that the information was given to one who inquired for or desired it, nor to describe the pictures about which information was given, further than to state their character. Id.

Under R. S. § 3893, as amended by Act July 12, 1876 (embodied herein), it is sufficient if the writing, although unobjectionable on its face, in fact gives information where matter of the character specified in the statute can be obtained, and the indictment need not plead all the words constituting information with the particularity required in cases of libel or forgery. Id.

A count for mailing a single copy of a circular declared by R. S. § 3893 (embodied herein), to be nonmailable, is not double merely because it alleges two reasons why the circular was nonmailable, viz., that it gave information where an obscene book might be obtained and was in itself obscene. Burton v. U. S. (1906) 142 Fed. 57, 73 C. C. A. 243.

An indictment charging the defendant with "willfully, unlawfully, wrongfully, and knowingly" mailing an obscene circular giving information where an obscene book might be obtained, the sufficiency of which is not questioned before verdict, is, upon motion in arrest of judgment, to be taken as meaning that the circular was mailed with knowledge of its contents and of the book respecting which it gave information. Id.

As the question whether or not a

writing charged to have been deposited in a post office in violation of law, is too obscene, lewd, and lascivious to be spread upon the records, is a question within the discretion of the court to determine, its action thereon cannot be assigned as error. Rinker v. U. S. (1907) 151 Fed. 755, 81 C. C. A. 379.

An indictment, under R. S. § 3893, as amended by Act Sept. 26, 1888, § 2 (embodied herein), for depositing in a post office an obscene, lewd, and lascivious letter, sufficiently describes the letter, where it sets out sufficient thereof to identify it and alleges that the contents are so obscene, lewd, and lascivious as to be improper to spread on the records of the court, and, if the defendant desires more specific information as to such contents, he may apply for a bill of particulars. Id.

In R. S. § 3893, as amended by Act Sept. 26, 1888, § 2 (embodied herein), which declares unmailable "every obscene, lewd, or lascivious book, pamphlet * * * or other publication of an indecent character," the words "indecent character" qualify only the words "other publication," and, in an indictment for its violation by mailing of a letter, it is not essential that the letter be described as of an indecent character, in addition to describing it as obscene, lewd, and lascivious. Id.

An indictment under R. S. § 3893, as amended by Act Sept. 26, 1888, § 2 (embodied herein), for depositing an obscene, lewd and lascivious letter in the mails, is not bad because it alleges that the offense was committed "on or about" a given date, where it shows that but a short time elapsed between the writing of the letter and the finding of the indictment; the defect being one of form only, by which the defendant was not prejudiced, and to be disregarded under R. S. § 1025, ante, § 1691. Id.

An indictment under R. S. § 3893, as amended by Act Sept. 26, 1888, § 2 (embodied herein), held to sufficiently charge that defendant deposited an obscene letter in a post office "for mailing or delivery," although not in such language, where the plain and reasonable meaning of the language used is that such was the purpose with which the letter was deposited in the post office. Id.

An indictment under R. S. § 3893, as amended by Act Sept. 26, 1888 (embodied herein), charging the defendant with having mailed a letter giving information where and how, and of whom and by what means, articles and things designed and intended "for the prevention of conception and for the procuring of abortion" might be obtained, does not charge two offenses. Lee v. U. S. (1907) 156 Fed. 948, 84 C. C. A. 448.

An indictment charging that a defendant deposited in the mails unmailable matter includes the charge that caused such matter to be deposit it being immaterial whether he dep ited it by his own hand or by an age Shepard v. U. S. (1908) 160 Fed. 5 87 C. C. A. 486, writ of certiorari nied (1908) 29 Sup. Ct. 682, 212 U. 571, 53 L. Ed. 655.

In an indictment under R. S. § 38 as amended by Act Sept. 26, 1888, (embodied herein), an averment t defendant knowingly deposited in a p office for mailing circulars giving inf mation how, where, of whom, and what means obscene, lewd, and lasc ious books might be obtained, and t defendant unlawfully and knowin meant and intended thereby to g such information, is a sufficient av ment that defendant knew the ch acter and contents of such cir lars, and it is not necessary to set the same, nor to further character or describe the books referred to the in than to aver that they are obsce lewd, and lascivious. Id.

Under such an indictment an av ment that prohibited matter was posited in a post office box is sustai by proof that it was deposited i letter box placed by the government receiving mail, and was taken by agents from such box to the post of and there stamped and sent out. I

An indictment under R. S. § 3 (embodied herein), that defendant " lawfully and knowingly" mailed an scene, lewd, and lascivious pamph sufficiently charges that he knew character of such pamphlet. Kond U. S. (1908) 166 Fed. 91, 92 C. C. 75, 22 L. R. A. (N. S.) 304.

In an indictment for mailing nonm able matter, an averment that pamphlet charged to have been ma was "obscene, lewd, and lascivious one of fact, and not a conclusion law. Id.

An indictment under R. S. § 3 (embodied herein), charging defend with depositing on a day named in mail a letter containing indecent in mation addressed to a person nam but which contains no copy of the ter, no averment that it could properly be spread on the record the court, and no allegation of its d of the name signed to it, of the p where it was mailed, or of any ma whereby it could be identified, is uncertain to enable defendant to a himself of the conviction or acqui thereon in defense to a second pr cution, and is insufficient on motio arrest, because of uncertainty. Fl v. U. S. (1911) 186 Fed. 961, 108 C A. 577.

An indictment for misuse of the m to furnish information as to when where articles designed to prevent ception could be procured held to ficiently allege that defendant sent formation as to where and from w

les could be obtained. Ackley (1912) 200 Fed. 217, 118 C. 3.

ral things are denounced by a reating an offense, connected disjunctive "or," they must be l in the indictment by the con- "and." Id.

lictment for sending an ob- tter through the mail, which portions of such letter, but he objectionable portions, held ly specific to withstand a de- nd support a conviction. Win- J. S. (1912) 201 Fed. 845, 120 175.

dictment for sending an ob- tter containing an article de- for preventing conception the mail held insufficient, as ribing the article sent with suf- efiniteness. Id.

ictment of a physician for mail- tter intended to give informa- ere, from whom, and by what rticles designed, adapted, or in- for procuring abortion could be , held not demurrable for fail- allege what articles or things be used, how they were to be when or by whom they were sed. Clark v. U. S. (1912) 202 0, 121 C. C. A. 209.

jection, to an indictment for de- certain nonmailable pictures mails, that it did not expressly that defendants were aware of racter of the pictures, not hav- n specifically urged before ver- s within § 1691, ante, providing oceedings on an indictment shall affected by reason of any de- imperfection in matter of form ich shall not tend to defendant's ce. Tyomies Pub. Co. v. U. S. 211 Fed. 385, 128 C. C. A. 47.

prosecution for depositing in the certain lewd and filthy pictures ation of Pen. Code, § 211, the ent was not objectionable be- it did not refer to the entire tion of which the alleged non- e pictures were a part, since, statute makes it a crime to mail cene or filthy picture, it is only ry that the jury should consid- nuch of the context as is essen- a proper understanding of what ned to be in violation of the stat- d.

as not necessary for an indict- or mailing newspapers containing e matter to charge that the apers in which the objectionable appeared were obscene. Coom- U. S. (1914) 213 Fed. 1, 129 A. 617.

ssion of obscene matter alleged t proper to be spread upon the s held not to render indictment ailing such matter demurrable, it reasonably informed defend- the nature of the crime, though ould be set out either in the indictment or by a bill of particulars if defendant is liable to be surprised by evidence. Id.

An indictment which charged that defendant knowingly deposited in the post office a letter giving information as to where an abortion could be performed, sufficiently charged that defendant knew of the contents of the letter. Stayton v. U. S. (1914) 213 Fed. 224, 129 C. C. A. 568.

Separate counts in an indictment, charging with respect to the same package a violation of both this and the following section, in that the outside cover or wrapper displayed matter nonmailable under the following section, and its contents under this section, held not repugnant. Botsford v. U. S. (1914) 215 Fed. 510.

An indictment charging defendant with depositing in the mail an obscene pamphlet, and a notice giving information how an article designed for the prevention of conception can be obtained, need not give a definite or detailed description of the pamphlet. U. S. v. Foote (C. C. 1876) Fed. Cas. No. 15,128.

The statute refers to the place where such articles can be "obtained or made." Held, that an indictment using "obtained and made" was good and proof of either sufficient. U. S. v. Kelly (C. C. 1876) Fed. Cas. No. 15,-514.

An indictment is sufficient which alleges that defendant knowingly deposited the obscene book, without alleging that he knew it to be nonmailable matter under the statute. U. S. v. Bennett (C. C. 1879) Fed. Cas. No. 14,-571.

An indictment under such statute need not set forth in hæc verba the book, or the obscene part thereof, where it states that it is so indecent as to make it improper to place it on the records, where the book is otherwise sufficiently identified. U. S. v. Bennett (C. C. 1879) Fed. Cas. No. 14,571.

It is sufficient, under R. S. § 3893 (embodied herein), to describe in the indictment the particular book, pamphlet, etc., so as to identify it, and then allege in the language of the statute that it was of the character there described. Bates v. U. S. (C. C. 1881) 10 Fed. 92.

A bill of indictment for depositing for mailing a notice of where an article for the prevention of conception may be obtained should set out the notice, unless it cannot be copied without great inconvenience, or is so obscene as to be unfit to go upon public records. U. S. v. Kaltmeyer (C. C. 1883) 16 Fed. 760.

Where there is any reason for a failure to set out the notice of when an article for preventing conception can be obtained, apparent upon the face of the papers or of the indictment, the court will consider it. Id.

Where there has been a failure, with-

out excuse, to set the instrument out in the indictment, it will not be admissible in evidence. Id.

The indictment alleged that the defendant did unlawfully and knowingly deposit in a post office, for mailing and delivery (naming the time), a certain obscene, lewd, and lascivious writing, purporting to be a letter, and inclosed in a letter envelope, addressed to a female person at another post office (the post offices and persons being named), the said writing being so obscene it could not be set forth in the indictment. Held, that the writing described in the indictment was within the terms of the statute, and was nonmailable matter. U. S. v. Gaylord (C. C. 1883) 17 Fed. 438.

An indictment under R. S. § 3893 (embodied herein), charging that defendant did knowingly deposit for mailing and delivery certain obscene pictures, etc., is not open to the objection that it is not alleged that defendant knew the character of that which he deposited. U. S. v. Clark (C. C. 1888) 37 Fed. 106.

Though an indictment under R. S. § 3893 (embodied herein), charging the mailing of a letter containing information concerning obscene pictures, would be sufficient if it followed the language of the statute, yet if it goes further, and sets out the language of the letters, which do not on their face purport to convey such information, without also setting out the other extrinsic facts upon which the government relies, the allegations are repugnant, and an objection on the ground of uncertainty will be sustained. U. S. v. Grimm (C. C. 1891) 45 Fed. 558.

In an indictment for depositing in the mails newspapers containing an obscene article, an allegation that the newspapers were addressed, or that direction was given for mailing or delivery, is requisite, not as matter of description or identification of the unmailable article, but as an averment of an essential ingredient of the offense; and such ingredient is not supplied by the general averment that the newspapers were deposited "for mailing and delivery." U. S. v. Brazeau (C. C. 1897) 78 Fed. 464.

An indictment under R. S. § 3893 (embodied herein), which charges that the defendant "did knowingly deposit and cause to be deposited" in a post office, for mailing, certain newspapers containing an article claimed to be nonmailable under said section, is fatally defective on demurrer where it fails to charge that the defendant knew at the time that the papers contained matter prohibited by the statute. U. S. v. Clifford (C. C. 1900) 104 Fed. 296.

An indictment for violation of R. S. § 3893 (embodied herein), prohibiting the mailing of publications of a certain described character, must charge specifically that the publication mailed by defendant was of the character declared nonmailable by the statute, it is not sufficient to merely set ou copy of such publication, leaving nonmailable character to be infer therefrom; nor is the defect cured the conclusion of a subsequent co "contrary to the form of the statu Id.

Under R. S. § 3893, as amended Act July 12, 1876, and Act Sept. 1888 (embodied herein), declaring obscene letter, whether sealed as fi class matter or not, nonmailable m ter, and declaring a punishment depositing, for mailing or delivery, n mailable matter, an indictment for positing an obscene letter for mai and delivery, setting it out, and sh ing that it commences with an addr is sufficient, without alleging it was closed in an addressed envelope wrapper. U. S. v. Harris (C. C. 19 122 Fed. 551.

On a motion to quash an indictn under R. S. § 3893 (embodied here for mailing an obscene, lewd, or las ous letter, it is the province of court to determine whether the le which is the basis of the charge co within the scope of the statute. U v. O'Donnell (C. C. 1908) 165 Fed.

An indictment under R. S. § 3 (embodied herein), which makes n mailable "every obscene, lewd, or las ious book, * * * letter, writ print or other publication of an i cent character," which charges def ant with having mailed a letter cont ing "obscene, lewd and lascivious m ter," is not broadened in scope b further characterization of such m ter as of an indecent character. Id

Scienter as to the obscene, lewd, lascivious character of the matter m ed is an essential ingredient of the fense denounced by R. S. § 3893 (bodied herein), prohibiting the use the mails for the circulation of obs matter, and the failure to allege i not cured by R. S. § 1025, ante, § 1 providing that no indictment shall deemed insufficient nor shall the ju ment thereon be affected, by reaso any defect or imperfection in ma of form only, which shall not ten the prejudice of the defendant. U v. Slenker (D. C. 1887) 32 Fed. 69

An allegation in an indictment un R. S. § 3893 (embodied herein), hibiting the use of the mails for circulation of obscene matter, that accused "knowingly deposited or ca to be deposited," the objectionable m ter, cannot be extended to embrace averment of scienter, as to the obsc lewd, and lascivious character of matter so deposited. Id.

An indictment under R. S. § 3 (embodied herein), charged defend with mailing "a certain obscene, le and lascivious paper and publicatio an indecent character called 'Luci which paper and publication is obscene, lewd, and lascivious as to pense with the incorporation of

nd figures in this indictment," ld, that the identification of the matter was insufficient, neither of the paper, nor the title of cle, nor its general tenor being U. S. v. Harmon (D. C. 1888) 872.

ndictment charged defendant positing in the post office for "a certain obscene, lewd, and s pamphlet, of an indecent r," giving its title, and alleged "is so obscene, lewd, and las- that it would be offensive if h in full. Held, that a demur- the grounds that the pamphlet obscene, and that, if unfit for circulation, it might lawfully to certain persons, to whom the nt did not show that it was not could not be sustained, as the t could not be regarded as the record, and therefore those s could not be considered. U. arke (D. C. 1889) 38 Fed. 500.

e statute contains no exceptions ule making obscene publications able, the fact that a publica- ich would ordinarily be classed in its meaning might lawfully to certain persons does not it necessary to aver in the in- t that it was not sent to such ; it being matter of defense to at it was sent to such persons.

e an indictment for mailing a per containing an obscene ar- ncludes a number of counts, g as a separate offense the mail- copy of that issue to each of a of persons, the objection that counts are for the same offense be made by motion to require ecution to elect, and not by mo- quash the indictment. U. S. v. (D. C. 1889) 38 Fed. 827.

nt in an indictment for deposit- cene matter in the mail, describ- paper deposited as "a certain * * * paper, print, and ion, of an indecent character, ng with the words following, 'As long as there is life there ,' and then and there contained per wrapper having thereon the * * * following: 'W. E. Bluff Mills, Indiana, via Wave- but which paper is so obscene e offensive," etc. The paper, roduced, proved to be a form of prepared by the defendant for ion through the mails. Several efore the trial the defendant and obtained oyer of the in- paper in question. Held that, the circumstances, the descrip- the paper was sufficient. U. S. e (D. C. 1889) 40 Fed. 325.

mplaint against a person for n of R. S. § 3893 (embodied , is sufficient if it merely defendant with having deposit- the mail an obscene, lewd, and us letter, without setting out the language used in the letter. In re Wahll (D. C. 1890) 42 Fed. 822.

An indictment under R. S. § 3893 (embodied herein), for mailing letters giving information where obscene pictures can be obtained, is not bad because it charges that letters addressed respectively to Herman Huntress and William W. Waters were intended to and did convey information to Robert W. McAfee where obscene pictures could be obtained, since it is neither impossible nor improbable that the names Huntress and Waters were assumed names. U. S. v. Grimm (D. C. 1892) 50 Fed. 528, judgment affirmed Grimm v. U. S. (1895) 15 S. Ct. 470, 156 U. S. 604, 39 L. Ed. 550.

Where an indictment for mailing obscene matter charges that defendant "knowingly deposited in the post office an obscene letter," the word "knowingly" qualifies the whole act charged, and it is not necessary to allege that he knew the letter to be obscene. U. S. v. Nathan (D. C. 1894) 61 Fed. 936, following U. S. v. Clark (C. C. 1888) 37 Fed. 106.

An indictment for depositing in the mail an obscene document, which alleges that the document in question is so obscene and indecent that the same would be offensive to the court, and improper to be placed upon the records thereof, wherefore the grand jurors do not set forth the same, and which does not set forth the document mailed, nor describe the same so as to furnish means of identifying it, is insufficient. U. S. v. Fuller (D. C. 1896) 72 Fed. 771.

If the indictment omits to set out the offensive matter, on the ground that it is unfit to be spread upon the record, there must be such other allegations as will identify the subject-matter of the charge; and, where the objectionable matter was contained in a newspaper, it is not enough to aver that defendant was publisher of a newspaper named, and did deposit "certain newspapers, to wit, two thousand printed newspapers," without further identifying them by name, date, or otherwise. U. S. v. Reid (D. C. 1896) 73 Fed. 289.

An indictment charging that defendant did "unlawfully and knowingly deposit" certain newspapers in the mails, "each then and there containing, amongst other things, a certain obscene," etc., printed article, is insufficient to charge knowledge of the offensive character of the publication, when this objection is taken on motion to quash before trial, though the defect would probably be regarded as waived after verdict. Id.

An indictment under R. S. § 3893 (embodied herein), charging the defendant with having deposited in a post office, for mailing and delivery, a letter giving information where, how, and of

whom might be obtained an article designed and intended for the procuring of abortion, must in some manner identify such letter, to the end that the accused may be informed of the nature of the charge, and that a judgment may be pleaded in bar to a second prosecution for the same offense; and the letter should be set out in the indictment, or a sufficient reason given for not doing so. U. S. v. Tubbs (D. C. 1899) 94 Fed. 356.

An indictment under R. S. § 3893, as amended by Act Sept. 23, 1888 (embodied herein), charging the mailing of a letter giving information where and from whom an article or thing designed and intended for the prevention of conception might be obtained, must state what the particular "article or thing" consisted of; describing it with at least such particularity that the accused may not only know the particular charge against him, but may be able to plead the judgment of conviction or acquittal in bar of a second prosecution. U. S. v. Pupke (D. C. 1904) 133 Fed. 243.

An indictment under R. S. § 3893, as amended by Act July 12, 1876, and Act Sept. 26, 1888 (embodied herein), for mailing a letter giving information where and how and of whom and by what means articles and things designed and intended for the procuring of an abortion might be obtained, states an offense, where it sets out a letter written to defendant inquiring for some medicine or other means for accomplishing such result, and a letter, alleged to have been mailed by defendant in reply, which, when read in connection with the letter of inquiry, in effect offers for a stated consideration to effect the desired result by some treatment or operation, although the particular means are not specified; the word "thing," as used in the statute, being a comprehensive term, which includes any kind of treatment or operation. U. S. v. Somers (D. C. 1908) 164 Fed. 259.

An indictment for depositing in the mail a letter giving information where or by whom any act for procuring an abortion could be done, in violation of Cr. Code, § 211, held insufficient. U. S. v. Kline (D. C. 1913) 201 Fed. 954.

An indictment, alleging that defendant well knew that an envelope mailed by him contained a letter giving prohibited information as to where articles could be purchased intending to prevent conception, held not objectionable because it did not allege that defendant knew or believed the articles mentioned in the letter were designed and intended for that purpose. U. S. v. Currey (D. C. 1913) 206 Fed. 322.

Since the statute regulating the use of the mails has reference to an article, drug, medicine, or thing advertised and described to prevent conception and not to a letter describing or advertising it through the mails, indictment alleging the mailing o letter advertising and describing tain articles intended to be used to p vent conception was insufficient. Id

The government was not required specify as to which of the articles relied on for conviction. Id.

An indictment for misuse of the m alleging the mailing of an envel containing a letter which defendant knew advertised and described cert articles and implements designed intended to prevent conception, e held to sufficiently allege defenda knowledge that the letter adverti and represented that the articles co be used for that purpose. Id.

The indictment was not fatally fective for failure to charge that fendant wrote the letter or caused to be written. Id.

To make good an indictment for m ing a letter giving information for p curing an abortion, the letter set need not be such that a stranger wo know it gave the information, nor n the indictment contain explanat matter to show that it did give such formation. U. S. v. Breinholm (D. 1913) 208 Fed. 492.

On demurrer to an indictment un Cr. Code, § 211, as amended by March 4, 1911, for sending an obsc book through the mails, even when book is stipulated into the record part of the indictment, the court power only to decide whether it is clearly innocent that the jury sho not pass on it at all. U. S. v. K nerley (D. C. 1913) 209 Fed. 119.

In a prosecution under this sect the offense is depositing the letter the mail, and the question of varia between the language of the le charged and the one proved need therefore be determined by the st rule invoked, where the offense rela directly to the instrument relied up Kemp v. U. S. (1914) 41 App. D. 539.

No fatal variance in a prosecution violation of this section exists betw the allegation in the indictment of sending of a letter reading, "It wo cost about two hundred and have stay here one week," and a letter int duced in evidence, reading, "It wo cost about two hundred & would h to stay here one week." Id.

37. **Evidence.**—The provision in R § 3893 (embodied herein), making mailable an obscene letter sealed in envelope on which nothing appears the name and address, that noth therein shall authorize any person open any letter or sealed matter of first class "not addressed to himse does not vitiate the evidence of a p office inspector who opens a letter dressed to himself under a fictiti

Andrews v. U. S. (1896) 16 S. 162 U. S. 420, 40 L. Ed. 1023, judgment U. S. v. Andrews 893) 58 Fed. 861.

it is proved certain newspa- ve been received by the ad-, under circumstances strongly g that they came through the is competent to further prove the day these papers were dated umbers of copies of the same ere deposited in the post office ing and delivery. Dunlop v. U.) 17 Sup. Ct. 375, 165 U. S. L. Ed. 799.

an indictment against J. R. D., roprietor, for depositing in the newspaper called "The Chicago " containing obscene matter, npetent to admit in evidence as to prove identity and ownership of a newspaper bearing the "The Dispatch by J. R. D.," additional information that it fficial paper of the city of Chi- l of Cook county. Id.

ow that letters or papers ad- to a post office inspector, and his table or in his private post x, had come through the mails, npetent for him to testify as to rse of business in delivering to rs, and that it was the duty of in messenger to gather such m the boxes in the post office, ribute it in the boxes provided inspectors. Id.

trial for mailing lewd and las- letters, in which the only issue jury is whether they were sent the mails or in some other way, of subsequent illicit relations the writer and the addressee etters is irrelevant. Safter v. 898) 87 Fed. 329, 31 C. C. A. 1.

e, in a prosecution for unlaw- epositing in the United States nmailable matter, it was not that the box claimed to have lawfully mailed had ever been ost office, either by marks there- by evidence of post office em- and the recipient did not testify came to him from the mail, but eful to say only that he "re- t," without stating from whom, ence was insufficient to sustain tion. Harvey v. U. S. (1903) l. 357, 61 C. C. A. 61.

viction for sending an obscene, d lascivious publication through ls, in violation of R. S. § 3893 ed herein), held sustained by lence submitted to the jury by instruction. The test is the y to corrupt and deprave the f those who are open to such in- . MacFadden v. U. S. (1908) l. 51, 91 C. C. A. 89, writ of cer- denied (1909) 29 S. Ct. 693, 214 11, 53 L. Ed. 1062.

e trial of a defendant charged nding obscene letters through ls, testimony of a witness as to statements made by him admitting improper relations with a married woman, having no connection with the offense charged, was incompetent. Toothman v. U. S. (1912) 203 Fed. 218, 121 C. C. A. 424.

In prosecution for sending an obscene letter through the mails, testimony of defendant's statements to illicit relations with a married woman required reversal. Id.

Where a corporation publishing a newspaper and its manager were indicted for sending certain nonmailable pictures through the mails, it was not necessary, in order to sustain a conviction of the manager, that the government prove that he personally deposited the papers containing the alleged nonmailable pictures in the mails; the jury being authorized to find such fact from all the circumstances, including proof that the pictures were printed in the paper of which he was business manager and the publication of which he superintended. Tyomies Pub. Co. v. U. S. (1914) 211 Fed. 385, 128 C. C. A. 47.

In a prosecution for sending certain nonmailable pictures through the mails, evidence of certain words and dialogue appearing above and below the pictures, which was both identifying and characterizing, was admissible. Id.

On trial of an indictment for depositing scurrilous postal cards in the mail, evidence is admissible of other writings of defendant containing identical errors in spelling, to prove authorship. U. S. v. Chamberlain (C. C. 1874) Fed. Cas. No. 14,778.

On trial of an indictment charging the deposit in the mail of an obscene publication, clauses of alleged similar character cannot be read from other books by way of illustration. U. S. v. Bennett (C. C. 1879) Fed. Cas. No. 14,571.

To authorize a conviction under an indictment for sending obscene or indecent matter through the mails (R. S. § 3893 [embodied herein]), it must be proven beyond a reasonable doubt—First, that the defendants or their agents deposited, or caused to be deposited, the paper containing the objectionable matter in the post office for mailing; second, that the defendants knew that the paper contained the objectionable matter; and, third, that the publication was obscene, lewd, lascivious, or indecent. U. S. v. Bebout (D. C. 1886) 28 Fed. 522.

Accused being on trial for sending an obscene letter through the mails, directed to G., the government offered in evidence an alleged reply to a letter written to accused by a postal inspector, written on the back of the inspector's letter, which the government claimed was in the handwriting of accused, stating that accused had received a dental certificate, and was glad to get it, because it saved him accepting free board and lodging for six months, and that, while he liked big dinners, he

did not like to impose on good nature; the government claiming that this had reference to accused's conviction and incarceration before G., as a justice of the peace, on a charge of practicing dentistry without a license. It did not appear that the inspector had any knowledge of accused's incarceration as claimed. Held, that the letter was not admissible as showing motive for sending the alleged obscene letter to G. U. S. v. North (D. C. 1911) 184 Fed. 151.

In a prosecution of a physician for mailing a letter relating to abortion, evidence of a conversation between defendant and the addressee had as result of the letter, in which defendant referred to prior publicity resulting from a similar operation, held admissible to show guilty knowledge and intent. U. S. v. Kline (D. C. 1913) 201 Fed. 954.

In a prosecution for violation of this section, making it an offense to send through the mails a letter giving information as to how or where an abortion may be procured, the fact that a letter, innocent on its face, gave such information, may be shown by extrinsic proof. Kemp v. U. S. (1914) 41 App. D. C. 539.

An obscure letter may be explained by testimony of a detective who interviewed the sender in respect to its alleged subject-matters for the purpose of bringing it within this section, making it an offense to send through the mails a letter giving information as to how or where an abortion may be procured. Id.

38. Trial.—The court may, in its discretion, leave to the jury the character of the paper mailed by defendant, with instructions as to the rules by which they should be guided in determining what is an "obscene, lewd, or lascivious paper," within the meaning of the statute. Rosen v. U. S. (1896) 16 Sup. Ct. 434, 161 U. S. 29, 40 L. Ed. 606.

In a prosecution for mailing obscene matter the court charged that what are obscene, etc., publications "is largely a question of your own conscience and your own opinion"; but to be of that character a publication "must be calculated with the ordinary reader to deprave him, deprave his morals, or lead to impure purposes, * * * calculated to lower the standard which we regard as essential to civilization," etc. Held, that this could not mislead the jury into supposing that anything which tended to deprave morals in any way whatever was an obscene publication, when the publications in evidence consisted of advertisements by women offering inducement for the visits of men to their rooms. Dunlop v. United States (1897) 17 Sup. Ct. 375, 380, 165 U. S. 486, 41 L. Ed. 799.

In a prosecution for mailing a newspaper containing obscene advertisements, it was shown that a post office inspector repeatedly talked with defend-

ant about the paper, of which def ant admitted himself to be the res sible head; that he was warned t were complaints of its character, that the district attorney considere vertisements under certain heads proper and illegal; that defendant plied that he scarcely ever saw the vertisements before publication, but instructed his agent to scrutinize t with more care. Held sufficient dence of knowledge and responsi to warrant refusal to direct an ac tal. Id.

Instructions in a prosecution for positing prohibited matter in the m considered, and held free from pr dicial error. Shepard v. U. S. (1 160 Fed. 584, 87 C. C. A. 486, wri certiorari denied (1908) 29 Sup. 682, 212 U. S. 571, 53 L. Ed. 655.

In a prosecution for mailing nonm able matter, an instruction which in fect stated to the jury that defen was chargeable with knowledge of character of such matter and migh convicted if he negligently refra from ascertaining its character wa roneous. Konda v. U. S. (1908) Fed. 91, 92 C. C. A. 75, 22 L. R. A. S.) 304.

In a prosecution under R. S. § 3 as amended in 1888 (embodied her for depositing an obscene paper in mails, the court must first deter whether the writing could reason be held within the prohibition, an reasonable minds might reach diffe conclusions as to its character, the c must submit the question to the and cannot in any case declare the ing to be within the statute as m of law. Knowles v. U. S. (1909) Fed. 409, 95 C. C. A. 579.

Whether or not a newspaper ar commenting on the death of a y unmarried woman as the result o attempted abortion, and in effect proving fornication and condemnin ciety for its attitude toward it, wa scene, lewd, or lascivious and rend the mailing of the paper containing criminal offense under Rev. St. § 3 as amended in 1888, held a questio the jury. Id.

In a prosecution for sending non able letters through the mail, it not error, after the letters had bee troduced, to permit the jury to them with them on retirement. ters v. U. S. (1912) 201 Fed. 845, C. C. A. 175.

Where an indictment charged de ant only with mailing certain letter was not prejudiced by instruction thorizing a conviction if he mailed letters or "caused them to be mai Id.

In a prosecution for sending ob and filthy matter through the mail court properly defined the term "fi to mean nasty, dirty, vulgar, inde offensive to the moral sense, mo depraving, and debasing, and left

tion whether the pictures in ques- were obscene, filthy, lewd, and las- us to the jury. Tyomies Pub. Co. . S. (1914) 211 Fed. 385, 128 C. . 47.

a criminal prosecution for viola- of this section, the question wheth- e matter contained in a newspaper d by defendant was obscene, lewd, rious, or indecent held properly itted to the jury by instructions n were free from prejudicial er- Botsford v. U. S. (1914) 215 Fed.

e obnoxious character of the writ- s a question of fact for the jury, not of law for the court. U. S. v. s (C. C. 1889) 38 Fed. 326.

e question whether or not a par- r publication is obscene, lewd, or rious is for the jury, under instruc- from the court as to the meaning e words. U. S. v. Clarke (D. C.) 38 Fed. 500.

ough a defendant, under indictment ending obscene matter through the , is not entitled, as under the Eng- practice, to take the opinion of the by demurrer whether the matter orth was or was not obscene, it is r for the court to construe the nent, and decide whether a ver- establishing its obscenity would be side as against evidence and rea- U. S. v. Smith (D. C. 1891) 45 476.

a prosecution for mailing an al- nonmailable letter, whether the was filthy, within the ordinary tance of that term as used in Pen. § 211, held for the jury. U. S. v. bsey (D. C. 1911) 188 Fed. 450.

a prosecution under this section mailing nonmailable matter, there preliminary question for the court, if properly raised, to determine whether the matter can by any reasonable judgment be held within the statute. U. S. v. Journal Co. (D. C. 1912) 197 Fed. 415.

39. Sentence and punishment.—See, also, § 10512, post.

R. S. § 3893, as amended by Act Sept. 26, 1888, § 2 (embodied herein), which fixes the punishment for depositing obscene, lewd, or lascivious matter in the mails at a fine of not more than $5,000, or imprisonment at hard labor for not more than five years, or both, is not in violation of the eighth constitutional amendment, as imposing or authorizing an excessive fine or a cruel and unusual punishment. Rinker v. U. S. (1907) 151 Fed. 755, 81 C. C. A. 379.

Where a person convicted of mailing obscene papers is sent to the penitentiary, a failure to sentence him to hard labor, as required by R. S. § 3893 (embodied herein), is a fatal error, for which the judgment will be reversed. Harman v. U. S. (C. C. 1892) 50 Fed. 921.

Cited without definite application. Palliser v. U. S. (1890) 10 Sup. Ct. 1034, 1037, 136 U. S. 257, 34 L. Ed. 514; Glasgow v. Moyer (1912) 32 Sup. Ct. 753, 755, 225 U. S. 420, 56 L. Ed. 1147; McNiel v. U. S. (1907) 150 Fed. 82, 80 C. C. A. 36; Barnes v. U. S. (1909) 166 Fed. 113, 92 C. C. A. 97; Same v. Lyons (1911) 187 Fed. 881, 110 C. C. A. 15; U. S. v. Whittier (C. C. 1882) 13 Fed. 534; U. S. v. Morris (C. C. 1884) 18 Fed. 900; In re Christian (C. C. 1897) 82 Fed. 199, 202; U. S. v. Janes (D. C. 1896) 74 Fed. 543; U. S. v. Booker (D. C. 1899) 98 Fed. 291, 294; U. S. v. Breniholm (D. C. 1913) 208 Fed. 492.

382. (Crim. Code, § 212.) Libelous and indecent matter on wrappers or envelopes; punishment for mailing.

l matter otherwise mailable by law, upon the envelope or out- cover or wrapper of which, or any postal card upon which, delineations, epithets, terms, or language of an indecent, lewd, vious, obscene, libelous, scurrilous, defamatory, or threatening acter, or calculated by the terms or manner or style of display and ously intended to reflect injuriously upon the character or con- of another, may be written or printed or otherwise impressed or rent, are hereby declared nonmailable matter, and shall not be eyed in the mails nor delivered from any post-office nor by any r carrier, and shall be withdrawn from the mails under such regu- ns as the Postmaster-General shall prescribe. Whoever shall vingly deposit or cause to be deposited, for mailing or delivery, hing declared by this section to be nonmailable matter, or shall vingly take the same or cause the same to be taken from the mails he purpose of circulating or disposing of or aiding in the circula- or disposition of the same, shall be fined not more than five thou- dollars, or imprisoned not more than five years, or both.

Act June 18, 1888, c. 394, § 2, 25 Stat. 187, as amended, Act Sept. 26, 1888, 1039, § 1, 25 Stat. 496. Act March 4, 1909, c. 321, § 212, 35 Stat. 1129.

Notes of Decisions

onstitutionality.
ffect of amendment changing penalties.
3. Exclusion of nonmailable matter by postmaster general.
4. Falsity of language and malice.

5. Matter printed, stamped, or delineated on cover or wrapper in general.
6. "Outside cover" of publication.
7. Newspaper without wrapper.
8. Printing offer of reward for fugitive on envelope.
9. Writing anonymous, scurrilous letter.
10. Dunning letters.
11. Paper issued by collection agency.
12. Postal cards.
13. Indictment.
14. Evidence.

1. Constitutionality.—Act Sept. 26, 1888, c. 1039, 25 Stat. 496, forbidding deposit in the mails of anything upon the exposed surface of which appears language scurrilous, defamatory, threatening, or calculated and obviously intended to reflect injuriously on the character or conduct of others, is not objectionable as denying or abridging freedom of speech. Warren v. U. S. (1910) 183 Fed. 718, 106 C. C. A. 156, 33 L. R. A. (N. S.) 800.

2. Effect of amendment changing penalties.—Act Sept. 26, 1888, amending section 2 of the act of June 18, 1888, relating to nonmailable matter, changes all former penalties provided for that offense; and as the law of Sept. 26, 1888, has no saving clause relating to offenses arising under the said second section, offenses committed prior to Sept. 26, 1888, cannot be punished under the present law. U. S. v. Barber (D. C. 1888) 37 Fed. 55.

3. Exclusion of nonmailable matter by postmaster general.—This section vests the postmaster general with authority to determine what matter is nonmailable thereunder; and the courts cannot review his action in that regard unless he acts maliciously or fraudulently or exceeds his authority. Hence, in a suit to compel a postmaster to accept for transmission through the mails matter inclosed in certain envelopes, an answer setting up as a defense an order from the postmaster general directing the defendant to decline to accept such envelopes, on the ground that they contained matter printed thereon which rendered them nonmailable under the statute, is not evasive, but is responsive to the bill; it being the defendant's duty to obey such order. Davis v. Brown (C. C. 1900) 103 Fed. 909.

4. Falsity of language and malice.—In a prosecution for sending nonmailable matter through the mail, in violation of Act Sept. 26, 1888, c. 1039, 25 Stat. 496, it is not material whether the objectionable language is true or false, or whether accused was actuated by public spirit or private malice. Warren v. U. S. (1910) 183 Fed. 718, 106 C. C. A. 156, 33 L. R. A. (N. S.) 800.

5. Matter printed, stamped, or delineated on cover or wrapper in general.—A letter in which the person to whom it is addressed is called "a son of a bitch," inclosed in a sealed envelope, does not render the sender liable, under R. S. § 3893, as amended by Act Sept. 26, 1888 (ante, § 10381), pro hibiting the mailing of matter "upon th envelope or outside cover of which, o any postal-card upon which, are an delineation, epithets, terms, or lan guage" of an indecent, libelous, or de famatory character, etc. U. S. v. Dur ant (D. C. 1891) 46 Fed. 753.

The word "notorious," when writte on the outside of a letter, after th name of the person addressed, as fol lows, "Room 32, Pease House, Fron St., City, The Notorious," is not "ob viously intended to reflect injuriousl on the character or conduct of anoth er," and the mailing of such letter i therefore not within the prohibition c the statute. U. S. v. Jarvis (D. C 1894) 59 Fed. 357.

Sending through the mails a packag or letter on the cover or wrapper c which or a postal card on which i written, printed, stamped, or delineate any libelous or defamatory matter i within the prohibition of this sectio U. S. v. Nathan (D. C. 1894) 61 Fe 936, 937.

A publication constituting a seditiou libel and counseling murder, arson, rio and treason would come within th terms of this section as being "libe ous," "scurrilous," "defamatory," an "threatening," if the matter were prin ed on its cover or wrapper. (1908) 2 Op. Atty. Gen. 555.

6. "Outside cover" of publication.—When the outside pages of a public tion, though of the same color as th rest of the publication, overspread c overlay the publication, such pages ma be considered the "outside cover," c the publication, within Act Sept. 2 1888. U. S. v. Burnell (D. C. 189 75 Fed. 824.

7. Newspaper without wrapper.—A Sept. 26, 1888, prohibiting the mailin of matter on the outside cover or wra per containing language "calculated its terms * * * and obviously i tended to reflect injuriously upon th character or conduct of another," do not apply to a printed paper containi such language, which is not inclosed a wrapper, but which is merely folde and the postage stamps placed on th paper itself. U. S. v. Gee (D. C. 189 45 Fed. 194.

A newspaper without a wrapper, th address being written on the paper i self, though containing scurrilous a defamatory matter, marked with bl pencil and so folded as to expose th same, is not nonmailable matter, wit in this section. U. S. v. Higgins (C. 1912) 194 Fed. 539.

8. Printing offer of reward for fug tive on envelope.—Where accused d posited in the post office a stamped e velope, on the face of which was prin ed in large red letters, "$1,000 Rewa will be paid to any person who kidna Ex. Gov. Taylor and returns him Kentucky authorities," such depo constituted a violation of Act Sept. 2

1039, 25 Stat. 496, making it se for any person to mail an on the outside of which is any scurrilous, defamatory, or ing language calculated and ob- intended to reflect injuriously haracter or conduct of another. v. U. S. (1910) 183 Fed. 718, C. A. 156, 33 L. R. A. (N. S.)

iting anonymous, scurrilous let- is section did not include a let- nce a showing that defendant nd published words charging intiff had "written anonymous which were scurrilous, and that "a state prison offense" with- oquium or innuendo, does not to a charge that plaintiff had ed a crime against this section. y v. Effler (1902) 118 Fed. 261, C. C. A. 355.

unning letters.—Mailing a let- osed in an envelope, on which ds "Excelsior Collection Agen- printed in very large, full-faced, letters, which occupy more than envelope, and are so placed as ntirely separate from the direc- return to the sender, is a vio- of 25 Stat. 496, c. 1039, which mailing any envelope on which any delineation, epithet, or lan- calculated and intended by its manner, or style of display to injuriously on the character or t of another. U. S. v. Brown (C. 0) 43 Fed. 135.

editor deposited in the mail let- closed in envelopes directed to or, on one of which was indors- Carry me back in due time to the Regulator, for publication. outh Washington, Minneapolis, Persons who want us to collect Dead Beats should send their ac- to 32 Washington avenue south, apolis, Minn. Send five cents to postage for a large letter to the ;" and on another: "Return in s to———, the Collector of Bad 32 Washington Av. S., Minne- Minn. I am looking for an Old The Dead-Beat Collector hires look them up." He also mailed tal card addressed to the debtor, ning the following writing: "Sir: dering how near you can came to bill, I have decided to post you Dead-Beat lists I know of in the and have accordingly given the ent agencies a chance at you." that the creditor was not liable rosecution under R. S. § 3893, § 10381, as amended, making it fense for any person to deposit in ail any "letter upon the envelope hich, or postal card upon which, ent, lewd, obscene, or lascivious eations, epithets, terms, or lan- e may be written or printed." Ex Doran (D. C. 1887) 32 Fed. 76. e sending by a collection agency of dunning letters inclosed in black envelopes, addressed in white letters, the purpose of which was universally known to the post-office employés, was a "delineation," within Act Sept. 26, 1888, in relation to nonmailable matter. U. S. v. Dodge (D. C. 1895) 70 Fed. 235.

Act Sept. 26, 1888, prohibiting the sending through the mails of envelopes bearing any language of a defamatory or threatening character, or calculated, by its terms or manner of display, and obviously intended, to reflect injuriously upon another, does not forbid the sending of a respectful dunning letter in an unsealed envelope, on which are printed the words, "Mercantile Protection and Collection Bureau," in display letters of "10 points, or long primer French Clarendon, type." In re Barber (D. C. 1896) 75 Fed. 980.

11. Paper issued by collection agency.—A paper issued by a collection agency contained on its first page a motto showing that its purpose was to collect debts, and a large part of the paper contained notices warning the public against persons alleged to have failed to pay their debts, or asking for information as to such persons. It appeared that, when an account was sent to the agency for collection, the alleged debtor was notified that, if not paid, the account would be advertised in such paper as being for sale, and the paper contained many such advertisements. Held that, the object appearing to be to coerce payment of money the notices published were "calculated by the terms * * * and obviously intended to reflect injuriously upon the character or conduct of another," within the meaning of Act Sept. 26, 1888. U. S. v. Burnell (D. C. 1896) 75 Fed. 824.

12. Postal cards.—The mailing of a postal card concerning a business transaction, about which the writer was in an angry temper, which contained words ordinarily called profane, and expressions too vulgar for quotation by the court, the indecency of which was disguised by the use of an initial letter, slang words reflecting on the character and conduct of the addressee, and a political epithet intended to be defamatory, is a violation of Acts June 18, and Sept. 26, 1888, prohibiting the mailing of postal cards of an indecent, scurrilous, or defamatory character. U. S. v. Davis (C. C. 1889) 38 Fed. 326.

The mailing of a postal card containing words imputing illicit intercourse to third persons, but no epithet in the form of a substantive or adjective, is an offense under R. S. § 3893, ante, § 10381, punishing the mailing of postal cards containing "indecent or scurrilous epithets." U. S. v. Pratt (D. C. 1875) Fed. Cas. No. 16,082.

A postal card demanding payment of

a debt, and stating that "if it is not paid at once we shall place the same with our lawyer for collection," is nonmailable matter, within 25 Stat. 496, prohibiting the mailing of a postal card, envelope, or wrapper, the outside of which contains language of a "threatening character," or language "calculated * * * and obviously intended to reflect injuriously upon the character or conduct" of the person to whom it is addressed. U. S. v. Bayle (D. C. 1889) 40 Fed. 664, 6 L. R. A. 742.

A postal card containing the words, "Please call and settle account, which is long past due, and for which our collector has called several times, and oblige," is not within the prohibition, as the language cannot be said to be threatening or offensive to the person addressed, or such as to attract public notice. Id.

A postal card containing a notice that rent was due and unpaid, and, if not paid by a certain date, that the "matter would be placed in the hands of an officer," does not come within the prohibition of the act of September, 1888, declaring nonmailable any postal card of a "threatening character," and "obviously intended," from its "terms, manner, and style of display, to reflect injuriously upon the character of another." U. S. v. Elliott (D. C. 1892) 51 Fed. 807.

Postal cards containing such allegations as "You have promised, and do not perform," and, "I see, very plainly, you do not intend to pay any attention to my letters, or your agreements," are nonmailable matter, within 25 Stat. 496, prohibiting the mailing of a postal card, which contains language obviously intended to reflect injuriously on the character or conduct of the person to whom it is addressed. U. S. v. Si mons (D. C. 1894) 61 Fed. 640.

A postal card sent by a creditor his debtor, demanding payment of note, and adding: "You have be fighting time all along. * * * I v garnishee and foreclose. But I disli to do this if you will only be h white,"—is nonmailable, within A Sept. 26, 1888. U. S. v. Smith (D. 1895) 69 Fed. 971.

A postal card reading: "It is w regret that I once more ask you take your choice. I will vindicate m self if I live. The truth and the wh truth must come out,"—contains la guage of a "threatening" charact within the meaning of the Unit States postal laws. Griffin v. Pe broke (1876) 2 Mo. App. Rep'r, 9 64 Mo. App. 263.

13. Indictment.—Separate counts an indictment, charging with resp to the same package a violation of bo this and the preceding section, in th the outside cover or wrapper display matter nonmailable under this secti and its contents under the preced section, held not repugnant. Botsfo v. U. S. (C. C. A. 1914) 215 Fed. 5

The rule which requires a setti out of an entire instrument or its te or in an indictment in the fede courts is limited mainly, if not whol to cases of forgery, counterfeiting, a sending threatening letters. U. S. Heinze (C. C. 1908) 161 Fed. 425.

14. Evidence.—Extraneous evider is not admissible to show that the la guage of a postal card, on its fa threatening or abusive, was not so i tended by the sender, or so understo by the sendee. Griffin v. Pembro (1876) 2 Mo. App. Rep'r, 980, 64 M App. 263.

§ 10383. (Crim. Code, § 213.) Lottery, gift enterprise, etc., ci culars, etc., not mailable; punishment for; place of trial.

No letter, package, postal card, or circular concerning any lo tery, gift enterprise, or similar scheme offering prizes dependent whole or in part upon lot or chance; and no lottery ticket or pa thereof, or paper, certificate, or instrument purporting to be or to re resent a ticket, chance, share, or interest in or dependent upon th event of a lottery, gift enterprise, or similar scheme offering priz dependent in whole or in part upon lot or chance; and no check, dra bill, money, postal note, or money order, for the purchase of any tick or part thereof, or of any share or chance in any such lottery, gift e terprise, or scheme; and no newspaper, circular, pamphlet, or public tion of any kind containing any advertisement of any lottery, gift e terprise, or scheme of any kind offering prizes dependent in whole in part upon lot or chance, or containing any list of the prizes draw or awarded by means of any such lottery, gift enterprise, or schem whether said list contains any part or all of such prizes, shall be d posited in or carried by the mails of the United States, or be delivere by any postmaster or letter carrier. Whoever shall knowingly depos or cause to be deposited, or shall knowingly send or cause to be sen anything to be conveyed or delivered by mail in violation of the pr visions of this section, or shall knowingly deliver or cause to be d

ed by mail anything herein forbidden to be carried by mail, shall ned not more than one thousand dollars, or imprisoned not more two years, or both; and for any subsequent offense shall be imned not more than five years. Any person violating any provi- of this section may be tried and punished either in the district hich the unlawful matter or publication was mailed, or to which s carried by mail for delivery according to the direction thereon, which it was caused to be delivered by mail to the person to n it was addressed.

R. S. § 3894, as amended, Act July 12, 1876, c. 186, § 2, 19 Stat. 90, and t Sept. 19, 1890, c. 908, § 1, 26 Stat. 465. Act March 2, 1895, c. 191, 28 at. 963. Act March 4, 1909, c. 321, § 213, 35 Stat. 1129.

Notes of Decisions

nstitutionality and validity.
tute as superseding R. S. § 3894.
nstruction of statute in general.
rmer statute as applying only to pro-
notion of lottery schemes.
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nishment.
ernal revenue taxation.

§ 10407, post, and notes there- . See, also, notes under § 7412,

onstitutionality and validity.— statute was held constitutional. rte Jackson (1877) 96 U. S. 727, 4 L. Ed. 877.

stitutionality, see notes under . art. 1, § 8 (7), and Amendment parte Rapier (1892) 12 Sup. Ct. 43 U. S. 110, 36 L. Ed. 93.

dity of act, see notes under Ex Rapier (1892) 12 Sup. Ct. 374, J. S. 110, 36 L. Ed. 93; Horner S. (1892) 12 Sup. Ct. 522, 525, J. S. 570, 36 L. Ed. 266.

An act prohibiting the carrying in the mail of letters or circulars concerning lotteries, and punishing as a crime the sending of such matter through the mails, is not unconstitutional. In re Jackson (C. C. 1877) Fed. Cas. No. 7,124.

Violations of R. S. § 3894 (embodied herein), by depositing lottery circulars in the mail, or by sending them by mail, are complete without transmission or delivery of such matter, and an indictment therefor can be tried only in the district in which the matter is mailed; and so much of that section as, amended by Act Sept. 19, 1890, provides for the trial of those offenses in another district, to which such matter is carried by mail for delivery, conflicts with Const. art. 3, § 2, and also with the sixth amendment. But the offense of causing the prohibited matter to be delivered by mail, not being complete until such delivery, may be tried and punished in the district in which delivery is made. U. S. v. Conrad (C. C. 1894) 59 Fed. 458, explaining Horner v. U. S. (1892) 12 Sup. Ct. 522, 143 U. S. 570, 36 L. Ed. 266.

The acts of September 29, 1890 (26 Stat. 466), and March 2, 1895 (28 Stat. 964), for the suppression of lotteries, are constitutional and empower the Postmaster General to deny all mail facilities to those engaged in any of the classes of business described therein. (1896) 21 Op. Atty. Gen. 313, 314.

2. Statute as superseding R. S. § 3894.—This section held to supersede R. S. § 3894. U. S. v. Ridgway (D. C. 1912) 199 Fed. 286.

3. Construction of statute in general.—Act March 2, 1889, c. 393, § 2, making it a criminal offense to use the United States mails in carrying on or promoting any unlawful business under a false, fictitious, or assumed name, and R. S. § 3894, as amended by Act Sept. 19, 1890 (embodied herein), forbidding the use of the mails in carrying on or promoting the lottery business, construed in pari materia, plainly show the intent of congress to make the use of the mails to carry on or promote the lottery business under an assumed name a criminal offense.

MacDaniel v. U. S. (1898) 87 Fed. 324, 30 C. C. A. 670, certiorari denied (1898) 19 Sup. Ct. 885, 171 U. S. 689, 43 L. Ed. 1179.

This act is not only in derogation of the common law, but is penal in its character, and should therefore receive a strict construction. Commerford v. Thompson (C. C. 1880) 1 Fed. 417, 420.

This section must be construed, not according to its literal terms, but with reference to the evil to which congress was addressing itself, and the remedy it intended to provide for the suppression of that evil. U. S. v. Mason (C. C. 1884) 22 Fed. 707.

4. Former statute as applying only to promotion of lottery schemes.—R. S. § 5480, and its amendments (post, § 10385) are general in character, and make the use of the mails for promoting schemes to defraud a criminal offense. R. S. § 3894, as amended (embodied herein), is specific and applies only to the promotion of lottery schemes by the use of the mails. U. S. v. Sauer (D. C. 1898) 88 Fed. 249.

5. Meaning of "circular" and "letter."—The word "circular" in this section obviously refers to circulars sent out by lottery companies to advertise their schemes, and the word "letter" used in connection with it, under the rule of ejusdem generis, imports letters of a similar character and mailed for a like purpose. Commerford v. Thompson (C. C. 1880) 1 Fed. 417, 420.

6. Meaning of words "dependent on lot or chance."—See notes post.

If the condition upon which a prize may be received depends solely upon the ability of the beneficiary to perform that condition, then it does not depend upon "lot or chance," in any legal sense. (1900) 23 Op. Atty. Gen. 260.

To constitute "lot or chance," in a legal sense, the condition upon which the prize is to be received must depend for its performance entirely upon others over whom and whose action the beneficiary has no control. Id.

Opinion of August 31, 1900 ([1900] 23 Op. Atty. Gen. 200), commented on and distinguished. Id.

The words "dependent upon lot or chance," as used in R. S. § 3894, as amended by Act Sept. 19, 1890 (embodied herein), exclude estimates which are based upon mental calculation, even though the factors which enter into such calculation may be uncertain and matter of conjecture. (1901) 23 Op. Atty. Gen. 492, reaffirming opinions of October 31, 1890 ([1890] 19 Op. 679), and of September 4, 1900 ([1900] 23 Op. 207).

7. Use of the word "concerning."—It is obvious that the word "concerning" in R. S. § 3894 (embodied herein), was not intended to be used in its broadest sense, "pertaining to or rela tive to," as such construction woul include every letter of which the ente prises mentioned were wholly or in par the subject. Commerford v. Thompso (C. C. 1880) 1 Fed. 417, 420.

8. What constitutes lottery in gen eral.—An advertisement for the givin away of a piano and a reduction in th price of two other pianos to the fir persons forwarding the neatest solutio of a 15-square puzzle held not a lo tery, gift enterprise, or similar schem dependent in whole or in part on l or chance, within this section, prohibi ing the use of the mails for the furthe ance of lottery schemes, etc. Eastma v. Armstrong-Byrd Music Co. (1914 212 Fed. 662, 129 C. C. A. 198, 52 L R. A. (N. S.) 108.

The three necessary elements of "lottery" are the furnishing of a co sideration, the offering of a prize, an the distribution of the prize by chan rather than entirely upon a basis merit. Brooklyn Daily Eagle v. Voo hies (C. C. 1910) 181 Fed. 579.

The word "lottery" embraces the el ments of procuring through lot chance, by the investment of money something of value, some great amount of money or thing of value. U S. v. Wallis (D. C. 1893) 58 Fed. 94

A bond investment scheme, accor ing to which only a limited few, wh are determined by the order in whic their applications are received, are ce tain to receive a return, and the re are dependent for any return, and f the time thereof, upon the probabili that the great majority will permit the bonds to lapse, is a scheme in whic the prize is dependent on chance, an constitutes a "lottery," which it is crim inal to advertise through the mails. U S. v. McDonald (D. C. 1893) 59 Fe 563.

To constitute a lottery there must b a consideration, chance, and prize. person must pay something for the o portunity to try for a prize by chan or lottery. U. S. v. Purvis (D. 1912) 195 Fed. 618.

A circular of the World's Dispensa Medical Association, contemplating t sale of 100,000 copies of a certain bo at $1.50 per copy, and proposing to di tribute among the purchasers a lar amount out of the proceeds of su sale in sums ranging from 25 cents $6,000 per each purchaser, held to unmailable matter, it being manifest a device to deceive and defraud t public. (1883) 17 Op. Atty. Gen. 62

A pamphlet and papers accompan ing it considered, and determined be matter that should be excluded fro the mails, as containing an advertis ment of a lottery, in violation of R. § 3894 (embodied herein). (1891) Op. Atty. Gen. 203.

An advertisement containing a pictu and description of a slot machine wi

which revolves and indicates
ce the quantity of articles pur-
is not a circular containing any
or enterprise offering prizes de-
upon lot or chance within the
of the act of September 19,
26 Stat. 465). (1898) 22 Op.
en. 198.

enterprise or scheme by which
n pays for a chance to obtain
ng of much greater value, the
or failure to get which depends
t or chance, is similar to a lot-
the sense in which that word
in this statute. (1900) 23 Op.
en. 200.

dless chain enterprise.—The
chain enterprise whereby A
with B that upon the return to
B of a card accompanied by a
sum of money and the distri-
by him of ten similar cards ac-
ied by like requests to ten oth-
ons, and upon the receipt by A
f the ten cards accompanied in
stance by like sums of money,
send to B a magazine for one
ee, and will present him with
or other articles equal in val-
fty times the amount of money
ly sent by B, comes within the
ion of section 3894, R. S. as
d by Act Sept. 19, 1890 (em-
herein), which provides that,
tter, postal card, or circular
ing any lottery, so-called gift
or other similar enterprise of-
prizes dependent upon lot or
or concerning schemes devised
purpose of obtaining property
alse pretenses, * * *" shall
ived, transmitted, or delivered
the mails. (1900) 23 Op. Atty.
0.

ame of "keno."—The game of
is not a "lottery" within the
of the internal revenue laws.
Hornibrook (C. C. 1871) Fed.
. 15,390.

uessing contests.—A guessing
prior to the presidential election
mber, 1904, by which defendant
to give $10,000 to the person
uld make the nearest correct es-
of the total popular vote to be
the office of President of the
States, on November 8, 1904,
000 for the second nearest cor-
imate, persons filing guesses be-
uired to pay small sums as a
tion to a periodical named in
ertisement, constituted a lottery
ion of the federal laws and also
p. Laws Mich. § 11344, provid-
every person who shall set up
ote within the state any lottery
enterprise for money, or shall
of any property, real or person-
ls, chattels, or merchandise, or
uable thing by way of lottery
nterprise, shall be punished, etc.
. Press Pub. Ass'n (1907) 155
Fed. 58, 85 C. C. A. 576, 11 L. R. A. (N. S.) 609, 12 Ann. Cas. 319.

A circular offering prizes to persons who should estimate nearest to the number of cigarettes on which tax is paid during a certain month, as shown by the total sales of stamps by the United States Internal Revenue Department during that month, each estimate to be accompanied by 10 cigarette coupons inclosed in boxes of a particular brand of cigarettes, is not a lottery within R. S. § 3894, amended by Act Sept. 19, 1890 (embodied herein), prohibiting the sending of any lottery, etc., through the mails. U. S. v. Rosenblum (C. C. 1903) 121 Fed. 180.

Where a newspaper contained an advertisement offering in good faith a certain sum of money to the sender of the first "guess" giving the correct or nearest number of votes which each of two opposing candidates, of different political parties, for a designated state office, shall receive at the next ensuing election, the guessing period to end with the day on which the election takes place, held, that the scheme thus advertised is not one offering a prize "dependent upon lot or chance," within the meaning of R. S. § 3894 as amended by Act Sept. 19, 1890 (embodied herein), and that the newspaper containing the advertisement is not, by the provisions of said section, excluded from the mail. (1890) 19 Op. Atty. Gen. 679.

It is not offering a prize "dependent upon lot or chance," within the meaning of R. S. § 3894, as amended by Act Sept. 19, 1890 (embodied herein), for a corporation to issue and sell shares of stock, agreeing that one-half of the purchase money shall be divided into prizes of different amounts and distributed among the purchasers of the stock whose guesses as to the majority that will be received by either presidential nominee shall be nearest correct. (1900) 23 Op. Atty. Gen. 207.

The offering of prizes by a newspaper to those who make the nearest estimates of the number of paid admissions to the Pan-American Exposition at Buffalo, from the day of opening to the day of closing, is not in violation of R. S. § 3894, as amended by Act Sept. 19, 1890 (embodied herein). (1901) 23 Op. Atty. Gen. 492.

The scheme of the World's Fair Contest Company, under which a large number of cash prizes are offered to the persons submitting the nearest estimates of the total number of paid admissions to the World's Fair at St. Louis, Mo., from its opening to its close, a charge being made for the privilege of submitting each estimate; and the scheme of the National Contest Company, which proposes to distribute a large number of cash prizes to the persons who can estimate nearest to the popular vote cast for the winning candidate for the presidency of the

United States in 1904, a charge being made for each guess, are in effect lotteries under the guise of "guessing contests," and the Postmaster-General is authorized under R. S. §§ 3929, 4041, ante, §§ 7411, 7573, to deny the use of the mails in furtherance of those schemes. (1904) 25 Op. Atty. Gen. 286.

To bring such schemes within the inhibition of the statutes it is not necessary that the distribution of the prizes should be dependent wholly upon chance, but it is sufficient if the scheme is not a "legitimate business enterprise" and the distribution is dependent largely upon chance. Id.

Opinions of October 31, 1890 (19 Op. 679), of September 4, 1900 (23 Op. 207), and of August 19, 1901 (23 Op. 492), disregarded. Id.

12. Schemes to sell goods.—A newspaper advertisement offering a prize for the best essay on the name of a certain breakfast food to be judged by three persons named, and each essay when submitted to be accompanied by three labels from packages of such food, may or may not be an advertisement of a lottery which will render the newspaper unmailable under R. S. § 3894 (embodied herein), depending on whether or not the prize is "dependent upon lot or chance." To escape such condemnation the offer must be made and carried out in good faith, and the prize awarded on the merits, and the advertisement should contain a sufficiently definite statement of what the word "best" means as used therein to advise competitors of the standard of comparison to be applied by the judges. Brooklyn Daily Eagle v. Voorhies (C. C. 1910) 181 Fed. 579.

The scheme adopted by the Defender Shoe Store for carrying on business through the mails is as follows: A ticket is sent to A, who returns it with 80 cents, and receives a book containing four similar tickets to sell to four different persons, collecting from each, first, 20 cents, which repays him the 80 cents he first sent; second, he collects also from each 80 cents, making $3.20, which he takes with the four tickets to the company's store and for which he gets a pair of shoes. Another book containing four tickets is sent to each of the four persons to whom A sold his tickets, and each is expected, in turn, to sell these four tickets, upon the same terms, and get a pair of shoes therefor, and so on indefinitely. The schemes adopted by the Parisian Skirt Company, the Peerless Shoe Company, and by Henry Murray are similar in all essential respects, but they differ from the former in that it is not the originator of the series, but the persons to whom he sells the coupons who are to send in the money, and also in containing a provision that in case two coupons are sold, and the cash therefor turned in, the seller is entitled to some other article of less value, or the c pany will redeem the unsold cou at a certain value. Held, that schemes do not come within the hibition of section 3894, R. S. amended by Act Sept. 19, 1890 bodied herein), which forbids the tr mission through the mails of ma "concerning any lottery, so-called concert, or other similar enterprise fering prizes dependent upon lo chance." (1900) 23 Op. Atty. Gen.

The only element of uncertainty getting the article offered in each ticular case above named is whe the person will succeed in selling four tickets, and this depends upon own ability and exertion as much ordinarily does the question whe one can sell that which he has sale. Id.

13. Sale of so-called "diamond es."—A scheme conducted by a pany by the issuance and sale of called "diamond leases," numbered secutively in order of their issua and arranged in series, each purch being required to make a certain ber of weekly payments, and the thus created to be applied in fixed portions to the payment of the exp es of the company and the redemp of the oldest outstanding lease in same series and in prior series by chasing and delivering to each hold diamond of a stated weight and v there being no other fund applicab such redemption, except that ar from such weekly payments and fines and forfeitures on account of es, is a lottery or scheme for the tribution of property by lot or ch Preferred Mercantile Co. v. Hib (C. C. 1905) 142 Fed. 877.

14. Scheme to sell lots.—A sch for the disposal of town lots, by terms of which a purchaser ha chance of obtaining one of the rese or prize lots as a part of the co eration, is a lottery. U. S. v. C (D. C. 1868) Fed. Cas. No. 15,91

A scheme to plat and sell lots of equal value, and on some to build h es, to be apportioned to the purcha paying the same price by means drawing, held similar to a lottery that the furtherance thereof by m of the post office establishment co tuted a violation of this section. U v. Ridgway (D. C. 1912) 199 Fed.

15. Schemes to increase newsp circulation.—A scheme for incre the circulation of a newspaper, whe all paid-up subscribers receive num ed tickets corresponding to numb coupons, which are drawn from a by a blindfolded person, prizes t given to the holders of certain tic is a lottery (26 Stat. 465), though ery purchaser of a ticket is repai cost by receiving the paper. U. Wallis (D. C. 1893) 58 Fed. 942.

Plan or business relating to bonds, and investments.—Where the val- bonds in an investment company ds on their number, and the num- is done by the secretary accord- the order in which the applica- happen to reach him, the result purchase of such bonds is so de- nt on chance as to render their a lottery. MacDonald v. U. S.) 63 Fed. 426, 12 C. C. A. 339.

scheme by which certificates are l by a corporation, on each of the holder agrees to pay $1 per subject to forfeiture for non- ent, and about 75 per cent. of payments are paid into a "mu- benefit credit fund" until all cer- es prior in date have matured and canceled, when his own certifi- shall mature, and he shall be paid such fund the sum of $2 for each such certificate has been in force, ded there is so much in the fund, xceeding however $160, is a lot- within the meaning of R. S. § (embodied herein), and any person ed in conducting such scheme by s of letters or circulars sent gh the mails is guilty of a crim- offense under said section. Fitz- ons v. U. S. (1907) 156 Fed. 477, C. A. 287, 13 L. R. A. (N. S.) Id. (1907) 156 Fed. 482, 84 C. 292.

organization called the "League quity," in which each member, on g, paid an entrance fee, which to complainant, and $1 per month ng as he remained a member. Ten ent. of this was also kept by com- ant, and the remainder paid into a which was held without invest- until a time fixed, when it was di- equally between the members had been such for five years who received 90 per cent. of the money had paid in and of that paid in by and lapsed members. The amount ved, if any, depended on chance of g in new members. If none were ned, no money would be paid to in ones of the existing membership. that the scheme was a lottery, ne which must in the end amount legal fraud, and that the Post- er General was justified in issuing rder classifying it as fraudulent. c Clearing House v. Coyne (C. C. 121 Fed. 927, judgment affirmed) 24 Sup. Ct. 789, 194 U. S. 497, Ed. 1092.

main feature of a scheme con- g investment and loan features the loan part, the contracts for contained attractive terms. The ning of a loan depended on the ning of a low number and was the in the scheme. Held to involve sideration and chance, and there- a lottery. U. S. v. Purvis (D. C. 195 Fed. 618.

plan of business of the Provi- dent Bond & Investment Company considered and declared a lottery within section 3894, R. S., as amended by Act Sept. 19, 1890 (embodied herein). [The details of the business are not set out in the opinion.] (1894) 20 Op. Atty. Gen. 748.

The Tontine Savings Association of Minneapolis, Minn., issued bonds in numerical order agreeing to pay the holder of each bond $1,500 forty years after date, unless redeemed at an earlier period according to the conditions on the bank of the bond. An initiation fee of $15 was charged, all of which went to the expense fund. Monthly dues were $3, 12½ per cent. of which was set apart to the expense fund, 50 per cent. as a maturity fund, and 37½ per cent. as a reserve fund. Attached to each bond were three coupons for $500 each, redeemable out of the maturity fund. The coupons on all the bonds were numbered from 1 up in numerical order. The coupons were redeemable out of the maturity fund in the order of 1, 3; 2, 6; 9; 4, 12; 5, 15; 18; 7, 21, etc. Held, that such business was a lottery within the meaning of sections 3894 and 4041, R. S., as amended by the act of Sept. 19, 1890 (this compilation, §§ 7573, 10383). (1894) 21 Op. Atty. Gen. 4.

The business of the Pettis County Bond & Investment Company, of Sedalia, Mo., in essential respects, similar to that of the Tontine Savings Association, of Minneapolis, Minn., considered and determined to be in the nature of a lottery within the meaning of the United States statutes. (1896) 21 Op. Atty. Gen. 313.

Where a scheme proposes, on account of certain investments by many persons, to return to each something which, as to its certainty, amount, or value, is dependent, not upon the earning or producing power of the investment, nor upon business probabilities or expectations, but upon contingencies over which the parties to the transaction have no control and which they cannot forecast, such a scheme has in it and is dependent upon the elements of chance within the meaning of R. S. §§ 3929, 4041, as amended by Act Sept. 19, 1890, ante, §§ 7411, 7573. (1901) 23 Op. Atty. Gen. 512.

Where the operators of a scheme or plan induce others to invest therein upon the promise that upon their doing so and making certain stipulated payments they shall receive a specified return, and it is known by such promisors, or it is so apparent that it ought to be known by them, that if such investors comply on their part and continue to make the stipulated payments all cannot receive the promised return; or where such promise of return is absolute, but its performance and the ability of the company to perform is known by it to depend upon a con-

tinually increasing accession of new investors or upon the lapses and consequent forfeitures of former ones or both; or where payments to previous investors are promised at a profit far beyond what their investments can or are expected to earn, and are made, mainly, from moneys paid in by later investors upon the same terms, with no other provision for the ultimate payment of subsequent investors; or where such promise is absolute but its performance and the ability of the company to perform are known to depend to a considerable extent upon the broken promises and consequent forfeitures of other investors, such schemes are fraudulent within the meaning of the statutes. Id.

Nor is it material in this respect that in any of said supposed schemes the business is so successful that the time when the fraud in the scheme will find its victims is delayed indefinitely, so long as it is certain that the time will come sooner or later. Id.

The principles which govern the Southern Mutual Investment Company and "Claude Buckley's Perfect System," their workings and results, differing essentially from those of the companies passed upon in the opinion of September 7, 1901 (23 Op. Atty. Gen. 512), their contracts, taken in connection with the additional terms and requirements imposed upon the companies by the Post Office Department, do not so depend upon chance as to bring them within the operation of the antilottery statutes. (1901) 23 Op. Atty. Gen. 531.

The contracts issued by the Home Cooperative Company of Kansas City, Mo., provide for the payment of a membership fee of $3, and succeeding monthly payments of $1.35, $1 of which is to be credited to the party paying the same and applied on the installment purchase of a home, the company agreeing that whenever the sum of $50 shall have accumulated from these monthly payments, and from such payments on each like contract subsequently issued, the contract having the lowest number not then matured shall be deemed to have matured, and the owner thereof shall be entitled to an installment of $50 per month to be applied on the payment of a home for such owner, until $1,000 has been paid, when the contract shall be deemed to be fully performed. After the maturity of a contract, the monthly payments are increased to $5.35, $5 of which is to be placed to the credit of the party purchasing the home; and when the amounts so paid aggregate $1,000, less the amount such owner has to his credit at the maturity thereof, then the lien of the company on the property is discharged and the title thereto vests in the owner of the contract. Each contract is to be numbered in the order of its acceptance and given t number next higher than the contr last made, the benefits of each contr beginning in numerical order after t fulfillment of the contracts of low number. Held, that the plan was "gift enterprise or scheme for the d tribution of money by chance," wit R. S. § 3894, as amended Septem 19, 1890 (embodied herein), and, such, the Postmaster General was a thorized, under R. S. §§ 3929, 40 ante, §§ 7411 and 7573, to exclu from the mails all mail matter conne ed with such business. (1903) 24 O Atty. Gen. 563.

17. Schemes to sell municipal or go ernment bonds.—On February 11, 18 the Austrian government, to raise loan of 40,000,000 florins, issued bon each of which was for 100 florins a bore upon its face the number of t series to which it belonged, and number in that series. The bonds we not payable at any day certain, but t date of payment was to be determin by drawings, whereby it was determi ed which series was to be redeem and the amount to be paid for ea bond. For the first ten years the were to be five drawings a year; f the next ten years, four drawings year; for the third ten years, thr drawings a year; and thereafter, to and including the fifty-fifth ye there were to be two drawings a ye at the end of which time all the bon were to be paid. Under this plan t smallest amount to be paid for a bond thus selected for redemption du ing the first year was 135 gulden, du ing the second year 140 gulden, duri the third year 145 gulden, and so increasing 5 gulden each year until t amount reached 200 gulden, whi amount then remained stationary un all were redeemed. In addition to th there were certain bonds to be paid each year for which large sums were be given, ranging from 250,000 guld to 400 gulden, and these bonds were so to be determined by chance at t drawings. Held, that the scheme these bonds is an "enterprise offeri prizes dependent upon lot or chanc and was in the nature of "a lottery" so-called "gift concert," within t meaning of R. S. § 3894, as amend by Act Sept. 19, 1890 (embodied her in), and that a person who sen through the mails a circular containi an announcement of the bonds redee ed at a certain drawing, and a notific tion of the time of subsequent dra ings, is guilty of a violation of that a Horner v. U. S. (1893) 13 Sup. Ct. 4 147 U. S. 449, 37 L. Ed. 237, disti guishing Kohn v. Koehler (1884) 96 Y. 362, 48 Am. Rep. 628.

When a city or a government, as inducement to the purchase of bonds, holds out large prizes, to be d termined in the manner in which pri

ıally determined in lotteries, the : of circulars concerning such gs, past and future, is a mailing ery circulars, within R. S. § embodied herein). U. S. v. Zeis- C. 1887) 30 Fed. 499.

rnment bonds, issued under a in which the time of redemp- d certain premiums or prizes to rded to some of the holders are y a drawing, are "lotteries," and iling of circulars announcing the otion of certain bonds, and the f the next drawing, is prohibited S. § 3894 (embodied herein). U. Politzer (D. C. 1893) 59 Fed. 273, ng Horner v. U. S. (1893) 13 Ct. 409, 147 U. S. 449, 37 L. Ed.

Sale of bonds not prohibited by law.—That the selling of bonds uting a lottery was not prohib- y the statute of the state was defense under this section. U. S. itzer (D. C. 1893) 59 Fed. 273,

Accident insurance scheme.—A ny conducted a business as fol- For a membership fee of $5, and ly dues of $2, it entered into con- with members, and issued cer- es containing the usual provisions ident insurance. To each certifi- vere attached 50 coupons of $10 which were numbered consecu- those on the first certificate is- unning from 1 to 50, those on the l certificate issued from 51 to nd so on. The certificates were in the order in which applica- were received, and there was no of knowing, prior to the issue, nany had been issued previously, hat would be the numbers of the ns attached to them. It was pro- that one-half of the amounts re- from monthly dues should be in a "maturity fund," and that, ever there should be sufficient in said fund to pay one or more ns, such number of coupons l be paid, and that the coupons to id should be determined by taking he coupon numbered 1, then that ered 5, and so on, with the ra- until the series reached the high- umbered coupon sold; then tak- at numbered 2, then 10, etc., in a d series, with the ratio 5, and so ntil the numbers of all the coupons hould be included in some series. s also provided that, at the end of rs, each certificate holder should e the full amount paid in monthly at the end of 5 years, $150; at nd of 7 years, $300; and at the f 10 years, $500. But the only rces to provide for such payments the membership fees; the dues, providing for the maturity fund, devoted to an expense fund, and a accident, and death fund. Held, that this scheme was a lottery, within R. S. § 3894 (embodied herein). U. S. v. Fulkerson (D. C. 1896) 74 Fed. 619.

20. Advertisements. — Advertisement to give away a $350 piano and to sell others at a reduction of $105 and more to certain persons who should correctly answer a 15-square puzzle, the wholesale value of which pianos did not exceed $130, in the absence of further explanation was not so tainted with fraud as to deprive complainant of the right to restrain a postmaster from forbidding complainant's use of the mails. Eastman v. Armstrong-Byrd Music Co. (1914) 212 Fed. 662, 129 C. C. A. 198, 52 L. R. A. (N. S.) 108.

An advertisement in a French publication styled La Petite Journal, considered, and held to fall within the prohibited class defined in R. S. § 3894 as amended by Act Sept. 19, 1890 (embodied herein). (1895) 21 Op. Atty. Gen. 171.

21. Use of mails to further "schemes devised for the purpose of obtaining money or property under false pretenses."—The offense of using the mails in furtherance of "schemes devised for the purpose of obtaining money or property under false pretenses," denounced by R. S. § 3894 (embodied herein), includes only schemes having a similitude to the lottery and other like schemes particularly described by the particular words of the section, and does not cover the use of the mails to promote other schemes to obtain money or property by means of false pretenses, which is embraced by the provisions of R. S. § 5480, post, § 10385, making criminal the use of the mails to carry on any scheme or artifice to defraud. U. S. v. Stever (1911) 32 Sup. Ct. 51, 222 U. S. 167, 56 L. Ed. 145.

Making false and fraudulent representations through the mails to prospective buyers of cattle, to promote a scheme to defraud by inducing them to come and inspect the cattle, after which inferior cattle were to be substituted in the place of those inspected and sold, is not punishable under R. S. § 3894 (embodied herein), making criminal the use of the mails in furtherance of lotteries, or schemes of gain dependent upon chance, or "schemes devised for the purpose of obtaining money or property under false pretenses," but such acts constitute the offense prohibited by R. S. § 5480, post, § 10385, of using the mails to carry on any scheme or artifice to defraud. Id.

22. Exclusion of matter from the mails.—See, also, § 7411, and notes thereunder.

A court of equity will not grant relief where letters addressed to the secretary of a lottery company are de-

tained by the postmistress, under the direction of the postmaster general, as having been mailed in violation of section 3894, R. S. (embodied herein), providing that "no letter * * * concerning lotteries * * * shall be carried in the mail," where the pleadings fail to show that the letters had no connection with the lottery business. Commerford v. Thompson (C. C. 1880) 1 Fed. 417, 425.

It did not make any difference in the act done by the defendant that the person to whom the letter was delivered was an officer of the United States. U. S. v. Duff (C. C. 1881) 6 Fed. 45.

A citizen who mails a letter to a lottery dealer ordering lottery tickets, and inclosing the funds to pay for them, does not thereby commit an offense against the United States; the statute (R. S. § 3894 [embodied herein]) being intended to prohibit the use of the mails only by lottery dealers, and others using the mails for purposes of deception. U. S. v. Mason (C. C. 1884) 22 Fed. 707.

A lottery ticket is not a letter, in the meaning of the statute which forbids the mailing of "any letter or circular concerning lotteries," etc. A schedule setting out the prizes offered in a lottery, printed on the back of all lottery tickets sent out for a particular drawing, is a circular, within the meaning of that statute. U. S. v. Clark (C. C. 1885) 22 Fed. 708.

The effect of R. S. § 3894 (embodied herein), prohibiting the mailing of lottery circulars, etc., is to make any matter concerning lotteries unmailable, and to subject the sender of any such matter by mail to the penalty therein provided. U. S. v. Zeisler (C. C. 1887) 30 Fed. 499.

The prohibition in R. S. § 3894 (embodied herein), against the depositing of letters shows that a clear distinction was drawn between a letter and a writing, and that the term "writing" in R. S. § 3893, ante, § 10381, was not intended to include sealed letters. U. S. v. Comerford (D. C. 1885) 25 Fed. 902, 903.

Act July 27, 1868, c. 246, prohibiting the mailing of letters or circulars concerning lotteries, could not be safely executed by postmasters in all cases without additional legislation. (1868) 12 Op. Atty. Gen. 538.

Under R. S. § 3894, as amended by section 2 of the act of July 12, 1876 (embodied herein), letters or circulars concerning legal as well as those concerning illegal lotteries are authorized to be excluded from the mails. (1877) 15 Op. Atty. Gen. 203.

The Postmaster General was not authorized, under R. S. § 3894 (embodied herein), to direct the postmaster at New Orleans to withhold from the mails letters suspected to contain advertisements of lotteries. (1878) Op. Atty. Gen. 5.

Where the Postmaster General fin upon evidence satisfactory to himse that a person is engaged in conducti a fraudulent lottery, he may and shou forbid the delivery of registered lett and the payment of money orders such person. (1881) 17 Op. Atty. G 77.

It is not in terms all fraudulent l teries, etc., that are excluded from t use of the registry and money ord systems; those only are denied su use which are found to be fraudul by the Postmaster General. Id.

Letters and circulars known (n merely supposed or suspected) to co cern lotteries are nonmailable, and m properly be excluded from the mai (1885) 18 Op. Atty. Gen. 306.

Letters addressed to lottery assoc tions or lottery agents cannot, simp because they are thus addressed, deemed to be letters concerning lott ies and as such excluded. Id.

Newspapers or periodicals containi lottery advertisements are not there rendered nonmailable. Id. But [1891] 20 Op. Atty. Gen. 203.

A postmaster cannot lawfully refu to receive and forward registered pac ages addressed to lottery companies persons described as agents, officers, managers thereof; nor can he lawfu refuse to issue money orders payal to such companies or to persons scribed in the orders as agents, office or managers thereof. (1885) 18 Atty. Gen. 307.

Until the Postmaster General h found, on evidence satisfactory to hi self, that any lottery, gift enterpri or scheme is a means of fraudulen obtaining money through the mails, is not authorized to instruct postm ters to return registered letters or forbid them to pay money orders b cause the same are addressed or ma payable to an individual conducting su lottery, gift enterprise, or schem (1886) 18 Op. Atty. Gen. 325.

Congress intended in R. S. § 39 ante, § 7411, to draw a distinction b tween lotteries, etc., fairly, and lott ies, etc., dishonestly conducted. Id

23. Depositing circulars in the mai To constitute the offense of knowi ly depositing or causing to be depos ed in the mail a circular concerning lottery, it is necessary that the offe ing party should be conscious of t physical act of depositing or causi to be deposited the circular in the m and that he should be aware that su circular related to an enterprise whe the premiums or prizes or other imp tant pecuniary detail is determined fixed by lot or chance. U. S. v. Polit (D. C. 1893) 59 Fed. 273, 278.

In order to convict a defendant und R. S. § 3894 (embodied herein), t

nent must prove that the de- knowingly deposited or caus- be deposited in the mails, for ance or delivery thereby, the s set forth in the indictment, at such circulars concern a lot- Id.

ending circulars in reply to de- ters.—The offense of sending let- circulars concerning lotteries the mails is complete, under 3894, R. S. (embodied herein), h the circulars in question are reply to letters written by a ve under a fictitious name for no purpose than to obtain evidence commission of the offense. U. loore (D. C. 1883) 19 Fed. 39.

nnocent letters concerning let- —R. S. § 3894 (embodied here- early has many implied excep- as many innocent letters con- lotteries may be written and y mail. U. S. v. Noelke (C. C. 1 Fed. 426, 432.

ransportation of excluded mat- erwise than through the mails.— printed matter is excluded from ails, its transportation in any way cannot be forbidden by Con- It does not possess the power event transportation in other as merchandise, of matter which udes. Ex parte Jackson (1877) S. 727, 733, 735, 24 L. Ed. 877. section does not make sending or circulars concerning lotteries ls or to the post office an offense. ana Lottery Cases (C. C. 1884) d. 625.

"sending" of letters and circu- oncerning lotteries, denounced in 3894, R. S. (embodied herein), the knowingly forwarding or g to be forwarded through the s matter to be conveyed by mail, s mail matter, after the prohibit- ticle has been deposited in the and does not include the naked g towards or to the post office.

Resort to equity to aid lotteries. ugh R. S. § 3894 (embodied here- oes not prohibit the mailing of s to lottery companies, and their ion by the postmistress, under rection of the postmaster general, nlawful, a court of equity will not ts aid by injunction to secure the ry thereof. Commerford v. pson (C. C. 1880) 1 Fed. 417, 425. gress has placed the stamp of its roval upon lotteries, which is a which merits the reprobation visit- on it, as against public policy, court of equity should not lend l directly or indirectly to the fur- nce of such schemes. Id.

Remedies for violation of statute. imposition of the penalty provid- the exclusive remedy for a vio- lation of this section, at least of any such remedy as the detention of letters on a mere suspicion, though it may be a postmaster might lawfully refuse to receive letters known to contain unmailable matter. Commerford v. Thompson (C. C. 1880) 1 Fed. 417, 421.

29. Place of trial of offense.—See, also, note ante as to "Constitutionality."

The offense of delivering lottery matter through the mails is distinct from that of depositing it in the mails and is committed at the place of the delivery, and where it was alleged that defendant deposited a lottery circular in the mail at New York, and in another count that he caused it to be delivered through the mails to a person in Illinois, the district judge for the Southern District of New York properly issued a warrant for the removal of the defendant to Illinois for trial. Horner v. U. S. (1892) 12 Sup. Ct. 407, 409, 143 U. S. 207, 36 L. Ed. 126.

Under Act Sept. 19, 1890, amending R. S. § 3894 (embodied herein), which makes criminal (1) depositing lottery matter in the mails; (3) knowingly causing such matter to be delivered by mail,—an indictment having been found in the Southern district of Illinois against defendant containing five counts, the first four of which alleged such deposit by defendant at New York, and the last that he, knowingly, caused such matter to be delivered, by mail, to a person in the Southern district of Illinois, and that he had previously deposited such matter in the mails in New York, for such delivery, the offense charged in the fifth count was not completed except upon the delivery of the prohibited matter in Illinois; and the offense was, therefore, consummated and "committed" there, though begun in New York, and was, therefore, an offense legally triable in Illinois. U. S. v. Horner (D. C. 1891) 44 Fed. 677, order affirmed Horner v. U. S. (1892) 12 Sup. Ct. 407, 143 U. S. 207, 36 L. Ed. 126.

30. Indictment.—An indictment which, in plain language charges defendant with using the mails to carry on the lottery business, causing letters concerning the lottery business to be addressed to him under a false, fictitious, and assumed name, and receiving such letters from the post office, is sufficient. MacDaniel v. U. S. (1898) 87 Fed. 324, 30 C. C. A. 670, certiorari denied (1898) 19 Sup. Ct. 885, 171 U. S. 689, 43 L. Ed. 1179.

Where the first count of an indictment sets out a lottery scheme of defendants, subsequent counts charging them with mailing matter in furtherance of the scheme may refer to the scheme set out in the first count. Glass v. U. S. (1915) 222 Fed. 773, 138 C. C. A. 321.

Under R. S. § 1024, ante, § 1690,

acts of defendants mailing matter concerning a lottery or in furtherance thereof may be joined in one indictment in separate counts. Id.

An indictment alleging that defendants "deposited and caused to be deposited in the post office" mailing matter concerning lotteries is not duplicitous. Id.

An indictment held to charge that defendants mailed matter concerning a lottery either under R. S. § 3894, or Cr. Code, § 213 (embodied herein). Id.

A writing is not improperly described as a "Letter and Circular," in an indictment under R. S. § 3894 (embodied herein), providing that "no letter or circular concerning lotteries * * * shall be carried in the mail." U. S. v. Noelke (C. C. 1880) 1 Fed. 426, 429.

It is not necessary to allege that the writing was one "concerning a lottery offering prizes." Id.

The informal averment of facts necessary to show the illegal quality of the writing is cured by verdict, and will not sustain a motion in arrest of judgment. Id.

A circular alleged to have been mailed in violation of the statute should be set forth in hæc verba, and the omission is not cured by verdict. Id.

It is not necessary to allege facts showing that the writing set forth concerned a lottery, "in the sense contemplated by the statute," when it clearly appears upon the face of such writing that it was such a letter as was within the prohibition of the statute. Id.

An indictment for sending lottery circulars through the mails need not show how the circulars concern a lottery; but, where the circulars do not show on their face that they relate to a lottery, the indictment should aver the existence of a lottery, or an intention to hold a lottery, to which the circulars refer. U. S. v. Bailey (C. C. 1891) 47 Fed. 117.

An indictment for depositing in a post office a circular concerning a lottery (R. S. § 3894 [embodied herein]) setting forth with particularity the circular and its publication, and alleging that it was concerning a lottery, and to promote and aid the same, is not defective for insufficient description of such lottery. U. S. v. Conrad (C. C. 1894) 59 Fed. 458.

An indictment is bad for duplicity which charges that on a certain day and on each secular day between that day and another day named, and on each secular day between that time and another subsequent time mentioned, there were deposited in the post office a certain number of circulars concerning a certain lottery for the purpose of being sent by mail. U. S. v. Patty (D. C. 1880) 2 Fed. 664, 667.

An indictment is not bad for duplicity which charges that on a certain day a certain number of circulars concerning a certain lottery were deposited at the post office to be sent by mail. Id.

Under Act Sept. 19, 1890, making a misdemeanor to deposit in the m any newspaper containing the adv tisement of a lottery, an indictme charging, in the language of the a that defendant committed the offense depositing such newspaper in the m etc., and setting forth the name a address of the person to whom it w sent, is sufficient without alleging p payment of postage thereon. U. S. Lynch (D. C. 1892) 49 Fed. 851.

An indictment for violation of R. § 3894 (embodied herein), imposing penalty for depositing, in the mail, m ter concerning a lottery, etc., whi does not set out the scheme in t carrying out of which such matter w deposited in the mail, is fatally def tive. U. S. v. MacDonald (D. C. 189 65 Fed. 486.

In an indictment under R. S. § 38 (embodied herein), for depositing in post office a document concerning lottery, an allegation that an envelo deposited by the defendant "contain a certain pamphlet concerning a cert lottery, which said lottery was th and there being conducted by a cert corporation, called," etc., sufficiently firms the existence of a lottery. U. v. Fulkerson (D. C. 1896) 74 Fed. 6

In such an indictment, an allegati that the defendant "did knowingly posit" in the post office a certain pa phlet concerning a lottery, sufficien alleges that the defendant knew th the matter deposited concerned a l tery, since the word "knowingly" qu ifies, not only the verb "deposited," the whole matter described. Id.

An allegation that defendant kno ingly deposited "a letter concerning lottery conducted by a corporation ca ed" sufficiently shows, assuming su showing to be required, that the lett concerned a lottery existing at the ti the letter was mailed. Id.

Such an indictment need not alle specifically facts showing the enterpr to be a lottery. A general averme to that effect is sufficient. Id.

Nor need such an indictment alle that the letter deposited in the p office was in aid of a lottery, since t statute does not require this as element of the crime, but only th the letter should have been concerni a lottery. Id.

It is not necessary that docume set out in such an indictment, and leged to have been deposited in t post office, should show, upon th face, that they concern a lottery; are documents so set out repugnant the allegation that they concern a l tery because they do not show that f on their face. Id.

When such an indictment declares scheme in question to be a lotte without giving the details thereof, describing its plan, such allegat must, for the purposes of a demur be taken as true; and the object that such scheme is not a lottery,

he only element of chance there-
tes to time of payment, cannot
Id.

ndictment under R. S. § 3894
ied herein), for sending through
ils a newspaper containing an
sement of a lottery or gift enter-
or a complete or partial list of
awarded at the drawing of a lot-
gift enterprise, must aver, ei-
ecifically or by necessary intend-
the existence of a lottery or gift
rise. U. S. v. Irvine (D. C.
156 Fed. 376.

ndictment, alleging that accused
gly deposited in the post office
r concerning a lottery, held to
that he had knowledge of the
ts of the letter. U. S. v. Purvis
1912) 195 Fed. 618.

ndictment charging a violation of
ction alleging that accused "de-
or caused to be deposited in
t office" a letter set out held not
r duplicity. Id.

ndictment for misuse of the mails
herance of a lottery or similar
, charging that defendant did
y and knowingly, etc., and in an-
place charging that he devised
heme, alleged sufficient scienter.
v. Ridgway (D. C. 1912) 199
86.

ndictment for violation of this
held to sufficiently charge the
the post office in furtherance of
me offering prizes dependent on
chance. Id.

Evidence.—Where an indictment
s the defendants with sending
h the mails circulars concerning
ery, the prosecution may show,
dence outside the circulars, that
siness advertised therein was in
a lottery. MacDonald v. U. S.
63 Fed. 426, 12 C. C. A. 339.

umstantial evidence is competent
tends to show that the defendant
oth motive and opportunity to
the writing in violation of the
. U. S. v. Noelke (C. C. 1880)
426, 436.

as not necessary for the govern-
to prove that the lottery was or-
d under the Louisiana statute, or
e parties who issued certain lot-
ickets inclosed in the same enve-
vith the letter, purporting to be
by the Louisiana State Lottery,
a corporation, as they purported
Id.

re it was undisputed that the
lant was engaged in the lottery
ss, evidence that defendant re-
an order for two lottery tickets
s were subsequently mailed with
tter, that the name used in the
s of the letter was the same as
igned to the order, that the tick-
re his stamp, and that the letter
d his business card, would jus-
e conclusion that the defendant
ted the letter in the post office
ailing. Id.

The post-office stamp upon the envelope is prima facie proof that the letter was mailed, although it be shown that, in aid of justice, postmasters sometimes furnish empty envelopes bearing the post-office stamp, where the same have never in fact been through the mail. Id.

The surrounding circumstances, and the occupation of the defendant, were admissible in evidence in order to prove that the letter and circular related to a lottery. Id.

The evidence of the Louisiana statute, and of the sale of the lottery tickets contained in the mailed envelope, was sufficient to establish the existence of the lottery, in the absence of any evidence to the contrary. Id.

The act of the state of Louisiana (Laws 1868, pp. 24–26) entitled "An act to increase the revenues of the state, and to authorize the incorporation and establishment of the Louisiana State Lottery Company, and to repeal certain acts now in force," is a public act, and can be proved by the introduction in evidence of the statute book containing it. Id.

Papers enclosed in the same envelope with the writing set forth in the indictment, are admissible in evidence as part of the res gestæ. Id.

The postmark on the envelope containing matter forbidden by this section is presumptive evidence of the mailing of such envelope, with its inclosure, at the time and place designated in the postmark. U. S. v. Politzer (D. C. 1893) 59 Fed. 273, 278.

Proof that the defendant deposited or caused to be deposited in the mail matter forbidden by this section is sufficient to authorize the jury to find that it was intended for delivery through the mails to the persons addressed. Id.

32. Competency of jurors.—A juror is not rendered incompetent, upon the trial of such indictment, by the fact that he has a prejudice against the lottery business or those who are engaged in it, or that he is disposed in his mind to put an end to the traffic in lottery tickets, or that he is in favor of active measures for the suppression of such business. U. S. v. Noelke (C. C. 1880) 1 Fed. 426, 434.

A juror who sat on trial of defendant heard some general talk in the courthouse corridor, before he was impaneled, about the wickedness of those engaged in the lottery business. Held, on motion for a new trial, that he was not thereby disqualified. U. S. v. Duff (C. C. 1881) 6 Fed. 45.

33. Questions for jury.—Upon the trial of defendant for having deposited a lottery circular in the mail, in reply to a letter addressed to John Duff & Co., it was proved (1) that defendant was accustomed to use the name of John Duff & Co., and sold lottery tickets under that name; (2) that defendant

personally received the letter which contained the order for the circular in question, and also money to pay for two lottery tickets; and (3) that the circular was addressed to a fictitious name, known only to the defendant and the sender of the order. Held, under these facts, that it was competent for the jury to infer that the defendant deposited the circular. U. S. v. Duff (C. C. 1881) 6 Fed. 45.

The absence or presence of intent or design to evade the law cuts no figure whatever; whether or not the defendant knew that he was violating the law, or whether he knew of the existence of any such law, is not for the jury to consider. U. S. v. Politzer (D. C. 1893) 59 Fed. 273, 278.

34. **Reopening case.**—It was within the discretion of the judge who presided at the trial to permit the case to be re-opened, in order to permit the prosecution to prove the existence of the lottery, concerning which the papers in question were made. U. S. v. Noelke (C. C. 1880) 1 Fed. 426, 437.

35. **Punishment.**—Accused, convicted under an indictment good under R. S. § 3894, or Cr. Code, § 213 (embodied herein), for mailing matter concerning a lottery, could not complain of the lighter punishment authorized by section 3894. Glass v. U. S. (1915) 222 Fed. 773, 138 C. C. A. 321.

36. **Internal revenue taxation.**—See U. S. v. Gorman (C. C. 1835) Fed. Cas. No. 15,237; U. S. v. Stange (C. C. 1867) Fed. Cas. No. 16,375; In re Lindauer (C. C. 1870) Fed. Cas. No. 8,358.

Cited without definite application, Stone v. Mississippi (1879) 101 U. S. 814, 819, 25 L. Ed. 1079; Champion v. Ames (1903) 23 Sup. Ct. 321, 326, 188 U. S. 321, 47 L. Ed. 492; Weeks v. U. S. (1914) 34 Sup. Ct. 341, 342, 232 U. S. 383, 58 L. Ed. 652; U. S. v. Arnold (1897) 82 Fed. 769, 770, 27 C. C. A. 342; Demolli v. U. S. (1906) 144 Fed. 363, 75 C. C. A. 365, 6 L. R. A. (N. S.) 424 (dissenting opinion); Harris v. Rosenberger (1906) 145 Fed. 449, 76 C. C. A. 225, 13 L. R. A. (N. S.) 762 (writ of certiorari denied [1906] 27 Sup. Ct. 778, 203 U. S. 591, 51 L. Ed. 331); U. S. v. Borger (C. C. 1881) 7 Fed. 193; Hoover v. McChesney (C. C. 1897) 81 Fed. 472, 478; U. S. v. Delaware & Hudson Co. (C. C. 1908) 164 Fed. 215 (reversed [1909] 29 Sup. Ct. 527, 213 U. S. 366, 53 L. Ed. 836); U. S. v. Watson (D. C. 1888) 35 Fed. 358, 359.

§ 10384. (Crim. Code, § 214.) Official acting as lottery agent; punishment for.

Whoever, being a postmaster or other person employed in the postal service, shall act as agent for any lottery office, or under color of purchase or otherwise, vend lottery tickets, or shall knowingly send by mail or deliver any letter, package, postal card, circular, or pamphlet advertising any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any ticket, certificate, or instrument representing any chance, share, or interest in or dependent upon the event of any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes awarded by means of any such scheme, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both.

R. S. § 3851. Act March 4, 1909, c. 321, § 214, 35 Stat. 1130.

Notes of Decisions

Meaning of "send" and "sent."—Throughout the title "The Postal Service," the verb "send" and its past participle "sent" uniformly signify forwarded in the mail through the officers of the government. Louisiana Lottery Cases (C. C. 1884) 20 Fed. 625, 628.

§ 10385. (Crim. Code, § 215.) Using mails to promote frauds; counterfeit money; punishment for.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, bank note, paper money, or any obligation or security of the United States, or of any State, Territory, municipality, company, corporation, or person, or anything represented to be or intimated or held out to be such counterfeit or spurious article, or any scheme or artifice to obtain money by or through correspondence, by what is commonly

called the "saw-dust swindle," or "counterfeit-money fraud," or by dealing or pretending to deal in what is commonly called "green articles," "green coin," "green goods," "bills," "paper goods," "spurious Treasury notes," "United States goods," "green cigars," or any other names or terms intended to be understood as relating to such counterfeit or spurious articles, shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post-office, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post-office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet, or advertisement, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

R. S. § 5480, as amended, Act March 2, 1889, c. 393, § 1, 25 Stat. 873. Act March 4, 1909, c. 321, § 215, 35 Stat. 1130.

Notes of Decisions

1. Statute as originally enacted in the Revised Statutes, and as amended in 1889.
2. Clerical mistake in original statute.
3. Constitutionality.
4. Effect of amendment by act of 1889.
5. Nature and elements of offense in general.
6. Offense prior to taking effect of statute.
7. Scheme or artifice to defraud.
8. Statute as embracing "any scheme or artifice to defraud."
9. Honestly believing representations and having reasonable grounds therefor as constituting defense.
10. Limitations.
11. Venue and place of trial in general.
12. Removal of defendant to other district for trial.
13. Indictment—Form, requisites, and sufficiency in general.
14. —— Reference to prior counts or statements.
15. —— Setting out contents of letters or packets.
16. —— Knowledge, intent, and motive.
17. —— Charging or describing scheme or artifice to defraud.
18. —— Venue of offense.
19. —— Following language of the statute.
20. —— Duplicity.
21. —— Joinder of offenses or counts.
22. —— Consolidation of indictment for trial.
23. —— Issues, proof and variance.
24. Plea of not guilty.
25. Evidence.
26. Trial.
27. Sentence and punishment.
28. Review.
29. Conspiracy.

See notes under §§ 7411, 7412, and 10201, ante.

1. Statute as originally enacted in the Revised Statutes, and as amended in 1889.—This section, as originally enacted in R. S. § 5480, was as follows: "If any person having devised or intending to devise any scheme or artifice to defraud, or be effected by either opening or intending to open correspondence or communication with any other person, whether resident within or outside of the United States, by means of the Post-Office Establishment of the United States, or by inciting such other person to open communication with the person so devising or intending, shall, in and for executing such scheme or artifice, or attempting so to do, place any letter or packet in any post-office of the United States, or take or receive any therefrom, such person, so misusing the Post-Office Establishment, shall be punishable by a fine of not more than five hundred dollars, and by imprisonment for not more than eighteen months, or by both such punishments. The indictment, information, or complaint may severally charge offenses to the number of three when committed within the same six calendar months; but the court thereupon shall give a single sentence, and shall proportion the punishment especially to the degree in which the abuse of the Post-Office Establishment enters as an instrument into such fraudulent scheme and device."

It was amended by Act March 2, 1889, c. 393, § 1, cited above, to read as follows: If any person having devised or intending to devise any scheme or artifice to defraud, or to sell, dispose of, loan, exchange, alter, give away, or distribute, supply, or furnish, or procure for unlawful use any counterfeit or spurious coin, bank notes, paper money, or any obligation or security of the United States or of any state, territory, municipality, company, corporation, or person, or anything represented to be or intimated or held out to be such counterfeit or spurious articles, or any scheme or artifice to ob-

tain money by or through correspondence, by what is commonly called the "sawdust swindle," or "counterfeit money fraud," or by dealing or pretending to deal in what is commonly called "green articles," "green coin," "bills," "paper goods," "spurious Treasury notes," "United States goods," "green cigars," or any other names or terms intended to be understood as relating to such counterfeit or spurious articles, to be effected by either opening or intending to open correspondence or communication with any person, whether resident within or outside the United States, by means of the Post Office Establishment of the United States, or by inciting such other person or any person to open communication with the person so devising or intending, shall, in and for executing such scheme or artifice or attempting so to do, place or cause to be placed, any letter, packet, writing, circular, pamphlet, or advertisement in any post office, branch post office, or street or hotel letter box of the United States, to be sent or delivered by the said post office establishment, or shall take or receive any such therefrom, such person so misusing the post office establishment shall, upon conviction, be punishable by a fine of not more than five hundred dollars and by imprisonment for not more than eighteen months, or by both such punishments, at the discretion of the court. The indictment, information, or complaint may severally charge offenses to the number of three when committed within the same six calendar months; but the court thereupon shall give a single sentence, and shall proportion the punishment especially to the degree in which the abuse of the post office establishment enters as an instrument into such fraudulent scheme and device.

2. Clerical mistake in original statute.—Section 5480, R. S. (embodied herein), provides that "if any person having devised, or intending to devise, any scheme or artifice to defraud or be effected by either opening, or intending to open, correspondence or communication with any other person, whether resident within or outside of the United States, by means of the post-office establishment of the United States, or by inciting such other person to open communication with the person so desiring or intending, shall, in and for executing such scheme or artifice, or attempting so to do, place any letter or packet in any post office of the United States, or take or receive any therefrom, such person so misusing the post-office establishment shall be punishable by a fine of not more than $500, and by imprisonment for not more than 18 months, or by both such punishments." Held, that the word "or," in the expression "or be effected," is a clerical mistake for the word "to," and that the expression should be, "to be effected." Brand v. U. S. (C. C. 1880) 4 Fed. 394.

3. Constitutionality. — The constit tional power of congress to establi post offices and post roads embrac the regulation of the entire postal sy tem, and includes as a necessary in dent the right to determine what m be carried in the mails, and what sh not be, and to impose penalties for t violation of its regulations to be e forced, through the courts, such as a contained in this section. U. S. v. Lo ing (D. C. 1884) 91 Fed. 881.

4. Effect of amendment by act 1889.—Act March 2, 1889, entitled "A act to punish dealers and pretend dealers in counterfeit money and oth fraudulent devices for using the Unit States mails," and which amended S. § 5480 (embodied herein), by inse ing therein an enumeration of vario ways or devices for using the mails defraud, did not repeal this section, narrow its scope to the specific schem and artifices so specified. Culp v. S. (1897) 82 Fed. 990, 27 C. C. A. 2

In the offenses expressly enumerat in R. S. § 5480, as amended by A March 2, 1889, § 1 (embodied herei e. g., the selling, etc., of counterf coin, the "sawdust swindle," the "cou terfeit money fraud," etc., there is element of gain to the offender. The concrete cases were all inserted in t section by the amendment of 1889. its original form the section enumer ed only "any scheme or artifice to d fraud," and there was nothing in t section when originally passed to quire a restriction of this plain la guage. It is not to be inferred that, the insertion of concrete cases the amendment, Congress intended change the meaning of the words it h already employed to designate an fense. Since Congress did not ma the benefit of the wrongdoer an e ment, it would seem to be judicial l islation for the courts to require su benefit to be alleged and proved. K logg v. U. S. (1903) 126 Fed. 323, 3 61 C. C. A. 229.

Amendment of R. S. § 5480, relat to the fraudulent use of the mails, Act March 2, 1889, § 1 (embodied he in), did not limit the scope of such s tions to schemes, artifices, or devi described in the amendment, but add to the offenses denounced by the ori nal act those specified in act of 18 Miller v. U. S. (1904) 133 Fed. 337, C. C. A. 399.

5. Nature and elements of offense general.—Under R. S. § 5480, as amen ed in 1889 (embodied herein), it mu be charged in the indictment and est lished by the evidence: (1) That t persons charged must have devised scheme or artifice to defraud; (2) th they must have intended to effect t scheme by opening or intending to op correspondence with some other pe son through the post office or by i citing such other person to open co munication with them; (3) and that

ng out such scheme such person have either deposited a letter or in the post office or taken or re- one therefrom. Stokes v. U. S. 15 Sup. Ct. 617, 618, 157 U. S. 9 L. Ed. 667.

fact that the communication in the mails by the promoter of dulent investment company con- mere statements as to the fu- rofits which would accrue to in- s and not misrepresentations as sting facts did not affect his lia- under R. S. § 5480, as amended 9 (embodied herein). Durland v. (1896) 16 Sup. Ct. 508, 511, 161 306, 40 L. Ed. 709.

constitute the offense the letters ted in the post office need not h as would be effective in carry- t defendant's fraudulent scheme.

ing false and fraudulent repre- ions through the mails to pro- e buyers of cattle, to promote a e to defraud by inducing them to and inspect the cattle, after inferior cattle were to be sub- d in the place of those inspected ld, is not punishable under R. S. 4, ante. § 10383, making criminal e of the mails in furtherance of es, or schemes of gain depend- on chance, or "schemes devised e purpose of obtaining money or ty under false pretenses," but acts constitute the offense pro- d by R. S. § 5480 (embodied here- using the mails to carry on any e or artifice to defraud. U. S. ver (1911) 32 Sup. Ct. 51, 53, . S. 167, 56 L. Ed. 145.

justify a conviction under R. S.) (embodied herein), the govern- must prove accused had devised eme to defraud, that he intended ect the scheme by opening a cor- ndence with some other person or s through the post office, and n carrying out such scheme he placed in or received from some office a letter or packet. Packer S. (1901) 106 Fed. 906, 46 C. 35.

S. § 5480 (embodied herein), it an offense for any person to any letter in a post office in fur- ce of any scheme to defraud. that if the offense, under the e, be a felony, so as to render the ne of principal and accessory ap- le, one who performs a part of heme, or who is a party to the e or plan, is a principal, though not present when the letters are . Hume v. U. S. (1902) 118 Fed. 5 C. C. A. 407, writ of certiorari (1903) 23 Sup. Ct. 850, 189 U. , 47 L. Ed. 923.

er R. S. § 5480 (embodied here- hich makes it a criminal offense person, having devised a scheme rifice to defraud, "shall, in and ecuting such scheme or artifice, * place or cause to be placed any letter * * * in any post office, branch post office, or street or hotel letter box of the United States," a railway postal car used and designated as a railway post office for the receiving and distribution of mail is a branch post office. Hanley v. U. S. (1903) 123 Fed. 849, 59 C. C. A. 153, rehearing granted (1903) 126 Fed. 944, 61 C. C. A. 668, which is reversed on rehearing (1904) 127 Fed. 929, 62 C. C. A. 561, writ of certiorari denied (1904) 24 Sup. Ct. 858, 194 U. S. 634, 48 L. Ed. 1160.

In a prosecution for violating R. S. § 5480 (embodied herein), prohibiting any person to further any scheme to defraud by opening communication with persons to be defrauded by means of the United States post office, the defendant's intention to obtain a benefit by the alleged fraud, or to convert the money obtained thereby to his own use, is not an element of the offense. Kellogg v. U. S. (1903) 126 Fed. 323, 61 C. C. A. 229.

On an indictment for depositing letters in the mail with intent to defraud, under R. S. § 5480, as amended March 2, 1889 (embodied herein), the accused must have devised or intended to devise a scheme to defraud, and must have intended to effect the scheme by opening correspondence through the mails, or by inciting some person to open communication with him through the mails, and in executing the scheme, or attempting so to do, he must have either deposited a letter or other communication in the post office for delivery, or taken or received one therefrom. Brown v. U. S. (1906) 143 Fed. 60, 74 C. C. A. 214, writ of certiorari denied (1906) 26 Sup. Ct. 765, 202 U. S. 620, 50 L. Ed. 1174.

In order to make out the offense defined by R. S. § 5480 (embodied herein), prohibiting the mailing of a letter in the execution or attempted execution of a scheme to defraud, there must not only be a scheme intended to defraud, but such scheme must contemplate as one of its essential parts the use of the United States post office establishment to effect its purpose, the gist of the offense being the mailing of the letter in furtherance of such scheme. Brooks v. U. S. (1906) 146 Fed. 223, 76 C. C. A. 581.

Each mailing or taking from the post office of a letter pursuant to a scheme to defraud constituted a separate offense under R. S. § 5480 (embodied herein). Francis v. U. S. (1907) 152 Fed. 155, 81 C. C. A. 407, modifying judgment U. S. v. Francis (D. C. 1906) 144 Fed. 520, and writ of certiorari denied (1907) 27 Sup. Ct. 797, 206 U. S. 565, 51 L. Ed. 1191.

Where accused had been a party to a scheme to defraud during a period when the persons conducting the same had done so solely by means of express and telegraph companies, but was not shown to have had any connection with his

former confederates after they commenced to unlawfully use the mails for such purpose, he was not guilty of violating R. S. § 5480 (embodied herein). Dalton v. U. S. (1907) 154 Fed. 461, 83 C. C. A. 317.

A letter mailed in furtherance of a scheme to defraud, in order to support an indictment under R. S. § 5480, as amended in 1889 (embodied herein), need not in itself be effective to execute such scheme, but it is sufficient if it was designed for that purpose or to assist in it. Lemon v. U. S. (1908) 164 Fed. 953, 90 C. C. A. 617.

One who devises a fraudulent scheme by opening a correspondence with himself by means of the post office is guilty of no offense punishable under R. S. § 5480 (embodied herein). Erbaugh v. U. S. (1909) 173 Fed. 433, 97 C. C. A. 663.

The act forbidden by R. S. § 5480, as amended (embodied herein), is not the deposit in or the receipt from the post office of a letter or circular for the purpose of executing a fraudulent scheme as in this section. Id.

The gravamen of the offense under R. S. § 5480 (embodied herein), was not the intended or perpetrated fraud, but the intended use of the post office to perpetrate the fraud, and the act forbidden was not the deposit in or the receipt from the post office of a letter or circular for the purpose of executing a fraudulent scheme as in this section. Id.

To constitute the offense of using the mails to defraud, under R. S. § 5480 (embodied herein), there must have been an intention to injure the person addressed or sought to be reached by defrauding him of something which he already had; and the making of false representations, for the purpose of deceiving the persons addressed by raising expectations of gain or advantage which it was not the intention to fulfill, is insufficient. Miller v. U. S. (1909) 174 Fed. 35, 98 C. C. A. 21.

In order to constitute the offense of using the post office in furtherance of a scheme to defraud, the government must prove that the defendants devised a scheme or artifice to defraud, that they intended to effect the scheme through the use of the post office establishment, and that in carrying out the scheme they either deposited a letter or packet in the post office or took or received one therefrom. Foster v. U. S. (1910) 178 Fed. 165, 101 C. C. A. 485.

In a prosecution for using the post office establishment in furtherance of a scheme to defraud, it is not necessary to show that any one has been in fact defrauded, nor is it necessarily conclusive against the fraudulent nature of the scheme that those named in the indictment as among those intended to be defrauded have not been so defrauded in fact. Id.

The offense denounced by R. S. § 54 (embodied herein), consists in the vising of a fraudulent scheme and depositing in the mail of a letter, wr ing, or other paper for executing attempting to execute such scher When such acts are shown, the cri is established, and, while what is actu ly accomplished may be evidence what was intended to be accomplish it is not the sole evidence. The offe is complete if an attempt be made execute by the use of the postal tablishment. Humes v. U. S. (191 182 Fed. 485, 105 C. C. A. 158.

The elements of the offense defined R. S. § 5480 (embodied herein), p hibiting the use of the post office in furtherance of a scheme to defraud, the devise or intended devise of artifice to defraud by accused, the tention to effect the scheme or artif by opening correspondence or commu cation with some person through mail or by inciting some person to o communication with him through mail, and the execution of the sche or artifice or an attempt to do so the deposit of a letter or other co munication in the post office for tra mission or delivery, or taking or rece ing a letter or communication for t purpose therefrom. Rimmerman v. S. (1911) 186 Fed. 307, 108 C. C. 385, writ of certiorari denied (1911) Sup. Ct. 523, 223 U. S. 721, 56 L. 630.

To constitute the offense of using mails to carry into effect a scheme defraud, within R. S. § 5480 (embod herein), it is not necessary that th should be actual misrepresentation to an existing fact; but it is suffici if the representations made were tended and calculated to deceive and fraud. McCarthy v. U. S. (1911) Fed. 117, 110 C. C. A. 547.

The misuse of the post office by deposit in or receipt from it of a let is the gravamen of the offense, but scheme to defraud and the intention use the post office to effect it are ind pensable elements of the offense. H v. U. S. (1912) 198 Fed. 610, 119 C. A. 493.

Elements of the offense of using mails to defraud, within this secti considered. Harrison v. U. S. (191 200 Fed. 662, 119 C. C. A. 78.

In order to constitute the offense using the post office establishment furtherance of a scheme to defraud violation of this section, there must proof of a scheme or artifice to defra which accused has devised or is inte ing to devise and a use of the mails execute the scheme or artifice, or attempt to do so. Stockton v. U. (1913) 205 Fed. 462, 123 C. C. A. 5 46 L. R. A. (N. S.) 936.

Elements of the offense of using mails to defraud in violation of R. S 5480, as amended by Act March 2, 18 (embodied herein), stated. Smith v.

3) 208 Fed. 131, 125 C. C. A.

defendants, engaged in scheme ud by selling worthless instru- s genuine soldier's script, also id script, mailing of letter ad- the business and soliciting cor- ence, held to violate this sec- ugh it did not appear that the ld to the addressee was fraud- Blanton v. U. S. (1914) 213 Fed. C. C. A. 22, Ann. Cas. 1914D,

nts of crime of using the mails ote frauds, punishable by this are a scheme intended to de- d an actual use of the mails. v. U. S. (1915) 223 Fed. 903, C. A. 341.

sing the mails in carrying out a to defraud by inducing another goods on approval with intent of g them held guilty of violating tion. Tucker v. U. S. (1915) 833, 140 C. C. A. 279.

bank, forwarding check by mail ction, was ignorant of defend- eme to defraud, held not to de- ir responsibility for fraudulent the mails, under this section. U. S. (C. C. A. 1915) 228 Fed.

from post office of letter in cheme to defraud held offense, his section, though letter was y defendants' agent. Trent v. C. C. A. 1916) 228 Fed. 648.

use of mails in affecting to defraud held offense, under ion; a purpose to use the mails g an essential element of the Id.

al for fraudulent use of mails, falsity of financial statements parties from whom credit was held controlling; the sending being inconsistent with honesty, ngly false. Kaplan v. U. S. (C. 16) 229 Fed. 389.

st of the offense is the abuse of , and the mailing and the let- f constitute the corpus delicti. Jones (C. C. 1882) 10 Fed. 469.

g a letter through the mail to he purchase of counterfeit mon- the purpose of putting it off as is an offense under R. S. § mbodied herein), notwithstand- absence of evidence showing an to defraud any particular per-

ho advertises under various ti- agents to sell goods and dis- circulars without any intention ying such agents, but intending persons who meet with such ements or circulars to send him in postage stamps and $2.50 y for agents' outfits or sample ith the intention of cheating and ng the persons sending such stamps or money, or a portion y converting such stamps or his own use, without intending any equivalent for the same, and to carry out this fraudulent device takes a letter and packet from the post office and deposits a packet in the post office, is guilty of the misdemeanor described in R. S. § 5480 (embodied herein). U. S. v. Stickle (C. C. 1883) 15 Fed. 798.

As the offense consists in the concocting of a scheme or artifice to defraud individuals of their property and money, and in the employment of the post-office department in carrying into execution such scheme or artifice to warrant a conviction the jury must be satisfied, beyond a reasonable doubt, of the intention of the accused to defraud, and of the use of the post office for that purpose. Id.

Where the mails are used by persons who have devised a scheme to defraud, and as a part of the means for carrying out such scheme, an offense is committed under R. S. § 5480, as amended by Act March 2, 1889 (embodied herein), and it is immaterial to whom the letter was addressed or by whom mailed. U. S. v. Ryan (C. C. 1903) 123 Fed. 634.

The sending through the mails, by persons who have entered into a conspiracy to defraud, of letters to each other, not intended to be shown to the intended victims, or otherwise used in carrying out the fraudulent scheme, but merely for the purpose of giving or asking information as to the acts of the different parties to the conspiracy, and to keep each other informed as to its progress, does not constitute an offense under R. S. § 5480, as amended by Act March 2, 1889 (embodied herein). Id.

The gist of the offense under the statute is the use of the mails as a material part of carrying out the scheme to defraud. Id.

To constitute the offense of "using the mails to effectuate a scheme to defraud," within R. S. § 5480 (embodied herein), the scheme must have contemplated the use of the post office establishment to effectuate it, and not the use of the mails as a mere incident to some fraudulent scheme. U. S. v. McCrory (C. C. 1910) 175 Fed. 802.

An attempt to defraud a creditor by inclosing with a letter to him worthless slips of paper in place of money, stated by such letter to be inclosed therewith, and sending such letter and inclosed slips to such creditor through the mail, is not an indictable offense, under R. S. § 5480 (embodied herein). U. S. v. Owens (D. C. 1883) 17 Fed. 72.

Under R. S. § 5480 (embodied herein), a person is guilty of "placing a letter in the postoffice" if a letter has been so deposited by his direction, even though by the hand of another. U. S. v. Flemming (D. C. 1883) 18 Fed. 907.

The elements in the offense of using the mail for the purpose of defrauding, created by R. S. § 5480 (embodied herein), are the devising, or intending to

devise, a scheme or artifice to defraud; the opening or intending to open correspondence or communication with some other person, or inciting such person to open correspondence, by means of the post-office department, with the one devising the scheme, and, in pursuance of the scheme, putting a letter or packet in the mail, or taking one out. U. S. v. Wootten (D. C. 1887) 29 Fed. 702.

In order to constitute the offense of using the mail for the purpose of defrauding, under R. S. § 5480 (embodied herein), the intent not to pay for the goods must exist before credit sought,—must precede an order for goods; and it is not fraudulent, within the meaning of the statute, if one not in solvent circumstances should seek credit or order goods without the present means of paying for them, nor would it come within the meaning of the statute if one had ordered goods, and afterwards devised a purpose of escaping from paying for them. Id.

R. S. § 5480 (embodied herein), does not embrace every case where a letter promotive of or connected with a fraudulent design may be sent through the post office by the person engaged in or contemplating the fraud, and to constitute the offense something more is necessary than the mere sending through the mail of a letter forming part or designed to aid in the perpetration of a fraud, and the scheme to defraud is one which must be affected by the designer of it opening a correspondence by mail or by inciting some one else to open correspondence with him. U. S. v. Mitchell (D. C. 1888) 36 Fed. 492, 493, 1 L. R. A. 796.

The practice of exaggerating the value of goods offered for sale is not criminal if restricted within reasonable bounds, and is not done with fraudulent intent. U. S. v. Staples (D. C. 1890) 45 Fed. 195.

R. S. § 5480, and its amendments (embodied herein), are general in character, and make the use of the mails for promoting schemes to defraud a criminal offense. R. S. § 3894, as amended (ante, § 10383), is specific and applies only to the promotion of lottery schemes by the use of the mails. U. S. v. Sauer (D. C. 1898) 88 Fed. 249.

The offense defined by R. S. § 5480 (embodied herein), is one against the postal laws of the United States, and its policy is to prevent the misuse of the mails of the United States, the prostitution of the mails of the United States in furtherance of dishonest schemes. The government intends that the post office establishment shall be used by the people for the purposes of legitimate business and social intercourse and that it shall not be used for the purpose of furthering dishonest schemes or practices, or for disseminating immoral or indecent literature. All such matter and kindred matter are declar the laws of the United States nonmailable. U. S. v. Horman (1901) 118 Fed. 780, affirmed (1902 Fed. 350, 53 C. C. A. 570.

An indictment under R. S. § 548 amended (embodied herein), for the mails for the purpose of car out a fraudulent scheme devised b fendant, must charge that the le etc., alleged to have been deposit the mails were so deposited fo purpose of carrying out or exec such scheme, that being a material of the offense, which cannot be plied by intendment. U. S. v. Clar C. 1903) 125 Fed. 92.

In a prosecution for the use o mails for the furtherance of a sc intended to defraud, the govern is bound to prove beyond a reaso doubt a plan or contemplated seri actions for the purpose of defra another by deception, artifice, promises, or pretenses; that a of the plan must be the use of the for the purpose of effecting the and that the party charged deposit caused to be deposited in the some letter or paper in the execut such plan. U. S. v. Post (D. C. 128 Fed. 950, judgment reversed F U. S. (1905) 135 Fed. 1, 67 C. 569, 70 L. R. A. 989, rehearing (1905) 135 Fed. 1022, 67 C. C. A 70 L. R. A. 989.

R. S. § 5480 (embodied herein which section 7411, ante, manifest fers, so far as the fraudulent s for obtaining money through the here referred to is concerned, co plates an executed transaction. indictment would lie unless the o is completed by actual deposit of letter in furtherance of the frau scheme in the post office. U. Burton (D. C. 1904) 131 Fed. 55 reversed (1905) 25 Sup. Ct. 243, 1 S. 283, 49 L. Ed. 482.

R. S. § 5480 (embodied herein) templates an executed transaction indictment would lie thereunder the offense had been completed b actual deposit of some letter in therance of the fraudulent sche the post office. Id.

The elements of the offense vising a scheme or artifice to defra be effected by means of the post establishment of the United Stat violation of R. S. § 5480 (em herein), are: (1) That defenda vised the scheme to defraud, as al (2) that he intended to effect scheme or artifice by opening spondence or communication wit persons intended to be defraud means of the post office establis of the United States, or by in them to open correspondence wit respecting such scheme or artifice (3) that in the furtherance and tion of the scheme, or in attempt

the same, defendant deposited d to be deposited in the United ost office letters, papers, writ- circulars, or took from the post pers or writings connected with nerance of such scheme. U. S. r (D. C. 1907) 154 Fed. 890.

prosecution for devising a or artifice to defraud, to be ef- hrough the post office estab- , the date of the alleged mailing different letters, papers, or described in the indictment was ssential element of the offense; sufficient that the letters, writ- ulars alleged, or some of them, posited or caused to be deposit- lefendant at any time within ars next prior to the finding of tment. Id.

s of a labor union who send let- circulars through the mails to s of a manufacturing corpora- induce them to withdraw their rom it for the purpose of ruin- usiness or forcing it to pay a osed on it for employing non- orkmen, whether such fine and were initiated by such officers e union with their participation roval, are guilty of the offense the mails to defraud, in viola- R. S. § 5480 (embodied herein). Raish (D. C. 1908) 163 Fed.

nstitute an offense under R. S. (embodied herein), the person must have devised some scheme ce to defraud, must have in- o effect the same by opening or to open such correspondence me other person or persons the post office or by inciting ner person to so open commu- with him, and in executing such or attempting to he must either ced in a post office a letter, cir- advertisement, or received one n. U. S. v. Smith (D. C. 1909) 958.

prosecution for using the post furtherance of a scheme to in violation of R. S. § 5480 ed herein), it is not necessary scheme to defraud contemplat- se of the post office in its exe- while such requirement is nec- o a conviction under R. S. § ate, § 10201. Ex parte King 912) 200 Fed. 622.

prosecution for violating this it was not necessary for the ent to prove that the defend- devising their scheme to de- tended to effect the scheme by correspondence through the ce establishment, as was re- nder Act March 2, 1889. U. S. (D. C. 1912) 200 Fed. 997.

ection, prohibiting the use of s in furtherance of a scheme ud, is broader than R. S. § which it was founded; it being necessary under this section, to complete the offense, for the government to prove only a fraudulent scheme, and that to execute it there was placed, or caused to be placed, in the post office, or taken therefrom, a letter or postal card, etc. U. S. v. Goldman (D. C. 1913) 207 Fed. 1002.

That letters taken from post office pursuant to scheme to defraud were decoy letters held not to render their receipt any less an offense, if they were written in an effort to detect, and not to induce the commission of, a crime. Id.

An indictment for misuse of the mails, in furtherance of a scheme to defraud by the sale of de luxe editions of books to be resold to others, held not objectionable on the ground that the representations as to resale were of an opinion character. U. S. v. Farmer (D. C. 1914) 218 Fed. 929.

6. Offense prior to taking effect of statute.—Under this section, which became effective in January, 1910, and section 10517, post, authorizing the prosecution of offenses committed prior to its enactment in the same manner as if it had not been passed, one indicted for using the mails to defraud subsequent to January, 1910 may be prosecuted under ths section, although the indictment charges that the scheme was devised in 1909. Sandals v. U. S. (1914) 213 Fed. 569, 130 C. C. A. 149.

Where persons devising a scheme to defraud by misuse of the mails prior to Criminal Code continued their scheme thereafter, the continuance was the devising of a scheme after taking effect of the Code. Farmer v. U. S. (1915) 223 Fed. 903, 139 C. C. A. 341.

Where defendants devised scheme to defraud by use of the mails prior to Criminal Code, and continued the scheme thereafter, the government, charging a violation of Code, could prove acts prior to it. Myers v. U. S. (1915) 223 Fed. 919, 139 C. C. A. 399.

7. Scheme or artifice to defraud.—Under an indictment for devising a scheme to sell counterfeit money through the mails, based on Act March 2, 1889, c. 393, providing for the punishment of one using the mails in the execution of "a scheme to defraud, or to sell" counterfeit money, it is not necessary to prove a scheme to defraud. Streep v. U. S. (1895) 16 Sup. Ct. 244, 160 U. S. 128, 40 L. Ed. 365.

The offense of using the mails in furtherance of "schemes devised for the purpose of obtaining money or property under false pretenses," denounced by R. S. § 3894, ante, § 10383, includes only schemes having a similitude to the lottery and other like schemes particularly described by the particular words of the section, and does not cover the use of the mails to promote

other schemes to obtain money or property by means of false pretenses, which is embraced by the provisions of R. S. § 5480 (embodied herein), making criminal the use of the mails to carry on any scheme or artifice to defraud. U. S. v. Stever (1911) 32 Sup. Ct. 51, 222 U. S. 167, 56 L. Ed. 145.

In R. S. § 5480, as amended by Act March 2, 1889 (embodied herein), which makes it a criminal offense if any one, "having devised or intending to devise any scheme or artifice to defraud" to be effected by the use of the mails, shall, in carrying out such scheme or artifice, have either deposited a letter or packet in a post office or taken one therefrom, the phrase "scheme or artifice to defraud" is not limited in its meaning to such as are to be accomplished by means of deception or trickery, but, bearing in mind that the purpose of the statute is to preserve the use of the mails for legitimate purposes, such phrase must be construed to include any scheme designed and intended to injure another by depriving him of his property wrongfully; and a plan to extort money from another by threatening to publish charges against him accusing him of having committed crimes, unless a sum demanded is paid, is a "scheme to defraud," within the meaning of the statute. Horman v. U. S. (1902) 116 Fed. 350, 53 C. C. A. 570, affirming judgment U. S. v. Horman (D. C. 1901) 118 Fed. 780, and writ of certiorari denied (1902) 23 Sup. Ct. 841, 187 U. S. 641, 47 L. Ed. 345.

R. S. § 5480 (embodied herein), provided that if any person, having devised any scheme or artifice to defraud, to be effected by correspondence with any persons by means of the post office of the United States, should, for the purpose of executing such scheme, place any letter in any post office of the United States, he should, on conviction, be punished, etc. Section 5480, R. S., was amended by Act March 2, 1889, so as to read that if any person, having devised a scheme to defraud or to dispose of any counterfeit money, etc., to be effected by a correspondence through the mails, should place any letter in the post office, etc., he should be punished. Held, that the amendment was not intended to restrict the statute to schemes to defraud by the intended sale of counterfeit money, but was enacted to include such schemes within the prohibition of section 5480. Milby v. U. S. (1903) 120 Fed. 1, 57 C. C. A. 21.

In a prosecution for using the mails in furtherance of a scheme to defraud by the paying of large returns for money to be used in betting on horse races, the fact that such scheme involved a gambling transaction forbidden by the laws of the state where it was devised and where defendants resided was immaterial. O'Hara v. (1904) 129 Fed. 551, 64 C. C. A

The intentional use of a legal tract to defraud another may co tute a scheme to defraud, under § 5480 (embodied herein), though use of the same contract with an est intent for a proper purpose be lawful. Miller v. U. S. (1904) Fed. 337, 66 C. C. A. 399.

R. S. § 5480, as amended by March 2, 1889, § 1 (embodied her making it a criminal offense by sons whose vocation is healing, t the mails in furtherance of a sc or artifice to defraud, does not any discrimination, with respect t right to the use of the postal estal ment of the United States bet those who profess to cure by the of mental science and those who drugs; and, in a prosecution the der for such use of the mails, the tion of the defendant's good fai the cardinal question. If she prac in good faith, without the inte to defraud, she is not guilty, alth in fact the theory and practice fo ed were worthless; but, if, withou lief in her practice, and with kn edge that her representations re ing it were false, she made the defraud, the fact that mental he is a lawful vocation does not pr conviction. Post v. U. S. (1905) Fed. 1, 67 C. C. A. 569, 70 L A. 989, reversing judgment U. Post (D. C. 1904) 128 Fed. 950 rehearing denied (1905) 135 Fed. 67 C. C. A. 679, 70 L. R. A. 989.

R. S. § 5480, as amended Mar 1889 (embodied herein), includes scheme or artifice to defraud in e ing which it is designed to use the office as an instrument for commu tion, whether that be the sole or part of the means to be employ effecting it or not. Brown v. (1906) 143 Fed. 60, 74 C. C. A. writ of certiorari denied (1906 Sup. Ct. 765, 202 U. S. 620, 50 L 1174.

Accused was indicted for depos a letter in the post office in exec of a scheme to defraud. The sc alleged consisted of the insertio an advertisement in a newspaper taining the words "How to spec on Board of Trade. Sent free L. Brown & Co.," etc., to induce public through correspondence ducted by mail to purchase th defendant under the name of " Brown & Co." commodities on board of trade to enable defendant did not intend to make such purc to convert the money to his own The proof was that one Hardwick such advertisement and without c spondence sent defendant $1,00 wire, with instructions to buy o on pork. Defendant immediately turned a memorandum showing a made by him to Hardwick, and

ie made on a board of trade
m. Thereafter Hardwick de-
more money, and directed fur-
urchases of pork, which were
n the same manner. Held, that
acts were insufficient to estab-
e charge laid in the indictment.
v. U. S. (1906) 146 Fed. 219,
. A. 577.

her the pretensions made by
used, which are averred to con-
the scheme to defraud, consti-
agreement, valid or otherwise,
sist of representations of fact,
or future, an expression of
or assurance of past, present,
re conditions, it may constitute
ne to defraud, provided only it
gned and reasonably adapted to
. Brooks v. U. S. (1906) 146
23, 76 C. C. A. 581.

e scheme is sufficiently outlined
y its design and adaptability to
and to fairly acquaint the ac-
vith what he is required to meet,
ers the requirement of the stat-
d.

eme by the owner of a saloon,
ffected by opening correspond-
rough the mails, to induce dif-
persons to each purchase a half
in his saloon as a partner, and
argely more than it was worth,
representing its value and the
of its profits, and to thus
their money without their re-
any equivalent therefor, held
e to defraud, within the mean-
his section, and to be sufficient-
ged in an indictment thereun-
an Deusen v. U. S. (1907) 151
9, 81 C. C. A. 175.

issuance of certificates in the
f a company by which the hold-
in $1 per. month, and on ma-
f his certificate in its turn was
to receive double the amount
from a "mutual benefit credit
created solely by the payment
of less than 75 per cent. of the
s paid in, held to be a scheme
aud, which when carried on by
of the post office department
violation of R. S. § 5480 (em-
herein). Walker v. U. S.
152 Fed. 111, 81 C. C. A. 329.

act that a circular sent out by
a commission merchant to ad-
his business contained some ex-
ions as to his facilities for
g property consigned to him, or
failed to settle with some of
rons, is not sufficient to estab-
scheme or artifice to defraud,
vill support an indictment under
5480, as amended by Act March
, § 1 (embodied herein), for
ent use of the mails. Faulkner
(1907) 157 Fed. 840, 85 C. C.

nstitute a "scheme to defraud"
carried out by the use of the
n violation of R. S. § 5480, as
d by Act March 2, 1889, § 1
(embodied herein), it is not necessary that the scheme should be fraudulent on its face; but, although it is apparently a legitimate business, it is within the statute if there was an intention not to conduct such business honestly, but to use it to defraud. McConkey v. U. S. (1909) 171 Fed. 829, 96 C. C. A. 501.

Where the evidence established the charge that defendant advertised as a matrimonial agency, and obtained money from a person by means of correspondence through the mails by false representations made in the advertisement, the offense of using the mails to defraud was complete; and it was no defense that defendant afterwards put the person defrauded in correspondence with a woman whom he married. Grey v. U. S. (1909) 172 Fed. 101, 96 C. C. A. 415.

In a prosecution for using the post office establishment in furtherance of a scheme to defraud, in violation of R. S. § 5480 (embodied herein), it is not necessary that the scheme charged in the indictment, if carried out, would necessarily defraud, but it is sufficient if the scheme as charged is reasonably adapted to defraud. Rimmerman v. U. S. (1911) 186 Fed. 307, 108 C. C. A. 385, writ of certiorari denied (1911) 32 Sup. Ct. 523, 223 U. S. 721, 56 L. Ed. 630.

A scheme to induce persons to purchase stock in a corporation by false and fraudulent representations that the money paid would go into the corporation's treasury for development purposes, that the officers would not sell their shares and believed that they would become of enormous value, that stock held by officers was nontransferable, that only treasury stock was on the market, and that all increases on the selling of the stock was justified by the development of the business, was a "scheme and device to defraud" within R. S. § 5480 (embodied herein), prohibiting the use of the mails in furtherance of a scheme or artifice to defraud, etc.; the statute being intended broadly to prevent the use of the mails to despoil the public, whether such result was intended to be accomplished by plain falsehoods, or by the most alluring and complicated contrivances. Wilson v. U. S. (1911) 190 Fed. 427, 111 C. C. A. 231.

A scheme to defraud the public, by inducing them to send money to a corporation as the purchase price for its stock, which money the defendants, as officers of the company, could then embezzle, was none the less a public offense and a violation of the laws of the United States because it was also a private tort against the corporation. Id.

Use of the mails in furtherance of a scheme to defraud, by inducing the sale of stock in a corporation by false representations, that only treasury stock

was to be sold, was not rendered innocuous by defendants placing an amount equal to the amount of the treasury stock in the corporation's treasury as a loan. Id.

The word "devise," as used in this section, conveys the idea of being devious, contriving, disingenuous; a scheme or plan whose appearance differs from the reality; an artifice, trick, false pretense or token. Stockton v. U. S. (1913) 205 Fed. 462, 123 C. C. A. 530, 46 L. R. A. (N. S.) 936.

Scheme to sell false and worthless instruments as genuine soldier's script held a scheme to defraud or obtain money by fraudulent pretenses within this section, notwithstanding the lack of official origin of such script or that false swearing would not constitute perjury. Blanton v. U. S. (1914) 213 Fed. 320, 130 C. C. A. 22, Ann. Cas. 1914D, 1238.

That a scheme is visionary does not make it fraudulent, if the promoter thereof actually in good faith believed in it himself. Sandals v. U. S. (1914) 213 Fed. 569, 130 C. C. A. 149.

Where accused sought by use of the mails to obtain whisky from another by means of checks drawn on a bank in which accused knew he had no funds, he was guilty of using the post office in furtherance of a scheme to defraud in violation of this section. Charles v. U. S. (1914) 213 Fed. 707, 130 C. C. A. 221, Ann. Cas. 1914D, 1251.

Accused's act in obtaining liquor on altered bills of lading by means of the post office establishment held to constitute a misuse of the post office establishment in furtherance of a scheme to defraud in violation of this section. Id.

This section held not limited to schemes of the nature of those specified in the section, but to include the use of the mails for the transmission of a false financial statement by which defendant intended to obtain, and did obtain, goods on credit to which he was not entitled. Scheinberg v. U. S. (1914) 213 Fed. 757, 130 C. C. A. 271, Ann. Cas. 1914D, 1258.

Under this section held, that scheme to defraud was not incomplete, because ways and means for carrying it into effect were to be subsequently devised. Goldman v. U. S. (1915) 220 Fed. 57, 135 C. C. A. 625, affirming judgment U. S. v. Goldman (D. C. 1913) 207 Fed. 1002.

Under this section, relative to use of mails in execution of scheme to defraud, the government need not prove that an intention to use the mails was a part of the original scheme. Stern v. U. S. (1915) 223 Fed. 762, 139 C. C. A. 292.

A scheme to induce persons to purchase stock under the false representation that they were purchasing treasury stock held within R. S. §§ 5440, 5480, and Cr. Code, §§ 37, 215 (this compilation, §§ 10201, 10385). Myers v. U. S. (1915) 223 Fed. 919, 139 C. C. A. 399.

This section applies to the act of one engaged in a legitimate business, wh to obtain money or credit, sen through the mails a false statement to his financial condition. Bettman U. S. (1915) 224 Fed. 819, 140 C. A. 265.

Where loans were obtained by virt of a false financial statement se through the mails, held, that there w an artifice to defraud within this se tion, though the borrower was then s vent. Id.

That a scheme to defraud would n have deceived one of ordinary intel gence does not relieve the wrongdoer liability for using the mails to carry o the deception. Tucker v. U. S. (191 224 Fed. 833, 140 C. C. A. 279.

Letter defendants were charged wi taking from the post office in aid scheme to defraud held not to show its face that the scheme was fully ex cuted. Trent v. U. S. (C. C. A. 191 228 Fed. 648.

Any scheme, the necessary result which would be the defrauding of som body, is a scheme to defraud with the meaning of this section. U. S. Jones (C. C. 1882) 10 Fed. 469, 470.

To constitute an offense under R. § 5480 (embodied herein), which pr vides for the punishment of any pe son using the mails for fraudulent pu poses, it is not necessary that the guil person should be the originator of t fraudulent scheme in which he parti pates. U. S. v. Flemming (D. C. 188 18 Fed. 907.

A scheme need not be unlawful in self, or constitute a fraud, either common law or by statute, to be "scheme or artifice to defraud," with R. S. § 5480 (embodied herein). It enough if its purpose is to defraud ot er persons of their money. U. S. Loring (D. C. 1884) 91 Fed. 881.

A plan to defraud by ordering goo by mail, under the false pretense th the persons mailing the orders a merchants, is a "scheme or artifice defraud," within R. S. § 5480 (em bodied herein). U. S. v. Watson (D. 1888) 35 Fed. 358.

Forming a plan to defraud by orde ing goods by mail, with the intention not paying for them, under the fal pretense that the persons mailing t orders are merchants, is a "scheme artifice to defraud" within the mea ing of this section; and the act mailing a letter ordering goods in pu suance of such scheme is indictal thereunder. Id.

For the purpose of deceiving an ac dent insurance company as to the da of remittance of a sum of money ne essary to save from forfeiture the ce tificate of one of the defendants, and promote the allowance of his claim indemnity, lost by the failure to ren in time, defendants stamped the lett with a false post-mark date, so as give it the appearance of having be mailed sooner than it really was. He

case was not within R. S. § nbodied herein) relating to to defraud, to be effected by correspondence by mail, etc. Mitchell (D. C. 1888) 36 Fed. R. A. 796.

R. S. § 5480 (embodied here- uncing the use of the mails for t purposes, a person may be who, representing himself to resident of a publishing com- lsely pretends by letters and that he desires to employ sell books, when in fact his ose is to induce the agents to posits of money, which he in- appropriate to his own use. U. ney (D. C. 1890) 45 Fed. 41. ere fact that defendant carried usiness under the name of the Publishing Company" is not fraudulent. Id.

ho, through the mails, induces er publishers to insert adver- s in their papers on a promise e bills therefor when rendered, s no intention of so doing, is using the mails for the pur- lefrauding. U. S. v. Staples (D. 45 Fed. 195.

heme to defraud," within the R. S. § 5480 (embodied here- lves the element of some plaus- ce, reasonably calculated to de- rsons of ordinary comprehen- d prudence; and a manifest r humbug, which belies the aws of nature, is not an indict- ense thereunder. U. S. v. Fay 897) 83 Fed. 839.

lictment under R. S. § 5480, as March 2, 1889 (embodied here- ging that defendant devised a to defraud certain persons out sums of money, in pursuance h scheme letters were sent the mails, threatening to ac- id persons of crimes and dis- matters, which threats were e carried out if said money was the price of silence, states a what is commonly called "black- nd is a scheme to defraud, and under said section of the Unit- es statutes. U. S. v. Horman 1901) 118 Fed. 780, judgment Horman v. U. S. (1902) 116 0, 53 C. C. A. 570, writ of cer- denied (1902) 23 Sup. Ct. 841, S. 641, 47 L. Ed. 345.

heme by a defendant to induce by means of letters sent the mails to send him $1 each nent for a special life reading, he horoscope of the sender and nts of his life from the cradle grave, is a scheme or artifice to to be effected by the use of the Office Department, within the g of R. S. § 5480 (embodied , if in consideration of the pay- so sent defendant returned and d to return to the senders a etter purporting to be a special life reading, but which were alike in each case, regardless of the age, color, or sex of the recipient. U. S. v. White (D. C. 1906) 150 Fed. 379.

A scheme by a defendant, to be effected by means of letters sent through the mails, to induce persons receiving such letters to purchase from him paper made in imitation of parchment at the price of $1 per yard, by representations made in such letters that the paper was pure parchment, and that certain charms, if written on pure parchment, would have certain influences on the lives of the persons who used them, if defendant knew that such paper was not pure parchment, and was worth much less than $1 per yard, was a scheme or artifice to defraud to be effected by use of the Post Office Department, within the meaning of R. S. § 5480 (embodied herein). Id.

A "scheme or artifice" to defraud, within R. S. § 5480 (embodied herein), prohibiting the use of the post office establishment in aid of a scheme or artifice to defraud, is the formation of a plan, device, or trick to perpetrate a fraud on another. U. S. v. Dexter (D. C. 1907) 154 Fed. 890.

The purpose of R. S. § 5480, prohibiting the use of the post office establishment in furtherance of a scheme to defraud, on which this section is modeled, was to prevent the use of the mails in aid of schemes and artifices to defraud others of their money and property. U. S. v. Goldman (D. C. 1913) 207 Fed. 1002.

A use of the mails in furtherance of a scheme to defraud, in order to sustain an indictment, need not be a scheme definitely devised in the first instance with respect to the particular instruments of fraud and the particular proposed victims. U. S. v. Farmer (D. C. 1914) 218 Fed. 929.

It is no objection to an indictment for misuse of the mails, in violation of this section, that the scheme is obnoxious to a state statute, or is of a character which is within the police powers of the states only. Id.

A scheme to corrupt a state election so as to secure the election as circuit judge of one not the choice of the voters, is a scheme to defraud, within this section. U. S. v. Aczel (D. C. 1915) 219 Fed. 917.

8. Statute as embracing "any scheme or artifice to defraud."—R. S. § 5480, as amended in 1889 (embodied herein), making it a criminal offense to use the mails in the execution of schemes to defraud, although it specifically names schemes to dispose of counterfeit or spurious money, is not confined to such schemes, but by its terms embraces "any scheme or artifice to defraud." Lemon v. U. S. (1908) 164 Fed. 953, 90 C. C. A. 617.

R. S. § 5480 (embodied herein), prohibiting the use of the post office in furtherance of a scheme to defraud, in-

cludes every scheme to be effected by the use of the post office establishment which is in fact designed to defraud, by representations as to the past or present, or suggestions and promises as to the future; it being immaterial that the business or scheme conducted is an actual business provided it is the basis of a fraudulent scheme. Foster v. U. S. (1910) 178 Fed. 165, 101 C. C. A. 485.

9. Honestly believing representations and having reasonable grounds therefor as constituting defense.—In a prosecution under R. S. § 5480 (embodied herein), for using the mails to defraud, it is a defense that defendant honestly believed that the representations made in the letters or circulars which he is charged with having sent through the mails were true, and that he had no actual intent to defraud. Rudd v. U. S. (1909) 173 Fed. 912, 97 C. C. A. 462.

In a prosecution for misuse of the mails in furtherance of a scheme to defraud by the sale of worthless mining stock, if any one or more of the defendants honestly believed that the representations made by him respecting the property were true, or had reasonable grounds to so believe, such belief would constitute a complete defense as to him. Horn v. U. S. (1910) 182 Fed. 721, 105 C. C. A. 163, writ of certiorari denied (1911) 31 Sup. Ct. 470, 219 U. S. 585, 55 L. Ed. 347.

10. Limitations.—The essence of the offense made punishable by this section is not the devising of a scheme or artifice to defraud, but the using of the mails in pursuance of such a scheme and a prosecution thereunder is not barred by limitation because the scheme may have been devised more than three years prior to the indictment, where the overt acts were committed within that time. Mitchell v. U. S. (1912) 196 Fed. 874, 116 C. C. A. 436.

11. Venue and place of trial in general.—Laying the venue of the trial of a conspiracy to commit an offense against the United States, under R. S. § 5480 (embodied herein), by using the mails to defraud, in the state and federal judicial district where the overt act is performed, satisfies Const. Amend. 6, that all crimes be tried in the state and district where committed. Brown v. Elliott (1912) 32 Sup. Ct. 812, 814, 225 U. S. 392, 56 L. Ed. 1136.

A prosecution under R. S. § 5480 (embodied herein), prohibiting the use of the post office for promoting a scheme to defraud, can only be instituted in the district in which the fraudulent matter was placed in the post office. U. S. v. Sauer (D. C. 1898) 88 Fed. 249.

12. Removal of defendant to other district for trial.—The removal of a party indicted in a United States court in another jurisdiction for violating R. S. § 5480 (embodied herein), by using the mails to defraud, from this jurisdiction to the jurisdiction where the indictment was found, can be refused only where, on a broad and liberal construction of the indictment, it clearly appears that no offense against the United States is charged in the indictment. Farr v. Palmer (1904) 24 App. D. C. 234.

The charges in an indictment for the fraudulent use of the mails in violation of R. S. § 5480 (embodied herein), in selling bogus degrees of a law college not a bona fide institution, reviewed, and held sufficient to justify the removal of the accused from this jurisdiction for trial in the jurisdiction where the indictment was found. Id.

13. Indictment—Form, requisites, and sufficiency in general.—An indictment under the statute for using the mails to defraud held sufficient. Hibbard v. U. S. (1909) 172 Fed. 66, 96 C. C. A. 554, 18 Ann. Cas. 1040; Bartholomew v. U. S. (1910) 177 Fed. 902, 101 C. C. A. 182 (writ of certiorari denied [1910] 30 Sup. Ct. 697, 217 U. S. 608, 54 L. Ed. 901); Belden v. U. S. (1915) 223 Fed. 726, 139 C. C. A. 256; Stern v. U. S. (1915) 223 Fed. 762, 139 C. C. A. 292; U. S. v. Goldman (D. C. 1913) 207 Fed. 1002.

The omission to state in the indictment the names of the parties intended to be defrauded, and the names and addresses on the letters placed in the post office in carrying out the fraudulent scheme, is excused by the allegation, if true, that such names and addresses are to the grand jury unknown. Durland v. U. S. (1896) 16 Sup. Ct. 508, 161 U. S. 306, 40 L. Ed. 709.

An indictment under this section need only aver the scheme and its attempted execution by placing a letter in the post office, and need not allege that the scheme was to be executed by the use of the mails. U. S. v. Young (1914) 34 Sup. Ct. 303, 232 U. S. 155, 58 L. Ed. 548.

An indictment for a fraudulent use of the mails, in violation of R. S. § 5480, as amended by Act March 2, 1889 (embodied herein), not charging a scheme to defraud the public generally, or a class not capable of being resolved into individuals, but clearly importing an intention to defraud definite individuals, is bad, if it does not describe them by name, or give a good and true reason for the omission. Larkin v. U. S. (1901) 107 Fed. 697, 46 C. C. A. 588.

Such an indictment, stating the names of persons to whom letters or postal cards were addressed, does not satisfy the requirement that the names of parties intended to be defrauded must be alleged if it is not alleged that the scheme to defraud included them,

as use of the mail for communication with a person intended to be injured is not essential to the offense, it being within the statute, if, in aid of the scheme to defraud, the mails be used to open correspondence with the intended victim, or "any person," or to incite "such other person [the one intended to be defrauded], or any person," to open communication with the designer of the scheme. Id.

An indictment based on R. S. § 5480, as amended by Act March 2, 1889 (embodied herein), charging defendant with having devised a scheme to defraud a certain person, to be effected by opening correspondence with such person by means of the post-office establishment of the United States, and, in executing such scheme, with placing a letter directed to such person in a post office of the United States, and setting forth the letter, which contained simply a clear proposition to sell such person counterfeit money at the rate of five dollars for one dollar, the indictment not charging that defendant did not intend to or would not send such counterfeit money on receipt of the price therefor, is insufficient, under such section, since, though the letter proposes a violation of another law, it does not disclose an intent to defraud the person to whom it is addressed. Milby v. U. S. (1901) 109 Fed. 638, 48 C. C. A. 574.

R. S. § 5480 (embodied herein), makes it an offense for any person to place any letter in a post office in furtherance of any scheme to defraud. An indictment under the statute charged that S., acting for himself and "in conjunction with H.," placed a letter, etc. Held, that a contention that the indictment did not charge H. with any participation was of no merit. Hume v. U. S. (1902) 118 Fed. 689, 55 C. C. A. 407, writ of certiorari denied (1903) 23 Sup. Ct. 850, 189 U. S. 510, 47 L. Ed. 923.

An indictment under the statute alleged that defendants on the 30th of September, 1896, having "theretofore fraudulently devised" a scheme to defraud, and then averred the scheme and the deposit of letters, and gave the dates of deposit as prior to September 30, 1896. Defendant contended that the indictment was insufficient, in that it showed the letters were mailed prior to the fraudulent scheme. Held of no merit, since the indictment did not charge anything done on September 30th, but that the scheme was formed theretofore. Id.

An indictment under R. S. § 5480 (embodied herein), punishing the use of the mails with intent to defraud, must allege that defendants had devised a scheme to defraud, which was to be effected by opening or intending to open correspondence with some person by means of the use of the mails, or by inciting such person to open communication with defendants, or some of them, and that, in the execution of the scheme, defendants either placed a letter in a post office, or took one therefrom. Stewart v. U. S. (1902) 119 Fed. 89, 55 C. C. A. 641.

A count in an indictment under R. S. § 5480 (embodied herein), alleged that the fraudulent scheme devised by defendants was to induce, by the use of the mails, persons to come to a designated city in Missouri, in the expectation of there defrauding them by various artifices not then conceived. It showed that the mails were not the sole means defendants intended to employ to induce persons to come to such city. It also showed that the letter written by one of the defendants to a third person, on which the count was founded, was deposited in the mail long after the person to whom the letter was addressed had been induced to go to the designated city by oral representations made to him by a party to the scheme, and had been induced to part with his money by the various fraudulent pretenses and artifices there resorted to. Held, that the indictment did not clearly show that the letter in question was deposited in the mail in execution of the alleged scheme to defraud, but rather disclosed that it was so deposited after the scheme so described had been executed. Held further, that the indictment contained so many redundant and immaterial allegations as to render it almost unintelligible, and that it was so far lacking in certainty of averment that it ought to be quashed on a motion to that effect. Id.

Where an indictment for using the mails for the purpose of furthering a scheme to defraud, in violation of R. S. § 5480 (embodied herein), alleged that said scheme and artifice was to be effected by opening correspondence and communication with persons sought to be defrauded by means of the post office establishment of the United States, etc., an objection that the indictment was insufficient for failure to allege that the use of the mails was part and parcel of the scheme was not well taken. Kellogg v. U. S. (1903) 126 Fed. 323, 61 C. C. A. 229.

In a prosecution for using the mails in furtherance of a scheme to defraud, in violation of R. S. § 5480, as amended by Act March 2, 1889 (embodied herein), it is sufficient to charge that the defendants, having devised or intending to devise a scheme to defraud, to be executed by the use of the mails, did, in the execution of such fraudulent scheme, deposit for transmission a letter in some post office. O'Hara v. U. S. (1904) 129 Fed. 551, 64 C. C. A. 81.

Where an indictment charged that on May 21, 1902, defendants devised a

cludes every scheme to be effected by the use of the post office establishment which is in fact designed to defraud, by representations as to the past or present, or suggestions and promises as to the future; it being immaterial that the business or scheme conducted is an actual business provided it is the basis of a fraudulent scheme. Foster v. U. S. (1910) 178 Fed. 165, 101 C. C. A. 485.

9. Honestly believing representations and having reasonable grounds therefor as constituting defense.—In a prosecution under R. S. § 5480 (embodied herein), for using the mails to defraud, it is a defense that defendant honestly believed that the representations made in the letters or circulars which he is charged with having sent through the mails were true, and that he had no actual intent to defraud. Rudd v. U. S. (1909) 173 Fed. 912, 97 C. C. A. 462.

In a prosecution for misuse of the mails in furtherance of a scheme to defraud by the sale of worthless mining stock, if any one or more of the defendants honestly believed that the representations made by him respecting the property were true, or had reasonable grounds to so believe, such belief would constitute a complete defense as to him. Horn v. U. S. (1910) 182 Fed. 721, 105 C. C. A. 163, writ of certiorari denied (1911) 31 Sup. Ct. 470, 219 U. S. 585, 55 L. Ed. 347.

10. Limitations.—The essence of the offense made punishable by this section is not the devising of a scheme or artifice to defraud, but the using of the mails in pursuance of such a scheme and a prosecution thereunder is not barred by limitation because the scheme may have been devised more than three years prior to the indictment, where the overt acts were committed within that time. Mitchell v. U. S. (1912) 196 Fed. 874, 116 C. C. A. 436.

11. Venue and place of trial in general.—Laying the venue of the trial of a conspiracy to commit an offense against the United States, under R. S. § 5480 (embodied herein), by using the mails to defraud, in the state and federal judicial district where the overt act is performed, satisfies Const. Amend. 6, that all crimes be tried in the state and district where committed. Brown v. Elliott (1912) 32 Sup. Ct. 812, 814, 225 U. S. 392, 56 L. Ed. 1136.

A prosecution under R. S. § 5480 (embodied herein), prohibiting the use of the post office for promoting a scheme to defraud, can only be instituted in the district in which the fraudulent matter was placed in the post office. U. S. v. Sauer (D. C. 1898) 88 Fed. 249.

12. Removal of defendant to other district for trial.—The removal of a party indicted in a United States court in another jurisdiction for violating S. § 5480 (embodied herein), by usi the mails to defraud, from this jur diction to the jurisdiction where the i dictment was found, can be refus only where, on a broad and liberal co struction of the indictment, it clea appears that no offense against t United States is charged in the indi ment. Farr v. Palmer (1904) 24 Ap D. C. 234.

The charges in an indictment for t fraudulent use of the mails in viol tion of R. S. § 5480 (embodied herein in selling bogus degrees of a law co lege not a bona fide institution, revie ed, and held sufficient to justify the r moval of the accused from this juri diction for trial in the jurisdicti where the indictment was found. Id.

13. Indictment—Form, requisites, a sufficiency in general.—An indictm under the statute for using the ma to defraud held sufficient. Hibbard U. S. (1909) 172 Fed. 66, 96 C. C. 554, 18 Ann. Cas. 1040; Bartholom v. U. S. (1910) 177 Fed. 902, 101 C. A. 182 (writ of certiorari den [1910] 30 Sup. Ct. 697, 217 U. S. 6 54 L. Ed. 901); Belden v. U. S. (191 223 Fed. 726, 139 C. C. A. 256; St v. U. S. (1915) 223 Fed. 762, 139 C. A. 292; U. S. v. Goldman (D. 1913) 207 Fed. 1002.

The omission to state in the indi ment the names of the parties intend to be defrauded, and the names a addresses on the letters placed in post office in carrying out the fra ulent scheme, is excused by the alle tion, if true, that such names and dresses are to the grand jury unkno Durland v. U. S. (1896) 16 Sup. 508, 161 U. S. 306, 40 L. Ed. 709.

An indictment under this section n only aver the scheme and its attemp execution by placing a letter in post office, and need not allege that scheme was to be executed by the of the mails. U. S. v. Young (19 34 Sup. Ct. 303, 232 U. S. 155, 58 Ed. 548.

An indictment for a fraudulent use the mails, in violation of R. S. § 54 as amended by Act March 2, 1889 (e bodied herein), not charging a sche to defraud the public generally, o class not capable of being resolved to individuals, but clearly importing intention to defraud definite indivi als, is bad, if it does not describe th by name, or give a good and true r son for the omission. Larkin v. S. (1901) 107 Fed. 697, 46 C. C. 588.

Such an indictment, stating names of persons to whom letters postal cards were addressed, does satisfy the requirement that the na of parties intended to be defrau must be alleged if it is not alleged t the scheme to defraud included th

of the mail for communication
person intended to be injured
essential to the offense, it being
the statute, if, in aid of the
to defraud, the mails be used
n correspondence with the in-
victim, or "any person," or to
'such other person [the one in-
to be defrauded], or any per-
o open communication with the
r of the scheme. Id.

ndictment based on R. S. § 5480,
nded by Act March 2, 1889 (em-
herein), charging defendant with
devised a scheme to defraud a
person, to be effected by open-
rrespondence with such person
ans of the post-office establish-
f the United States, and, in exe-
such scheme, with placing a let-
ected to such person in a post
of the United States, and set-
rth the letter, which contained
a clear proposition to sell such
counterfeit money at the rate
dollars for one dollar, the in-
nt not charging that defendant
t intend to or would not send
ounterfeit money on receipt of
ce therefor, is insufficient, under
ection, since, though the letter
es a violation of another law, it
ot disclose an intent to defraud
rson to whom it is addressed.
v. U. S. (1901) 109 Fed. 638,
C. A. 574.

S. § 5480 (embodied herein),
it an offense for any person to
ny letter in a post office in fur-
ce of any scheme to defraud.
ictment under the statute charg-
S., acting for himself and "in
ction with H.," placed a letter,
Held, that a contention that the
ent did not charge H. with any
ation was of no merit. Hume
. (1902) 118 Fed. 689, 55 C. C.
writ of certiorari denied (1903)
. Ct. 850, 189 U. S. 510, 47 L.
3.

ndictment under the statute al-
hat defendants on the 30th of
ber, 1896, having "theretofore
ently devised" a scheme to de-
and then averred the scheme and
posit of letters, and gave the
f deposit as prior to September
96. Defendant contended that
ictment was insufficient, in that
ed the letters were mailed prior
fraudulent scheme. Held of no
since the indictment did not
anything done on September
ut that the scheme was formed
fore. Id.

ndictment under R. S. § 5480
ied herein), punishing the use
mails with intent to defraud,
llege that defendants had de-
scheme to defraud, which was
effected by opening or intending
correspondence with some per-
means of the use of the mails,
or by inciting such person to open communication with defendants, or some of them, and that, in the execution of the scheme, defendants either placed a letter in a post office, or took one therefrom. Stewart v. U. S. (1902) 119 Fed. 89, 55 C. C. A. 641.

A count in an indictment under R. S. § 5480 (embodied herein), alleged that the fraudulent scheme devised by defendants was to induce, by the use of the mails, persons to come to a designated city in Missouri, in the expectation of there defrauding them by various artifices not then conceived. It showed that the mails were not the sole means defendants intended to employ to induce persons to come to such city. It also showed that the letter written by one of the defendants to a third person, on which the count was founded, was deposited in the mail long after the person to whom the letter was addressed had been induced to go to the designated city by oral representations made to him by a party to the scheme, and had been induced to part with his money by the various fraudulent pretenses and artifices there resorted to. Held, that the indictment did not clearly show that the letter in question was deposited in the mail in execution of the alleged scheme to defraud, but rather disclosed that it was so deposited after the scheme so described had been executed. Held further, that the indictment contained so many redundant and immaterial allegations as to render it almost unintelligible, and that it was so far lacking in certainty of averment that it ought to be quashed on a motion to that effect. Id.

Where an indictment for using the mails for the purpose of furthering a scheme to defraud, in violation of R. S. § 5480 (embodied herein), alleged that said scheme and artifice was to be effected by opening correspondence and communication with persons sought to be defrauded by means of the post office establishment of the United States, etc., an objection that the indictment was insufficient for failure to allege that the use of the mails was part and parcel of the scheme was not well taken. Kellogg v. U. S. (1903) 126 Fed. 323, 61 C. C. A. 229.

In a prosecution for using the mails in furtherance of a scheme to defraud, in violation of R. S. § 5480, as amended by Act March 2, 1889 (embodied herein), it is sufficient to charge that the defendants, having devised or intending to devise a scheme to defraud, to be executed by the use of the mails, did, in the execution of such fraudulent scheme, deposit for transmission a letter in some post office. O'Hara v. U. S. (1904) 129 Fed. 551, 64 C. C. A. 81.

Where an indictment charged that on May 21, 1902, defendants devised a

scheme to defraud, described in detail, and in conclusion alleged that defendants did then and there, in the execution of such scheme, place in the mails at C. a letter, a copy of which was set out, which letter was dated on May 21, 1902, and addressed to H., one of the persons it was averred the scheme was devised to defraud, was sufficiently definite as to time, though there was an averment in the body of the indictment that defendants intended to obtain from H. and others, between January 1, 1902, and May 23, 1902, large sums of money, etc., since such allegation, being nonessential, might be rejected as surplusage. Id.

An indictment alleged that defendant and another devised a scheme to defraud certain persons named, "which said scheme to defraud was to be effected by opening correspondence and communication with such persons and by distributing advertisements, circulars, prospectuses and letters by means of the post-office establishment of the United States and by inciting such persons to open a correspondence through such post-office establishment, with them, the said [defendants named], concerning said scheme, which scheme was then and there as follows, to wit," etc., followed by a specification of the scheme, in which it was alleged that defendants made through the mails a number of representations, which were all false and known by them to be false, and that, in reliance upon such representations, persons named in the indictment were induced to, and did, give to defendant and his associate certain sums of money, and that, in furtherance of such scheme, a certain specified letter was placed in the mails, etc. Held, that the indictment was not fatally defective, in that it was not directly charged therein, and that it did not appear therefrom, that the alleged scheme to defraud included or contemplated a use of the mails or post-office establishment of the United States. Ewing v. U. S. (1905) 136 Fed. 53, 69 C. C. A. 61.

The gist of the offense being the scheme to use the mails in furtherance of a purpose to defraud, and an act done to carry out the same, and not the obtaining of money by means of false representations, the indictment was not defective for failure to negative the truth of such representations. Id.

An indictment under R. S. § 5480, as amended March 2, 1889 (embodied herein), which states the essential elements of an intent to defraud by use of the mails in the general words of the statute, but with such reasonable particularity as will apprise the accused with reasonable certainty of the nature of the accusation, so that he may prepare his defense, and will enable him to plead his conviction or acquit-

tal as a bar to a subsequent prose tion for the same offense, and will able the court to say that the fa stated, are sufficient in law, is go Brown v. U. S. (1906) 143 Fed. 74 C. C. A. 214, writ of certiorari nied (1906) 26 Sup. Ct. 765, 202 S. 620, 50 L. Ed. 1174.

An indictment under R. S. § 54 (embodied herein), is not demurra because the letter set out therein a charged to have been mailed by defe ant in carrying out his alleged sche to defraud does not contain any of t representations which the indictm charges that it was defendant's sche to make in letters sent through mails; all that is necessary to cons tute the offense being that the let should have been mailed pursuant the scheme to defraud and as a s in its execution. Rumble v. U. (1906) 143 Fed. 772, 75 C. C. A. 30

In an indictment for using the ma in and for executing a scheme to fraud, it need not be alleged that t contents of a letter or circular cha ed to have been mailed pursuant such scheme were false. Grey v. U. (1909) 172 Fed. 101, 96 C. C. A. 4

Defendants were officers of a man facturing corporation, owning a pla and actually engaged in manufacturi and selling the product. In order sell an increased issue of stock, d fendants sent through the mails l ters to certain persons, representi that the company desired to establi branch selling houses and to empl managers therefor at a stated sala The letters also contained false re resentations as to the profits and di dends of the company, and by th means certain of the persons address were induced to purchase stock of t company at par in the belief that th would be appointed branch manage Held, that an indictment charging su facts, and that the representatio made were knowingly false, did n charge the offense of using the mails defraud, within the meaning of R. § 5480 (embodied herein); it not bei charged that the stock was not wor the price paid for it. Miller v. U. (1909) 174 Fed. 35, 98 C. C. A. 21.

An indictment for using the mails furtherance of a scheme to defraud s out in the first count a description the scheme, with an allegation that d fendants devised it, and in the seco and third counts, instead of repeati such allegation, charged that defen ants "in and for executing the sche and artifice to defraud set out in t first count of this indictment, whi statement is hereby made a part this second count of this indictme and in attempting so to do," etc. He that the latter counts were not o jectionable for failure to charge th defendants actually devised the schem on the theory that the word "stat

' related only to the description e scheme. Foster v. U. S. (1910) 'ed. 165, 101 C. C. A. 485.

indictment for devising and oper- a scheme to defraud by means of ost office establishment, in viola- f R. S. § 5480 (embodied herein), charge that the accused devised scheme or artifice to defraud; e intended to consummate it by g or intending to open corre- ence or communication with some person or persons through the office establishment, or by inciting other person to so open communi- with him; and that in and for ing such scheme, or in attempting so, he either placed, or caused placed, in the post office, intend- to be carried and delivered by nited States mail service, a let- rcular, or advertisement, or shall eceived one from another through ail. Horn v. U. S. (1910) 182 721, 105 C. C. A. 163, writ of rari denied (1911) 31 Sup. Ct. 19 U. S. 585, 55 L. Ed. 347.

ere an indictment for misuse of ails in furtherance of a scheme fraud in the sale of worthless stock alleged that defendants sented in their literature sent gh the mails to induce the pur- of stock, that the mine was a ped producing mine yielding ore ted large value, while in fact it ot have ore of the quality or of uantity stated, and no shafts had sunk thereon, etc., the indictment ot fatally defective for failure to that the stock was not of the for which it had been sold, or defendants did not believe, or reasonable cause to believe, that of such value, or that their rep- ations were not in fact true. Id.

ndictment for misuse of the mails, therance of a scheme to defraud sale of worthless mining stock, g that defendants' representa- were in fact false and untrue and by defendants to be so, consti- a sufficient averment, if such were ary, that defendants did not in faith believe, or have reasonable ds to believe, that the representa- were true. Id.

ere an indictment for the misuse mails in furtherance of a scheme raud did not expressly state that tter in question deposited in the office was to be sent or delivered e Post Office Department, but d that it was mailed and ad- d to the person to be defrauded, he envelope was duly stamped postage, and that defendants then ere unlawfully, etc., and know- deposited it in the United States office, it sufficiently charged that tter was to be sent or delivered United States mails. Rimmer- . U. S. (1911) 186 Fed. 307, 108 A. 385, writ of certiorari denied (1911) 32 Sup. Ct. 523, 223 U. S. 721, 56 L. Ed. 630.

As against objection to testimony or motion in arrest, an indictment for using the mails to defraud sufficiently charged that a letter was intended to be sent or delivered by the post office department, where it stated that accused deposited and caused to be deposited in a particular post office a certain envelope, duly stamped and sealed, and addressed to certain persons. Dyar v. U. S. (1911) 186 Fed. 614, 108 C. C. A. 478; Register v. Same (1911) 186 Fed. 624, 108 C. C. A. 488.

Where an indictment for the use of the mails in furtherance of a scheme to defraud, in describing the offense, charged that defendant devised and intended to devise a scheme and artifice to defraud divers persons of their money and property, in and by inducing by false and fraudulent representations and pretenses, and by fraudulent artifices and devices, such persons to part with their money and property, did not, by the use of the words "by false and fraudulent representations and pretenses," state an offense solely within this section, in which the words "by means of false or fraudulent pretenses, representations or promises" are added to the language of R. S. § 5480 (embodied herein), prohibiting the use of the post office in furtherance of a scheme to defraud, in force at the time the offenses were committed, and the indictment, notwithstanding such words, sufficiently stated an offense under R. S. § 5480. Wilson v. U. S. (1911) 190 Fed. 427, 111 C. C. A. 231.

In a prosecution for wrongful use of the mails, in furtherance of a scheme to defraud by the sale of corporate stock by false representations, it was not essential that the government allege or prove that the stock sold was worth less than the price paid for it and that the purchasers were, in fact, damaged thereby. Id.

An indictment for using the mails to defraud held not subject to be quashed because private books belonging to accused were wrongfully produced before the grand jury. Hillman v. U. S. (1911) 192 Fed. 264, 112 C. C. A. 522, writ of certiorari denied (1912) 32 Sup. Ct. 834, 225 U. S. 699, 56 L. Ed. 1263.

Indictments for using the post office in furtherance of a scheme to defraud are not to be tested by rules applicable to indictments for obtaining money under false pretenses. Emanuel v. U. S. (1912) 196 Fed. 317, 116 C. C. A. 137.

An indictment, alleging the deposit of certain letters in the post office, addressed, etc., was not objectionable for failure to allege that they were addressed "to" the person designated. Gould v. U. S. (1913) 209 Fed. 730, 126 C. C. A. 454.

Indictment held to charge sufficiently

a use of the mails in aid of a scheme to defraud or obtain money by false pretenses in violation of this section. Blanton v. U. S. (1914) 213 Fed. 320, 130 C. C. A. 22, Ann. Cas. 1914D, 1238.

The offense denounced by this section is the use of the mails in execution of a fraudulent scheme, not the devising of the scheme; and therefore an indictment under that section, which alleges the devising of the scheme on one date and the use of the mails on another, is not objectionable as charging the commission of the offense on two separate dates. Sandals v. U. S. (1914) 213 Fed. 569, 130 C. C. A. 149.

Indictment held to charge an offense, under this section, relative to use of mails in aid of scheme to defraud. Moses v. U. S. (1915) 221 Fed. 863, 137 C. C. A. 433, certiorari denied (1915) 35 Sup. Ct. 792, 238 U. S. 629, 59 L. Ed. 1497.

Requisites of an indictment for using the mails to defraud, in describing the offense, considered. Colburn v. U. S. (1915) 223 Fed. 590, 139 C. C. A. 136.

Indictment for using the mails in furtherance of a scheme to defraud held not bad for repugnancy. Id.

An indictment for misuse of the mails in furtherance of a scheme to defraud held not false, because alleging that the jury did not know the names of the individuals whom defendants intended to defraud. Farmer v. U. S. (1915) 223 Fed. 903, 139 C. C. A. 341.

Indictment for fraudulent use of mails held good, notwithstanding failure to negative value for some purpose of lots persons were induced to take under supposition that they were paying only cost of abstracts and deeds. Trent v. U. S. (C. C. A. 1916) 228 Fed. 648.

An indictment under R. S. § 5480, as amended by Act March 2, 1889 (embodied herein), for sending by mail a letter in execution of a scheme to defraud, is sufficient if it alleges facts showing that defendant, having devised a scheme to defraud, transmitted through the post office a letter to carry the scheme into effect, though the letter did not result as intended. Weeber v. U. S. (C. C. 1894) 62 Fed. 740.

Where the indictment explicitly charges that the money was sought for the ostensible purpose of investment in business for the sender's account, but with the real intent to convert the moneys to defendant's own use, it is not necessary to further aver the falsity of any specified statements in the letters or circulars alleged to have been sent by mail to induce the sending of money. U. S. v. Bernard (C. C. 1898) 84 Fed. 634.

Where an indictment charged defendant with devising a scheme to defraud, by inducing others to purchase stock on false representations of fact, and alleged that the scheme was to be effected by correspondence through the post office, and that a letter was actually mailed in furtherance thereof, the indictment was not demurrable for f ure to charge that the stock was l ing in value to such an extent a defraud those who paid the price a therefor. U. S. v. Palmieri (C. 1909) 169 Fed. 490.

An indictment for devising a sch to defraud, to be furthered by us the post office establishment, was demurrable for failure to allege particulars in which the represe tions charged were false, as such de could be cured by furnishing a bil particulars. Id.

Indictments charging either that fendant devised a fraudulent schem obtain money by an issue of fraudu bonds, intending to apply the mone received to his own use, and tha was intended to employ the mails carry out the scheme, and that mails were so used, or that defen devised a fraudulent scheme by re senting that a certain company, which he was president, would large sums of money on the receip similar ones, and that it was not tended to make such payments, bu convert the money received to his use, and that he intended to use, did use, the mails to carry out scheme, sufficiently charge offe against the postal law. U. S. v. I land (D. C. 1894) 65 Fed. 408.

An indictment under R. S. § (embodied herein), for using the m to defraud, must show that the fra lent scheme was "to be effec through that medium as an esse part, and not as a mere adjunct o cident, and that the original design templated and embraced this, whic not necessarily the case with a ch that defendants falsely pretended pursuance of the fraudulent schem which they had engaged, that they prepared to give personal instructio correspondence, through the m That the mails were actually to be to effect the scheme must be charged and proved. U. S. v. Clark C. 1902) 121 Fed. 190.

An indictment alleged that defen by advertisements sought to bring alleged business of the Globe Re Company, a pretended real es agent, to attention of persons who real estate to sell, intending to pro them to list it with such comp which had no existence except a name under which defendant did b ness, to procure them to pay for vertising their real estate whether was made or not; that defendant tended to make no efforts toward sale; that he intended to execute scheme by use of the post office tablishment, and in so doing depos a letter and circular addressed to to induce him to sign a contract in cordance with such scheme. Held, such indictment stated an offense violation of this section, and was demurrable because not alleging the acts charged were willfully and

ly done. U. S. v. Smith (D. C. 166 Fed. 958.

ere an indictment for misuse of ails in furtherance of a scheme to d charged that such scheme was accomplished by means of circu- nd newspapers circulated in Iowa lsewhere, it was not demurrable ilure to set out such advertise- . Id.

n indictment for using the mails therance of a scheme or artifice raud, in violation of R. S. § 5480 died herein), it is sufficient to al- n the indictment that the scheme tifice having been devised by the lant was to be effectuated by the the mails, and that defendant, in rance of such intention and e or artifice, deposited a letter was to be delivered by medium of ost office, so that an indictment ng that the artifice or scheme to d was to obtain a sum of money reats, intimidation, etc., and that scheme was to be effectuated by g correspondence and communi- with K. by means of the post establishment, was not objection- or failure to charge that accused the letter, that he knew of its nts, or because the letter failed te a scheme to defraud, would not deceived a person of ordinary pru- or because K. was not indebted sender. U. S. v. Sherwood (D. 10) 177 Fed. 596.

uisites of an indictment under ection for using the mails to pro- frauds considered. U. S. v. Wup- n (D. C. 1914) 215 Fed. 135.

indictment for misuse of the in furtherance of a scheme to d by a sale of falsely represented e editions of books, held not de- able for failure to specify the s of the persons to whom the were to be resold. U. S. v. Far- D. C. 1914) 218 Fed. 929.

also, note under the following n.

— Reference to prior counts or nents.—An indictment under the e alleged the deposit of certain s in a post office. Such allegation ot followed by any averment that etters were deposited to be sent, fter a further allegation as to the it of other letters, it was averred, f which said above-mentioned let- were so deposited for the purpose ing carried and delivered through ail. Held, that the words "all of said above-mentioned letters" in- l all of the letters which had been usly mentioned in the indictment. v. U. S. (1902) 118 Fed. 689, 55 A. 407, writ of certiorari denied) 23 Sup. Ct. 850, 189 U. S. 510, Ed. 923.

ount in an indictment under R. S. 0 (embodied herein) for using the to carry out a scheme to defraud, t insufficient because it refers to or count for a statement of the scheme to defraud, where the reference is adequate to the making up of a sufficient accusation. Bartholomew v. U. S. (1910) 177 Fed. 902, 101 C. C. A. 182, writ of certiorari denied (1910) 30 Sup. Ct. 697, 217 U. S. 608, 54 L. Ed. 901.

A count in an indictment under R. S. § 5480 (embodied herein), for using the mails to carry out a scheme to defraud, is not insufficient because it refers to a prior count for a statement of the scheme to defraud, where the reference is adequate to the making up of a sufficient accusation. Id.

15. — Setting out contents of letters or packets.—An indictment under the statute, charging a scheme to defraud, and the mailing of letters in furtherance thereof, is sufficient, though the letters are not set out. Hume v. U. S. (1902) 118 Fed. 689, 55 C. C. A. 407, writ of certiorari denied (1903) 23 Sup. Ct. 850, 189 U. S. 510, 47 L. Ed. 923.

It is not necessary that the contents of letters charged to have been placed in a post office in pursuance of a scheme to defraud should show the fraudulent character of the scheme, and hence such letters need not be set out in an indictment. U. S. v. Loring (D. C. 1884) 91 Fed. 881.

An indictment under R. S. § 5480 (embodied herein) is not insufficient as being too general, because it avers that defendant placed in the post office letters and packets addressed to persons to the grand jurors unknown, nor because it does not set out the contents of such letters or packets, the remedy of defendants if they desire more specific information being by motion for a bill of particulars. Id.

16. — Knowledge, intent, and motive.—Where an indictment charged the use of the mails for the purpose of defrauding others unknown, by inducing the recipient of the letter deposited to place counterfeit money in circulation to such others, it contained a sufficient allegation of an intention to defraud, though the recipient of the letter could not have been defrauded. Milby v. U. S. (1903) 120 Fed. 1, 57 C. C. A. 21.

Where an indictment for misuse of the mails charged a scheme to defraud by means of false representations to be disseminated through the mails, that the scheme was carried out, that the representations were false and fraudulent, and that thereby certain named persons were induced to part with their money and give it to defendant, it was not necessary that the indictment should also allege that the scheme was formed by defendant with intent to defraud. Ewing v. U. S. (1905) 136 Fed. 53, 69 C. C. A. 61.

An indictment under R. S. § 5480, as amended in 1889 (embodied herein), which charges that defendants devised a scheme to defraud intended to be executed, and which was executed, by the

use of the mail service of the United States by pretending that they were engaged in a certain solvent banking enterprise, and making other pretenses in relation thereto, which pretenses were false and were made for the purpose of inducing others to deposit money with them or to buy stock, and with the intention of appropriating such money to their own use, is sufficient to charge the offense, and need not specifically charge that defendants knew their bank to be insolvent. Lemon v. U. S. (1908) 164 Fed. 953, 90 C. C. A. 617.

Where defendants were charged with having instituted and carried out a scheme to defraud in the sale of worthless mining stock, by means of the post office establishment, whether defendants in good faith believed, or had reasonable grounds to believe, that the alleged statements or representations made by them were true, was a matter of defense which the government was not required to negative in the indictment. Horn v. U. S. (1910) 182 Fed. 721, 105 C. C. A. 163, writ of certiorari denied (1911) 31 Sup. Ct. 470, 219 U. S. 585, 55 L. Ed. 347.

Where, in a prosecution for misuse of the mails in the furtherance of a scheme to defraud, the indictment alleged the device of a scheme to defraud K. out of certain hotel property by inducing him to make an exchange of the property for certain real estate in Oklahoma, which defendants did not own, that they contemplated the use of the mail service of the United States in executing the scheme, and actually employed such service in the sending of a letter to K., containing matter calculated to further the trade, it was not defective for failure to charge by way of scienter that defendants knew that neither they nor the person they expected to have convey the land did not have title thereto. Rimmerman v. U. S. (1911) 186 Fed. 307, 108 C. C. A. 385, writ of certiorari denied (1911) 32 Sup. Ct. 523, 223 U. S. 721, 56 L. Ed. 630.

Where an indictment for misuse of the mails in the furtherance of a scheme to defraud alleged that, as a means of executing the scheme, defendants unlawfully, etc., deposited and caused to be deposited in a United States post office at H., in Oklahoma, a registered envelope addressed and directed to K. (the person intended to be defrauded), such envelope being duly stamped with postage thereon, and then and there contained a certain letter directed to K. purporting to be signed by one of the defendants, a copy of which was set out, and also containing opinions with reference to the title to land in Oklahoma, which defendants were attempting to exchange for K.'s property, and the letter so deposited in the United States post office was transferred by means of the post office establishment to K. in furtherance of and in execution of the scheme and artifice to defraud, it

charged with sufficient certainty tha
fendants intended to effect the sch
or artifice by opening correspond
with K. through the United St
mails. Id.

An indictment for misuse of the m
in furtherance of a scheme to def
held to sufficiently allege that it wa
tended by the scheme to defraud
public generally. Gould v. U. S. (1
209 Fed. 730, 126 C. C. A. 454.

An indictment held sufficient to ch
that defendant, a corporation presi
knew the falsity of a financial st
ment sent by him through the mail
a creditor of the corporation. Bett
v. U. S. (1915) 224 Fed. 819, 14
C. A. 265.

In an indictment under R. S. §
(embodied herein), it is sufficient t
lege an endeavor to induce person
send money to defendants for inv
ment in a business enterprise, by
tain false representations and all
ments, even though no intent by def
ants to convert such moneys to t
own use is stated. U. S. v. Bernard
C. 1898) 84 Fed. 634.

Where there is no averment of
intent to convert the moneys to def
ant's own use, so that the indictm
can stand only on the procuring of m
ey by false representations, it is
essary to point out the particular f
statements or representations relied
Id.

An indictment charging defen
with a scheme to defraud, intendin
engage apartments to be furnished
decorated as a Chinese physician's
fice, and to represent to various per
through newspaper advertisements,
culars, and letters, to be sent thr
the post-office establishment of
United States, that he was a Chi
physician, well skilled in the scienc
medicine, etc., and having devised
aforesaid scheme to defraud, to be
fected by opening correspondence
various persons by means of the p
office establishment of the Un
States, did in and for executing
scheme and in attempting so to do
posit in the post office, to be sent,
a certain letter, etc., is insufficien
charge an offense, under R. S. § 5
amended by 25 Stat. 873 (embo
herein), because it fails to charge
intent to use the mails to defraud
erwise than by implication or re
U. S. v. Smith (D. C. 1891) 45
561.

An indictment under R. S. §
(embodied herein), for using the m
as a means to defraud, must directl
lege that the fraudulent scheme i
included the intended use of the Un
States mail in its execution. U. S
Harris (D. C. 1894) 68 Fed. 347.

An indictment, under R. S. §
(embodied herein), for using the m
for promoting "a scheme and artific
defraud," must show that there w
motive of gain on the part of def

nce the general language of the must be limited to such schemes rtifices as are ejusdem generis ose specifically named, and these are of the kind which are gainful wrongdoer. U. S. v. Beach (D. 5) 71 Fed. 160.

n indictment for using the mails ntent to defraud, the dishonest audulent intent of the defendant atter which must be passed upon jury; and where the indictment ot clearly charge and state the it is fatally defective. U. S. v. D. C. 1902) 113 Fed. 852.

ndictment for misuse of the mails herance of a scheme to defraud, g the devising of the scheme and ployment of the mails in the ex- thereof, held to state the offense ced by this section, without an ion that defendant intended as a f the scheme to use the mails to out its purposes. U. S. v. Young 1914) 215 Fed. 267.

— Charging or describing or artifice to defraud.—An in- nt under R. S. § 5480 (embodied), making it a crime for any per- ving devised a scheme or artifice raud other persons by inciting o open communication with him h the post office, to place any in, or receive any letter from, st office, is fatally defective if it the offense in general language, t disclosing the particulars of the or artifice, and cannot be aid- cured by verdict. U. S. v. Hess 8 Sup. Ct. 571, 573, 124 U. S. 1 L. Ed. 516.

March 2, 1889, entitled "An act ish dealers and pretended dealers nterfeit money and other fraudu- vices for using the United States and which amended R. S. § 5480 died herein), by inserting therein umeration of various ways or for using the mails to defraud, t repeal this section, or narrow pe to the specific schemes and s so specified; and an indictment ing a scheme to defraud by send- ters requesting the persons ad- d to sell and ship to defendant s of merchandise, for which he t intend to pay, states a punish- fense, under the statute. Culp v. (1897) 82 Fed. 990, 27 C. C. A.

quisite of such an indictment is e fraudulent scheme must be de- d with sufficient certainty to in- defendants with reasonable cer- of the nature of the evidence to sh the scheme which will be ad- at the trial. Stewart v. U. S. 119 Fed. 89, 55 C. C. A. 641.

unt in an indictment, charging de- t with making use of the post of- tablishment in aid of a fraudulent to sell counterfeit money, and e did not in fact have or intend any counterfeit money, and that when the letters of purchasers were returned to him he intended to convert the money therein sent and delivered through the post office to his own use, sufficiently charged a scheme to defraud, prohibited by R. S. § 5480, as amended by Act March 2, 1889 (embodied herein). Milby v. U. S. (1903) 120 Fed. 1, 57 C. C. A. 21.

An indictment under R. S. § 5480 (embodied herein), for using the mails for the purpose of effecting a fraud must not only charge the devising of a scheme or artifice to defraud, to be effected by using the mails, but must set out the facts which constitute the specific scheme or artifice so devised by defendant; and this must be done by direct and positive averment, and not inferentially. Dalton v. U. S. (1904) 127 Fed. 544, 62 C. C. A. 238.

An indictment charging defendants with a scheme to use the mails, and a contract between the directors of a mutual insurance company and one of the defendants to procure from its members money, to appropriate these sums to the defendants and thereby render the corporation insolvent, shows a scheme to defraud the members of the corporation, under section 5480, R. S. (embodied herein), by inducing them by the use of the mails to pay their money to defendants, to the end that they may defraud them of it. Miller v. U. S. (1904) 133 Fed. 337, 66 C. C. A. 399.

An indictment for mailing a letter in execution or attempted execution of a scheme to defraud in violation of R. S. § 5480 (embodied herein), while required to allege the particulars of the scheme with sufficient certainty to show its existence, and character, need not do so with the same particularity as to time, place, and circumstance as is required with reference to the mailing of the letter. Brooks v. U. S. (1906) 146 Fed. 223, 76 C. C. A. 581.

An indictment for mailing a letter in execution of a scheme to defraud, in violation of R. S. § 5480 (embodied herein), alleged that the defendant with others by means of advertisements published in newspapers, and correspondence conducted by and through the United States mail service, pretended to be engaged under the name "National Securities Company" in a lucrative and honorable business as a broker, dealing in grain, provisions, and stocks, and pretended to be possessed of superior knowledge concerning the business, making loss improbable, and pretended to pay interest to depositors at the rate of 6 per cent. per month, and to permit withdrawals at the depositors' election, when in fact he had no such superior knowledge, did not intend for any great length of time to pay 6 per cent. per month, nor permit withdrawals at depositors' pleasure, but intended by such false pretensions to induce deposits, for the sole purpose of converting them to his own use.

Held, that the indictment sufficiently alleged a scheme to defraud, within such section. Id.

A scheme by the owner of a saloon, to be effected by opening correspondence through the mails, to induce different persons to each purchase a half interest in his saloon as a partner, and to pay largely more than it was worth, by misrepresenting its value and the amount of its profits, and to thus obtain their money without their receiving any equivalent therefor, held a scheme to defraud, within the meaning of this section, and to be sufficiently charged in an indictment thereunder. Van Deusen v. U. S. (1907) 151 Fed. 989, 81 C. C. A. 175.

An indictment for using the mails to defraud, in violation of R. S. § 5480 (embodied herein), by subdividing a tract of land in Louisiana of small value into lots 10 or 20 feet square, and selling certificates, each purporting to give the holder an option to purchase an interest in a lot, upon false representations that the lots were within an oil district and very valuable, and that large cash offers had been made for certain of the same, construed, and held to charge a scheme and artifice to defraud within the meaning of the statute, which, when carried on by means of correspondence through the mails, constituted a violation thereof. Gourdain v. U. S. (1907) 154 Fed. 453, 83 C. C. A. 309.

Though an indictment for using the post office in furtherance of a scheme to defraud must describe the alleged scheme with such certainty as to clearly inform the defendants of the charge made against them, an indictment is sufficient if it states such elements with sufficient certainty to enable the defendants to prepare their defense. Foster v. U. S. (1910) 178 Fed. 165, 101 C. C. A. 485.

While the formation of some scheme or artifice to defraud is an essential element of the offense of using the United States mails in an intentional effort to defraud, in violation of R. S. § 5480 (embodied herein), the gist of the offense is the use, or attempted use, of the mails, for the forbidden purpose, and it is therefore only essential to charge the scheme with such particularity as will enable the accused to know what is intended and to apprise him of what he will be required to meet on a trial; the indictment being sufficient if it is distinctly alleged that the United States mails were intended to be used in consummating such scheme. Horn v. U. S. (1910) 182 Fed. 721, 105 C. C. A. 163, writ of certiorari denied (1911) 31 Sup. Ct. 470, 219 U. S. 585, 55 L. Ed. 347.

An indictment for using the post office establishment in the furtherance of a scheme to defraud alleged that, for the purpose of defrauding K. out of certain hotel property owned by him in Illinois, defendants represented and stated to him that they were the ers of a certain 360 acres of la H. county, Okl., of the value of per acre, which they would exch with K. for his hotel property, in fact, defendants had no title o terest in the Oklahoma land which undertook to convey to K. by a tended deed, purporting to be mad others; that defendants intended t fraud, and did in fact defraud, K. the hotel property, and, in the fur ance of such scheme and as a mea executing it, they unlawfully, etc. vised and caused to be deposited i post office certain letters, etc., con ing an abstract of title and opi of attorneys. Held, that the indict was not demurrable for a failu sufficiently state the facts consti the scheme to defraud. Rimme v. U. S. (1911) 186 Fed. 307, 1 C. A. 385, writ of certiorari d (1911) 32 Sup. Ct. 523, 223 U. S 56 L. Ed. 630.

An indictment for violating R. 5480, as amended by Act Mar 1889, § 1 (embodied herein), pro ing the use of the United States in furtherance of a "scheme or a to defraud," must allege, not only the defendant had devised a scher artifice to defraud, but must also facts showing what the artifice wherein the fraud consisted, and it was to be accomplished, the "scheme or artifice" not being eq lent to a plan or mode of effect fraud, but must be a plan so cunn devised and presented as to appe human passion for gain, by untru and seductive embellishment of a tages, begetting confidence whe would not otherwise be bestowed; hence an indictment merely cha that defendant caused another to a diamond ring from complainant paid for on the installment through the United States mails, the intent not to pay for the sam not charge a scheme to defraud was therefore insufficient. Ethe v. U. S. (1911) 186 Fed. 434, 1 C. A. 356.

An indictment, alleging that at a ticular time defendants had devi fraudulent scheme, sufficiently ch that defendants theretofore "did vise such scheme, and was ther not defective as pleading the sc or artifice by way of recital only. son v. U. S. (1911) 190 Fed. 427 C. C. A. 231.

An indictment for misuse of the in furtherance of a scheme to def alleging that defendant manufac loaded dice, marked playing cards and conceived a scheme to de third persons by selling such artic be used by buyers to defraud third sons, and in furtherance of scheme deposited catalogues adver the same in the mails addressed to spective buyers, held not to all

e to defraud within this section. on v. U. S. (1913) 205 Fed. 462, . C. A. 530, 46 L. R. A. (N. S.)

e the use of the post office estab- nt in furtherance of a scheme to d, and not the scheme itself, is st of that offense, an indictment g the acts done by accused in ion of the scheme was not fatally ive for failure to sufficiently de- the scheme. Gould v. U. S. 209 Fed. 730, 126 C. C. A. 454. indictment which would be suffi- o charge the offense of using the in execution of a scheme to de- under R. S. § 5480, is more than ent to charge an offense under ection, which defines a similar but does not require that the se to use the mails be shown as of the scheme as was required former statute. Sandals v. U. 914) 213 Fed. 569, 130 C. C. A.

indictment for the violation of ection need not allege that the e to defraud was to be effected use of the United States mails. en v. U. S. (1915) 222 Fed. 70, . C. A. 364.

ctment for fraudulent use of held sufficient in its description eme to defraud, though alleging parties did, instead of continuing description of scheme. Spear v. (C. C. A. 1915) 228 Fed. 485.

ndictment for using the mails in rance of a scheme to obtain mon- false pretenses alleged that de- t sent to S. a circular which that an organ of particular de- on, worth $150, would be sent to r $33, warranted for ten years, be returned within three years satisfactory, in which event the would be refunded. The indict- then alleged that defendant in- to induce S. to believe that an would be delivered to him of the ter, and on the terms, described, as he did not intend to perform presentations in said circular, but end to obtain the said sum of $33 ans of the said false pretenses. that the scheme was set out with ent particularity and detail. U. Beatty (C. C. 1894) 60 Fed. 740. indictment under R. S. § 5480 died herein), charging that de- ts devised a scheme to defraud etending to have established a which they designated as "Fund o be used for purposes of specu- and by soliciting the sending and ting to them of money for invest- in such fund, for the purpose and the intent of converting such to their own use, in fraud of sending it, in pursuance of which e defendants placed letters and ts in a post office, or received let- and packets from a post office, ently informs the defendants of the particular scheme relied on as fraudulent, and also enables the court to know that, if consummated as charged, such scheme would result in the perpetration of a fraud. U. S. v. Loring (D. C. 1884) 91 Fed. 881.

An indictment charging that defendants placed letters in a post office in pursuance of a scheme to defraud, by inducing others to send them money with intent to convert such money to their own use, need not specify the manner in which such conversion was to be accomplished. Id.

An indictment under R. S. § 5480 (embodied herein), relating to the use of mails to defraud, alleged that defendant, having devised a scheme to defraud persons unknown, "by falsely pretending, in and through certain letters, to be seeking information that would show and lead said persons to believe that they were heirs to large fortunes in England, and requesting the inclosure of a sum of money by said persons to him, with intent fraudulently to obtain and retain said sum of money so inclosed, said scheme and artifice to be effected by opening correspondence * * * with * * * said unknown persons by means of the post-office establishment of the United States, did wrongfully and unlawfully * * * place in the post office at the city of St. Louis, * * * for mailing, etc., a certain letter, * * * to wit," and then set out in hæc verba the contents of a certain letter. Held, that the indictment sufficiently described a scheme to defraud by using the post office, and that it was needless to aver that the statements in such letter were false, as the offense did not depend on that question. U. S. v. Hoeflinger (D. C. 1887) 33 Fed. 469.

An indictment, under R. S. § 5480, as amended by Act March 2, 1889 (embodied herein), which alleges that defendant had devised a scheme to defraud, by advertising that she could cure disease and poverty by mental science, and that she was intending to induce persons to send her money for treatment, and to fraudulently convert it to her own use, without rendering any service or thing of value, is insufficient to charge a crime, where the power to perform what she pretended she could do is not denied, nor that she believed that she could do so, nor that she did not intend to render such service. U. S. v. Post (D. C. 1902) 113 Fed. 852.

A count of an indictment charging the defendant with using the mails for the purpose of carrying out a fraudulent scheme is not rendered bad by further unnecessary allegations relating to the consummation of the scheme; such averments being disregarded as surplusage. U. S. v. Clark (D. C. 1903) 125 Fed. 92.

An indictment for misuse of the mails in furtherance of a scheme to defraud

must describe the alleged scheme with such certainty as to clearly inform the defendant of the charge made against him and the nature of the evidence to be produced in proof of the execution of the scheme. U. S. v. Goldman (D. C. 1913) 207 Fed. 1002.

An indictment for misuse of the mails, in furtherance of a scheme to defraud by the sale of certain alleged de luxe editions of books, held not demurrable as failing to adequately describe the books relied on as the subject-matter of the scheme to defraud. U. S. v. Farmer (D. C. 1914) 218 Fed. 929.

Indictment alleging that letters in answer to advertisement for person to assist accused in scheme to defraud were taken from the post office for the purpose of executing the scheme held not insufficient, as showing that the receipt thereof was merely a step in devising the scheme. Goldman v. U. S. (1915) 220 Fed. 57, 135 C. C. A. 625, affirming judgment U. S. v. Goldman (D. C. 1913) 207 Fed. 1002.

An indictment for using the mails in furtherance of a scheme to defraud, contrary to this section, held to sufficiently allege the fraudulent scheme. U. S. v. Baxter (D. C. 1914) 221 Fed. 473.

See, also, notes ante.

18. —— **Venue of offense.**—The exact place of the formation of a conspiracy to use the mails to defraud, denounced by R. S. § 5480 (embodied herein), need not be stated in the indictment which lays the venue in the place where an overt act was committed. Brown v. Elliottt (1912) 32 Sup. Ct. 812, 815, 225 U. S. 392, 56 L. Ed. 1136.

An indictment under R. S. § 5480 (embodied herein), found in the district of Kansas, after alleging that defendants' fraudulent scheme was to be effected by inciting divers persons to open correspondence with them, averred that a third person named deposited in a post office in Kansas a letter addressed to one of the defendants at a city in Missouri, but without alleging that it was taken from the mails by the addressee or any of the other defendants. Held, that if the court could assume, in the absence of an express averment to that effect, that the letter was taken from the mails by the addressee or by the other defendants it would appear that the offense was committed in Missouri. Stewart v. U. S. (1902) 119 Fed. 89, 55 C. C. A. 641.

19. —— **Following language of the statute.**—An indictment under R. S. § 5480, as amended by Act March 2, 1889 (embodied herein), for using the mails to defraud, need not follow the language of the statute, but it is sufficient if the averments bring the charge within the substance and true meaning of the statute. Lemon v. U. S. (1908) 164 Fed. 953, 90 C. C. A. 617.

An indictment, under R. S. § 5480 (embodied herein), for using the m to defraud, which substantially foll the language of the statute, is s cient after verdict. Grey v. U. S. (1 172 Fed. 101, 96 C. C. A. 415.

An indictment under R. S. § 5 (embodied herein) alleging that def ant devised a fraudulent scheme, "t effected by opening correspond * * * by means of the post-office tablishment," though following the guage of the statute, is defective, failing to directly allege that defen designed the accomplishment of fraudulent scheme through the ins mentality of the postoffice. U. S Long (D. C. 1895) 68 Fed. 348.

20. —— **Duplicity.**—In a prosecu for using the United States mails to ther a scheme to defraud, in viola of R. S. § 5480 (embodied herein) indictment charging that the sch was to be effected by opening co spondence or communication with th persons by means of the post of "and" by inciting them to open co spondence with a certain concern, not objectionable for duplicity. Kell v. U. S. (1903) 126 Fed. 323, 61 C A. 229.

Averments in an indictment that tifices used in furtherance of a sch to defraud, to be carried on through use of the mails, were intended to one understanding of the scheme to class of investors and another and ferent understanding to a diffe class, both being deceived and defra ed by the same artifices, do not m out two separate schemes so as to der the indictment bad for duplic Gourdain v. U. S. (1907) 154 Fed. 83 C. C. A. 309.

An indictment under R. S. § 5 (embodied herein), is not bad for plicity for alleging that the sch to defraud was to be effected "by op ing correspondence, etc., and by inci the person addressed to open co spondence," though the statute re "or" inciting, etc. U. S. v. Bernard C. 1898) 84 Fed. 634.

21. —— **Joinder of offenses or cou** —Under R. S. § 5480 (embodied he in), held, that three separate offen committed in the same six months be joined for the purposes of trial, when joined there is a single sente but that there was nothing in the s ute to indicate an intention to mak single continuous offense, and punis ble as such, of what without it wo have been several distinct offen each complete in itself. Ex parte H ry (1887) 8 Sup. Ct. 142, 123 U. S. 31 L. Ed. 174.

Three separate offenses commit within the same six calendar mon may be joined for the purpose of tr and when joined there is a single s tence, but the statute does not cre a single continuous offense. Id.

An indictment under R. S. § 5480 (

d herein), may be framed so as to three offenses committed within ame six calendar months, but the must give a single sentence, and section is not to be construed as ing the number of offenses for indictments may be returned n the period of six calendar hs, but the number of offenses may be joined in the same inent when committed within that d. De Bara v. U. S. (1900) 99 942, 945, 40 C. C. A. 194.

S. § 5480 (embodied herein), perthe indictment to severally charge ses to the number of three when itted within the same six calenonths, and each letter thus placed received from a post office purto the fraudulent scheme constia separate and distinct offense. er v. U. S. (1901) 106 Fed. 906, 46 A. 35.

e concluding clause of R. S. § 5480 odied herein), which provides that rosecutions thereunder for using mails to defraud, the indictment charge offenses to the number of when committed within the same calendar months, but the court upon shall give a single sentence, no relation to the offense which is defined elsewhere in the section, relates to the mode of procedure and an indictment containing than three counts, each charging a tion of the section, is not for that on fatally defective, where no der or other objection was taken to in the trial court and only a sinentence was given thereon. Walk- U. S. (1907) 152 Fed. 111, 81 C. . 329.

e provision of R. S. § 5480 (emd herein), that an indictment may ge offenses to the number of three committed within the same six dar months, but the court thereuphall give a single sentence, does render an indictment bad because ses not committed within the same alendar months are joined therein, the offenses in such case are sepaand distinct, and punishable as Hall v. U. S. (1907) 152 Fed. 81 C. C. A. 562.

here an indictment under this secfor using the mails to defraud cond three counts, each charging the scheme, but the sending of letters uant thereto to different persons, equittal on two of the counts does invalidate a conviction on the reing count. Grey v. U. S. (1909) Fed. 101, 96 C. C. A. 415.

e statute limiting the number of ts which may be joined in the same tment for separate offenses comed within the same six calendar ths relates merely to the mode of edure, so that the inclusion of more three counts in the same indict- t does not vitiate it as an entirety; the rights of the defendant ordinarily being amply safeguarded by directing the prosecution before entering on the trial to nolle pros. all the counts in excess of three, or by requiring the prosecutor to elect three of the counts on which he will proceed after his evidence is in, and then compel him to abandon the others. Etheredge v. U. S. (1911) 186 Fed. 434, 108 C. C. A. 356.

Under Cr. Code, § 215, relative to use of mails in aid of scheme to defraud, number of counts or period within which the separate offenses must have been committed held not restricted as under R. S. § 5480 (embodied herein). Stern v. U. S. (1915) 223 Fed. 762, 139 C. C. A. 292.

The latter clause of section 5480, R. S. (embodied herein), providing that "the indictment * * * may severally charge offenses to the number of three when committed within the same six calendar months," is not a part of the description of the offense. The offense is completely defined in the former part of the section, and this clause relates only to the procedure. U. S. v. Nye (C. C. 1880) 4 Fed. 888.

R. S. § 5480 (embodied herein), imposes no stricter rule than that at common law; and where an indictment under that section charges, in different counts, the commission of five separate and distinct offenses, the court may, in its discretion, permit the district attorney to nolle two of the counts, and proceed upon those remaining. Id.

Under R. S. § 5480 (embodied herein), making it a criminal offense to deposit a letter in a post office for the purpose of executing a scheme to defraud, the provision that "the indictment, information, or complaint may severally charge offenses to the number of three when committed within the same six calendar months; but the court shall thereupon give a single sentence * * *" does not prevent the joinder in one indictment of counts charging offenses in different periods of six months, nor the imposition of sentence on each of such counts in case of conviction thereon. U. S. v. McVickar (C. C. 1908) 164 Fed. 894.

The last clause of R. S. § 5480 (embodied herein), authorizing the joining of offenses to the number of three in the same indictment, means offenses relating to separate frauds, and is not a limitation of the right to include in one indictment any number of counts charging different acts in pursuance of the same fraudulent scheme. U. S. v. Loring (D. C. 1884) 91 Fed. 881.

The provisions of R. S. § 5480 (embodied herein), to the effect that the indictment, etc., for sending or receiving letters through the mail with intent to defraud, may "severally charge offenses to the number of three when committed within the same six calendar months," does not confine the gov-

ernment to the prosecution of three several acts alone. U. S. v. Martin (D. C. 1886) 28 Fed. 812.

Each letter put into the post office in pursuance of a scheme to defraud to be effected by the use of the mails constitutes a separate and distinct offense; and as, by the express provisions of the act of Congress, but three offenses committed within the same six calendar months can be joined in one indictment, a count which charges the defendant with having deposited within specified dates "a large number of letters, circulars, and booklets, to wit, 500 letters, 500 circulars, and 500 booklets, addressed to various persons whose names and addresses" are unknown, is bad. U. S. v. Clark (D. C. 1903) 125 Fed. 92.

Under R. S. § 1024, ante, § 1690, counts for using the mails to defraud, in violation of R. S. § 5480 (embodied herein), and for conspiracy to commit such offense under R. S. § 5440, ante, § 10201, where based upon the same transaction, may be joined in one indictment. Id.

Where an indictment under R. S. § 5480 (embodied herein), permitting the charging of offenses to the number of three when committed within the same six calendar months, contains three counts, but it appears from an inspection of the whole indictment that the three offenses charged were not committed within the same six calendar months, and a demurrer is overruled, an announcement by the prosecution that it will not press for conviction on the first count cannot relate back to the demurrer, and thereby cure the error in the indictment, but a nolle pros. on the first count should have been entered prior to the overruling of the demurrer, which would have cured the defect in the indictment. Bass v. U. S. (1902) 20 App. D. C. 232.

See, also, notes post as to "Consolidation of indictments for trial" and "Sentence and punishment."

22. —— Consolidation of indictments for trial.—R. S. § 921, ante, § 1547, provides that a court of the United States, when causes of a like nature or relative to the same question are pending before it, may "make such orders or rules concerning the proceedings therein as may be conformable to the usages of courts for avoiding unnecessary costs or delay, * * * and may consolidate such causes when it appears reasonable to do so." Nine indictments were returned against defendant under R. S. § 5480 (embodied herein), each containing three counts, all relating to the same alleged scheme to defraud, but charging different mailings, all within the same six calendar months. The record showed that "by order of the court the said nine indictments were tried together and at the same time, and upon each of the said nine indictments separate verdicts were ren-

dered," and separate sentences imposed under the several indictm Held, that the indictments were consolidated, which would, in e defeat the implied prohibition ag joining more than three offenses in same indictment, and that the onl fect of the order was that all th dictments should be tried togethe the same jury, leaving each party the same material rights as though separately. Betts v. U. S. (1904) Fed. 228, 65 C. C. A. 452.

R. S. § 5480 (embodied herein), not prohibit a joint trial as a m of expedition and economy of sepa indictments charging in the aggre more than three offenses coverl period of more than six months, w defendant is accorded all the righ which he would be entitled if th dictments were tried separately. B v. U. S. (1906) 143 Fed. 60, 74 A. 214, writ of certiorari denied (26 Sup. Ct. 765, 202 U. S. 62 L. Ed. 1174.

R. S. § 1024, ante, § 1690, autho the consolidation for trial of in ments for using the mails to def under R. S. § 5480 (embodied her notwithstanding the fact that suc dictments charge offenses not co ted within the same six months which could not be joined in one in ment under the latter section, a the aggregate more than the thre fenses which may be so joined. I v. U. S. (1907) 154 Fed. 836, 83 A. 552.

R. S. § 1024, ante, § 1690, held t thorize the consolidation for tri indictments for using the mails t fraud under R. S. § 5480 (emb herein), though the indictment ch offenses not committed within the six months and in the aggregate c ed more than three offenses. Em v. U. S. (1912) 196 Fed. 317, 1 C. A. 137.

R. S. § 1024, ante, § 1690, autho the consolidation for trial of in ments under R. S. § 5480 (emb herein), charging separate offens using the mails in carrying out the scheme to defraud. Marshall v. (1912) 197 Fed. 511, 117 C. C. A

It is error to consolidate two c nal prosecutions under R. S. § (embodied herein), where the se counts of the indictments present offenses not committed within the six calendar months, as such cons tion will, under the statute, put the counts contained in the two in ments in the same category as if were separate counts of one in ment. Bass v. U. S. (1902) 20 D. C. 232.

See, also, § 1690, ante, and thereunder.

23. —— Issues, proof, and varia An indictment under R. S. § 5480 bodied herein), charged that defen

g devised a scheme to defraud in persons named, pursuant there- means of letters sent through the induced such persons to send him y for the supposed purpose, in instance, of redeeming a ring from ; that he obtained such sums of y, and converted the same to his use, "without furnishing to any of persons any ring at all equal in to any of the sums so sent and to him for the purpose aforesaid." that the gist of the fraud charged the obtaining of such money with- urnishing to the persons sending it equivalent in value, and that a ction could not be sustained upon nce which showed that in all cases etail price of the ring sent in re- was equal to the money forwarded. il v. U. S. (1903) 120 Fed. 236, . C. A. 584.

ues considered in a prosecution l on R. S. § 5480, as amended by March 2, 1889, § 1 (embodied here- for fraudulent use of the mails. v. U. S. (1904) 132 Fed. 228, 65 A. 452.

ere, in an indictment for using the in furtherance of a scheme or ar- to defraud, the only charge of l or bad faith was that defendant rtised to practice mental healing, received pay to treat patients n she did not intend to administer treatment," the mere averment she was engaged in the business of al healing does not state a scheme rtifice to defraud, within R. S. § , as amended by Act March 2, 1889, (embodied herein), but the gist of offense as charged in such indict- is that she did not intend, when so advertised and received money, ve the treatment for which she was and such averment must be prov- o warrant a conviction. Post v. . (1905) 135 Fed. 1, 67 C. C. A. 70 L. R. A. 989, reversing judg- U. S. v. Post (D. C. 1904) 128 950, and rehearing denied (1905) Fed. 1022, 67 C. C. A. 679, 70 L. . 989.

lefendant charged in the indictment having devised a scheme to de- l, to be effected by means of the office establishment, in violation R. S. § 5480 (embodied herein), be shown to have devised the par- ar scheme specified in the indict- , and cannot be convicted on evi- e that is as consistent with a dif- t scheme, which, although equally in the statute, is not charged. v. U. S. (1906) 145 Fed. 625, 76 . A. 417.

a prosecution for depositing a let- n the post office in execution of a me to defraud in violation of R. S. 80 (embodied herein), defendant ot be convicted unless the proof es- shes the "scheme" substantially as ed in the indictment. Brown v. U. S. (1906) 146 Fed. 219, 76 C. C. A. 577.

In a prosecution for using the post office in furtherance of a scheme to defraud by means of the O. Brokerage Company and F. & Co., held out as legitimate brokerage concerns, when in fact they were mere bucket shops, a paper prepared for distribution, though not sent out, giving notice that two of the defendants had retired from the brokerage company and had turned over the business to their employés, with its entire capitalization of $250,000, fortifying them with a surplus of $500,000 additional, and soliciting for them the continued patronage of the old firm's customers, was admissible, though not covered by any allegation in the indictment, on proof that defendants knew of the preparation of the statement, and that it was prepared to be sent out in furtherance of the alleged scheme to defraud. Foster v. U. S. (1910) 178 Fed. 165, 101 C. C. A. 485.

In a prosecution for using the post office establishment in furtherance of a scheme to defraud in the conduct of a bucket shop in the name of the "O. Brokerage Company" and "F. & Co.," represented to be legitimate brokerage concerns, evidence that neither the brokerage company nor F. & Co. were members of the New York Stock Exchange or the Chicago Board of Trade was admissible, though there was no express allegation thereof in the indictment. Id.

Where an indictment for devising a scheme to defraud, to be effected through the post office department, charged defendants with devising a scheme or artifice to defraud, the fact that it also added the words "in and by inducing by false and fraudulent representations and pretenses" persons to part with their money, did not limit the government to the common-law offense of obtaining money by false pretenses. Wilson v. U. S. (1911) 190 Fed. 427, 111 C. C. A. 231.

Proof held not in substantial variance with the averments of the indictment in a prosecution under this section. Harrison v. U. S. (1912) 200 Fed. 662, 119 C. C. A. 78.

Where an indictment for misuse of the mails in furtherance of a scheme to defraud charged that certain letters were mailed by defendants in connection with such alleged scheme and to carry it out, it was sufficient to show that the letters were mailed in execution of the scheme. Gould v. U. S. (1913) 209 Fed. 730, 126 C. C. A. 454.

Government held not bound to prove intent to defraud every one dealing with defendants. Stern v. U. S. (1915) 223 Fed. 762, 139 C. C. A. 292.

An indictment charging misuse of the mails by placing letters in the post office in a city held sustained by evidence that the letters received by the ad-

dressees bore the postmark of the city. Farmer v. U. S. (1915) 223 Fed. 903, 139 C. C. A. 341.

An indictment alleging that a dozen persons entered into a scheme to defraud by use of the mails justifies a conviction of only some of the persons as against the objection of fatal variance between the scheme pleaded and the scheme proved. Id.

Under indictment for misuse of mails to defraud, by selling stock falsely represented to be treasury stock, it is not necessary to go into details as to truth of statements as to condition of the corporation. Myers v. U. S. (1915) 223 Fed. 919, 139 C. C. A. 399.

Where an indictment used the language of a false financial statement sent by accused through the mails to defraud, a subsequent letter correcting an obvious clerical error wil be received. Bettman v. U. S. (1915) 224 Fed. 819, 140 C. C. A. 265.

An indictment under R. S. § 5480 (embodied herein), charged that defendant sent circulars through the mails, stating that he had a certain kind of seed wheat which he would furnish at a certain price per bushel, and that, in accordance with a previously formed intention to defraud every one sending him money, he kept the money sent by various persons to purchase such wheat, and sent them no wheat whatever. Held that, in order to convict, it must be shown that defendant intended to defraud every person sending him money during the time alleged. U. S. v. Staples (D. C. 1890) 45 Fed. 195.

On trial of physician for using mails in aid of scheme to defraud, conviction held warranted, though allegation that his representations that he was a physician and specialist were false was not supported by the evidence. U. S. v. Smith (D. C. 1915) 222 Fed. 165.

24. Plea of not guilty.—A plea of not guilty in a prosecution for using the mails to defraud, in violation of R. S. § 5480, as amended by Act March 2, 1889 (embodied herein), denies the existence of each element essential to constitute such offense. Smith v. U. S. (1913) 208 Fed. 131, 125 C. C. A. 353.

25. Evidence.—In a prosecution of an accused under R. S. § 5480 (embodied herein), on an indictment charging him with having devised a scheme to defraud, to be effected by the use of the post-office establishment of the United States, the question of a fraudulent intent being the principal issue, other similar business transactions conducted by accused a year prior to those charged in the indictment are not so remote in time that the court may not permit them, in its discretion, to be proved. Packer v. U. S. (1901) 106 Fed. 906, 46 C. C. A. 35.

A letter, written to a defendant charged with having devised a sch to defraud, to be effected by the us the mails, by a person claimed to been defrauded by means of scheme, after the transaction on w the charge was based had been cl which contained a narrative of the transaction and charges of f against defendant, but which was answered or acted on by him, was admissible in evidence against him, ther as part of the res gestæ or as plying an admission on his part of truth of the statements made ther and its admission over his objec was prejudicial error. Id.

Where a scheme to defraud was pendent on the use of the mails fo success, and the evidence showed a wholesale use of the mails that intelligent mind could reach no o conclusion than that such use was templated by the persons origina the scheme from the beginning, the dence was sufficient to establish the use of the mails was a parce the alleged scheme, though no wit testified to such fact directly, and it peared that some of the commun tions between the swindlers and victims were exchanged without the of the mails. Kellogg v. U. S. (1 126 Fed. 323, 61 C. C. A. 229.

In a prosecution for using the n with intent to defraud, in violatio R. S. § 5480 (embodied herein), dence reviewed, and held sufficien establish that defendants placed caused the letters set forth in the dictment to be placed in the rail post office alleged in the indictm Hanley v. U. S. (1903) 126 Fed. 61 C. C. A. 668, granting rehea (1903) 123 Fed. 849, 59 C. C. A. and judgment reversed on rehea (1904) 127 Fed. 929, 62 C. C. A. writ of certiorari denied (1904) 24 Ct. 858, 194 U. S. 634, 48 L. Ed. 1

In a prosecution for using the n with intent to defraud, in further of a scheme devised by defendant an alleged turf commissioner, to large returns for money to be use betting on horse races, the fact the scheme was impossible of ex tion on its face was immate O'Hara v. U. S. (1904) 129 Fed. 64 C. C. A. 81.

In a prosecution for using the n with intent to defraud, loose sheet paper containing figures with refer to defendant's business, which he c not identify or explain, not appea to be either original records or co thereof, were properly excluded. I

In a prosecution for using the n in the furtherance of a scheme to fraud, alleged to have been devise May 21, 1901, evidence of similar tr actions occurring prior to such was properly admitted as showing nature of the scheme which defen was engaged in executing when he n

letter to the person specified in ctment. Id.

in a prosecution for use of ils in furtherance of a scheme aud, in violation of R. S. § 5480 ied herein), by inducing the pub- urchase worthless mining stock, of the offense is fraud, letters legrams principally written by nt, showing that he exercised e control of a mining company, ck of which he was engaged in some of such letters contain- e and fraudulent representations g a sale of stock, and other nd fraudulent advertisements in pers and magazines, printed as nd paid for at high rates as ad- ments, which pretended to give a ccount of defendant's achieve- as a mining expert, and calculat- leceive the public, were admissi- Balliet v. U. S. (1904) 129 Fed. 4 C. C. A. 201.

ence considered in a prosecution on R. S. § 5480, as amended by arch 2, 1889, § 1 (embodied here- or fraudulent use of the mails. v. U. S. (1904) 132 Fed. 228, 65 A. 452.

the trial of a defendant for using ails to defraud, where he was ed with having used a letter head rting to show that he was en- in a business in which he was fact engaged, for the purpose of ing property on credit, it was to admit in evidence against him ter head of a firm having the surname, where he was not charg- th using such letter heads nor with g any representations respecting onnection with the firm, and also mit a list, supposed to be of cred- and unreceipted bills from parties named in the indictment, all of were found in defendant's office, being no evidence to show by the list was made, nor whether t he was in fact indebted to any of parties, nor how the transactions . Booth v. U. S. (1905) 139 Fed. 71 C. C. A. 378.

a prosecution under R. S. § 5480 odied herein), for using the mails fraud, averments in the indictment audulent representations made by defendant by the use of the mails, to characterize his alleged scheme efraud, may be proved by the in- ction in evidence of letters or cir- s mailed by defendant other than one set out in the indictment, and that purpose a circular printed and out through the mails by an t of defendant is admissible in evi- e, where it is shown that it was wn to and approved by defendant, it contained copies of letters writ- by him, and that statements and esentations therein made were bas- n those made by him to the agent. ble v. U. S. (1906) 143 Fed. 772, C. C. A. 30.

Where, on the trial of a defendant for using the mails to defraud, a witness testified that his father and himself purchased mining stock from defendant through correspondence sent by mail, that his father was 85 years old, and that the witness acted for him in the transaction, and conducted the entire correspondence, it was not error to permit him to testify that both his father and himself were induced to purchase the stock by representations made in letters received from defendant through the mails. Id.

Where a circular issued by an agent of the defendant in a criminal case containing false statements and representations was introduced in evidence on proof that it was submitted to and approved by defendant, and the agent testified that some of such statements were based on statements made to him by defendant, and that others were based on his own investigations, questions in cross-examination designed to show which of the statements were made by defendant were immaterial and irrelevant, and their exclusion was not prejudicial error. Id.

A letter written to defendant before the close of the transactions charged in the indictment, although not answered by him, was admissible in evidence, where it was shown that it was part of a larger correspondence between the parties, and taken in connection with such correspondence and the other evidence tended to show that representations charged in the indictment to have been made by defendant were false and known by him to be so. Id.

Where in a prosecution for mailing certain letters in furtherance of a scheme to defraud, it was charged that the letters were mailed, one on December 10, 1902, one on January 13, 1903, and another on January 29, 1903, and there was no evidence that defendant's admissions to a post office inspector concerning his operation of the scheme were not made after the mailing of the letters in question, such admissions were not erroneously admitted as made prior to the mailing of the letters. Brooks v. U. S. (1906) 146 Fed. 223, 76 C. C. A. 581.

In a prosecution for the mailing of certain letters in furtherance of a scheme to defraud, evidence held sufficient to justify a finding that defendant mailed or caused the letters in question to be mailed. Id.

Accused did business under the name "National Securities Company." He advertised to invest deposits in grain, provisions, and securities, so as to yield his customers 6 per cent. per month, and to permit them to withdraw their deposits at their election. He sent out through the mail laudatory circulars, affidavits, and letters purporting to come from others, some of which were entitled "Do you know of

something, anything better?" "Our company strong, well financed, capital full paid." "Our plan infallible, has never lost a dollar. An assured success." "Our management honest, conservative, intelligent, and experienced." "Our proposition very profitable, cannot be excelled. Our profits justify it." Held, that such documents in themselves constituted evidence of the existence of a scheme to defraud. Id.

Where, in a prosecution for mailing certain letters in furtherance of a scheme to defraud, defendant's participation in securing a certain false affidavit and laudatory letter appeared in the stock advertisements of the business in which defendant was engaged, such stock advertisements and copies of the affidavit and letter were admissible. Id.

In a prosecution for mailing certain letters in furtherance of a scheme to defraud, letters other than those counted on in an indictment, purporting to have been written by the company operated by defendant, to different persons throughout the country, and relating to transactions by the company with them, were admissible to show that the scheme contemplated the use of the mails, and as bearing on the intent with which the business was done, and the existence of a scheme to defraud. Id.

A verdict finding defendants guilty on a charge of using the mails in furtherance of a scheme to defraud held sustained by the evidence. Klein v. U. S. (1907) 151 Fed. 420, 80 C. C. A. 650.

On the trial of a defendant charged under R. S. § 5480 (embodied herein), with using the mails to carry out a scheme to defraud, letters shown to have been mailed or received by defendant need not be effective to forward such scheme to render them admissible in evidence, but it is sufficient if it appears therefrom that they were intended to be utilized in some way in connection with it. Walker v. U. S. (1907) 152 Fed. 111, 81 C. C. A. 329.

In a prosecution under R. S. § 5480 (embodied herein), for using the mails in conducting a scheme to defraud, it is not necessary to prove a specific intent to defraud, where such intent is manifest from the nature of the scheme itself. Id.

An affidavit made to obtain an attachment in an action against a bank was inadmissible as evidence of the insolvency of the bank in a criminal case against third parties, there being no proof that a judgment was ever obtained in the action or that return of nulla bona was made by the sheriff. Lemon v. U. S. (1908) 164 Fed. 953, 90 C. C. A. 617.

On the trial of a defendant, charged with having devised a scheme to defraud, which was carried out by the use of the mails, consisting of ad tising by letters and circulars a medical institute and defrauding sons secured thereby for treatm where the government introduced nesses, who had answered such ad tisements and who testified as to transactions between them and def ant, the file wrappers in defendant's fice, containing the correspondence tween him and every patient sec for treatment, were admissible in behalf as part of the res gestæ, sh ing the real nature of the business by him. Hibbard v. U. S. (1909) Fed. 66, 96 C. C. A. 554, 18 Ann. 1040.

On the trial of a defendant, cha with having conducted a scheme to fraud by the use of the mails, evid that defendant's predecessor in business had been indicted for the s offense was competent on the ques of intent, if defendant was shown have had knowledge of the fact thereafter continued the busi Grey v. U. S. (1909) 172 Fed. 101 C. C. A. 415.

A conviction on an indictment for ing the mails to defraud, in violatio R. S. § 5480 (embodied herein), w charged that defendant falsely re sented to the persons intended t defrauded by letters and circulars through the mail that she was cond ing a fair, honest, and bona fide m monial agency, well knowing that was not, held sustained by evid showing that she inserted false ad tisements in newspapers, purportin have been inserted by a man or wo of wealth who desired to marry, in reply to answers received thr the mail sent letters and circulars resenting that she conducted a m monial bureau, and had many client wealth of both sexes, and thereby tained from persons so addressed a of $5 each for membership in such reau and to be introduced to clients of wealth, when in fact, so f shown, none were ever so introdu and no marriages resulted, and def ant made no attempt to carry out promises made. Glinn v. U. S. (1 177 Fed. 679, 101 C. C. A. 305.

In a prosecution for using the office establishment in furtheranc a scheme to defraud, consisting of fendants' operation of a bucket s advertised through the mail to b legitimate brokerage business, evid held to justify an inference that scheme was fraudulent in its incep and execution, and that the adverti matter sent through the mail was culated to further defendants' sch to despoil the public. Foster v. U (1910) 178 Fed. 165, 101 C. C. A.

In a prosecution for using the office establishment in furtheranc a scheme to defraud, by the use of business of a brokerage company, dence held insufficient to sustain a

of one of the defendants, who t shown to have participated in ual management of the business ompany, nor to have had knowl- the alleged fraudulent schemes actices of those engaged in its ment. Id.

prosecution for misuse of the in furtherance of a scheme to by sale of worthless mining evidence that one of the defend- romised witness that she should half interest in the profits of shares of canceled or forfeited f a mining corporation, when it sold by him, that she was to pay for the stock, and when it was 5 cents a share was to go to the ation, and the witness and de- t were to divide the balance, and e had received $562 as her share part of the stock that had been as properly admitted as against efendant to show his method of with the stock of the company. . U. S. (1910) 182 Fed. 721, 105 A. 163, writ of certiorari denied 31 Sup. Ct. 470, 219 U. S. 585, Ed. 347.

prosecution for misuse of the in furtherance of a scheme to d by soliciting the sale of worth- ining stock, evidence held suffi- to show that letters set out in dictment and alleged to have been pursuant to such scheme were in ailed or caused to be mailed by fendant, who wrote the same on ate of the postmark appearing n. Id.

prosecution for misuse of the in furtherance of a scheme to de- by the sale of worthless mining evidence held to sustain a convic- Id.

trial for using the mails to de- it was error to admit evidence of f the defendant's convictions of offenses, where his character was ut in issue. Dyar v. U. S. (1911) ed. 614, 108 C. C. A. 478; Reg- v. Same (1911) 186 Fed. 624, 108 A. 488.

prosecution for using the United s mails in furtherance of a scheme raud, evidence of defendant's con- n in various similar transactions ich the mails were used in fur- nce of similar fraudulent schemes December, 1904, nearly to the of the transactions charged in the ment, was admissible to show in- Colt v. U. S. (1911) 190 Fed. 111 C. C. A. 205, writ of certio- denied (1912) 32 Sup. Ct. 527, 223 729, 56 L. Ed. 633.

a prosecution for wrongful use of nails in furtherance of the scheme efraud in the sale of corporate by false representations, the s of the corporation, regularly kept e course of business, are admissi- n the issue of the financial condi- of the corporation, without verifi- n of the entries by employés, in the absence of any contention that the books were not accurately kept. Wilson v. U. S. (1911) 190 Fed. 427, 111 C. C. A. 231.

In a prosecution for using the post office in furtherance of a scheme to defraud in the sale of corporate stock by false and fraudulent representations, evidence held sufficient to sustain the conviction of all the defendants. Id.

In a prosecution for using the mails to defraud, the admission of evidence that defendant was also conducting another similar scheme not mentioned in the indictments held error. Marshall v. U. S. (1912) 197 Fed. 511, 117 C. C. A. 65.

Evidence held to sustain a judgment of conviction for using the mails to defraud. McKinney v. U. S. (1912) 199 Fed. 25, 117 C. C. A. 403.

On the trial of a defendant, charged under this section, with using the mails to defraud, held prejudicial error to admit in evidence a letter indicating the writer's opinion that in certain particulars defendant's business was fraudulent. Harrison v. U. S. (1912) 200 Fed. 662, 119 C. C. A. 78.

Evidence considered in a prosecution for use of the mails in carrying out a scheme to defraud, in violation of this section, and held insufficient to justify a conviction. Id.

In a prosecution for use of the mails in furtherance of a scheme to defraud in selling certain corporate stock, the affairs of a former corporation being closely interwoven with those of the company in question, evidence of defendant's relations with the former company was admissible to establish the offense charged, and it was not error to omit to limit it to the question of intent. Parker v. U. S. (1913) 203 Fed. 950, 122 C. C. A. 252.

In a prosecution for misuse of the mails in furtherance of a scheme to defraud in the sale of corporate stock, conversation between defendant and the chairman of the corporation's executive committee concerning its earnings, made subsequent to the representations of defendant, were inadmissible on the issue of defendant's good faith. Parker v. U. S. (1913) 203 Fed. 950, 122 C. C. A. 252.

In a prosecution for misuse of the mails in furtherance of a scheme to defraud in the sale of corporate stock, the exclusion of certain documentary evidence concerning the corporation's business was proper in the absence of a proper foundation laid therefor. Parker v. U. S. (1913) 203 Fed. 950, 122 C. C. A. 252.

In a prosecution for wrongful use of the mails in furtherance of a scheme to defraud in the sale of corporate stock by false representations, the books of a corporation were admissible on the issue of the truth of the representations, though defendant had no part in keeping them. Parker v. U. S.

(1913) 203 Fed. 950, 122 C. C. A. 252.

In a prosecution for use of the mails in furtherance of a scheme to defraud in violation of this section by filing alleged fraudulent claims for wild animal bounty in violation of Pol. Code S. D. § 3118, certain evidence as to defendants' conduct of the office of auditor in which the claims were rejected held admissible to negative a fraudulent intent. Fall v. U. S. (1913) 209 Fed. 547, 126 C. C. A. 369.

In a prosecution for misuse of the mails in furtherance of a scheme to defraud, a letter written by one defendant to another during the time it was claimed that defendant was engaged in executing the fraudulent scheme, and when it did not appear that he was informed that any prosecution was contemplated, held admissible as res gestæ. Gould v. U. S. (1913) 209 Fed. 730, 126 C. C. A. 454.

In a prosecution for misuse of the mails in furtherance of a scheme to defraud by the promotion of a land and irrigation company, a complaint, judgment, execution, and return in an action by a third person against the company, without any proof that the court had jurisdiction, held inadmissible as bearing on defendants' solvency and their ability to perform the representations made. Id.

Evidence that defendant deposited in the post office a false financial statement directed to a commercial agency, with knowledge that it would be used as a basis of an extension of credit to him for goods purchased, was sufficient to warrant a finding that it was mailed to execute a scheme to defraud in violation of this section. Scheinberg v. U. S. (1914) 213 Fed. 757, 130 C. C. A. 271, Ann. Cas. 1914D, 1258.

In a prosecution for misuse of the mails in furtherance of a scheme to defraud, in violation of this section, evidence of other offenses disconnected with the offense charged, but tending to show defendant's misconduct in business, held inadmissible. Id.

Evidence held to show that accused took from post office letters in answer to an advertisement for the purpose of executing or attempting to execute a scheme to defraud, notwithstanding his lack of knowledge of their contents. Goldman v. U. S. (1915) 220 Fed. 57, 135 C. C. A. 625, affirming judgment U. S. v. Goldman (D. C. 1913) 207 Fed. 1002.

Evidence held to show that decoy letters, taken from post office for purpose of executing or attempting to execute scheme to defraud, were written to detect, and not to induce the commission of, a crime. Id.

Under indictment charging use of mails in aid of scheme to defraud, evidence as to falsity of representations concerning oxypathor held to justify conviction, without evidence that it was worthless as a cure for diseases. Moses v. U. S. (1915) 221 Fed. 863, 137 C. C. A. 433, certiorari denied (1915) 35 Ct. 792, 238 U. S. 629, 59 L. Ed.

On trial for using mails in a fraudulent scheme in connection sales of oxypathor, evidence as to ner in which defendant's company business and made sales held pro excluded. Id.

Evidence in support of an indict for using the mails in carrying o scheme to defraud held sufficient to tify the submission of the case to jury. Colburn v. U. S. (1915) 223 590, 139 C. C. A. 136.

On trial for use of mails in a scheme to defraud, evidence of tra tions similar to those charged hel missible to show intent to defraud system of doing business. Stern S. (1915) 223 Fed. 762, 139 C. 292.

On trial for use of mails in aid scheme to defraud, evidence of u cessful prosecution of one of de ants in a state court held not ad sible. Id.

Under indictment for misuse of mails in furtherance of a schem defraud by selling books, letters ten by a defendant to a buyer held missible as in furtherance of ge scheme to defraud. Farmer v. U (1915) 223 Fed. 903, 139 C. C. A.

Under an indictment for misus the mails in violation of this sec instances of similar frauds commi prior to the taking effect of the were admissible to show intent.

Under an indictment for misus the mails in furtherance of a sch to defraud, letters passing between fendants while carrying out t scheme held admissible. Id.

In a prosecution for sending a f financial statement through the mai one from whom the defendant expe to obtain money for the corporatio which he was president, evidence sufficient to warrant a verdict that fendant knew of the falsity of statement. Bettman v. U. S. (1 224 Fed. 819, 140 C. C. A. 265.

In a prosecution for sending thro the mails a false financial statem evidence as to the result of the sch held at most surplusage, and not jectionable as showing other offen Id.

In a prosecution for using the m in a scheme to defraud, evidence to show defendant's knowledge of purpose of a financial statement w was required by one from whom company desired to borrow money.

In a prosecution for using the m to defraud, evidence that loans w not have been made, had the falsity a financial statement been known, admissible. Id.

On trial for misuse of mails in f therance of a scheme to defraud, dence of commitment of accused to on another charge and his discha

nth later on bail held admissible. er v. U. S. (1915) 224 Fed. 833, C. C. A. 279.

npetent evidence tending to establhe guilt of accused is not incomt because it may tend to show of another offense. Id.

a trial for the use of mails to ote fraud, evidence held to susa conviction. Id.

a trial for using the mails in aid scheme to defraud evidence of a ar venture was properly received ne question of fraudulent intent. v. U. S. (C. C. A. 1916) 228 Fed.

ere defendant in request for credit ied to correctness of accompanynancial statements, jury, on trial raudulent use of mails, held jus in refusing to hold defendant's keeper solely responsible for false nents. Kaplan v. U. S. (C. C. A. 229 Fed. 389.

a prosecution for mailing a letter intent to defraud, the jury cannot ermitted to inspect a copy of the made by the accused in their nce for the purpose of comparing andwriting, since it would be perg defendant to make evidence for lf. U. S. v. Jones (C. C. 1882) ed. 469.

a prosecution for sending, through nail, a letter advertising counternoney, an admission of defendant he mailed the letter is admissible st him. Id.

fact that one accused of using ost-office department for certain ulent purposes, contrary to R. S. 0 (embodied herein), was accused former occasion of a similar of pleaded guilty to the charge, and convicted thereof, may be considby the jury as a confession on his at that time, tending, with other nstances in his conduct, to show haracter of the business he had t time been establishing and caron, and had since carried on. U. Stickle (C. C. 1883) 15 Fed. 798.

ere, on a charge of using the post department for certain fraduurposes, contrary to R. S. § 5480 died herein), evidence is admithowing that defendant on a foroccasion pleaded guilty to the e of a similar offense, the jury l consider his explanation of his ns for pleading guilty, in order termine the weight to which such ice was entitled. Id.

n an issue of fraudulent intent y transaction, evidence of similar actions at a previous time is rel, so far as it goes to prove the , though for no other purpose. dingly, upon an indictment for the f the mails in furtherance of a ulent scheme connected with a led "Fund W," held, that evidence of fraudulent practices by the same parties, by means of certain funds, "H" and "K," was admissible. U. S. v. Flemming (D. C. 1883) 18 Fed. 907.

In a prosecution for mailing a letter containing a scheme to defraud, evidence that defendant mailed similar letters, not mentioned in the indictment, is admissible, as bearing on the intent. U. S. v. Watson (D. C. 1888) 35 Fed. 358.

Evidence of the mailing of similar letters not set forth in the bill of indictment is admissible on the question of intent. Id.

In such a case the defendant will not be permitted to give a test or exhibition of his unknown power in open court. U. S. v. Ried (D. C. 1890) 42 Fed. 134.

Defendant was indicted for using the mails in furtherance of a scheme to defraud, by soliciting money upon the representation that by an unknown power he was able to answer sealed letters addressed to spirit friends. The government, to show the fraudulent character of the defendant's business, introduced admissions of defendant that the business was fraudulent. Held not competent for defendant to show, by the testimony of persons sending him such letters, that in particular instances he had answered them satisfactorily, and that the questions were of such a character that he could not have answered them except by supernatural power. Id.

On a prosecution for using the mails to defraud, by soliciting money on the representation that defendant was able to answer sealed letters addressed to spirit friends, the belief of defendant as to his capacity or power to get answers to questions contained in sealed letters from the spirits of the departed is one of the questions of fact bearing upon intent. Id.

Defendant's intent is to be determined by inference from all the facts and circumstances in the case, including evidence of his failure to return deposits secured from various persons. U. S. v. Finney (D. C. 1890) 45 Fed. 41.

On trial of an indictment charging defendant with using the mails to promote a fraudulent scheme to obtain money by subscriptions to bonds purporting to return large profits on small investments, evidence as to defendant's knowledge and experience of financial schemes, and as to previous attacks made on the honesty of the scheme, is material as bearing on the question whether or not defendant was himself deceived respecting it. U. S. v. Durland (D. C. 1894) 65 Fed. 408.

Where, in a prosecution for the use of the mails with intent to defraud, in the exercise of an alleged power of mental healing, defendant claimed that

she was able, by the mere emanations of her own mind, to impart such power to another residing at a great distance, and through a second person, not present, to a third person, also absent, without such third person's knowledge, such claim being contrary to well-settled and accepted natural laws, the burden was on the defendant to establish the existence of such power; but if it was found that defendant believed she could accomplish what was promised, or there was any doubt that she knew she could not, that doubt should be considered in defendant's favor, and a verdict of acquittal rendered. U. S. v. Post (D. C. 1904) 128 Fed. 950, judgment reversed Post v. U. S. (1905) 135 Fed. 1, 67 C. C. A. 569, 70 L. R. A. 989, rehearing denied (1905) 135 Fed. 1022, 67 C. C. A. 679, 70 L. R. A. 989.

In a prosecution for using the mails in furtherance of a scheme to defraud, consisting of the practice of an alleged power of mental healing, evidence of one of defendant's employés in regard to the manner of conducting her business and as to the classes of cases in which treatment was undertaken and money received was admissible. Id.

On the trial of a defendant indicted, under R. S. § 5480 (embodied herein), for using the mails in carrying out a scheme to defraud, evidence that defendant published advertisements soliciting persons who read them to write to him, and that when he received letters from such persons he had made all arrangements to carry on a systematic correspondence with them through the mails, warrants a finding that the scheme or artifice was one to be effected by means of the post office establishment of the United States, within the meaning of the statute. U. S. v. White (D. C. 1906) 150 Fed. 379.

In a prosecution for having devised a scheme or artifice to defraud, to be effected by means of the post office establishment of the United States, in violation of R. S. § 5480 (embodied herein), evidence that defendant knowingly deposited in or sent through the mails letters, papers, and writings, other than those described in the indictment, to other persons for the purpose of carrying out the alleged scheme, was admissible solely as bearing on defendant's intent and purpose in his transactions charged in the indictment. U. S. v. Dexter (D. C. 1907) 154 Fed. 890.

The evidence, on the trial of a prosecution for using the mails for carrying out a scheme to defraud, while conflicting, held sufficient to sustain a verdict of guilty and such as not to justify the court in awarding a new trial. U. S. v. Conrad (D. C. 1907) 156 Fed. 248.

In a prosecution under R. S. § 5480 (embodied herein), it is error to allow a witness for the prosecution, whom is claimed the defendant defrauded, answer questions about her father's her financial condition; the question whether the witness was in such condition, through poverty or fan distress, as would render her easily ceived, having no relevancy. Bass U. S. (1902) 20 App. D. C. 232.

Where, in a prosecution under R. § 5480 (embodied herein), making i penal offense to defraud by means the postal service, the governm seeks to show that defendant frau lently offered to provide places for employed teachers, questions propou ed to a former employé of the defe ant, whose duty it was to send out tices of vacancies, as to the purp for which they were sent out by fendant's agency, and whether, in se ing them out, she ever knowingly n represented facts, or without hav before her information as to the ex ence of such vacancies, are compet as reflecting on the defendant's int in the conduct of his business. Bas U. S. (1902) 20 App. D. C. 232.

Where, in a prosecution under R. § 5480 (embodied herein), making i penal offense to defraud by means the postal service, the governm seeks to show that the defendant fra ulently offered to provide places unemployed teachers, it is error the trial court to permit witnesses the prosecution, who had received fr the defendant notices of the existe of vacancies in certain schools, to p duce and read in evidence replies letters which they had written to s schools in reference to the alleged cancies, in the absence of any atter to show the genuineness of the ha writing of or signatures to such repl Bass v. U. S. (1902) 20 App. D. 232.

In a prosecution, under R. S. § 5 (embodied herein), making it a pe offense to defraud by means of postal service, it is error for the t court to permit one of the witnes for the prosecution to be asked whe er she knew anything about a la quantity of mail that was carried do to South Carolina, or down to a h to be mailed in South Carolina, though the fact sought to be sho might have been a good ground for other indictment in South Caroli the charge of a crime committed another jurisdiction having no ma riality in a prosecution for anot crime in this jurisdiction. Bass v. S. (1902) 20 App. D. C. 232.

In a criminal prosecution, under S. § 5480 (embodied herein), wher the defendant is charged with attem ing to defraud in the organization manipulation of associations to p vide places for unemployed teachers is not error for the trial court to p mit a witness for the prosecution, w was the secretary of one of such in tutions, of which the defendant

proprietor, to answer the question, m what sources were most of vacancies procured?" where the t is to show that newspaper clip-, no matter how old, were used e defendant as one of the sources hich he was to provide informa- to those who had joined one of nstitutions. Bass v. U. S. (1902) pp. D. C. 232.

Trial.—An indictment for the dulent use of the mails charged defendant deposited in the post a large number of letters ad-ed to J. and various other un-n persons. The court refused his est to instruct the jury that the cular act charged against defend-was the mailing of the letters ad-ed to J., that they should acquit f he did not mail it, and that they only consider evidence of the ng and mailing similar letters to persons in determining the intent fendant. Held, that the error, if was not available; no motion to , to elect, or in arrest having made, or bill of particulars ask-r. Tingle v. U. S. (1898) 87 Fed. 30 C. C. A. 666.

a prosecution of a defendant un-. S. § 5480 (embodied herein), on dictment charging him with hav-evised a scheme to defraud, to be ed by the use of the post-office lishment of the United States, e the government introduced evi-, in support of the specific charg-ade, showing that defendant under ssumed name deposited in a post circulars addressed to the persons d in the indictment, who were gers to him, soliciting remittances used by him in stock speculations ccount of such persons, which cir-s contained on their face persua-evidence of a scheme to defraud that defendant received through post office remittances of money such persons, which he subse-ly reported to them as having lost in such speculations, such nce was sufficient to warrant the ission of the case to the jury. er v. U. S. (1901) 106 Fed. 906, C. A. 35.

a prosecution for using the mails intent to defraud by means of a offering to sell counterfeit mon-vidence of the mailing of the let-n which an answer was asked to dressed to a person whose name formed from the maiden name of dant's wife, and that letters thus ssed were opened by defendant, money taken therefrom and con-d to his own use, was sufficient stify submission of the case to the Milby v. U. S. (1903) 120 Fed. C. C. A. 21.

a prosecution for fraudulent use e mails, an instruction that if the addressed to C. & Co. was found on his desk, on or about the day date, in the place in which it was the custom of the clerks of the company to place letters that had come by mail for C.'s consideration, and the letter was written by defendant on the day of its date, and related to a scheme to defraud, charged in the indictment which had been formed by one of the defendants, the jury would be authorized to assume that the letter was placed or caused to be placed in the post office by defendants, or one of them, "unless there be other circumstances or evidence which removes such presumption," was erroneous, as placing on the defendant the burden of rebutting the inferences arising from the evidence of guilt. Melton v. U. S. (1903) 120 Fed. 504, 57 C. C. A. 134.

An indictment under R. S. § 5480, as amended by Act March 2, 1889, § 1 (embodied herein), charged the defendants with having devised a scheme to defraud, which they carried out by sending circulars through the mails, intended to cause persons receiving the same to believe that if they would sell certain pieces of jewelry for defendants, and remit therefor the sum of $2, they would receive from defendants, free, three certain described articles, whereas in fact defendants did not intend to give, and did not give, one of said articles and the other articles sent by them were not as represented, but were practically worthless. Held, that the gist of the scheme charged was to cause persons receiving the circulars to believe therefrom that the three articles named would be sent on receipt of $2, and that it was error to charge the jury that although they should find that the circulars, reasonably construed, only promised the two articles actually sent, yet they might find defendants guilty if such articles were so much different in description and quality from those named in the circulars as to amount to a fraud. Flachskamm v. U. S. (1904) 127 Fed. 674, 62 C. C. A. 400.

Instructions considered in a prosecution based on R. S. § 5480, as amended by Act March 2, 1889, § 1 (embodied herein), for fraudulent use of the mails. Betts v. U. S. (1904) 132 Fed. 228, 65 C. C. A. 452.

That a number of indictments against the same defendant under R. S. § 5480 (embodied herein), for using the mails to defraud, are by order of the court tried together to the same jury, does not affect the right under R. S. § 819, ante, § 1264, to three peremptory challenges for each indictmet. Id.

The burden of proof in a criminal case is never upon the accused to prove innocence, or to disprove evidence offered to establish crime. In a prosecution for the use of the mails to carry out a scheme to defraud in the practice of mental healing, it being charged in the indictment that the defendant's promises to heal were impossible of performance, and evidence having been

received on both sides of that issue, it was error to instruct the jury that the burden rested on the defendant to prove to their satisfaction that she possessed such power. Post v. U. S. (1905) 135 Fed. 1, 67 C. C. A. 569, 70 L. R. A. 989, reversing judgment U. S. v. Post (D. C. 1904) 128 Fed. 950, and rehearing denied (1905) 135 Fed. 1022, 67 C. C. A. 679, 70 L. R. A. 989.

In a prosecution for mailing certain letters in execution of a scheme to defraud, in violation of R. S. § 5480 (embodied herein), the court properly charged, that defendant could not be convicted for devising the scheme alone, but that the gravamen of the offense rested in the mailing of the letters alleged in the indictment, and that in order to convict the jury must find that defendant placed or caused the letters to be placed in the post office, as alleged. Brooks v. U. S. (1906) 146 Fed. 223, 76 C. C. A. 581.

Instructions requested by defendants on trial for a fraudulent use of the mails considered, and held properly refused. Lemon v. U. S. (1908) 164 Fed. 953, 90 C. C. A. 617.

In a prosecution for using the mails in a scheme to defraud in violation of R. S. § 5480 (embodied herein), there is no hard and fast rule requiring concert of action between two defendants to be first shown before evidence of acts of one can be admitted against the other, but the order of evidence is within the court's discretion, and it is sufficient if the jury, before considering such evidence, are satisfied either by direct evidence, or proof of facts and circumstances from which it may be reasonably inferred, such concert existed, and defendants were conducting a joint scheme. Doyle v. U. S. (1909) 169 Fed. 625, 95 C. C. A. 153.

Under R. S. § 5480 (embodied herein), making it a crime to devise a scheme to defraud, to be carried out, and which is, or is attempted to be, carried out, by the use of the mails, the intent to defraud is an essential element of the offense, to be determined by the jury as a question of fact from all of the evidence; and an instruction in such a case that "the law presumes that every man intends the natural, legitimate, and necessary consequences of his acts," is erroneous, as tending to mislead the jury into the supposition that, if the scheme in its operation resulted in defrauding persons, the law raises a conclusive presumption of an intent to defraud. Hibbard v. U. S. (1909) 172 Fed. 66, 96 C. C. A. 554, 18 Ann. Cas. 1040.

In a prosecution under R. S. § 5480 (embodied herein), for using the mails to defraud, if a defense that defendant honestly believed that the representations made in the letters or circulars which he is charged with having sent through the mails were true, and that he had no actual intent to defraud, is made, it is for the determination of the jury. Rudd v. U. S. (1909) 173 I 912, 97 C. C. A. 462.

Where defendants were indicted misuse of the mails in furtherance a scheme to defraud by the sale of tain mining stock, and the indictn set out certain letters alleged to been written and mailed by defen pursuant to such scheme, whether letters tended to connect the defen with the scheme as alleged, or mailed in execution or attempted cution thereof, was for the jury. E v. U. S. (1910) 182 Fed. 721, 105 C A. 163, writ of certiorari denied (19 31 Sup. Ct. 470, 219 U. S. 585, 5 Ed. 347.

In a prosecution for misuse of mails in furtherance of a scheme defraud by the sale of worthless ing stock, evidence held to require mission of the case to the jury a each of the defendants. Id.

In a prosecution under R. S. § (embodied herein), for using the n to effect a scheme to defraud, inst tions are erroneous which permit a viction on a finding of any stated g of facts, from which a purpose to fraud is omitted. Blackman v. U (1911) 186 Fed. 965, 109 C. C. A.

Instructions approved in a pros tion for using the mails to defr McCarthy v. U. S. (1911) 187 Fed. 110 C. C. A. 547.

One indicted for a violation of section is indicted for a misdemea and his rights of challenge must be termined according to law gover misdemeanor trials. Kharas v. U (1911) 192 Fed. 503, 113 C. C. A.

The question of the good faith defendant, charged with using the n to defraud in violation of this sec in making offers to return the pric articles sold if customers were diss fied, held one for the jury under all evidence. Harrison v. U. S. (1912) Fed. 662, 119 C. C. A. 78.

In a prosecution for using the n in furtherance of a scheme to def in advertising a cure for morphi which in itself contained morphin was error to refuse to charge that fraud consisted, not in the employ of the morphine in the treatment, in the representation that the med in itself was curative of the h Bruce v. U. S. (1912) 202 Fed. 98, C. C. A. 370.

In a prosecution for misuse of mails in furtherance of a scheme to fraud in the sale of a substance taining morphine for the cure of morphine habit, defendants held ent to instructions that purchasers not deceived as to the substance taining morphine, and that defend could not be convicted on the opinio medical men that it was not cura Id.

In a prosecution for misuse of mails in furtherance of a scheme to fraud in the sale of stock of a co

on by misrepresentations, evidence sufficient to justify a submission of case to the jury as against defend- P. Parker v. U. S. (1913) 203 Fed. 122 C. C. A. 252.

a prosecution for using the mails lefraud, in violation of R. S. § 5480, mended by Act March 2, 1889 (em- ed herein), it is error to charge the to convict if they find that defend- devised a scheme to defraud, and in ying out such scheme deposited or ived a letter, without also charging he must have intended to effectu- his scheme by correspondence ugh the post office. Smith v. U. (1913) 208 Fed. 131, 125 C. C. A.

here the court, in a prosecution for g the mails in furtherance of a eme to defraud, in several instruc- s required that defendant must have wn that his representations made ugh the mails were false, such in- ctions sufficiently covered a request- charge that an honest belief on his that his statements were true ld constitute a defense. Mackenzie J. S. (1913) 209 Fed. 289, 126 C. A. 215.

a prosecution for using the mails he execution of a fraudulent scheme the sale of corporate stock, a charge erroneous as eliminating the de- e offered that the promoters of the oration had no intent to defraud, acted in good faith. Sandals v. U. (1914) 213 Fed. 569, 130 C. C. A.

charge criticising the acts of the ctors of the corporation, who were on trial, held erroneous as restrict- the jury in judging the good faith he defendants, who were the pro- ers of the corporation. Id.

a prosecution for misuse of the s in furtherance of a scheme to de- d, an instruction held not erroneous nisleading the jury to believe that it only necessary that the government ld prove that accused used the s with a hope that an opportunity fraud would be afforded him. rles v. U. S. (1914) 213 Fed. 707, C. C. A. 221, Ann. Cas. 1914D, 1.

instruction, in a prosecution for se of the mails in furtherance of a eme to defraud, that the jury might r a previous design to defraud from of of the fraud, held not objection- . Id.

atement in charge that witnesses testified that oxypathor, in connec- with which scheme to defraud was rged, could not as "matter of fact" te the effects claimed for it, held error. Moses v. U. S. (1915) 221 863, 137 C. C. A. 433, certiorari ed (1915) 35 Sup. Ct. 792, 238 U. 29, 59 L. Ed. 1497.

efusal of instructions requested on of defendants charged with using mails in furtherance of a scheme to defraud held proper. Colburn v. U. S. (1915) 223 Fed. 590, 139 C. C. A. 136.

The question of the guilt or innocence of defendants, charged with using the mails in furtherance of a scheme to defraud, held properly submitted to the jury and by proper instructions. Belden v. U. S. (1915) 223 Fed. 726, 139 C. C. A. 256.

Where an indictment sufficiently charges the joint participation of two or more in using the mails in the execution of a scheme to defraud, it is not error to deny the defendant separate trials. Id.

On trial for use of mails in aid of scheme to defraud, in connection with property listed with defendants for sale, sale made after their arrest held for the jury's consideration. Stern v. U. S. (1915) 223 Fed. 762, 139 C. C. A. 292.

Accused, charged with using mails to promote frauds, in violation of this section, held to waive by acquiescence any right to ask for the return of papers removed by post office inspectors. Farmer v. U. S. (1915) 223 Fed. 903, 139 C. C. A. 341.

In a prosecution for using the mails to defraud, an instruction that there was evidence that defendant knew the financial statement sent was false held not erroneous, in view of instructions prohibiting conviction without a finding of defendant's actual knowledge of the falsity. Bettman v. U. S. (1915) 224 Fed. 819, 140 C. C. A. 265.

On trial for misuse of mails in furtherance of a scheme to defraud, an instruction held not erroneous. Tucker v. U. S. (1915) 224 Fed. 833, 140 C. C. A. 279.

The fact that defendant received letters in answer to an advertisement, and the fact that the letter inclosing the advertisement to the newspaper in which it was published was in the defendant's handwriting, warranted the court in charging, under the circumstances of this case, that such facts were evidence that defendant mailed such letter and advertisement. Brand v. U. S. (C. C. 1880) 4 Fed. 394.

In determining the intention of the accused charged with using the mails to defraud, it is proper for the jury to consider all the facts and circumstances in evidence, the nature and quality of his advertisements and circulars, and the statements and representations therein contained, their truth or falsity in different particulars, whether he filled orders for goods or not, and the equality of such orders, and his conduct in the premises generally. U. S. v. Stickle (C. C. 1883) 15 Fed. 798.

The second count of the indictment charged that defendant, in furtherance of a scheme to defraud the public, sent circulars through the mails, stating that he had blueberry plants to sell, and that he intended giving no plants of any value for the money received. The evidence tended to show that de-

fendant shipped wild huckleberry plants, which he gathered in the woods, while his advertisement described what would be understood as a cultivated plant, and conveyed the idea that he was engaged in its culture. It also appeared that many of the plants had been set out by purchasers, but failed to live. Held, that the jury should consider whether it was represented by the circular that defendant had a place where he grew the plants, or had the means of procuring them, or whether it was implied that they were wild plants, or were such as were raised by people in the business. U. S. v. Staples (D. C. 1890) 45 Fed. 195.

In a prosecution for the use of the mails with intent to defraud in the use of an alleged power of mental healing, defendant's fraudulent intent is a question of mental condition not provable as an ordinary fact, but is to be found by the jury from the attendant and surrounding circumstances. U. S. v. Post (D. C. 1904) 128 Fed. 950, judgment reversed Post v. U. S. (1905) 135 Fed. 1, 67 C. C. A. 569, 70 L. R. A. 989, rehearing denied (1905) 135 Fed. 1022, 67 C. C. A. 679, 70 L. R. A. 989.

Where, in a prosecution for fraudulent use of the mails in furtherance of a scheme to defraud by mental healing, certain witnesses testified that they were treated for diseases and helped by defendant through emanations of her mind, while they were totally ignorant of defendant's acts and doings, such phenomena being contrary to nature and not explainable under any natural principle or known laws, this evidence might be rejected by the jury, though uncontradicted. Id.

On the trial of a defendant charged, under R. S. § 5480 (embodied herein), with using the mails to effect a scheme or artifice to defraud, where it is shown that defendant published advertisements and sent out circulars and letters offering to impart to persons communicating with him, in return for money sent him, instructions as to how they could acquire occult and supernatural powers, the question for the jury to determine is, not whether or not it was possible for him to impart such information, but whether he honestly and in good faith intended to do so, and upon such determination the question whether he believed himself able to do so is material. U. S. v. White (D. C. 1906) 150 Fed. 379.

See note ante as, to "Consolidation of indictments for trial."

27. Sentence and punishment.—A single sentence on conviction under several indictments for several offenses committed within the same six months, on a prosecution under R. S. § 5480 (embodied herein), for fraudulent use of the mails, need not be limited to the sentence prescribed for one offense by that section, since the provisions which authorize the join of three offenses in one indictment, the imposition of a single sente therefor, do not have the effect making all the offenses commi within six months amount to a si continuing offense. Ex parte De B (1900) 21 Sup. Ct. 110, 112, 179 U 316, 45 L. Ed. 207.

R. S. § 5480 (embodied herein), vides that the indictment, informat or complaint in a prosecution for ing the post office for a scheme to fraud may severally charge three fenses when committed within months, and requires a single sente to be given in such case. Held, the consolidation of eight indictm charging separate offenses did not, der this provision, in effect make one case and one indictment, so the court could pronounce but sentence upon a conviction in the solidated cases. Howard v. U. (1896) 75 Fed. 986, 21 C. C. A. 58 L. R. A. 509.

Nor does such provision require there shall be but one punishment all the offenses of this character mitted by a person within six mo Id.

An indictment under R. S. § (embodied herein), may be frame as to cover three offenses commi within the same six calendar mo but the court must give a single tence, and this section is not to be strued as limiting the number of fenses for which indictments ma returned within the period of six endar months, but the number of fenses which may be joined in same indictment when committed in that period. De Bara v. U (1900) 99 Fed. 942, 945, 40 C. C 194.

The consolidation of three in ments, each charging a separate fense of using the mails to defraud committed in the same six mo does not on conviction of all the fenses, prevent a sentence for eac them, under R. S. § 5480 (emb herein), providing that an indict may charge three such offenses mitted in the same six months, bu court thereon shall give a single tence. Hanley v. U. S. (1903) Fed. 944, 61 C. C. A. 668, gra rehearing (1903) 123 Fed. 849, 5 C. A. 153, and judgment reverse rehearing (1904) 127 Fed. 929, 6 C. A. 561, writ of certiorari d (1904) 24 Sup. Ct. 858, 194 U. S. 48 L. Ed. 1160.

Where three indictments, each c ing a single offense under R. S. (embodied herein), were consoli as authorized by R. S. § 1024, an 1690, and defendant was convicte the three offenses committed w the same six calendar months, court was entitled to sentence th fendant, in its discretion, to the

of the penalty provided for
ense. Id.
ence to imprisonment at "hard
erroneous because of the use
quoted words, and it will be
by striking them out. Dow-
. S. (1912) 193 Fed. 1020, 113
667.
le sentence for several offenses
ed within the same six calen-
ths, and charged in the same
nt, may exceed the maximum
ent prescribed for a single
under R. S. § 5480 (embodied
Hyde v. U. S. (1912) 198
, 119 C. C. A. 493.
lant was indicted for using the
defraud, under two indict-
One indictment charged two,
other three, offenses, and the
ffenses occurred within a pe-
ix months. Being found guilty
oth indictments, the court sen-
him to six months' imprison-
der each conviction, the terms
oncurrently. On a petition for
corpus, held that, under R. S.
(embodied herein), which pro-
at "the indictment may sev-
arge offenses to the number of
ommitted within the same six
months, but the court there-
ll give a single sentence," even
that a conviction could only
for three offenses in each six
one of the indictments, with
iction under it, was valid, and
ndant was not entitled to the
n re Haynes (C. C. 1887) 30
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R. S. § 5480 (embodied here-
ing it a criminal offense to de-
letter in a post office for the
of executing a scheme to de-
he provision that "the indict-
formation, or complaint may
charge offenses to the num-
three when committed within
six calendar months; but the
all thereupon give a single sen-
* *" does not prevent the
in one indictment of counts
offenses in different periods
months, nor the imposition of
on each of such counts in case
ction thereon. U. S. v. Mc-
(C. C. 1908) 164 Fed. 894.
view.—The federal Supreme
s no jurisdiction to review an
a federal district court per-
the entry of a nolle prosequi
dictment for violating R. S. §
nbodied herein), punishing the
of letters through the mails
ent to defraud, where no new
nt has been returned within
ars from the date of the com-
of the alleged offense, or, if
, is not still pending, since,
e circumstances, the case has
merely a moot one. Lewis v.
910) 30 Sup. Ct. 438, 439, 216
1, 54 L. Ed. 637.
gment of a federal district
court sustaining a demurrer to an indictment under this section for placing a letter in the post office for delivery by the post office establishment for the purpose of executing a scheme to defraud, cannot be reviewed in the Supreme Court by writ of error, where it does not appear from the record upon what ground the court below acted. U. S. v. Moist (1914) 34 Sup. Ct. 255, 231 U. S. 701, 58 L. Ed. 444.

The use of the mails for promoting a scheme to defraud being punishable by imprisonment in a state penitentiary not exceeding 18 months (R. S. § 5480 [embodied herein]), is an "infamous crime;" hence a conviction thereof is reviewable on error in the supreme court, and not in the circuit court of appeals. Judiciary Act March 3, 1891, §§ 5, 6. Stokes v. U. S. (1894) 60 Fed. 597, 9 C. C. A. 152.

Where an indictment for misuse of the mails in furtherance of a scheme to defraud alleged that the representations made by letters, circulars, etc., sent through the mails, were utterly false and untrue in fact, and were known by defendant and his accomplice to be so, and it did not appear that defendant made any objection to the introduction of evidence on such branch of the case, he could not object for the first time on appeal that the indictment did not negative the truth of the representations alleged, on the ground that the allegations made were mere conclusions of law. Ewing v. U. S. (1905) 136 Fed. 53, 69 C. C. A. 61.

29. Conspiracy.—An indictment for conspiracy to use the mails to defraud, in violation of this section, held sufficient. Robinson v. U. S. (1909) 172 Fed. 105, 96 C. C. A. 307; Ex parte King (D. C. 1912) 200 Fed. 622.

An indictment for conspiracy to defraud through the mails, under this section, which alleges that defendants conspired in devising a scheme to defraud certain persons, to be carried out by each of the defendants representing himself as a merchant, and using, in correspondence, paper with his pretended business printed thereon; defendants mutually to represent each other, to the persons intended to be defrauded, to be entitled to credit; the scheme to be further effected by ordering merchandise from said persons, having no intention to pay for it, but intending to convert it to the use of each and of each other,—states with sufficient clearness the first charge requisite under the section, namely, that the persons charged devised a scheme to defraud. Stokes v. U. S. (1895) 15 Sup. Ct. 617, 619, 157 U. S. 187, 39 L. Ed. 667.

The second requisite of such an indictment, namely, a charge that defendants intended to effect the scheme by opening correspondence with some other person through the post-office de-

partment, or by inciting such other person to open communication with them, is sufficiently complied with by an allegation that the post-office establishment of the United States was to be used for the purpose of executing such scheme to defraud, pursuant to said conspiracy, by opening correspondence with said persons, and by inciting said persons to open correspondence with defendants by means of said post-office establishment. Id.

Such allegations, together with allegations that, for the further purpose of executing said conspiracy to defraud, S. (one of defendants) did deposit in the post office at O. a letter addressed to R., at B., ordering merchandise from him, which letter was inclosed in an envelope deposited in the post office at O., as aforesaid, to be conveyed by the post-office establishment to R.; that the letter contained a check on M., a banker, for the amount of the merchandise ordered, payable to R.; that S. never had any funds deposited with M., but the sending of the check was pursuant to the conspiracy, a scheme to defraud R. of his merchandise by not paying, and intending not to pay, therefor, but to convert the same to the use of S. and the other defendants,—sufficiently charge the offense. Id.

Where an indictment under this section for conspiracy to defraud through the mails, charged as one of the acts in furtherance of the conspiracy that B. deposited in the post office a letter addressed to D., applying for an agency to sell its shoes, and ordering shoes, railroad waybills showing a shipment of the shoes by D., and an order by B. to a freight agent to deliver his freight to a certain person are admissible. Id.

The exact place of the formation of a conspiracy to use the mails to defraud, denounced by this section, need not be stated in the indictment which lays the venue in the place where an overt act was committed. Brown v. Elliott (1912) 32 Sup. Ct. 812, 225 U. S. 392, 56 L. Ed. 1136.

An indictment for conspiracy to defraud by the use of the mails, in violation of this section, is not bad for repugnancy because it charges in the same count that defendant conspired to defraud "by dealing and pretending to deal" in what is commonly called "green articles" and "spurious Treasury notes." Lehman v. U. S. (1903) 127 Fed. 41, 61 C. C. A. 577.

A conviction of conspiracy to defraud by pretending to deal in what is commonly called "green articles" and "spurious treasury notes," to be accomplished by the use of the mails in violation of this section held sustained by the evidence. Id.

An allegation of an indictment that a part of a scheme to defraud, which the defendants conspired to devise, was that the scheme "was to be effected" by opening correspondence by means mails with unknown persons, is ficient averment of an intent accused to use the mails to their scheme. Miller v. U. S. 133 Fed. 337, 66 C. C. A. 399.

It is not a valid objection to dictment charging accused with c ing to defraud persons unknown grand jury that it shows on it that defendants were also guilty offense, with which they are not ed in the indictment, of conspi defraud persons known to the jury. Id.

An indictment charging accuse conspiring to devise a scheme fraud persons unknown to the jury is not insufficient becaus names are not stated in the indic if it contains a true averment th are unknown. Id.

Where accused and others co to further a scheme to defraud t the Post Office Department, each act of mailing a letter pursuant t scheme or withdrawing a letter the post office warranted a cha conspiracy to commit such offe that an indictment therefor wou shield from a subsequent indictm another conspiracy of the same to commit another and addition fense, though of the same kind. cis v. U. S. (1907) 152 Fed. 155 C. C. A. 407, modifying judgment U Francis (D. C. 1906) 144 Fed. 5 writ of certiorari denied (19 Sup. Ct. 797, 206 U. S. 565, 51 1191.

Facts showing a conspiracy fraud, an intention to defraud, an tion to use the mails as a part scheme, the use of the mails f purpose, and the scheme itse essential to a valid indictment R. S. § 5440, ante, § 10201, to the offense described by R. S. (embodied herein), and must be in the indictment. Cohen v. (1907) 157 Fed. 651, 85 C. C. writ of certiorari denied (19 Sup. Ct. 261, 207 U. S. 596, 52 357.

While in an indictment, under 5440, ante, § 10201, for a conspi use the mails to defraud, a fra purpose must be averred and and where a purpose to defra jointly is charged, it must be pr laid, where the sending of individ ters to parties named is charged ferent counts, an averment in terms of an intent to defraud the ties does not necessarily impo the conspiracy contemplated a j frauding of the whole number the parties not being jointly int in the property which it was t to secure. Marrin v. U. S. (19 Fed. 951, 93 C. C. A. 351, a judgment U. S. v. Marrin (D. C 159 Fed. 767, writ of certiorari

32 Sup. Ct. 523, 223 U. S. 719, 3d. 629.

ise of the mails in a scheme to is made a crime by this sec- d it is the depositing in or the out of a letter pursuant to such that constitutes the offense, onspiracy to commit the offense nfederating together of two or ersons to carry out a scheme of nd in that way. Id.

ndictment, under R. S. § 5440, 10201, for conspiracy to commit se under R. S. § 5480, as amend- ct March 2, 1889, § 1 (embodied , by devising a scheme to de- tended to be carried out by the he mails, must charge a conspir- commit acts which, if committed, constitute an offense under the section; but it need not charge ely that defendants specifically ed to commit each element of the McConkey v. U. S. (1909) 171 9, 96 C. C. A. 501.

ndictment, under R. S. § 5440, 10201, for conspiracy to use the defraud, in violation of R. S. § amended by Act March 2, 1889, nbodied herein), considered, and sufficiently describe the offense defendants conspired to commit.

certain persons combine to per- ertain acts, and some of them with others engaged in total- rent acts, though all may have r general purpose in view, it is r to join them in an indictment spiracy. Wilson v. U. S. (1911) 1. 427, 111 C. C. A. 231.

e there was evidence of the formation of a single joint con- among the defendants to sell ck of a corporation by false and ent representations and of an community of interests and plan in which all the defendants ated, to a greater or less de- hey were not improperly joined indictment because they later agencies to sell the stock in t parts of the country, though f the defendants profited from ncy, some from another, and one th. Id.

r R. S. § 5480 (embodied herein), five persons were joined in six ents, the five for fraudulent use nails under such section, and one spiracy under R. S. § 5440, ante, 1, the fact that the conspiracy ent charged conspiracy against fendants and divers persons un- did not prevent its consolidation he others. Emanuel v. U. S. 196 Fed. 317, 116 C. C. A. 137.

ndictment for conspiracy to de- y use of the post office establish- eld not defective for failing to that it was part of the conspir- place or cause to be placed letters and circulars in the United States post office. Id.

On a trial for participation in a conspiracy to use the mails to defraud, error in admitting an instrument containing positive averments of facts tending to establish accused's guilt cannot be disregarded as nonprejudicial. Todd v. U. S. (1915) 221 Fed. 205, 136 C. C. A. 615.

To establish conspiracy under section 10201, ante, to commit violation of this section, punishing the use of mails to promote frauds, the government must prove an intent to defraud and a defrauding by use of the mails. Id.

Intent of defendants, charged under section 10201, ante, with conspiracy to violate this section by use of mails to promote frauds, may be shown by circumstantial evidence. Farmer v. U. S. (1915) 223 Fed. 903, 139 C. C. A. 341.

Evidence held not to sustain a conviction of a conspiracy under section 10201, ante, to violate this section, punishing the use of mails to promote frauds. Id.

A conspiracy to defraud an individual, even though the mails be made use of for the purpose, does not fall within the terms of section 5440, R. S., section 10201, ante. What is there provided for is a conspiracy of two or more either to commit an offense against the United States or to defraud it. U. S. v. Clark (D. C. 1902) 121 Fed. 190.

A conspiracy to defraud an individual, even though the mails be made use of for the purpose, does not fall within the terms of R. S. § 5440, ante, § 10201. What is there provided for is a conspiracy of two or more either to commit an offense against the United States or to defraud it. U. S. v. Clark (D. C. 1903) 121 Fed. 190.

Where, in a prosecution for conspiracy to use the mails in furtherance of a scheme to defraud, in violation of this section, the government established a prima facie case of conspiracy, it was then properly permitted to show all relevant declarations of the co-conspirators made in furtherance of the conspiracy, though in defendant's absence. U. S. v. Francis (D. C. 1906) 144 Fed. 520, judgment modified Francis v. U. S. (1907) 152 Fed. 155, 81 C. C. A. 407, writ of certiorari denied (1907) 27 Sup. Ct. 797, 206 U. S. 565, 51 L. Ed. 1191.

Where, in a trial for conspiring to use the mails in carrying out a scheme to defraud, on an indictment charging a scheme to defraud named persons and others whose names were unknown to grand inquest, there was no showing that any other persons than those named were known to the grand inquest, it must be presumed on writ of error that the indictment in this regard truthfully states the fact. U. S. v. Marrin (D. C. 1908) 159 Fed. 767, judg-

ment affirmed Marrin v. U. S. (1909) 167 Fed. 951, 93 C. C. A. 351, writ of certiorari denied (1911) 32 Sup. Ct. 523, 223 U. S. 719, 56 L. Ed. 629.

In a trial for conspiring to use the mails in carrying out a scheme to defraud, the cashbook, checks, and entries of cash in defendant's deposit book in a trust company, made during the continuance of the scheme, were properly admitted to show the conspiracy. Id.

In an indictment for conspiring to use the mails to carry out a scheme to defraud, under R. S. § 5440, ante, § 10201, making it an offense against the United States, and under R. S. § 5480 (embodied herein), making it an offense to use the mails to carry out a scheme to defraud, the names of as many persons defendant planned to defraud may be used in the indictment as the pleader may know, and all mail connected with the scheme, shown to have passed through the post office to any person whether named in the indictment or not, is evidence upon the question of the existence of the scheme. Id.

Where one was tried for conspiring to use the mails to carry out a scheme to defraud, under R. S. § 5440, ante, § 10201, making it an offense to conspire to commit an offense against the United States, and under R. S. § 5480 (embodied herein), making it an offense to use the mails to carry out a scheme to defraud, it was sufficient for the government to show that written or printed matter about the scheme charged was mailed to one of the three persons named in the indictment as the persons defendant planned to defraud, and that copies of the same printed matter were sent through the mails to a mailing list throughout the United States. Id.

To constitute an indictable conspiracy there must be some overt act, which must tend to carry out the object of the conspiracy, or in some way effectuate it, and if the conspiracy ceases without an overt act it would not constitute an offense, though when consummated it is the conspiracy rather than the overt act which constitutes the crime. U. S. v. McLaughlin (D. C. 1908) 169 Fed. 302.

Where defendants were charged with having conspired to defraud several corporations engaged in selling merchandise, etc., by mail, by means of catalogues, and it was alleged that the scheme to defraud was to be effected by the use of the post office by soliciting from such corporations catalogues and samples requesting price lists and estimates on spurious bills of lumber by falsely representing that defendants were desirous of purchasing such materials, etc., letters and postal cards sent through the mails by which defendants requested catalogues, prices, samples, and estimates, but in none of which was there any represen that the signer or any of the defe intended to purchase such ma from the addressees, were insu to constitute an overt act requi make out a criminal conspiracy.

Where an indictment for cons to further a scheme to defra means of the post office establis stated an offense under R. S. § 5 was immaterial that it recited th facts showed a violation of Cr. C 215 (this section). Ex parte Ki C. 1912) 200 Fed. 622.

An indictment for conspiring fraud by use of the post office lishment held not fatally defecti cause the charging part did not that defendants conspired and di mit the offense of attempting fraud, etc. U. S. v. Maxey (D. C. 200 Fed. 997.

An indictment for conspiring fraud by means of the post offi tablishment held not fatally de because the intent to defrau charged in the description, as guished from the charging part, indictment. Id.

See, also, notes under § 10201

Cited without definite appli

Streep v. U. S. (1895) 16 Su 244, 246, 160 U. S. 128, 40 L. E Wheeler v. U. S. (1913) 33 S 158, 226 U. S. 478, 57 L. Ed. 3 S. v. Arnold (1897) 82 Fed. 7 C. C. A. 342; Hoeffner v. U. S. 87 Fed. 185, 30 C. C. A. 610 Donnell v. U. S. (1904) 133 Fed. C. C. A. 671; Demolli v. U. S. 144 Fed. 363, 75 C. C. A. 365, 6 A. (N. S.) 424 (dissenting op Harris v. Rosenberger (1906) 14 449, 76 C. C. A. 225, 13 L. R. S.) 762 (writ of certiorari denied 27 Sup. Ct. 778, 203 U. S. 591, 51 331); Walsh v. U. S. (1909) 17 615, 98 C. C. A. 461 (certiorari [1910] 30 Sup. Ct. 409, 215 U. 54 L. Ed. 347); Waller v. U. S. 179 Fed. 810, 103 C. C. A. 302, R. A. (N. S.) 113; Register v. (1911) 186 Fed. 624, 108 C. C. Franklin v. U. S. (1912) 193 Fe 113 C. C. A. 258; Stanley v. (1912) 195 Fed. 896, 115 C. C. In re Cain (1913) 209 Fed. 4 C. C. A. 182; U. S. v. Hugge C. 1889) 40 Fed. 636, 642; In re son (C. C. 1893) 58 Fed. 962, 97 versed [1895] 70 Fed. 591, 17 A. 293); Rosenberger v. Harris 1905) 136 Fed. 1001, 1004 (re [1906] 145 Fed. 449, 76 C. C. 13 L. R. A. [N. S.] 762, certior nied [1906] 27 Sup. Ct. 778, 203 591, 51 L. Ed. 331); U. S. v. T (D. C. 1886) 27 Fed. 682, 683; U McMillan (D. C. 1886) 29 Fed U. S. v. Haynes (D. C. 1887) 2 691.

386. (Crim. Code, § 216.) Using fraudulent fictitious address; punishment for.

hoever, for the purpose of conducting, promoting, or carrying n any manner, by means of the post-office establishment of the ed States, any scheme or device mentioned in the section last eding or any other unlawful business whatsoever, shall use or ne, or request to be addressed by, any fictitious, false, or assumed name, or address, or name other than his own proper name, or shall or receive from any post-office of the United States, or station of, or any other authorized depository of mail matter, any let- postal card, package, or other mail matter addressed to any such ous, false, or assumed title, name, or address, or name other than wn proper name, shall be punished as provided in the section last ding.

Act March 2, 1889, c. 393, § 2, 25 Stat. 873. Act March 4, 1909, c. 321, § 6, 35 Stat. 1131.

Notes of Decisions

ery business.—Act March 2, 1889, § 2, and R. S. § 3894, as amend- Act Sept. 19, 1890 (ante, §), forbidding the use of the mails rying on or promoting the lot- usiness, construed in pari ma- plainly show the intent of con- to make the use of the mails to on or promote the lottery busi- nder an assumed name a crimi- ense. MacDaniel v. U. S. (1898) d. 324, 30 C. C. A. 670, certiorari (1898) 19 Sup. Ct. 885, 171 U. 43 L. Ed. 1179.

ng real person to carry out e to defraud.—Under an indict- under R. S. § 5480, as amended t March 2, 1889, § 2 (ante, §), for using a false, fictitious, or ed name in carrying out a scheme raud by the use of the mails, de- t could not be convicted of aid- real person of that name in car- out such a scheme. Tingle v. U. 98) 87 Fed. 320, 30 C. C. A. 666.

ctment.—Act March 2, 1889, by rst section amends R. S. § 5480 § 10385), relating to the use mails for the purpose of car- out a scheme or artifice to defraud, etc. Section 2 provides that "any person who, in and for conducting, promoting, or carrying on, in any manner by means of the post office establishment of the United States, any scheme or device mentioned in the preceding section * * * shall use or assume * * * any fictitious, false, or assumed title, name, or address, * * * or name other than his own * * * proper name, shall, upon conviction, be punishable as provided in the first section of the act." Held, that an indictment under said section 2 must set out facts constituting a scheme or device to defraud as fully as required under section 1. U. S. v. Etheredge (C. C. 1905) 140 Fed. 376.

The charge of such an unexecuted scheme is not a sufficient allegation that defendant was engaged in an unlawful business to bring the assumption and use of and request to be addressed by a fictitious name, within R. S. § 5480, subsec. 2, ante, § 10385, and make it an offense. U. S. v. Smith (D. C. 1891) 45 Fed. 561.

Cited without definite application, Smith v. U. S. (1913) 208 Fed. 131, 125 C. C. A. 353.

387. (Crim. Code, § 217.) Poisons, explosives, etc., not mailable; packing permitted; intoxicating liquors; punishment for mailing; mailing articles with injurious intent; punishment for.

l kinds of poison, and all articles and compositions containing on, and all poisonous animals, insects, and reptiles, and ex- ves of all kinds, and inflammable materials, and infernal ma- s, and mechanical, chemical, or other devices or compositions h may ignite or explode, and all disease germs or scabs, and all natural or artificial articles, compositions, or materials of what- kind which may kill, or in any wise hurt, harm, or injure another, amage, deface, or otherwise injure the mails or other property, her sealed as first-class matter or not, are hereby declared to be nailable matter, and shall not be conveyed in the mails or delivered any post-office or station thereof, nor by any letter carrier; but Postmaster-General may permit the transmission in the mails, un- such rules and regulations as he shall prescribe as to preparation packing, of any articles hereinbefore described which are not

outwardly or of their own force dangerous or injurious to life, hea or property: Provided, That all spirituous, vinous, malted, fermen or other intoxicating liquors of any kind, are hereby declared to nonmailable and shall not be deposited in or carried through the ma Whoever shall knowingly deposit or cause to be deposited for mai or delivery, or shall knowingly cause to be delivered by mail accord to the direction thereon, or at any place at which it is directed to delivered by the person to whom it is addressed, anything decla by this section to be nonmailable, unless in accordance with the r and regulations hereby authorized to be prescribed by the Postmas General, shall be fined not more than one thousand dollars, or imp oned not more than two years, or both; and whoever shall knowin deposit or cause to be deposited for mailing or delivery, or shall kn ingly cause to be delivered by mail according to the direction th on, or at any place to which it is directed to be delivered by the per to whom it is addressed, anything declared by this section to be n mailable, whether transmitted in accordance with the rules and reg tions authorized to be prescribed by the Postmaster-General or with the design, intent, or purpose to kill, or in anywise hurt, harm injure another, or damage, deface, or otherwise injure the mails other property, shall be fined not more than five thousand dollars imprisoned not more than ten years, or both.

Act March 4, 1909, c. 321, § 217, 35 Stat. 1131.

The mailing of packages containing any plant or plant product into a maintaining terminal inspection thereof, without marking the contents of package on the outside, was prohibited by Act March 4, 1915, c. 144, an 8764b.

Notes of Decisions

Indictment.—Where an indictment for violating the postal regulations regulating the mailing of poisonous compositions was insufficient because the regulation was void, the indictment could not be sustained as charging a violation of this section. Bruce v. U. S. (1912) 202 Fed. 98, 120 C. C. A. 370.

Validity of post office department order.—Under this section Post Office Department Order No. 2,923, pro gated February 23, 1910, prohib the mailing of poisonous composi except for transmission in the dom mails from manufacturer or deale licensed physicians, surgeons, pha cists, and dentists, held invalid, as yond the jurisdiction of the Post ter General. Bruce v. U. S. (1912) Fed. 98, 120 C. C. A. 370.

§ 10388. (Crim. Code, § 218.) Counterfeiting, etc., money ord punishment for.

Whoever, with intent to defraud, shall falsely make, forge, co terfeit, engrave, or print, or cause or procure to be falsely m forged, counterfeited, engraved, or printed, or shall willingly aid assist in falsely making, forging, counterfeiting, engraving, or pr ing, any order in imitation of or purporting to be a money order sued by the Post-Office Department, or by any postmaster or a thereof; or whoever shall forge or counterfeit the signature of postmaster, assistant postmaster, chief clerk, or clerk, upon or to money order, or postal note, or blank therefor provided or issued or under the direction of the Post-Office Department of the Un States, or of any foreign country, and payable in the United States any material signature or indorsement thereon, or any material nature to any receipt or certificate of identification thereon; or s falsely alter, or cause or procure to be falsely altered in any mat respect, or knowingly aid or assist in falsely so altering any such m ey order or postal note; or shall, with intent to defraud, pass, utter publish any such forged or altered money order or postal note, kn ing any material signature or indorsement thereon to be false, for or counterfeited, or any material alteration therein to have been fal made; or shall issue any money order or postal note without ha previously received or paid the full amount of money payable there

ıe purpose of fraudulently obtaining or receiving, or fraudulent-
bling any other person, either directly or indirectly, to obtain
eive from the United States, or any officer, employee, or agent
f, any sum of money whatever; or shall, with intent to defraud
ıited States, or any person, transmit or present to, or cause or
e to be transmitted or presented to, any officer or employee, or
office of the Government of the United States, any money order
tal note, knowing the same to contain any forged or counterfeited
ıre to the same, or to any material indorsement, receipt, or cer-
thereon, or material alteration therein unlawfully made, or to
een unlawfully issued without previous payment of the amount
ed to be paid upon such issue, shall be fined not more than five
nd dollars, or imprisoned not more than five years, or both.

. S. § 5463, as amended, Act Jan. 3, 1887, c. 13, § 2, 24 Stat. 355. Act June 1888, c. 394, § 2, 25 Stat. 187. Act March 4, 1909, c. 321, § 218, 35 Stat. 1.

Notes of Decisions

ry in general.—One may be of forgery if he fraudulently is name, although it is identical e name of the person who should igned. U. S. v. Long (C. C. 30 Fed. 678.

t to defraud.—In order to find ent to defraud a particular per- is not necessary that there be evidence to show that the l had that particular person in plation at the time of the for- It is sufficient if the forgery have the effect of defrauding U. S. v. Long (C. C. 1887) 30 78.

rsonation of payee.—If accused represents himself to be the of a money order, it is a cir- nce tending to impeach his good ınd such misrepresentation may vell effected by acts as by words. f he presents himself before the official, and, presenting the or- gns it as if he were the person ıom it was intended, he as well ls as if he had declared himself the payee. U. S. v. Long (C. C. 30 Fed. 678.

ery at common law and under ıtute.—The postmaster at Lewis- aho, issued a postal money order application of a fictitious person, ıt consideration therefor, pay- a certain bank, to which he at me time wrote in the name of erson, directing that the amount order be collected and remitted at Pierce City, in a registered e, which he intercepted as it through his office, and convert- contents to his own use. Held, ıe act of the postmaster consti- forgery, both at common law and the statute of the United States. § 5463, post, § 10388. Ex parte (D. C. 1886) 26 Fed. 421.

ıer conviction as a bar to in- ıt.—Where accused was indicted, ted, and fined for issuing money in violation of section 10380, such conviction was no bar to a subsequent indictment for issuing the same orders in violation of this section. U. S. v. Komie (D. C. 1912) 194 Fed. 567.

Indictment.—Though separate instruments were forged by accused on the same date and as part of the same general transaction, the forgery of each is a separate offense punishable on a separate indictment or count. U. S. v. Carpenter (1907) 151 Fed. 214, 81 C. C. A. 194, 9 L. R. A. (N. S.) 1043, 10 Ann. Cas. 509.

Less nicety in the form of the indictment is required in the prosecution of offenses under the postal laws than is required in cases of felonies in England. U. S. v. Lancaster (C. C. 1841) Fed. Cas. No. 15,556.

An indictment against a carrier of the mail for an offense under the law, punishable generally, will sustain a conviction, the word "carrier" being stricken out as surplusage. U. S. v. Burroughs (C. C. 1844) Fed. Cas. No. 14,-695.

An indictment under R. S. § 5463, post, § 10388, charging a person with forging a material indorsement on a post-office money order, with intent to defraud a person named, is sufficient. U. S. v. Morris (C. C. 1879) Fed. Cas. No. 15,813.

The rule which requires as a setting out of an entire instrument or its tenor in an indictment in the federal courts is limited mainly, if not wholly, to cases of forgery, counterfeiting, and sending threatening letters. U. S. v. Heinze (C. C. 1908) 161 Fed. 425.

An indictment for forging "a United States postal money order for" a certain sum, of a certain number and date, procured at a certain place, and payable at a certain place, to a certain person, did not sufficiently show the substantial parts of the order, no copy being set out. Pierce v. State (1898) 44 S. W. 292, 38 Tex. Cr. R. 604.

Cited without definite application, U. S. v. Crecilius (D. C. 1888) 34 Fed. 30, 32; U. S. v. Lehman (D. C. 1889) 39 Fed. 768, 770.

§ 10389. (Crim. Code, § 219.) Counterfeiting, etc., postage stam punishment for.

Whoever shall forge or counterfeit any postage stamp, or stamp printed upon any stamped envelope, or postal card, or die, plate, or engraving therefor; or shall make or print, or know ly use or sell, or have in possession with intent to use or sell, any forged or counterfeited postage stamp, stamped envelope, postal c die, plate, or engraving; or shall make, or knowingly use or sell have in possession with intent to use or sell, any paper bearing watermark of any stamped envelope, or postal card, or any fraudu imitation thereof; or shall make or print, or authorize or procure t made or printed, any postage stamp, stamped envelope, or postal c of the kind authorized and provided by the Post-Office Departm without the special authority and direction of said department shall, after such postage stamp, stamped envelope, or postal card been printed, with intent to defraud, deliver the same to any pe not authorized by an instrument in writing, duly executed under hand of the Postmaster-General and the seal of the Post-Office partment, to receive it, shall be fined not more than five hundred lars, or imprisoned not more than five years, or both.

R. S. § 5464. Act March 4, 1909, c. 321, § 219, 35 Stat. 1132.

Cited without definite application.
U. S. v. Coppersmith (C. C. 1880) 4 Fed. 198, 208.

§ 10390. (Crim. Code, § 220.) Counterfeiting, etc., foreign stan punishment for.

Whoever shall forge, or counterfeit, or knowingly utter or any forged or counterfeited postage stamp of any foreign gov ment, shall be fined not more than five hundred dollars, or prisoned not more than five years, or both.

R. S. § 5465. Act March 4, 1909, c. 321, § 220, 35 Stat. 1132.

§ 10391. (Crim. Code, § 221.) Inclosing higher in lower class m ter; punishment for.

Matter of the second, third, or fourth class containing any w ing or printing in addition to the original matter, other than authorized by law, shall not be admitted to the mails, nor delive except upon payment of postage for matter of the first class, ded ing therefrom any amount which may have been prepaid by sta affixed, unless by direction of the Postmaster-General such pos shall be remitted. Whoever shall knowingly conceal or inclose matter of a higher class in that of a lower class, and deposit or c the same to be deposited for conveyance by mail, at a less rate would be charged for such higher class matter, shall be fined not m than one hundred dollars.

R. S. § 3887. Act Jan. 20, 1888, c. 2, § 2, 25 Stat. 2. Act March 4, c. 321, § 221, 35 Stat. 1132.

Notes of Decisions

See notes under § 10381, ante.

§ 10392. (Crim. Code, § 222.) Postmaster illegally appro bond, etc.; punishment for.

Whoever, being a postmaster, shall affix his signature to approval of any bond of a bidder, or to the certificate of suffici of sureties in any contract, before the said bond or contract is sig by the bidder or contractor and his sureties, or shall knowingly without the exercise of due diligence, approve any bond of a bi with insufficient sureties, or shall knowingly make any false or fra lent certificate, shall be forthwith dismissed from office and be th after disqualified from holding the office of postmaster; and shall

ed not more than five thousand dollars, or imprisoned not more one year, or both.

R. S. § 3947. Act June 23, 1874, c. 456, § 12, 18 Stat. 235. Act March 4, 09, c. 321, § 222, 35 Stat. 1133.

393. (Crim. Code, § 223.) Submitting false evidence as to econd-class matter; punishment for.

hoever shall knowingly submit or cause to be submitted to postmaster or to the Post-Office Department or any officer of ostal service, any false evidence relative to any publication for urpose of securing the admission thereof at the second-class rate, ransportation in the mails, shall be fined not more than five hundollars.

Act March 3, 1879, c. 180, § 13, 20 Stat. 359, as amended, Act June 18, 1888, 394, § 1, 25 Stat. 187, and Act March 2, 1905, c. 1304, 33 Stat. 823. Act arch 4, 1909, c. 321, § 223, 35 Stat. 1133.

Notes of Decisions

lew by courts of questions deter- by executive department.—Conhaving declared that certain kinds nted matter shall be nonmailable, at the mails shall not be used to plish fraudulent schemes, whethtain mail matter belongs to the ited class, or whether a person is in fact making a fraudulent use of the mails, is within the jurisdiction of the executive branch of the government, the determination of which is not reviewable by the courts if sustained by any credible evidence. Missouri Drug Co. v. Wyman (C. C. 1904) 129 Fed. 623.

394. (Crim. Code, § 224.) Inducing or prosecuting false claims or losses; punishment for.

hoever shall make, allege, or present, or cause to be made, ed, or presented, or assist, aid, or abet in making, alleging, esenting, any claim or application for indemnity for the loss of egistered letter, parcel, package, or other article or matter, or ontents thereof, knowing such claim or application to be false, ous, or fraudulent; or whoever for the purpose of obtaining or g to obtain the payment or approval of any such claim or applicashall make or use, or cause to be made or used, any false state, certificate, affidavit, or deposition; or whoever shall knowingly willfully misrepresent, or misstate, or, for the purpose aforesaid knowingly and willfully conceal any material fact or circumstance spect of any such claim or application for indemnity, shall be fined nore than five hundred dollars, or imprisoned not more than one or both.

Act March 4, 1909, c. 321, § 224, 35 Stat. 1133.

395. (Crim. Code, § 225.) Misappropriating postal funds or property; punishment for; prima facie evidence; deposits, etc., permitted.

hoever, being a postmaster or other person employed in or con- d with any branch of the postal service, shall loan, use, pledge, thecate, or convert to his own use, or shall deposit in any or exchange for other funds or property, except as authorized w, any money or property coming into his hands or under his con- n any manner whatever, in the execution or under color of his , employment, or service, whether the same shall be the money operty of the United States or not; or shall fail or refuse to re- o or deposit in the Treasury of the United States or in a desig- l depository, or to account for or turn over to the proper officer or , any such money or property, when required so to do by law or egulations of the Post-Office Department, or upon demand or of the Postmaster-General, either directly or through a duly au- zed officer or agent, shall be deemed guilty of embezzlement; and such person, as well as every other person advising or knowingly cipating therein, shall be fined in a sum equal to the amount or val-

ue of the money or property embezzled, or imprisoned not more
ten years, or both. Any failure to produce or to pay over any
money or property, when required so to do as above provided,
be taken to be prima facie evidence of such embezzlement; and
on the trial of any indictment against any person for such embe
ment, it shall be prima facie evidence of a balance against him to
duce a transcript from the account books of the Auditor for the
Office Department. But nothing herein shall be construed to pro
any postmaster depositing, under the direction of the Postmaster-
eral, in a national bank designated by the Secretary of the Trea
for that purpose, to his own credit as postmaster, any funds in
charge, nor prevent his negotiating drafts or other evidences of
through such bank, or through United States disbursing officers
otherwise, when instructed or required so to do by the Postmas
General, for the purpose of remitting surplus funds from one
office to another.

R. S. §§ 4046, 4053. Act March 4, 1909, c. 321, § 225, 35 Stat. 1133.

Notes of Decisions

1. Constitutionality.
2. Embezzlement by postmaster or clerk in general.
3. Embezzlement by clerk in charge of branch post office station.
4. Post office clerk as "public officer" within meaning of former law.
5. Embezzlement of money order funds by carrier.
6. Former jeopardy.
7. Indictment.
8. Evidence.
9. Verdict, sentence, and punishment.
10. Amnesty of crimes committed in Cuba during military occupation thereof.

1. Constitutionality.—R. S. § 4046, post, § 10395, providing that on trial for an indictment for embezzlement of money-order funds a transcript from the money-order account books of the sixth auditor shall be prima facie evidence of a balance due, is not in violation of Const. Amend. 6, providing that in all criminal cases the accused shall enjoy the right to be confronted with the witnesses against him. U. S. v. Swan (N. M. 1893) 34 Pac. 533.

2. Embezzlement by postmaster or clerk in general.—That a postmaster who issued money orders without receiving the money therefor, and failed to account for such money, did not intend to defraud the government, but to collect and account for the money on his settlement, constitutes no defense to a prosecution for embezzlement of money-order funds under R. S. § 4046 (embodied herein). Vives v. U. S. (1899) 92 Fed. 355, 34 C. C. A. 403.

A postmaster who uses the money received through his office in paying his private debts, so that, upon examination, his accounts do not balance, is guilty of embezzlement (Act June 8, 1872, § 122), though he intended to replace the money, and made the same good shortly after his arrest. U. S. v. Gilbert (C. C. 1873) Fed. Cas. No. 15,-205.

Funds payable on money orders may be deemed to be intrusted to the postmaster or clerk in the sense that he is guilty of embezzlement if he con
them to his own use. U. S. v. R
(D. C. 1903) 122 Fed. 844, 845.

**3. Embezzlement by clerk in ch
of branch post office station.**—A
in charge of a branch post-office
tion, authorized to issue money o
payable at other offices or station
intrusted in his official capacity
care and custody of the funds
which he is so authorized to dra
such sense that he is guilty of em
zlement, under R. S. § 4046 (emb
herein), where he issues money o
in payment of his private debts, w
are paid to the holders from
funds. U. S. v. Royer (D. C. 1
122 Fed. 844.

**4. Post office clerk as "public off
within meaning of former law.**—A
in a post office acting as a cashier
public officer within the meaning o
penal clause of the subtreasury a
August 6, 1846 (chapter 90), and
to prosecution under it for embez
funds intrusted to him. (1853) 5
Atty. Gen. 685.

**5. Embezzlement of money
funds by carrier.**—R. S. § 4045, an
7577, defines "money order funds
consist of "all money received fo
sale of money orders, including all
thereon, all money transferred fro
postal revenues to the money
funds, all money transferred or
from the money order funds to
service of the Post Office Departm
and declares that all money order f
transferred from one postmaster t
other shall be deemed and taken
money order funds and money i
treasury of the United States. R.
4046 (embodied herein), declares
every postmaster, assistant, clerl
other person employed in or conn
with the business or operations o
money order office, who converts t
own use, in any way whatever,
portion of the "money order fu
shall be deemed guilty of embezzle

d that it shall be prima facie e of a balance against him to a transcript from the money ccount books of the Sixth Audi- The post-office regulations au- rural letter carriers to take ceipt for money from patrons of outes and to purchase and for- noney orders to the persons or ations for which they are de- Held, that money received and ed for by a rural letter carrier atrons of his route, to be used purchase and forwarding of orders, while in the possession h carrier and before surrender post office, did not constitute y order funds," for the embez- t of which the carrier could be uted under R. S. § 4046. U. S. nn (D. C. 1907) 160 Fed. 552.

ormer jeopardy.—A defendant onvicted under R. S. § 4046 (em- herein), of embezzlement as as- t postmaster. A verdict was tak- the issue of embezzlement alone, nsent, without a finding of the t embezzled; and the court sen- l defendant to imprisonment only, ut rendering judgment by way of or the amount embezzled. Held, on reversal of the judgment, and emanding of the cause for further edings, defendant must be dis- ed, since the fixing of the fine require a retrial, and place de- nt twice in jeopardy on the issue e amount embezzled. U. S. v. ruff (D. C. 1895) 68 Fed. 536, ent affirmed Kent v. U. S. (1896) d. 680, 19 C. C. A. 642.

ndictment.—Indictment of a post- r for embezzlement of post office in violation of this section, charg- at accused was a postmaster and fully and feloniously converted to own use money of the United s by virtue of his office, was not tive for failure to charge that he awful possession of the money in iciary capacity at the time of the rsion. Corbin v. U. S. (1913) Fed. 278, 125 C. C. A. 114.

indictment for embezzlement, un- R. S. § 4053 (embodied herein), ing that defendant was the clerk arge of a branch post office, and ich clerk was intrusted with the of postage stamps and stamped opes, for which he refused and cted to account, sufficiently alleg- at defendant was "intrusted by with the sale of such stamps and ped envelopes within the meaning at section, in view of R. S. § 3918, § 7399, which provides that such ps and envelopes shall be furnish- all postmasters, and shall be kept sale at all post offices. U. S. v. er (D. C. 1903) 122 Fed. 844.

indictment under R. S. § 4046 bodied herein), which provides gen- y that "every postmaster, assist- clerk or other person employed in or connected with the business or operations of any money order office who converts to his own use * * * any portion of the money order funds shall be deemed guilty of embezzlement," is not sufficient where it merely avers that defendant was a clerk employed in a money order office, and charges the offense in the language of the statute, but it must, in addition, charge that the funds converted came into his possession by virtue of his employment, which is essential to the crime of embezzlement and to differentiate it from larceny. U. S. v. Allen (D. C. 1906) 150 Fed. 152.

8. Evidence.—R. S. § 4046 (embodied herein), providing that on trial of an indictment for embezzlement of money order funds a transcript from the money order account books of the sixth auditor shall be prima facie evidence of a balance due, is not in violation of Const. Amend. 6, giving accused the right to confront the witnesses against him. U. S. v. Swan (1893) 7 N. M. 306, 34 Pac. 536.

9. Verdict, sentence, and punishment.—Where an indictment against a postmaster contained two counts, one charging him with the embezzlement of money-order funds, under R. S. § 4046 (embodied herein), and one with failing to deposit the same amount of postal revenue funds, under R. S. § 4053 (embodied herein), and the verdict found him guilty as charged, without specifying on which count, a sentence imposing the minimum sentence under either charge renders the error, if any, without prejudice to the defendant. Vives v. U. S. (1899) 92 Fed. 355, 34 C. C. A. 403.

Under R. S. § 4046 (embodied herein), limiting the fine on conviction of embezzlement to the amount embezzled, a judgment imposing a fine for an amount equal to the amount embezzled, and also the costs of the prosecution, is erroneous. Whitworth v. U. S. (1902) 114 Fed. 302, 52 C. C. A. 214.

Accused, a postmaster, was charged in one count with feloniously converting money of the United States which came into his hands by virtue of his office, and in the second count with embezzling the same amount of money. Held, that the direction of a verdict of not guilty on the second count did not preclude a conviction on the first for inconsistency. Corbin v. U. S. (1913) 205 Fed. 278, 125 C. C. A. 114.

Under R. S. § 4046 (embodied herein), declaring the embezzlement of post office money order funds a crime, and providing that one convicted thereof, shall "be imprisoned * * * and fined in a sum equal to the amount embezzled," a sentence of imprisonment, without any fine, is invalid. Woodruff v. U. S. (C. C. 1893) 58 Fed. 766.

10. Amnesty of crimes committed in Cuba during military occupation there-

of.—Act Cuban Cong. June 9, 1902, granting amnesty of crimes committed during the period of intervention by citizens of the United States, and providing that the courts shall discontinue pending proceedings against such citizens, and that the supreme tribunal shall send down and the judges of examination shall send up to the respective courts the dossiers relating to accused persons of said citizenship, applied only to the punishment for crimes committed, and did not bar an action by the United States against one of its officers, stationed in Cuba during itary occupation thereof, to rec moneys belonging to the United Sta misappropriated by such officer. U v. Neely (C. C. 1903) 126 Fed. 221

Cited without definite applicat Lewis Pub. Co. v. Wyman (1910) Fed. 13, 104 C. C. A. 453 (affir [1913] 33 Sup. Ct. 599, 228 U. S. 57 L. Ed. 989); Higgins v. U. (1911) 185 Fed. 710, 108 C. C. A. U. S. v. Young (D. C. 1885) 25 710.

§ 10396. (Crim. Code, § 226.) Employees interested in mail c tracts; punishment for.

Whoever, being a person employed in the postal service, sh become interested in any contract for carrying the mail, or act agent, with or without compensation, for any contractor or per offering to become a contractor in any business before the Dep ment, shall be immediately dismissed from office, and shall be fi not more than five thousand dollars, or imprisoned not more than year, or both.

R. S. § 412. Act March 4, 1909, c. 321, § 226, 35 Stat. 1134.

Notes of Decisions

Postal employé as agent for corporation in business before department.—An employé of the postal service who merely executes a contract with the United States, or a department thereof, on behalf of a corporation of which he is president, cannot be said to be an agent for the corporation "in any business before the department" within the meaning of this section, and a contract thus executed may be legally entered into by the Postmaster General for what are known as "printed facing slips" to be used as labels on packages of letters. (1911) 29 Op. Atty. Gen. 199.

Contract with firm member of which is an officer of the department.—See, also, notes under § 10205, ante.

R. S. § 412 (embodied herein), not prohibit the Postmaster Gen from awarding a contract for furn ing coal for his department to a firm being the lowest bidder, one of members of which is an officer of department; but if the contract one for "carrying the mail," it w be clearly within the general prohibi of that section. (1903) 24 Op. A Gen. 557.

While there is no statute forbid the Postmaster General from aw ing the contract to such a firm, h under no legal obligation to do so. the question is one of administra judgment and discretion, the Atto General is without authority or ob tion to express an opinion with erence to it. Id.

§ 10397. (Crim. Code, § 227.) Fraudulent use of official envelop penalty.

Whoever shall make use of any official envelope, label, or dorsement authorized by law, to avoid the payment of postage registry fee on his private letter, packet, package, or other ma in the mail, shall be fined not more than three hundred dollar

Act March 3, 1877, c. 103, § 5, 19 Stat. 335. Act March 3, 1879, c. 1 29, 20 Stat. 362. Act July 5, 1884, c. 234, § 3, 23 Stat. 158. Act July 2, 1 c. 611, 24 Stat. 122. Act March 4, 1909, c. 321, § 227, 35 Stat. 1134.

§ 10398. (Crim. Code, § 228.) Fraudulently increasing weigh mail; punishment for.

Whoever shall place or cause to be placed any matter in mails during the regular weighing period, for the purpose of creasing the weight of the mail, with intent to cause an increas the compensation of the railroad mail carrier over whose route s

l may pass, shall be fined not more than twenty thousand dollars, or risoned not more than five years, or both.

Act June 13, 1898, c. 446, § 1, 30 Stat. 442. Act March 4, 1909, c. 321, § 228, 35 Stat. 1134.

Notes of Decisions

nspiracy.—See, also, notes under § 1, ante.

here an indictment charged a conicy to defraud the United States ailing old newspapers for the pur- of fraudulently increasing the ht of mail matter, it was held that, ch mailing was done by defendant's ants or agents, as such, and not arties to, or members or abettors he common design, they will not be ed coconspirators, nor will such ng amount to an overt act. U. S. ewton (D. C. 1892) 52 Fed. 275.

the fraudulent mailing was comed within the judicial district charg- the indictment, it is immaterial e the alleged conspiracy was formr whether or not the parties there- r either of them, were ever within district. Id.

the trial of one indicted for conng to defraud the United States by ng old newspapers for the purpose raudulently increasing the weight ail matter, mere suspicion or bare ledge of an alleged co-conspirator that defendant was attempting to defraud the United States is not sufcient to make such person a party to the attempt, and to sustain the charge, it being necessary to show intentional participation in the attempt to defraud; and if the evidence shows that such alleged co-conspirator had knowledge that defendant was mailing over said post route such newspapers with intent to defraud the United States, and such alleged co-conspirator, with a view to assist defendant therein remailed such newspapers over said post route, a conspiracy to defraud the United States is proven, and by such remailing such alleged co-conspirator becomes an active party to the conspiracy. Id.

It is sufficient if the defendant and any other person at any time during the weighing formed a common design to defraud the government in connection with such weighing, and that then the defendant or such other person committed an overt act in connection therewith. Id.

399. (Crim. Code, § 229.) Offenses against foreign mail in transit; punishment for; indictments.

very foreign mail shall, while being transported across the terry of the United States under authority of law, be taken and ned to be a mail of the United States so far as to make any tion thereof, or depredation thereon, or offense in respect thereor any part thereof, an offense of the same grade, and punishable e same manner and to the same extent as though the mail was a of the United States; and in any indictment or information for such offense, the mail, or any part thereof, may be alleged to be, on the trial of any such indictment or information it shall be deemnd held to be, a mail or part of a mail of the United States.

R. S. § 4013. Act March 4, 1909, c. 321, § 229, 35 Stat. 1134.

400. (Crim. Code, § 230.) Omission to take oath.

very person employed in the postal service shall be subject to penalties and forfeitures for the violation of the laws relating uch service, whether he has taken the oath of office or not.

R. S. § 3832. Act March 4, 1909, c. 321, § 230, 35 Stat. 1134.

401. (Crim. Code, § 231.) Definition.

he words "postal service," wherever used in this chapter, shall eld and deemed to include the "Post-Office Department."

Act March 4, 1909, c. 321, § 231, 35 Stat. 1134.

CHAPTER NINE

Offenses against Foreign and Interstate Commerc

Sec.
10402. Explosives carried on vessels or vehicles with passengers for hire forbidden; explosives permitted; restriction; military transportation.
10403. Regulations for transporting explosives to be made by Interstate Commerce Commission; effect.
10404. High explosives excluded from certain vessels or vehicles.
10405. Marking packages of explosives; punishment for violation.
10406. Causing death or injury by illegal transportation; punishment for.
10407. Importing, etc., lottery tickets, etc.; interstate, etc., carriage; punishment for.
10408. Intoxicating liquors by interstate, etc., shipment delivered to other than bona fide consignee; punishment for.
10409. Carrier, etc., collecting purchase price of interstate, etc., shipment of intoxicating liquor; penalty.
Sec.
10410. Shipping packages of intox ing liquors in interstate, commerce not plainly mar penalty.
10411. Importing certain injurious and animals forbidden; mits for foreign wild anim specimens for museums, e
10412. Transportation of illegally ed game, etc., prohibited; ments in game season; f ers of barnyard fowls.
10413. Marking of packages.
10414. Penalty for violations.
10415. Importing and transporting scene books, etc., punish for.
10416. Transportation or import of prize-fight films, etc., lawful.
10417. Receiving for sale, etc., o hibition, prize-fight films, unlawful.
10418. Punishment for violation of visions of act.

§ 10402. (Crim. Code, § 232.) Explosives carried on vessels vehicles with passengers for hire forbidden; explosives p mitted; restriction; military transportation.

It shall be unlawful to transport, carry, or convey, any dynam gunpowder, or other explosive, between a place in a foreign co try and a place within or subject to the jurisdiction of the Uni States, or between a place in any State, Territory, or District of United States, or place noncontiguous to but subject to the jurisdic thereof, and a place in any other State, Territory, or District of United States, or place noncontiguous to but subject to the juris tion thereof, on any vessel or vehicle of any description operated b common carrier, which vessel or vehicle is carrying passengers hire: Provided, That it shall be lawful to transport on any such sel or vehicle small arms ammunition in any quantity, and such fu torpedoes, rockets, or other signal devices, as may be essential to p mote safety in operation, and properly packed and marked sample explosives for laboratory examination, not exceeding a net weight one-half pound each, and not exceeding twenty samples at one t in a single vessel or vehicle; but such samples shall not be carrie that part of a vessel or vehicle which is intended for the transpo tion of passengers for hire: Provided further, That nothing in section shall be construed to prevent the transportation of militar naval forces with their accompanying munitions of war on passen equipment vessels or vehicles.

R. S. § 5353. Act May 30, 1908, c. 234, § 1, 35 Stat. 554. Act Marc 1909, c. 321, § 232, 35 Stat. 1134.

Notes of Decisions

Application of statute to common carriers.—Cr. Code, §§ 232, 235, prohibiting the transportation of explosives in vehicle carrying passengers for

sported on any passenger train en-
d in interstate commerce, held ap-
ıble to common carriers, their em-
és, or any person traveling on such
cle. Ryan v. U. S. (1914) 216 Fed.

**eight train as passengor train with-
tatute.**—A freight train may be re-
ed as a passenger train, within the
ning of R. S. § 5353 (embodied
in), prohibiting the transportation
itroglycerine on vehicles engaged in
state passenger traffic, when pas-
ers are conveyed thereby for com-
ation, in any kind of cars, by au-
ity of the railway company. U. S.
ıul (D. C. 1893) 58 Fed. 763.

**ohibition of transportation of nitro-
rin as extending to dynamite.**—
prohibition in R. S. § 5353 (em-
ed herein), against transporting
glycerin upon vehicles engaged in
state passenger traffic, extends also
ynamite, which is made by mixing
glycerin with some solid and inert
rbent substance, and contains no
r explosive ingredient. U. S. v.
(D. C. 1893) 58 Fed. 763.

lictment.—Counts of an indictment
ging certain defendants named with
wfully, etc., transporting and car-
; in interstate commerce dynamite
nitroglycerin in a vehicle described
ferent counts as a "passenger car"
rain," and other defendants as aid-
nd abettors therein, held to suffi-
ly charge a violation of this sec-
Ryan v. U. S. (C. C. A. 1914)
Fed. 13.

nspiracy.—In a prosecution for
piracy to commit a crime against
United States, to wit, the trans-
ation in interstate commerce in
enger trains or cars of nitroglycerin
dynamite in violation of Cr. Code,
, 232, et seq., and for transporting,
g, and abetting in such transporta-
of nitroglycerin and dynamite, evi-
e held sufficient to sustain a con-
on of certain of the defendants and
ficient to sustain a conviction of
certain others. Ryan v. U. S. (C. C. A. 1914) 216 Fed. 13.

Such indictments held to charge separate and not interdependent offenses, and hence were properly consolidated for trial. Id.

Where the indictments charged the first overt act as of January 20, 1908, and the last August 27, 1911, and were filed February 6, 26, 1912, the prosecution was not barred by limitations. Id.

Where the carriage as averred was the subject of the conspiracy in any measure, the violation of such act would be sufficient to form the basis of conspiracy within section 37, regardless of the fact that the ultimate purpose was the destruction of "open shop" steel constructions in the United States, an object not within federal cognizance. Id.

The indictment held to aver a continuing conspiracy to commit a continuous offense against the United States. Id.

Where a conspiracy to transport nitroglycerin in passenger trains and cars in interstate commerce was alleged to have been entered into December 1, 1906, the overt acts having been committed beginning January 20, 1908, and extending to August 27, 1911, it was immaterial that dynamite was not named in the enactments in force at the inception of the conspiracy, or that R. S. § 5353 (embodied herein), had been amended in the meantime; the carriage of nitroglycerin having been prohibited by Act July 3, 1866, and continuously since that time. Id.

It was not necessary for the government to prove an extension of the conspiracy to the carriage of dynamite after May 30, 1908, when R. S. § 5353 (embodied herein), was amended to include dynamite, though such proof was admissible. Id.

Cited without definite application, Watson v. St. Louis, I. M. & S. R. Co. (C. C. 1909) 169 Fed. 942, affirmed (1912) 32 Sup. Ct. 533, 223 U. S. 745, 56 L. Ed. 639.

)403. (Crim. Code, § 233.) Regulations for transporting explosives to be made by Interstate Commerce Commission; effect.

he Interstate Commerce Commission shall formulate regula-
s for the safe transportation of explosives, which shall be bind-
upon all common carriers engaged in interstate or foreign com-
ce which transport explosives by land. Said commission, of its
motion, or upon application made by any interested party, may
e changes or modifications in such regulations, made desirable by
information or altered conditions. Such regulations shall be in
rd with the best known practicable means for securing safety in
sit, covering the packing, marking, loading, handling while in
sit, and the precautions necessary to determine whether the ma-
l when offered is in proper condition to transport. Such regu-
ns, as well as all changes or modifications thereof, shall take effect

ninety days after their formulation and publication by said com sion and shall be in effect until reversed, set aside, or modified.

Act May 30, 1908, c. 234, § 2, 35 Stat. 555. Act March 4, 1909, c. 321, § 35 Stat. 1135.

Notes of Decisions

See notes under the preceding section.

Regulations as excluding state laws.—This section, by authority of which the Interstate Commerce Commission has formulated and issued regulations for the transportation of explosives by governs as to all such transportati interstate or foreign commerce, t exclusion of state laws. The Ingri C. 1912) 195 Fed. 596.

§ 10404. (Crim. Code, § 234.) High explosives excluded f certain vessels or vehicles.

It shall be unlawful to transport, carry, or convey, liquid ni glycerin, fulminate in bulk in dry condition, or other like ex sive, between a place in a foreign country and a place withi subject to the jurisdiction of the United States, or between a p in one State, Territory, or District of the United States, or place contiguous to but subject to the jurisdiction thereof, and a plac any other State, Territory, or District of the United States, or p noncontiguous to but subject to the jurisdiction thereof, on any v or vehicle of any description operated by a common carrier in transportation of passengers or articles of commerce by land or w

Act May 30, 1908, c. 234, § 3, 35 Stat. 555. Act March 4, 1909, c. 3 234, 35 Stat. 1135.

§ 10405. (Crim. Code, § 235.) Marking packages of explosi punishment for violation.

Every package containing explosives or other dangerous arti when presented to a common carrier for shipment shall have pla marked on the outside thereof the contents thereof; and it shal unlawful for any person to deliver, or cause to be delivered any common carrier engaged in interstate or foreign commerc land or water, for interstate or foreign transportation, or to carry on any vessel or vehicle engaged in interstate or foreign trans tation, any explosive, or other dangerous article, under any fals deceptive marking, description, invoice, shipping order, or other d ration, or without informing the agent of such carrier of the character thereof, at or before the time such delivery or carriag made. Whoever shall knowingly violate, or cause to be violated, provision of this section, or of the three sections last preceding any regulation made by the Interstate Commerce Commission in suance thereof, shall be fined not more than two thousand dollar imprisoned not more than eighteen months, or both.

R. S. § 5355. Act May 30, 1908, c. 234, §§ 4, 5, 35 Stat. 555. Act M 4, 1909, c. 321, § 235, 35 Stat. 1135.

Notes of Decisions

See notes under § 10402, ante.

Cited without definite application.

Watson v. St. Louis, I. M. & S. R. Co. (C. C. 1909) 169 Fed. 942, aff (1912) 32 Sup. Ct. 533, 223 U. S. 56 L. Ed. 639.

§ 10406. (Crim. Code, § 236.) Causing death or injury by ill transportation; punishment for.

When the death or bodily injury of any person is caused by explosion of any article named in the four sections last preced while the same is being placed upon any vessel or vehicle t transported in violation thereof, or while the same is being so t ported, or while the same is being removed from such vessel o hicle, the person knowingly placing, or aiding or permitting the

of such articles upon any such vessel or vehicle, to be so trans-
ed, shall be imprisoned not more than ten years.

R. S. § 5354. Act March 4, 1909, c. 321, § 236, 35 Stat. 1136.

ed without definite application, . v. Coppersmith (C. C. 1880) 4 198, 205; Watson v. St. Louis, I. M. & S. R. Co. (C. C. 1909) 169 Fed. 942, affirmed (1912) 32 Sup. Ct. 533, 223 U. S. 745, 56 L. Ed. 639.

407. (Crim. Code, § 237.) Importing, etc., lottery tickets, etc.; interstate, etc., carriage; punishment for.

Whoever shall bring or cause to be brought into the United es or any place subject to the jurisdiction thereof, from any ign country, for the purpose of disposing of the same, any paper, ficate, or instrument purporting to be or to represent a ticket, ice, share, or interest in or dependent upon the event of a lot- , gift enterprise, or similar scheme, offering prizes dependent in le or in part upon lot or chance, or any advertisement of, or list he prizes drawn or awarded by means of, any such lottery, gift rprise, or similar scheme; or shall therein knowingly deposit or e to be deposited with any express company or other common ier for carriage, or shall carry, from one State, Territory, or Dis- of the United States, or place noncontiguous to but subject to the sdiction thereof, to any other State, Territory, or District of the ted States, or place noncontiguous to but subject to the jurisdic- thereof, or from any place in or subject to the jurisdiction of the ted States through a foreign country to any place in or subject to jurisdiction thereof, or from any place in or subject to the juris- ion of the United States to a foreign country, any paper, certificate, nstrument purporting to be or to represent a ticket, chance, share, nterest in or dependent upon, the event of any such lottery, gift en- rise, or similar scheme, or any advertisement of, or list of the prizes wn or awarded by means of, any such lottery, gift enterprise, or lar scheme, or shall knowingly take or receive, or cause to be taken eceived, any such paper, certificate, instrument, advertisement, or so brought, deposited, or transported, shall, for the first offense, ined not more than one thousand dollars, or imprisoned not more n two years, or both; and for any subsequent offense shall be im- oned not more than two years.

Act March 2, 1895, c. 191, 28 Stat. 963. Act March 4, 1909, c. 321, § 237, 35 Stat. 1136.

Notes of Decisions

nstitutionality.—The carriage of ry tickets from one state to anoth- y an express company engaged in ying freight and packages from to state is interstate commerce, h Congress, under its power to reg- e, may prohibit by making it an of- e against the United States to cause tickets so to be carried. Cham- v. Ames (1903) 23 Sup. Ct. 321, 188 U. S. 321, 47 L. Ed. 492.

e provision of Act March 2, 1895 section), that "any person who cause to be * * * carried from state to another in the United es any paper, certificate, or instru- t purporting to be or represent a et, chance, share, or interest in or ndent upon the event of a lottery * or similar enterprise," shall be y of an offense, is within the con- tional power of Congress to reg- e commerce among the states and rs a case where an individual car- from one state into another a ticket slip of paper which is understood by all the parties to the transaction to represent the interest of the purchaser of a chance in a lottery or "policy" game in which the drawing has not taken place. Reilley v. U. S. (1901) 106 Fed. 896, 46 C. C. A. 25, judgment reversed Francis v. U. S. (1903) 23 Sup. Ct. 334, 188 U. S. 375, 47 L. Ed. 508.

What constitutes lottery. — Policy slips written by a customer to indicate his choice of numbers, and delivered by him to an agent of the policy game, to be forwarded by him to headquarters in another state, are not within this section, making it an offense against the United States to cause to be carried from one state to another any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in a lottery. Francis v. U. S. (1903) 23 Sup. Ct. 334, 335, 188 U. S. 375, 47 L. Ed. 508, reversing judgment Reilley v. U. S. (1901) 106 Fed. 896, 46 C. C. A. 25.

Defendant, to induce the sale of a cereal called "Mother's Oats," placed in

each package a coupon on which one of the letters which spelled the word "Mother's" was printed, and offered premiums to persons holding coupons which would spell the word "Mother's"; the letter "O" being placed on only one coupon in 500. Held, that such scheme was a lottery, within this section. U. S. v. Jefferson (C. C. 1905) 134 Fed. 299.

A scheme by which a prize is given to the person who obtains seven complete paper animals, the parts of one of which, to be put together, are contained in each package of a food product sold, but without anything on the outside of the package to indicate what animal is contained therein has an element of chance in the purchase of the packages, and is a lottery scheme; and the conveying of a ticket or instrument purporting to represent a share or interest therein from one state into another constitutes a criminal offense, under this section. U. S. v. McKenna (D. C. 1906) 149 Fed. 252.

Meaning of word "state."—In the provision of this section which makes it an offense to cause lottery tickets to be carried or transferred "from one state to another," the word "state" must be held to have been used in a constitutional sense, which does not include a territory of the United States; hence a complaint charging a person with having caused lottery tickets to be carried and transported from a state to a territory does not charge an offense within a statute. U. S. v. Ames (C. C. 1899) 95 Fed. 453.

Separate and distinct offenses under statute.—Act March 2, 1895, defines three separate offenses; and to constitute an offense under either the second or third clause it is not necessary that the paper, certificate, or instrument should have been brought into the United States from abroad for the purpose of disposing of the same, those being the elements of the first offe alone. Reilley v. U. S. (1901) 106 F 896, 46 C. C. A. 25, judgment rever Francis v. U. S. (1903) 23 Sup. 334, 188 U. S. 375, 47 L. Ed. 508.

Transportation of tickets from s to District of Columbia.—Act Marc 1895, c. 191, 28 Stat. 963, provides any person who shall cause to brought within the United States f abroad, for the purpose of disposing the same, or carry from one state another in the United States, any ti of a lottery, shall be punished, Held, that such statute did not p hibit the transportation of lottery t ets from a state to the municipality the District of Columbia. U. S. Whelpley (D. C. 1903) 125 Fed. 616

Carrying papers containing figu representing result of lottery draw —The provision of this section mak it an offense to carry from one s to another any paper "purporting be or represent a ticket, chance, sh or interest in or dependent upon event of a lottery," does not apply the carrying of papers containing figures representing the result of a tery drawing which has already ta place. France v. U. S. (1897) 17 S Ct. 219, 221, 164 U. S. 676, 41 L. 595.

Cited without definite applicat Hoke v. U. S. (1913) 33 Sup. Ct. 227 U. S. 308, 57 L. Ed. 523, 43 R. A. (N. S.) 906, Ann. Cas. 191 905; Shawnee Milling Co. v. Ter (C. C. 1910) 179 Fed. 517; U. S Warner (C. C. 1911) 188 Fed. U. S. v. Delaware & Hudson Co. (C 1908) 164 Fed. 215 (reversed [19 29 Sup. Ct. 527, 213 U. S. 366, 53 Ed. 836); U. S. v. Hoke (D. C. 19 187 Fed. 992 (affirmed [1913] 33 S Ct. 281, 227 U. S. 308, 57 L. Ed. 43 L. R. A. [N. S.] 906, Ann. 1913E, 905).

§ 10408. (Crim. Code, § 238.) Intoxicating liquors by interst etc., shipment delivered to other than bona fide consign punishment for.

Any officer, agent, or employee of any railroad company, press company, or other common carrier, who shall knowingly liver or cause to be delivered to any person other than the person whom it has been consigned, unless upon the written order in e instance of the bona fide consignee, or to any fictitious person, or any person under a fictitious name, any spirituous, vinous, malted, mented, or other intoxicating liquor of any kind which has been sh ped from one State, Territory, or District of the United States, or pl noncontiguous to but subject to the jurisdiction thereof, into any ot State, Territory, or District of the United States, or place nonc tiguous to but subject to the jurisdiction thereof, or from any fore country into any State, Territory, or District of the United States, place noncontiguous to but subject to the jurisdiction thereof, shal

not more than five thousand dollars, or imprisoned not more than years, or both.

Act March 4, 1909, c. 321, § 238, 35 Stat. 1136.

Notes of Decisions

gulation of interstate commerce.—nterstate Commerce Act, the Wil-ct, and Cr. Code, §§ 238, 239, reg-interstate commerce in intoxicat-iquors, to the exclusion of state n, and Acts Tenn. 1913, 2d Extra c. 1, §§ 5, 8, and section 9, subsec. ating to the same subject, are in-so far as they regulate interstate erce. Palmer v. Southern Exp. Tenn. 1914) 165 S. W. 236.

e of words "any railroad company, ss company, or other common car-—The words "any railroad com-express company, or other com-carrier" exhaust the whole genus of carriers engaged in interstate commerce, and the subject of private carriers of intoxicating liquors in interstate commerce is not within the statute. U. S. v. First Nat. Bank (D. C. 1911) 190 Fed. 336.

Cited without definite application, Ex parte Oklahoma (1911) 31 Sup. Ct. 426, 220 U. S. 191, 55 L. Ed. 431; United States Express Co. v. Friedman (1911) 191 Fed. 673, 112 C. C. A. 219; U. S. v. Eighty-Seven Barrels, etc., of Wine (D. C. 1910) 180 Fed. 215; U. S. v. United States Express Co. (D. C. 1910) 180 Fed. 1006, reversed (1911) 191 Fed. 673, 112 C. C. A. 219.

409. (Crim. Code, § 239.) Carrier, etc., collecting purchase price of interstate, etc., shipment of intoxicating liquor; penalty.

ny railroad company, express company, or other common car-or any other person who, in connection with the transpor-on of any spirituous, vinous, malted, fermented, or other intox-ng liquor of any kind, from one State, Territory, or District of United States, or place noncontiguous to but subject to the ju-ction thereof, into any other State, Territory, or District of the ed States, or place noncontiguous to but subject to the jurisdic-thereof, or from any foreign country into any State, Territory, or rict of the United States, or place noncontiguous to but subject to jurisdiction thereof, shall collect the purchase price or any part eof, before, on, or after delivery, from the consignee, or from any r person, or shall in any manner act as the agent of the buyer or r of any such liquor, for the purpose of buying or selling or com-ng the sale thereof, saving only in the actual transportation and very of the same, shall be fined not more than five thousand dollars.

Act March 4, 1909, c. 321, § 239, 35 Stat. 1136.

Notes of Decisions

gulation of interstate commerce.—er v. Southern Exp. Co. (Tenn.) 165 S. W. 236; note under § 10,-

e of words "any railroad company, ss company, or other common car-'—U. S. v. First Nat. Bank (D. C.) 190 Fed. 336; note under § 10,-

rpose or object of phrase "in con-on with."—The primary purpose of phrase "in connection with" is to ne the statute within the scope of al jurisdiction, and to extend fed-jurisdiction over the whole field of ority. U. S. v. First National Bank C. 1911) 190 Fed. 336.

e secondary object of the phrase connection with" is to require that forbidden act shall be done in con-on with interstate commerce, and e a liquor dealer sells intoxicating r shipped in interstate commerce redit, Congress may not make the act of collecting the purchase price, either by a bank or an attorney months after the transaction is closed, criminal, under its power to regulate interstate commerce, because such an act is not a part of that commerce. Id.

Violation of statute by bank.—This section does not apply to or prohibit banks from collecting the purchase price of liquor transported in interstate commerce by means of a draft attached to the bill of lading. First Nat. Bank v. U. S. (1913) 206 Fed. 374, 124 C. C. A. 256, 46 L. R. A. (N. S.) 1139, reversing judgment U. S. v. First Nat. Bank (D. C. 1911) 190 Fed. 336.

The acts referred to in this section are condemned only when connected with the interstate transportation of liquor, and the act of a bank in collecting a draft attached to a bill of lading for liquor transported in interstate commerce from the purchaser is not in connection with the interstate trans-

portation of the liquor, and it is therefore not within the statute. Danciger v. Stone (C. C. 1910) 188 Fed. 510.

This section applies to a bank to which a draft for the purchase price of a shipment of liquor is sent by the seller in another state, with a bill of lading for such liquor attached, and which collects the draft from the consignee, and delivers the bill of lading to him upon which he obtains the liquor from the carrier. U. S. v. First Nat. Bank of Anamoose (D. C. 1911) 190 Fed. 336.

This section does not apply to banks, collecting drafts with bill of lading attached, where the shipment is made to a real consignee upon an order sent by him and filled by shipment from the dealer's place of business. (1911) 29 Op. Atty. Gen. 58.

Where consignments of liquor are made to fictitious persons, and the bills of lading, with drafts attached, are sent to a bank with such instructions that the goods are delivered to anybody who will pay the draft and accept the goods, even though the person to whom the goods are delivered has not previously ordered the liquor, such a transaction would constitute a sale by the bank, and the bank in such a case would be amenable to discipline by the state for selling liquor contrary to state law, and also to discipline by federal authorities for selling li without compliance with the provi of the internal-revenue laws. Id.

Indictment.—An indictment cha in a single count a conspiracy to e payment of a special tax on whol liquor dealers imposed by R. 3242, ante, § 5965, and also to vi this section, prohibiting C. O. D. ments, held duplicitous. John Brewing Co. v. U. S. (1913) 204 17, 122 C. C. A. 331, opinion mod (1913) 206 Fed. 386, 124 C. C. A.

Cited without definite applica Ex parte Oklahoma (1911) 31 Sup 426, 220 U. S. 191, 55 L. Ed. Jones v. U. S. (1909) 170 Fed. 1 C. C. A. 213, 24 L. R. A. (N. S.) (dissenting opinion); United St Express Co. v. Friedman (1911) Fed. 673, 112 C. C. A. 219; Sha Milling Co. v. Temple (C. C. 1910) Fed. 517; U. S. v. United States press Co. (D. C. 1910) 180 Fed. (reversed [1911] 191 Fed. 673, 11 C. A. 219); U. S. v. Eighty-Seven rels, etc., of Wine (D. C. 1910) 180 215.

§ 10410. (Crim. Code, § 240.) Shipping packages of intoxica liquors in interstate, etc., commerce not plainly marked; p alty.

Whoever shall knowingly ship or cause to be shipped, from State, Territory, or District of the United States, or place contiguous to but subject to the jurisdiction thereof, into any o State, Territory, or District of the United States, or place non tiguous to but subject to the jurisdiction thereof, or from any eign country into any State, Territory, or District of the United St or place noncontiguous to but subject to the jurisdiction thereof, package of or package containing any spirituous, vinous, malted, mented, or other intoxicating liquor of any kind, unless such pack be so labeled on the outside cover as to plainly show the name of consignee, the nature of its contents, and the quantity contained th in, shall be fined not more than five thousand dollars; and such li shall be forfeited to the United States, and may be seized and demned by like proceedings as those provided by law for the sei and forfeiture of property imported into the United States cont to law.

Act March 4, 1909, c. 321, § 240, 35 Stat. 1137.

Notes of Decisions

"Consignee" within statute.—The term "consignee" is used in its primary legal sense to describe the person to whom the liquor is to be delivered at destination in accordance with the contract of carriage, and hence where wholesale merchants in California, after collecting enough orders from purchasers in New England to make car load shipments, labeled each package with its own name, the character and quantity of the liquor, and the name of the purchaser, and consigned the entire car to itself or to its own order with directions to the carrier to notify d nated persons, the shipper was also consignee within the statute; the n of the purchasers being regarde surplusage, so that there was no lation of the act. U. S. v. Eighty-S Barrels, etc., of Wine (D. C. 1 180 Fed. 215.

Treasury rules and regulations.— not within the province of the Secre of the Treasury to prescribe regula governing the marking of imported uors to conform to this section. (1 28 Op. Atty. Gen. 99.

is section is a criminal statute, no reference to the collection of in- l revenue or duties on imports, and is no statute authorizing the Sec- y of the Treasury to formulate and regulations for the enforce- of a general criminal statute h has no relation to the collection venue. Id.

e Treasury Department may, how- instruct collectors of customs that a package, shipped from a foreign try or a place subject to the juris- on of the United States, but non- guous thereto, into the United s, containing intoxicating liquors, clearly not labeled as required thereby, comes within the observation of a customs officer, he should seize the same and have it declared forfeited by like proceedings as those provided to enforce forfeitures for violation of the customs laws. Id.

Cited without definite application. Ex parte Oklahoma (1911) 31 Sup. Ct. 426, 220 U. S. 191, 55 L. Ed. 431; United States Express Co. v. Friedman (1911) 191 Fed. 673, 112 C. C. A. 219; Shawnee Milling Co. v. Temple (C. C. 1910) 179 Fed. 517; U. S. v. United States Express Co. (D. C. 1910) 180 Fed. 1006, reversed (1911) 191 Fed. 673, 112 C. C. A. 219.

411. (Crim. Code, § 241.) Importing certain injurious birds and animals forbidden; permits for foreign wild animals; specimens for museums, etc.

he importation into the United States, or any Territory or rict thereof, of the mongoose, the so-called "flying foxes" or bats, the English sparrow, the starling, and such other birds and als as the Secretary of Agriculture may from time to time de- to be injurious to the interests of agriculture or horticulture, is by prohibited; and all such birds and animals shall, upon arrival ny port of the United States, be destroyed or returned at the ex- e of the owner. No person shall import into the United States nto any Territory or District thereof, any foreign wild animal or , except under special permit from the Secretary of Agriculture: vided, that nothing in this section shall restrict the importation of ral history specimens for museums or scientific collections, or of in cage birds, such as domesticated canaries, parrots, or such r birds as the Secretary of Agriculture may designate. The Sec- y of the Treasury is hereby authorized to make regulations for ying into effect the provisions of this section.

Act May 25, 1900, c. 553, § 2, 31 Stat. 188. Act March 4, 1909, c. 321, § 241, 5 Stat. 1137.

Appropriations for the enforcement of this section and the three sections next ollowing are made in the recent annual agricultural appropriation acts. The rovision for the fiscal year 1917, was by Act Aug. 11, 1916, c. 313, § 1, 39 tat. 467.

Notes of Decisions

portation of turtles for food.—This on held inapplicable to importation reign turtles to be used for food, and hence a state may regulate such importation. People ex rel. Freel v. Downs (1911) 136 N. Y. S. 440.

412. (Crim. Code, § 242.) Transportation of illegally killed game, etc., prohibited; shipments in game season; feathers of barnyard fowls.

shall be unlawful for any person to deliver to any common ier for transportation, or for any common carrier to transport any State, Territory, or District of the United States, to any other e, Territory, or District thereof, any foreign animals or birds, importation of which is prohibited, or the dead bodies or parts eof of any wild animals or birds, where such animals or birds been killed or shipped in violation of the laws of the State, Ter- y, or District in which the same were killed, or from which they shipped: Provided, That nothing herein shall prevent the trans- ation of any dead birds or animals killed during the season when same may be lawfully captured, and the export of which is not ibited by law in the State, Territory, or District in which the e are captured or killed: Provided further, That nothing herein

shall prevent the importation, transportation, or sale of birds or
plumage manufactured from the feathers of barnyard fowls.

Act May 25, 1900, c. 553, §§ 3, 5, 31 Stat. 188. Act March 4, 1909, c. 3
242, 35 Stat. 1137.

Notes of Decisions

Constitutionality.—The provisions of Lacey Act May 25, 1900, §§ 3, 4 (this section), prohibiting the shipment or transportation in interstate commerce of game killed in violation of the local laws, and requiring all packages containing game shipped in interstate commerce to be plainly marked showing the name and address of the shipper and the nature of the contents, and making the violation of such provisions a criminal offense, are within the powers of congress, and constitutional and valid. Rupert v. U. S. (1910) 181 Fed. 87, 104 C. C. A. 255.

What is evasion of statute in general.—It may be difficult to define just what in every instance will amount to an evasion of the statute; but it must at least be something contrived or done in connection with a shipment actually entered upon, and not one that is in mere contemplation. U. S. v. Smith (D. C. 1902) 115 Fed. 423.

Indictment.—Under the Game Law of Oklahoma Territory (Wilson's Rev. & Ann. St. 1903, §§ 3069, 3078), which permits the killing of quail between October 15th and February 1st following but prohibits the shipping of quail from the territory at any time, an indictment charging a violation of this section, by knowingly delivering to a carrier for transportation from the territory into another state the dead bodies of quail killed in the territory in violation of its laws, is sufficient where it avers that such quail were killed "with the intent and for the purpose of being shipped and transported out of the territory," and need not allege the months in which such quail were killed. The same is also true of an indictment under section 10413 for failing to mark the packages containing the bodies of such q
Rupert v. U. S. (1910) 181 Fed. 87,
C. C. A. 255.

Act May 25, 1900, c. 553, § 3, 31
188, makes it unlawful for any pe
to deliver to any common carrier
for such carrier to transport from
state or territory to another, "the
bodies or parts thereof of any wild
mals or birds, where such animal
birds have been killed in violatio
the laws of the state, territory or
trict in which the same were kil
and which (section 4) requires all p
ages containing such dead ani
birds, or parts thereof, when shi
by interstate commerce, "as prov
in section 1 [3?] of this act," t
plainly and clearly marked on the
side to show the name of the shi
and the nature of the contents,
prescribes a fine for each violatio
evasion of the act, relates solel
game which has been killed in v
tion of the local law; and in a pro
tion thereunder, whether for a v
tion of the act by shipment of gam
for an evasion by a failure to mar
packages containing the same, the
that it was so killed must be ave
in the indictment and proved. U
v. Smith (D. C. 1902) 115 Fed. 42

It is essential to constitute an of
under either of said provisions,
the prohibited game should either
been shipped or delivered to a ca
for shipment, and an indictment v
charges the defendant with having
pared certain described game wit
tent to ship it by interstate comm
or having concealed the same in
marked packages for the purpos
such shipment, in evasion or viol
of the act, without alleging deliver
a carrier, is insufficient. Id.

§ 10413. (Crim. Code, § 243.) Marking of packages.

All packages containing the dead bodies, or the plumage
parts thereof, of game animals, or game or other wild birds, w
shipped in interstate or foreign commerce, shall be plainly and cl
ly marked, so that the name and address of the shipper, and the na
of the contents, may be readily ascertained on an inspection of the
side of such package.

Act May 25, 1900, c. 553, § 4, 31 Stat. 188. Act March 4, 1909, c. 321, §
35 Stat. 1137.

Notes of Decisions

See notes under the preceding section.

Offense under law as originally enacted.—Act May 25, 1900, c. 553, § 3, 31 Stat. 188, provides that it shall be unlawful for any person to deliver to any common carrier or for any common carrier to transport from one state or territory to another state or territory the dead bodies or parts thereof of any wild animals or birds killed in violatio
the laws of the state, territory, or
trict in which the same were k
"provided that nothing herein shall
vent the transportation of any
birds or animals killed during the
son when the same may be law
captured and the export of whic
not prohibited by law in the state,

y, or district in which the same are d." Section 4 requires all packages taining such dead animals, birds, or s thereof, when shipped by inter- e commerce, as provided in section this act" (31 Stat. 187) to be plain- narked, so that the name and ad- s of the shipper and the nature of contents may be readily ascertained inspection of the outside of such ages, and makes the violation of requirement a penal offense. Held, the reference in such section to ion 1 of the act was a clerical er- such section having no relation to subject-matter, and section 3 be- manifestly intended; that as so construed section 4 is limited in its application to the two classes of shipments enumerated in section 3: First, animals or birds killed in violation of the game laws; and, second, animals or birds killed during the open season and "the export of which is not prohibited by law"; and that an indictment would not lie under said section 4 for a failure to mark a package containing game killed during the open season but the export of which was prohibited by the law of the state where the same was killed. U. S. v. Thompson (D. C. 1906) 147 Fed. 637; Same v. Spear, Id. 640.

0414. (Crim. Code, § 244.) Penalty for violations.

'or each evasion or violation of any provision of the three sec- ıs last preceding, the shipper shall be fined not more than two ıdred dollars; the consignee knowingly receiving such articles shipped and transported in violation of said sections shall be fined more than two hundred dollars; and the carrier knowingly car- ıg or transporting the same in violation of said sections shall be d not more than two hundred dollars.

Act May 25, 1900, c. 553, § 4, 31 Stat. 188. Act March 4, 1909, c. 321, § 244, 35 Stat. 1138.

0415. (Crim. Code, § 245.) Importing and transporting obscene books, etc., punishment for.

Vhoever shall bring or cause to be brought into the United tes or any place subject to the jurisdiction thereof, from any eign country, or shall therein knowingly deposit or cause to deposited with any express company or other common carrier, carriage from one State, Territory, or District of the United States, place noncontiguous to but subject to the jurisdiction thereof, to other State, Territory, or District of the United States, or place contiguous to but subject to the jurisdiction thereof, or from place in or subject to the jurisdiction of the United States through reign country to any place in or subject to the jurisdiction thereof, from any place in or subject to the jurisdiction of the United tes to a foreign country, any obscene, lewd, or lascivious, or any ıy, book, pamphlet, picture, paper, letter, writing, print, or other ter of indecent character, or any drug, medicine, article, or thing igned, adapted, or intended for preventing conception, or producing rtion, or for any indecent or immoral use, or any written or printed l, letter, circular, book, pamphlet, advertisement, or notice of any l giving information, directly or indirectly, where, how, or of om, or by what means any of the hereinbefore-mentioned articles, ters or things may be obtained or made; or whoever shall know- ly take or cause to be taken from such express company or other mon carrier any matter or thing the depositing of which for car- ge is herein made unlawful, shall be fined not more than five thou- d dollars, or imprisoned not more than five years, or both.

Act Feb. 8, 1897, c. 172, 29 Stat. 512, as amended, Act Feb. 8, 1905, c. 550, 33 Stat. 705. Act March 4, 1909, c. 321, § 245, 35 Stat. 1138.

Notes of Decisions

nstitutionality.—Congress had pow- o enact this section. Clark v. U. S. 14) 211 Fed. 916, 128 C. C. A. 294. his section is not unconstitutional as mproper abridgment of the freedom he press. Id.

he provision of this section making it unlawful for any person to deposit with an express company or other common carrier, for carriage from one state or territory to another, any article or thing designed or intended for the prevention of conception, is not unconstitutional, on the ground that it

is a police regulation, and as such a matter over which the states have exclusive jurisdiction, but is within the constitutional powers of congress to regulate interstate commerce. U. S. v. Popper (D. C. 1899) 98 Fed. 423.

Sending books on decoy letters.—The gist of the offense of sending obscene books by interstate express still remains, though sent on decoy letters of a government inspector. Hanish v. U. S. (C. C. A. 1915) 227 Fed. 584.

The character of the transaction, as commerce, where defendant sold an obscene book, and sent it by interstate express billed to a person of the name given him by the buyer, is not affected by the name being fictitious. Id

Indictment.—Where an indictment charged defendants with violating this section, it was not duplicitous because it charged the deposit of several copies of the alleged obscene, lewd, or lascivious book in an express office to be transported in interstate commerce to different people. Clark v. U. S. (1914) 211 Fed. 916, 128 C. C. A. 294.

It is not one of the particulars necessary to be alleged in an indictment for sending an obscene book by interstate express, that the name of the person, to whom, as directed, it was billed, was fictitious. Hanish v. U. S., 227 Fed. 584.

An indictment under this section, charging the defendant with havin posited with an express company, carriage to another state, "an a designed and intended for the pre tion of conception," which charges such article was contained in a pac deposited with an express com named, at a place and on a date na addressed to a particular perso a designated place in another stat sufficiently specific, and need not specifically describe the article. v. Popper (D. C. 1899) 98 Fed. 4

Evidence.—Where defendants charged with depositing an obscene filthy book with an express com for transportation in interstate merce, in violation of this section charge not being limited to parti passages or parts of the book, de ants were entitled to have the book introduced in evidence and co ered by the jury under proper ins tions from the court. Clark v. (1914) 211 Fed. 916, 128 C. C. A.

Cited without definite applic Hoke v. U. S. (1913) 33 Sup. Ct. 227 U. S. 308, 57 L. Ed. 523, 43 A. (N. S.) 906, Ann. Cas. 1913E, Shawnee Milling Co. v. Temple (1910) 179 Fed. 517; U. S. v. Hok C. 1911) 187 Fed. 992, affirmed (1 33 Sup. Ct. 281, 227 U. S. 308, 57 L 523, 43 L. R. A. (N. S.) 906, Ann. 1913E, 905.

§ 10416. (Act July 31, 1912, c. 263, § 1.) Transportation or im tation of prize-fight films, etc., unlawful.

It shall be unlawful for any person to deposit or cause to be posited in the United States mails for mailing or delivery, o deposit or cause to be deposited with any express company or o common carrier for carriage, or to send or carry from one S or Territory of the United States or the District of Columbi any other State or Territory of the United States or the Dis of Columbia, or to bring or to cause to be brought into the Un States from abroad, any film or other pictorial representatio any prize fight or encounter of pugilists, under whatever na which is designed to be used or may be used for purposes of lic exhibition. (37 Stat. 240.)

This section and the two sections next following were an act entitled "A to prohibit the importation and the interstate transportation of films or pictorial representations of prize fights, and for other purposes."

Mailing or taking from the mails obscene or other indecent, fraudulent, matter described was made punishable by Crim. Code, §§ 211–217, an 10381–10387.

Notes of Decisions

Constitutionality.—This section making it unlawful to bring into the United States any film of any prize fight for purposes of public exhibition, is not beyond the powers of Congress under the commerce clause of the Constitution. Weber v. Freed (1915) 36 Sup. Ct. 131.

This statute prohibiting the importation of prize fight films, held a valid exercise of power under commerce clause. Weber v. Freed (1915) 224 Fed. 355, 140 C. C. A. 41.

Importation of films.—An import of moving picture films of a prize held prohibited by this statute, th the importer has no present inte of using them for any other pu than exhibition. Weber v. (1915) 224 Fed. 355, 140 C. C. A

Negatives of a prize fight in a eign country held within inhibitio this statute as films or other pict representations of a prize fight. K thenic Exhibition Co. v. Emmons C. 1915) 225 Fed. 902.

portation of films of prize fight for ibition before clubs, societies, asso- ons, and their guests, held prohib- by Act July 31, 1912. Kalisthenic bition Co. v. Emmons (D. C. 1915) Fed. 902.

gatives of prize fight, from which ives are to be made and exhibited before members and guests of clubs, etc., without limitation as to number of guests, held excluded from importation by Act July 31, 1912, as supplemented by Act Oct. 3, 1913, par. 380, ante, § 5291. Kalisthenic Exhibition Co. v. Emmons (C. C. A. 1916) 229 Fed. 124.

0417. (Act July 31, 1912, c. 263, § 2.) Receiving for sale, etc., or exhibition, prize-fight films, etc., unlawful.

shall be unlawful for any person to take or receive from the ls, or any express company or other common carrier, with in- to sell, distribute, circulate, or exhibit any matter or thing ein forbidden to be deposited for mailing, delivery, or carriage terstate commerce. (37 Stat. 241.)

See note to preceding section.

0418. (Act July 31, 1912, c. 263, § 3.) Punishment for violation of provisions of act.

ny person violating any of the provisions of this Act shall for offense, upon conviction thereof, be fined not more than one sand dollars or sentenced to imprisonment at hard labor for not e than one year, or both, at the discretion of the court. (37 Stat.)

See note to section 1 of this act, ante, § 10416.

CHAPTER TEN

The Slave Trade and Peonage

Sec.
9. Confining or detaining slaves on board vessel; punishment for.
0. Seizing slaves on foreign shores; punishment for.
1. Bringing slaves into United States; punishment for.
2. Equipping vessels for slave trade; punishment for.
3. Transporting persons to be held as slaves; punishment for.
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5. Serving on vessels in slave trade; punishment for.
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7. Equipping, etc., vessel for slave trade; forfeiture; moiety to informer.
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0. Receiving persons on board to be sold as slaves; penalty; moiety to informer.
10431. Vessels found hovering on coasts to be forfeited.
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10440. Instructions to masters of armed vessels.
10441. Kidnapping; punishment for.
10442. Holding or returning persons to peonage; punishment for.
10443. Obstructing enforcement of preceding section.
10444. Bringing kidnaped person into United States, etc.; punishment for.

0419. (Crim. Code, § 246.) Confining or detaining slaves on board vessel; punishment for.

Whoever, being of the crew or ship's company of any foreign sel engaged in the slave trade, or being of the crew or ship's npany of any vessel owned wholly or in part, or navigated for

or in behalf of any citizen of the United States, forcibly confine detains on board such vessel any person as a slave, or, on board s vessel, offers or attempts to sell as a slave any such person, or on high seas, or anywhere on tide water, transfers or delivers to any o vessel any such person with intent to make such person a slave lands or delivers on shore from on board such vessel any person intent to make sale of, or having previously sold such person slave, is a pirate, and shall be imprisoned for life.

R. S. § 5375. Act Jan. 15, 1897, c. 29, § 2, 29 Stat. 487. Act March 4, c. 321, § 246, 35 Stat. 1138.

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History and construction of statutes relating to slave trade in general.—See Tryphenia v. Harrison (C. C. 1806) Fed. Cas. No. 14,209; U. S. v. Smith (C. C. 1809) Fed. Cas. No. 16,-332; The Wilson v. U. S. (C. C. 1820) Fed. Cas. No. 17,846; U. S. v. The La Jeune Eugenie (C. C. 1822) Fed. Cas. No. 15,551; U. S. v. Darnaud (C. C. 1855) Fed. Cas. No. 14,918; Charge to Grand Jury (C. C. 1859) Fed. Cas. No. 18,269a; U. S. v. The Ohio (D. C. 1849) Fed. Cas. No. 15,914; U. S. v. Naylor (D. C. 1856) Fed. Cas. No. 15,-858.

Slave trade as piracy.—The slave trade is not piracy, unless made so by the treaties or statutes of the nation to whom the party belongs. The Antelope (1825) 10 Wheat. 66, 118, 6 L. Ed. 268.

Slave trade is not punishable as piracy. U. S. v. Corrie (C. C. 1860) Fed. Cas. No. 14,869.

Intent and acts as necessary to convict.—Intent and acts tending to make some one a slave are both necessary, under the act of 1820, to convict a person of a capital offense, though under other laws one may be guilty of a misdemeanor for merely transporting slaves from one place to another abroad. U. S. v. Libby (C. C. 1846) Fed. Cas. No. 15,597.

Participation in trade without taking slaves on board vessel.—Facts and circumstances enumerated which are c petent as evidence tending to sho guilty participation of the captain vessel in the slave trade, without tually taking slaves on board his vessel. U. S. v. Libby (C. C. 1 Fed. Cas. No. 15,597.

Transportation of goods to Afric a crime.—The mere transportatio any kind of goods to Africa is n crime under any act of congress, pendently of the intent with whi is done. U. S. v. Libby (C. C. 1 Fed. Cas. No. 15,597.

Dispensing with prosecutions against public policy.—It is ag public policy to dispense with pro tion for violation of the law to pro the slave trade. (1819) 5 Op. Gen. 717.

Proof of probable cause for arre Finding of 300 Africans on boa vessel held sufficient proof of prob cause for issuing warrant of arres engaging in slave trade. In re H (D. C. 1858) Fed. Cas. No. 1,099

Sufficiency of evidence.—Sufficien evidence to sustain an indictment forcibly confining and detaining neg on board a vessel with intent to them slaves. Act May 15, 1820, U. S. v. Gordon (C. C. 1861) Fed. No. 15,231.

§ 10420. (Crim. Code, § 247.) Seizing slaves on foreign sho punishment for.

Whoever, being of the crew or ship's company of any for vessel engaged in the slave trade, or being of the crew or sh company of any vessel owned in whole or in part, or navig for, or in behalf of, any citizen of the United States, lands from s vessel, and, on any foreign shore, seizes any person with inten make such person a slave, or decoys, or forcibly brings, or carrie receives such person on board such vessel, with like intent, is a pi and shall be imprisoned for life.

R. S. § 5376. Act Jan. 15, 1897, c. 29, § 2, 29 Stat. 487. Act March 4, c. 321, § 247, 35 Stat. 1139.

Notes of Decisions

See, also, notes under § 10419, ante.

Seizing and receiving on board vessels in general.—A person employed merely in the transportation of negroes from port to port is not guilty of piracy, under the act of 1820, for se negroes, or receiving them on a with intent to make slaves of t U. S. v. Battiste (C. C. 1835) Cas. No. 14,545.

it is the receiving of a person on with intent to make him a slave, is will render the captain guilty of tal offense. U. S. v. Libby (C. C. Fed. Cas. No. 15,597.

s an offense under Act May 15, § 4 (3 Stat. 600), to receive ne- on board of the vessel from per- who have seized them and brought to the vessel's side in violation of U. S. v. Westervelt (C. C. 1861) Cas. No. 16,668.

zenship necessary to constitute e.—Either the owner of the vessel ed in slave trade or the accused be a citizen to constitute the of- described by Act 1820, § 4. U. S. v. Brown (C. C. 1848) Fed. Cas. No. 14,656; Same v. Westervelt (C. C. 1861) Fed. Cas. No. 16,668.

Necessity that negroes should be free.—To bring a case within the statute it is necessary that the negroes should have been free when seized or received on board. U. S. v. Battiste (C. C. 1835) Fed. Cas. No. 14,545.

Bringing slaves from Martinique as piracy.—Bringing slaves from Martinique, the property of residents there, may be piracy, or may prove, by the place of its commission, to be only an offense against the municipal laws. (1792) 1 Op. Atty. Gen. 29.

421. (Crim. Code, § 248.) Bringing slaves into United States; punishment for.

hoever brings within the jurisdiction of the United States, in manner whatsoever, any person from any foreign kingdom ountry, or from sea, or holds, sells, or otherwise disposes of, person so brought in, as a slave, or to be held to service or labor, be fined not more than ten thousand dollars, one half to the use e United States and the other half to the use of the party who cutes the indictment to effect; and, moreover, shall be imprison- t more than seven years.

R. S. § 5377. Act March 4, 1909, c. 321, § 248, 35 Stat. 1139.

Notes of Decisions

note under § 10431, post.

ortation of African brought from reign place, or from sea.—An in- ent under Act April 20, 1818, e sustained for the illegal impor- of an African brought from any n place, or from sea. U. S. v. (C. C. 1860) Fed. Cas. No. 15,-

ging into country slaves removed rom.—The object of this law was an end to the slave trade and event the introduction of slaves foreign countries, and the lan- of the statute cannot proper- applied to persons of color who domiciled in the United States and brought back after temporary ab- U. S. v. The Garonne (1837) t. 73, 77, 9 L. Ed. 637.

April 20, 1818, c. 91, prohibit- e slave trade, does not prohibit turn of slaves who left the Unit- ates with their owners, and in- g to return. (1821) 1 Op. Atty. 503.

ne owner of slaves remove with to another country, with the view permanent settlement, and there several years, he cannot law- bring them into this country (1831) 2 Op. Atty. Gen. 479.

ging free colored servant.—The ng to the port of New York on a schooner a passenger from o, who had with him a free col- ervant, hired to him by his moth- th his assent, and who came with live with and serve him in New York, is not a violation of the slave laws. (1821) 5 Op. Atty. Gen. 736.

Selling negro or slave unlawfully imported.—An indictment will not lie for selling a negro or slave who was unlawfully imported. U. S. v. Gould (D. C. 1860) Fed. Cas. No. 15,239.

Africans on board captured vessels brought into port.—Where a French vessel, with Africans on board, unlawfully taken from their native land, was captured by pirates and from them captured by an American vessel and brought into port, and a demand for the Africans was made by the French minister with a view to their restoration, held, that the application was well founded and should be acceded to. (1822) 1 Op. Atty. Gen. 534.

The act of the United States schooner Grampus capturing and bringing in for adjudication, under the Act March 3, 1819, c. 101, the Spanish vessel Phœnix, with Africans on board, was not a violation of the laws concerning the slave trade. (1830) 2 Op. Atty. Gen. 365.

Whether the Africans can be delivered to a claimant whose title to them is deduced from a traffic which is equally forbidden by the laws of his own country and of ours, is a question which ought to be referred to the highest judicial tribunal. Id.

Coolie trade.—The coolie trade is not within the statutes prohibiting the slave trade. (1859) 9 Op. Atty. Gen. 282.

Evidence.—Evidence of an importation contrary to Acts Md. 1796, c. 67.

Maria v. White (C. C. 1829) Fed. Cas. No. 9,076.

Former law.—By Act March 2, 1807, c. 22, the importation of slaves from Africa or elsewhere into the United States, or any place within their jurisdiction, was prohibited under severe penalties; and the importer and all persons claiming under him were therein declared to have no title to the negroes imported, nor to their services. (1821) 1 Op. Atty. Gen. 447.

By the same act it was left to the legislatures of the several states to regulate the manner in which negroes thus imported shall be disposed of. Id.

It was the duty of every good citizen, who might be apprised of a breach of this law, to take prompt and immediate steps for the seizure of the negroes, and to inform the governor the state that he might give directi for the disposal of them. Id.

—— As to importation into cert states.—Act Feb. 28, 1803, to prev the importation of certain persons to certain states, where by the la thereof their admission is prohibit was not in force in the territory of leans. The Amiable Lucy v. U. (1810) 6 Cranch, 330, 3 L. Ed. 239.

Act Feb. 28, 1803, c. 10, prohibit the importation of certain persons color into certain states of the Uni is not repealed by the thirtee amendment of the Constitution, or Civil Rights Act April 9, 1866, c. (1868) 12 Op. Atty. Gen. 413.

See notes under §§ 10427, 104 post.

§ 10422. (Crim. Code, § 249.) Equipping vessels for slave trac punishment for.

Whoever builds, fits out, equips, loads, or otherwise prepar or sends away, either as master, factor, or owner, any vessel, any port or place within the jurisdiction of the United States, causes such vessel to sail from any port or place whatsoever, wit such jurisdiction, for the purpose of procuring any person from a foreign kingdom or country to be transported to any port or pl whatsoever, to be held, sold, or otherwise disposed of as a slave, held to service or labor, shall be fined not more than five thousand d lars, one half to the use of the United States and the other half the use of the person prosecuting the indictment to effect; and sh moreover, be imprisoned not more than seven years.

R. S. § 5378. Act March 4, 1909, c. 321, § 249, 35 Stat. 1139.

Notes of Decisions

Offense in general.—The offense of sailing with intent to engage in the slave trade (Act April 20, 1818, §§ 2, 3) is not committed unless the vessel sail out of the port. U. S. v. La Coste (C. C. 1820) Fed. Cas. No. 15,548.

It is an indictable offense, under the act of 1818, to fit, equip, load, or otherwise prepare, a vessel in the United States for the purpose of transporting slaves from a foreign place to any other place. U. S. v. Malebran (C. C. 1820) Fed. Cas. No. 15,711.

Chartering or selling vessel.—If an American citizen charter his vessel for the prosecution of a slaving voyage, he will be guilty of a violation of the slave trade acts; but if he charter his vessel for the prosecution of a voyage which is prima facie innocent, the fact that it may be converted to an inhibited ulterior purpose will not expose him to penalty, or his vessel to forfeiture. (1843) 4 Op. Atty. Gen. 242.

The selling of an American vessel in the port of Rio Janeiro to a slave dealer, deliverable on the coast of Africa, is not of itself an aiding or abetting of the slave trade. The vendor must not lend assistance to such slave dealer by navigating the vessel to the coast of Africa upon an outward slave trade voyage; for, if he d he becomes thereby a participant in trade, and, as such, is subject to p ishment; but if he only make a b fide sale of his property, delivere upon that coast or elsewhere, he d not incur any responsibility. Id.

Indictment or information.—As sufficiency of the indictment or formation, see U. S. v. Gooding (18 12 Wheat. 460, 467, 6 L. Ed. 6 The Caroline (C. C. 1819) Fed. No. 2,418; U. S. v. La Coste (C. 1820) Fed. Cas. No. 15,548; U. v. Smith (C. C. 1820) Fed. Cas. 16,338; U. S. v. Johnson (C. C. 18 Fed. Cas. No. 15,486; U. S. v. K (D. C. 1863) Fed. Cas. No. 15,51

In an indictment founded on Sl Trade Act April 20, 1818, §§ 2, 3 Stat. 451), for causing a vessel to from a port of the United States be employed in such trade, it is necessary to aver that the defend knowingly committed the offense. S. v. Smith (C. C. 1820) Fed. Cas. 16,338.

Evidence.—As to evidence of offe see U. S. v. Gooding (1827) 12 Wh 460, 467, 6 L. Ed. 693.

The truth or falsity of the charge being engaged in the slave trade b

be dependent on proof of circum-ices attending the fitting, equipping, loading, as well as those of the age; both to be weighed in connection with the master's declarations. U. S. v. The Isla De Cuba (C. C. 1864) Fed. Cas. No. 15,447, affirming (D. C. 1860) Fed. Cas. No. 15,449.

10423. (Crim. Code, § 250.) Transporting persons to be held as slaves; punishment for.

Whoever, within the jurisdiction of the United States, takes on ard, receives, or transports from any foreign kingdom or coun-, or from sea, any person in any vessel, for the purpose of hold-, selling, or otherwise disposing of such person as a slave, or be held to service or labor, shall be punished as prescribed in the tion last preceding.

R. S. § 5379. Act March 4, 1909, c. 321, § 250, 35 Stat. 1139.

Notes of Decisions

essel transporting slave from island St. Thomas to Cuba.—The master of essel employed in transporting a e from the island of St. Thomas to Cuba is indictable under Act May 10, 1800. U. S. v. Kennedy (C. C. 1821) Fed. Cas. No. 15,525.

10424. (Crim. Code, § 251.) Hovering on coast with slaves on board; punishment for.

Whoever, being the captain, master, or commander of any ves- found in any river, port, bay, harbor, or on the high seas, with- the jurisdiction of the United States, or hovering on the coast reof, having on board any person, for the purpose of selling such rson as a slave, or with intent to land such person for any such rpose, shall be fined not more than ten thousand dollars and im- soned not more than four years.

R. S. § 5380. Act March 4, 1909, c. 321, § 251, 35 Stat. 1139.

10425. (Crim. Code, § 252.) Serving on vessels in slave trade; punishment for.

Whoever, being a citizen of the United States, or other person siding therein, voluntarily serves on board of any vessel em- yed or made use of in the transportation of slaves from any for- n country or place to another, shall be fined not more than two thou- d dollars and imprisoned not more than two years.

R. S. §§ 5381, 5382. Act March 4, 1909, c. 321, § 252, 35 Stat. 1139.

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ffense in general.—Service on a voy- known to be for the purpose of curing slaves for transportation n one foreign country to another is iolation of this statute. Charge to nd Jury (C. C. 1859) Fed. Cas. No. 69a.

ecessity of actual transportation or rying of slaves.—An actual transpor- on or a carrying of slaves in the sel in which accused served is not essary to constitute the offense. U. v. Morris (1840) 14 Pet. 464, 474, L. Ed. 543.

he voluntary service of a citizen on rd a vessel of the United States in a voyage commenced with intent that the vessel should be employed in the slave trade from one foreign place to another is an offense, although no slaves are transported or received on board. U. S. v. Morris (1840) 14 Pet. 464, 474, 10 L. Ed. 543.

Procuring slaves and shipping them by another vessel.—The offense of en- engaging in the slave trade under the statute is committed by procuring slaves and shipping them by the ves- sel of another. U. S. v. Andrews (C. C. 1820) Fed. Cas. No. 14,454.

See notes under § 10422, ante.

10426. (Crim. Code, § 253.) Receiving or carrying away person to be sold or held as slave; punishment for.

Whoever, being the master or owner or person having charge of y vessel, receives on board any other person, with the knowledge intent that such person is to be carried from any place subject the jurisdiction of the United States to any other place, to be ld or sold as a slave, or carries away from any place subject

to the jurisdiction of the United States any such person, with intent that he may be so held or sold as a slave, shall be fined more than five thousand dollars, or imprisoned not more than five yea or both.

R. S. § 5524. Act March 4, 1909, c. 321, § 253, 35 Stat. 1139.

§ 10427. (Crim. Code, § 254.) Equipping, etc., vessel for sl trade; forfeiture; moiety to informer.

No person shall, for himself or for another, as master, fac or owner, build, fit, equip, load, or otherwise prepare any ve in any port or place within the jurisdiction of the United States, cause any vessel to sail from any port or place within the jurisdict of the United States for the purpose of procuring any person from foreign kingdom, place, or country to be transported to any port place whatsoever, to be held, sold, or otherwise disposed of, as a sl or to be held to service or labor; and every vessel so built, fitted equipped, laden, or otherwise prepared, with her tackle, apparel, niture, and lading, shall be forfeited; one moiety to the use of United States and the other to the use of the person who sues for forfeiture and prosecutes the same to effect.

R. S. § 5551. Act March 4, 1909, c. 321, § 254, 35 Stat. 1140.

Notes of Decisions

Extent of prohibitions in original acts.—The prohibitions in the slave trade acts of May 10, 1800, and of April 20, 1818, extend as well to the carrying of slaves, on freight, as to cases where the persons transported are the property of citizens of the United States, and to the carrying them from one port to another of the same foreign empire as well as from one foreign country to another. The Merino (1824) 9 Wheat. 391, 403, 6 L. Ed. 118.

Forfeiture in general.—As to forfeiture of vessel engaged in slave trade or built therefor, see The Caroline (C. C. 1819) Fed. Cas. No. 2,418; The Alexander (C. C. 1823) Fed. Cas. No. 165; Strohm v. U. S. (C. C. 1840) Fed. Cas. No. 13,539; The Porpoise (C. C. 1855) Fed. Cas. No. 11,284; U. S. v. The La Jeune Eugenie (C. C. 1822) Fed. Cas. No. 15,551; U. S. v. The Catharine (C. C. 1840) Fed. Cas. No. 14,755; U. S. v. The Augusta (C. C. 1861) Fed. Cas. No. 14,477; Charge to Grand Jury (C. C. 1859) Fed. Cas. No. 18,269a; The Wanderer (D. C. 1860) Fed. Cas. No. 17,139; U. S. v. The Kitty (D. C. 1808) Fed. Cas. No. 15,537; The Orion (D. C. 1859) Fed. Cas. No. 10,575.

Vessel fitted and equipped for slave trade.—A vessel begun to be fitted and equipped for a slave voyage in a port of the United States, then going to a foreign port, to evasively complete the fitting and equipping, and so completing it, and from such port continuing the voyage, is liable to seizure and condemnation when driven in its subsequent course into a port of the United States. The Slavers (1864) 2 Wall. 383, 395, 17 L. Ed. 911.

When forfeiture or right of seizure attaches. — The forfeiture attaches where the original voyage is comm ed in the United States whether vessel belongs to citizens or fore ers, and whether the act is done jure or by an agent for the benef another who is not a citizen or ident of the United States, and it is necessary, to incur the forfeiture, the equipment for the voyage shoul completed, and it is sufficient if preparations are made for the unla purpose. The Plattsburgh (1825 Wheat. 133, 139, 6 L. Ed. 284.

It is the preparation of a vessel the purpose for which she is to be ployed that constitute the offens engaging in the slave trade, and as as the preparations have progresse far as clearly and satisfactorily to such purpose, the right of seizur taches. The Slavers (1864) 2 375, 380, 17 L. Ed. 909.

Probable cause for seizure.—W the equipment of a vessel is adapt the slave trade, that fact, with circumstances, may be probable for a seizure. (1820) 5 Op. Atty. 724.

Indictment or information.—An i mation, which describes in one the two distinct ways of prepari vessel and of causing her to sail, suing the words of the law, is suffi The Emily (1824) 9 Wheat. 381, 6 L. Ed. 116.

In an indictment founded on Trade Act April 20, 1818, §§ 2, Stat. 451), for causing a vessel to from a port of the United States employed in such trade, it is not essary to aver that the defendant k ingly committed the offense. U. Smith (C. C. 1820) Fed. Cas. No. 338.

vidence.—Evidence in proceedings forfeiture held to show that a ves- was fitted out, as well as caused ail, for the prosecution of the pro- ted trade. The St. Jago de Cuba 24) 9 Wheat. 409, 412, 6 L. Ed.

he condemnation of a vessel for en- ing in the slave trade may be made testimony that is circumstantial, vided the circumstances are suffi- tly strong, and especially when cor- orated by moral coincidences. The vers (Reindeer) (1864) 2 Wall. 383, , 17 L. Ed. 911.

a foreign claimant of a vessel seiz- for being engaged in the slave trade sets up a title derived from American owners, he must show affirmatively that there remains no American ownership. U. S. v. The La Jeune Eugenie (C. C. 1822) Fed. Cas. No. 15,551.

Preferred claims.—The claim of seamen for wages on a voyage in violation of the statute, where they knew the character and destination of the vessel, was rejected; but such a claim, or that of materialmen, would be preferred to that of forfeiture where the seamen or materialmen were innocent of all knowledge of or participation in the illegal voyage. The St. Jago de Cuba (1824) 22 U. S. (9 Wheat.) 409, 414, 6 L. Ed. 122.

0428. (Crim. Code, § 255.) Penalty on persons building, equipping, etc.; moiety to informer.

Whoever so builds, fits out, equips, loads, or otherwise pre- res or sends away any vessel, knowing or intending that the same ll be employed in such trade or business, contrary to the provisions the section last preceding, or in any way aids or abets therein, ll, besides the forfeiture of the vessel, pay the sum of two thousand lars; one moiety thereof to the use of the United States and the er moiety thereof to the use of the person who sues for and prose- es the same to effect.

R. S. § 5552. Act March 4, 1909, c. 321, § 255, 35 Stat. 1140.

10429. (Crim. Code, § 256.) Forfeiture of vessels transporting slaves; moiety to informer.

Every vessel employed in carrying on the slave trade or on ich is received or transported any person from any foreign gdom or country, or from sea, for the purpose of holding, selling, otherwise disposing of such person as a slave, or of holding such rson to service or labor, shall, together with her tackle, apparel, fur- ure, and the goods and effects which may be found on board, or ich may have been imported thereon in the same voyage, be for- ted; one moiety to the use of the United States and the other to the e of the person who sues for and prosecutes the forfeiture to effect.

R. S. § 5553. Act March 4, 1909, c. 321, § 256, 35 Stat. 1140.

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resumption as to vessel being about engage in slave trade.—One trading the west coast of Africa must keep operations so clear and distinct in ir character as to repel the imputa- n of a purpose to engage in the slave de, and where a vessel is bound to western coast of Africa, under such cumstances as to raise a presumption t she may be about to engage in the ve trade, she must clearly explain se circumstances under penalty of feiture. The Slavers (Kate) (1864) Wall. 350, 363, 17 L. Ed. 878; The vers (Sarah) (1864) 2 Wall. 366, , 17 L. Ed. 906.

orfeiture of vessel in hands of subsequent purchasers.—A vessel under feiture for having violated the laws hibiting the slave trade remains sub- t to the forfeiture in the hands of sequent purchasers; and the Presi- nt will not interpose in any suit brought against the vessel on that account. (1823) 1 Op. Atty. Gen. 619.

Collector of customs as informer.—A collector of customs may become an informer and receive a portion of the penalties under Act July 7, 1838, c. 191, § 2, in relation to steamboats, and under the acts prohibiting the slave trade. (1859) 9 Op. Atty. Gen. 400.

Moiety to officers and crew seizing vessel.—Although the officers and crew who seized a vessel for the violation of the slave laws are entitled to a moiety of the proceeds of that vessel, it is doubtful whether it would be consistent with the respect due to the district court of Georgia, which has decided otherwise, to question its decision on the ex parte statement of an interested individual. (1819) 5 Op. Atty. Gen. 719.

Libel for forfeiture under former laws.—See The Mary Ann (1823) 8 Wheat. 380, 386, 5 L. Ed. 641.

§ 10430. (Crim. Code, § 257.) Receiving persons on board to sold as slaves; penalty; moiety to informer.

Whoever, being a citizen of the United States, takes on boa receives, or transports any person for the purpose of selling su person as a slave shall, in addition to the forfeiture of the ves pay for each person so received on board or transported the sum two hundred dollars, to be recovered in any court of the United Stat the one moiety thereof to the use of the United States and the ot moiety to the use of the person who sues for and prosecutes the sa to effect.

R. S. § 5554. Act March 4, 1909, c. 321, § 257, 35 Stat. 1140.

§ 10431. (Crim. Code, § 258.) Vessels found hovering on coa to be forfeited.

Every vessel which is found in any river, port, bay, or harb or on the high seas, within the jurisdiction of the United Sta or hovering on the coasts thereof, and having on board any p son, with intent to sell such person as a slave, or with intent land the same for that purpose, either in the United States or el where, shall, together with her tackle, apparel, furniture, and goods or effects on board of her, be forfeited to the United States.

R. S. § 5555. Act March 4, 1909, c. 321, § 258, 35 Stat. 1140.

Notes of Decisions

Construction and operation of prior acts.—See The Plattsburgh (1825) 10 Wheat. 133, 135, 6 L. Ed. 284.

Seizure by customs officers.—It is peculiarly the duty of the officers of the customs to watch over any maritime infractions of the laws of the United States, and it is the duty of all customhouse officers as well within their districts as without to make seizures of vessels. The Josefa Segunda (1825 Wheat. 312, 329, 6 L. Ed. 329.

Vessel in distress.—The unlawful portation of slaves into the Un States may not be excused on the of distress in proceedings to forfe vessel seized in the Mississippi r with a cargo of negroes on board. Josefa Segunda (1820) 5 Wheat. 353, 5 L. Ed. 104.

§ 10432. (Crim. Code, § 259.) Forfeiture of interest in slave v sels; additional penalty.

It shall be unlawful for any citizen of the United States, or ot person residing therein, or under the jurisdiction thereof, direc or indirectly to hold or have any right or property in any v sel employed or made use of in the transportation or carrying slaves from one foreign country or place to another, and any su right or property shall be forfeited, and may be libeled and condem for the use of the person suing for the same. Whoever shall viol the prohibition of this section shall also forfeit and pay a sum money equal to double the value of his right or property in such vess and shall also forfeit a sum of money equal to double the value of interest he had in the slaves which at any time may be transported carried in such vessels.

R. S. § 5556. Act March 4, 1909, c. 321, § 259, 35 Stat. 1140.

§ 10433. (Crim. Code, § 260.) Seizure of vessels in slave trad

The President is authorized, when he deems it expedient, to r and employ any of the armed vessels of the United States to cru wherever he may judge attempts are making to carry on the sl trade, by citizens or residents of the United States, in contrav tion of laws prohibitory of the same; and, in such case, he sl instruct the commanders of such armed vessels to seize, take, bring into any port of the United States, to be proceeded against cording to law, all American vessels, wheresoever found, which r have on board, or which may be intended for the purpose of tak on board, or of transporting, or may have transported any person

ion of the provisions of any Act of Congress prohibiting the traf-
slaves.

R. S. § 5557. Act March 4, 1909, c. 321, § 260, 35 Stat. 1140.

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ority to detain suspected vessel. never there is just cause to be-hat any merchant vessel is en-in an illicit trade a public vessel e right to detain her until our ment can act upon the subject, at question of the violation of vereignty of any foreign govern-n no wise affects the question in to the liability of the suspected to seizure under such circum-s. (1839) 3 Op. Atty. Gen. 405.

ty to officers and crew seizing —Although the officers and crew ized a vessel for the violation of ve laws are entitled to a moiety proceeds of that vessel, it is ul whether it would be consistent he respect due to the district of Georgia, which has decided ise, to question its decision on parte statement of an interested ual. (1819) 5 Op. Atty. Gen.

Authority of president to remit judgments of forfeiture.—The president is invested with authority to remit judgments of forfeiture pronounced against vessels, their tackle and apparel, for infractions of Act April 20, 1818, c. 91, prohibiting the slave trade. (1847) 4 Op. Atty. Gen. 573.

Right of owner under former law to claim slaves unlawfully transported.—See The Merino (1824) 9 Wheat. 391, 407, 6 L. Ed. 118.

Jurisdiction of district court under former law.—The district court of the United States could decide who was the captor of a slaver, under the law of Louisiana, made in pursuance of Slave Trade Act 1807, c. 77, § 4, giving one-half the proceeds of the sale of the negroes to the commander of the capturing vessel. The Josefa Segunda (1825) 23 U. S. (10 Wheat.) 312, 6 L. Ed. 329.

34. (Crim. Code, § 261.) Proceeds of condemned vessels paid nto the Treasury.

e proceeds of all vessels, their tackle, apparel, and furniture, he goods and effects on board of them, which are so seized, cuted, and condemned, shall be paid into the Treasury of the ed States.

R. S. § 5558. Act March 4, 1909, c. 321, § 261, 35 Stat. 1141.

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ner law as to distribution of pro- —Under the former law the entire ds of the vessel were forfeited e use of the United States, unless izure was made by armed vessels of the navy or by revenue cutters, in which case distribution was made as prizes taken from the enemy. The Josefa Segunda (1825) 10 Wheat. 312, 329, 6 L. Ed. 329.

35. (Crim. Code, § 262.) Disposal of persons found on seized vessel.

e officers of the vessel making such seizure shall safely keep person found on board of any vessel so seized, taken, or ght into port for condemnation, and shall deliver every such per-o the marshal of the district into which he may be brought, if a port of the United States, or if elsewhere, to such person as be lawfully appointed by the President, in the manner directed w, transmitting to the President, as soon as may be after such ery, a descriptive list of such persons, in order that he may give ions for the disposal of them.

R. S. § 5559. Act March 4, 1909, c. 321, § 262, 35 Stat. 1141.

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osition of persons on vessel.— ns who are first captured by a rent privateer fitted out in vio-of the United States neutrality, a pirate and then recaptured and t into the ports of the United under a reasonable suspicion that ation of the slave trade acts was ed, will not be restored without full proof of the proprietary interest. The Antelope (1825) 10 Wheat. 66, 125, 6 L. Ed. 268.

Act March 3, 1819, c. 101, prohibits the slave trade and makes a new arrangement for the disposition of persons of color seized and brought in under any of the acts prohibiting the traffic in slaves, and such persons are

made deliverable subject to the orders of the president. U. S. v. Preston (1830) 3 Pet. 57, 66, 7 L. Ed. 601.

Act March 3, 1819, c. 101, applies to all negroes previously brought into the United States contrary to the provisions of any of the acts of congress on the subject and not disposed of by state laws. (1820) 1 Op. Atty. Gen. 334.

Assumption of inferential duties under statute.—The president should not assume the responsibility of exercising inferential duties under Act March 3, 1819, c. 101. (1819) 1 Op. Atty. Gen. 317.

Former law.—The offense under Act 1807, c. 22, § 7, is not that of importing or bringing into the United States persons of color with intent to hold or sell them as slaves, but that of hovering on the coast of the United States with such intent, though the vessel and goods found on board may be forfeited, the act is silent as to the disposition of the colored persons found on board, except as to the duty of the officers of armed vessels making the capture to keep them to be delivered to the ov of the poor, or the governor state, or persons appointed by spective states to receive the sa S. v. Preston (1830) 3 Pet. 57, Ed. 601.

—— Effect of former repealin Slave Trade Act April 20, 1818, ed the first six sections of Act 22, and re-enacted their provisio a little more amplitude, but st fined all of their provisions to t of illegal importation thus leav seventh section of the act of force, but without any express p dispose of the colored persons, wise than to appoint someone ceive them. U. S. v. Preston (1 Pet. 57, 66, 7 L. Ed. 601.

—— Constitutionality of state contemplated thereby.—The sta Georgia, passed December 19, making the regulations contempl the law passed December 19, 1 not unconstitutional. (1821) Atty. Gen. 447.

§ 10436. (Crim. Code, § 263.) Apprehension of officers and cr

The commanders of such commissioned vessels shall cause apprehended and taken into custody every person found on of such offending vessel so seized and taken, being of the offic crew thereof, and him convey, as soon as conveniently may the civil authority of the United States, to be proceeded against i course of law.

R. S. § 5560. Act March 4, 1909, c. 321, § 263, 35 Stat. 1141.

Cited without definite application,
Kerr v. Shine (1905) 136 Fed. 61, 65, 69 C. C. A. 69.

§ 10437. (Crim. Code, § 264.) Removal of persons delivered seized vessel.

The President is authorized to make such regulations a rangements as he may deem expedient for the safe-keeping, su and removal beyond the limits of the United States of all such p as may be so delivered and brought within its jurisdiction.

R. S. § 5561. Act March 4, 1909, c. 321, § 264, 35 Stat. 1141.

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President's authority in making regulations and arrangements.—The president has authority to make all the regulations and arrangements that he may deem expedient for the safe-keeping, support, and removal beyond the limits of the United States of all such "negroes, mulattoes, and persons of color" as shall be taken from slavers by the armed vessels of the government. (1847) 4 Op. Atty. Gen. 567.

And all negroes, mulattoes, and persons of color adjudged by competent tribunals to have been imported into the United States contrary to the provisions of the several acts to prohibit the slave trade, and committed to the custody of marshals pursuant to such adjudications, are subject to his orders. Id.

It having been ascertained by the verdict of a jury that the two brought into the port of New O in the brig Titi were so brought lation of the acts prohibiting th trade, the president is called u exercise the authority so conferre

The president may make such lations as he deems expedient f keeping, support, and removal groes captured and delivered to shal of the United States und March 3, 1819, c. 101. (1859) Atty. Gen. 302.

He may allow compensation marshal for the duties required beyond his commissions for di ments, and such compensation able out of any appropriations t the act into effect. Id.

The marshal's accounts are quired to be certified by a judge

Aug. 16, 1856, c. 124, nor to be under Act Aug. 31, 1852, c. 108, hould be certified and taxed in dance with such regulations as resident may deem expedient for authentication. Id.

compensation is to be made in dance with the regulations pre- d by the president for the safe- g, support, and removal of the es, and not by analogy to any fees ribed by Act Feb. 26, 1853, c. 80.

judiciary fund is not applicable ch charges, and they can only be out of a special appropriation by ess for the purpose of carrying ffect the act to prohibit the slave Id.

ction of buildings for transported ans.—The president has no author- erect buildings for the reception ansported Africans. (1842) 4 tty. Gen. 139.

roes on board vessel never taken Africa.—Negroes who were on a vessel and never taken from and brought into the United in contravention of the Slave Trade Acts held not within the provisions of R. S. § 5561 (embodied herein), as originally enacted. U. S. v. The Amistad (1841) 15 Pet. 518, 596, 597, 10 L. Ed. 826.

Support of Africans seized.—The executive may apply to the support of Africans, seized in his efforts to prohibit the slave trade, such portion of the $100,000 appropriated for carrying the prohibitory laws into effect as may be necessary for that purpose. (1821) 5 Op. Atty. Gen. 728.

Purchase of land for settlement, and transportation of free persons of color thereto, etc.—Act March 3, 1819, c. 101, does not authorize the president to appropriate any part of the sum therein specified to the purchase of land on the coast of Africa or elsewhere for the purpose of a settlement, nor to the transportation of free people of color to Africa, nor to the purchase of carpenter's tools, for the purpose of making a settlement in Africa, nor to the payment of the salary and expenses of transporting an agent from this country to Africa. (1819) 1 Op. Atty. Gen. 315.

438. (Crim. Code, § 265.) To what port captured vessel sent.

shall be the duty of the commander of any armed vessel of United States, whenever he makes any capture under the pre- ng provisions, to bring the vessel and her cargo, for adjudica- into some port of the State, Territory, or District to which such l so captured may belong, if he can ascertain the same; if not, into any convenient port of the United States.

R. S. § 5563. Act March 4, 1909, c. 321, § 265, 35 Stat. 1141.

439. (Crim. Code, § 266.) When owners of foreign vessels shall give bond.

very owner, master, or factor of any foreign vessel clearing any port within the jurisdiction of the United States, and ected to be intended for the slave trade, and the suspicion g declared to the officer of the customs by any citizen, on oath, such information being to the satisfaction of the officer, shall give bond, with sufficient sureties, to the Treasurer of the United s that none of the natives of any foreign country or place shall ken on board such vessel to be transported or sold as slaves in other foreign port or place whatever, within nine months there-

R. S. § 5564. Act March 4, 1909, c. 321, § 266, 35 Stat. 1141.

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nt of customs collector to require—By Act March 22, 1794, c. 11, rohibit the carrying on the slave from the United States to any n place or country," the collector of customs cannot require a bond as a prerequisite to giving a clearance, except upon the oath or affirmation of some citizen. (1819) 1 Op. Atty. Gen. 312.

440. (Crim. Code, § 267.) Instructions to masters of armed vessels.

e President is authorized to issue instructions to the com- ders of the armed vessels of the United States, directing them, ever it is practicable, and under such rules and regulations may prescribe, to proceed directly to the country from which were taken, and there hand over to the agent of the United s all such persons, delivered from on board vessels seized in

the prosecution of the slave trade; and they shall afterwards brin captured vessels and persons engaged in prosecuting such trade t United States for trial and adjudication.

R. S. § 5567. Act March 4, 1909, c. 321, § 267, 35 Stat. 1141.

§ 10441. (Crim. Code, § 268.) Kidnapping; punishment for

Whoever kidnaps or carries away any other person, wit intent that such other person be sold into involuntary serv or held as a slave; or who entices, persuades, or induces any person to go on board any vessel or to any other place with the that he may be made or held as a slave, or sent out of the co to be so made or held; or who in any way knowingly aids in ca any other person to be held, sold, or carried away to be held o as a slave, shall be fined not more than five thousand dollars, o prisoned not more than five years, or both.

R. S. § 5525. Act March 4, 1909, c. 321, § 268, 35 Stat. 1141.

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Carrying away person to be sold.—Any person who falsely accuses another of crime, and carries him before a magistrate in order that he may be convicted and put to hard labor, having at the time the purpose or design to hire such person or to enable some other person to hire him, is guilty, under this section, of "carrying away any other person with intent tha other person be sold into invol servitude." Peonage Cases (1903) 123 Fed. 671.

Former law as to kidnappin sale in District of Columbia.—Se v. Henning (C. C. 1835) Fed. Ca 15,348; Id. (C. C. 1836) Fed. Ca 15,349.

§ 10442. (Crim. Code, § 269.) Holding or returning perso peonage; punishment for.

Whoever holds, arrests, returns, or causes to be held, arr or returned, or in any manner aids in the arrest or return o person to a condition of peonage, shall be fined not more five thousand dollars, or imprisoned not more than five years, or

R. S. § 5526. Act March 4, 1909, c. 321, § 269, 35 Stat. 1142.

Notes of Decisions

See notes under § 3944, ante.

Constitutionality.—The prohibition against peonage contained in R. S. §§ 1990, 5526 (this compilation, §§ 3944, 10442), was authorized by the provisions of Const. Amend. 13, forbidding slavery or involuntary servitude within the United States or in any place subject to their jurisdiction, and granting to congress the power to enforce the prohibition by appropriate legislation. Clyatt v. U. S. (1905) 25 Sup. Ct. 429, 430, 197 U. S. 207, 49 L. Ed. 726.

"Peonage" or "condition of peonage" defined in general.—A condition of peonage forbidden by Const. Amend. 13, and R. S. § 1990, ante, § 3944, and § 5526 (embodied herein), results from Code Ala. § 6846, under which a person fined for a misdemeanor may confess judgment with a surety in the amount of the fine and agreeing with the surety on payment of the judgment to reimburse him by working for him on terms approved by the court. U. S. v. Reynolds (1914) 35 Sup. Ct. 86, 235 U. S. 133, 59 L. Ed. 162, reversing judgments (D. C. 1914) 213 Fed. 352, and Same v. Broughton (D. C. 1914) 213 Fed. 345.

Peonage is a form of slavery, and was abolished and prohibited by this section. It may be defined as a co of compulsory service based up indebtedness of the peon to th ter. The principal fact is the in ness. This indebtedness of the p the master is the criminal c which they are held bound to th ter's service. Upon this is b condition of compulsory service. age is sometimes classified as vo or involuntary, but this applies the difference in the origin, bu in the character of the servitud one exists where the debtor volu contracts to enter the service creditor to work out a debt. T er is forced upon the debtor b apparent, but void, provision or by the exercise of criminal that is sometimes the perfect cruelty. But peonage, however ed, is compulsory involuntary tude. The peon can release therefrom, it is true, by the p of the debt; but otherwise the tude is enforced. A clear dist exists between peonage and the tary performance of labor in p of debt. In the latter case the though contracting to pay his labor, can elect at any time to it, and no law compels a conti of the service. That which is c

d to be prohibited by this section ompulsory service to secure the nent of a debt. In re Peonage ge (C. C. 1905) 138 Fed. 686, 687. e "condition of peonage," to hold eturn a person to which is made a inal offense by this section, is a ition of enforced servitude by h the servitor is restrained of his ty and compelled to labor in liqui- n of some debt or obligation, ei- real or pretended, against his will; any agreement giving another the to exact such servitude is invalid r the law, and treated as though involuntarily, and affords the tor or master no protection. Pe- e Cases (D. C. 1903) 123 Fed.

onage is the status or condition of ulsory service in payment of an ed indebtedness by the peon to his er. U. S. v. Cole (D. C. 1907) 153 801.

e fact that persons were induced to for another in payment of debts ugh fear of prosecution if they re- d did not render the master guilty eonage, unless such fear was caus- y threats of prosecution made by at the time. U. S. v. Clement (D. 909) 171 Fed. 974.

stinct acts covered by statute.— his section three distinct acts are ioned: First, holding; second, ar- ng; third, returning. Either may he subject of indictment and pun- ent. A party may hold another state of peonage without ever ng arrested him for that purpose. may arrest an individual for the ose of placing him in a condition eonage, or he may, after one has from a condition of peonage, re- him to it; and this whether he elf claims the service, or is act- s an agent for another, to enforce return. In re Peonage Charge (C. 905) 138 Fed. 686, 688.

olding to peonage.—So far as the sal without just cause to perform labor called for in a written con- t, under which the employé ob- ed money, not refunded, or prop- not paid for, was made prima evidence of an intent to defraud tate statutes, and therefore pun- ble as a criminal offense, such stat- offend against this section, espe- y since, under the local practice, sed may not, to rebut the statu- presumption, testify as to his un- municated motives, purposes, or ntions. Bailey v. Alabama (1911) Sup. Ct. 145, 219 U. S. 219, 55 L. 191.

a person desiring to have a serv- returned to him to work out a causes such servant to be arrest- n a warrant procured by the mas- and after incarceration the mas- procures the servant's release on promise to return to his master's loyment to continue to work out a debt, the master is guilty of peonage, prohibited by this section, provided the servant had been charged with the crime for the purpose of procuring his arrest and incarceration, and to enable the master to extort from the servant a promise to return and work out the debt. In re Peonage Charge (C. C. 1905) 138 Fed. 686.

Under the statute of Alabama which permits a person convicted of crime to sign a contract in open court, with the written approval of the judge, by which he submits himself to servitude to his surety, on confession of judgment by the latter for the fine and costs, until such fine and costs have been reimbursed by his labor, the provisions of the statute must be strictly followed, and the contract cannot be extended beyond the payment of the fine and costs, nor can it be transferred without the consent of the convict. If he is held thereunder against his will and by force or threats after the fine and costs have been paid, or by another to whom the contract has been transferred without his consent, the person so restraining him is guilty of holding him to a condition of peonage. Peonage Cases (D. C. 1903) 123 Fed. 671.

Under this section it is immaterial to the offense whether or not the condition of peonage exists by virtue of a local law or custom creating a system of peonage, or whether it exists in violation, or without the sanction, of law. Peonage Cases (D. C. 1903) 123 Fed. 671.

A person who hires another or induces him to sign a contract by which he agrees during the term to be imprisoned or kept under guard, and under cover of such agreement afterward holds the party to the performance of the contract by threats or punishment or undue influence, subduing his free will, when he desires to abandon the service, is guilty of holding such person to "a condition of peonage." Peonage Cases (D. C. 1903) 123 Fed. 671.

A magistrate or other judicial officer is not criminally liable for an error of judgment or for any act honestly performed under an unconstitutional law, but where he corruptly exercises his functions in order that a citizen may be convicted unlawfully, and sentenced, so that a particular person with whom he has an understanding, express or implied, by becoming surety on a confession of judgment may get the custody of the convict or make a profit out of a contract to be made between the convict and his surety, in consequence of which the convict is restrained of his liberty and put to hard labor, such magistrate cannot escape criminal liability to the United States for the conspiracy, and its natural and designed results in the holding of a citizen to a condition of peonage, be-

cause of the official character of his acts. Peonage Cases (D. C. 1903) 123 Fed. 671.

What influence, force, or threats to compel a person to render service to another in liquidation of an obligation amounts to coercion, such as, if effective, will render the service involuntary and create a condition of peonage, must be determined by taking into consideration in each case the relative inferiority of the person contracting to perform the service to the person exercising the force or influence to compel its performance. Peonage Cases (D. C. 1903) 123 Fed. 671.

A person who falsely pretends to another that he is accused of crime, and offers his good offices to prevent his conviction if he will pay a sum of money, thereby to satisfy the prosecutor, and thus induces such party to sign a contract obligating himself to work to reimburse the amount paid out or pretended to be paid out for this purpose, and to submit to restraint and deprivation of his liberty while he is performing the contract, is guilty of holding such person, or causing him to be held, to a condition of peonage, whenever such person, having so entered on performance of the contract, desires to leave it, but is compelled to remain and perform it by threats or punishment, subduing his freedom of will; and any third person for whose benefit such a contract is made, who, knowing such facts, becomes the custodian of the person so held to servitude and enforces performance of the contract, is also guilty of the offense. Peonage Cases (D. C. 1903) 123 Fed. 671.

If one person carries another before a magistrate, informing him that he is accused of crime, and the magistrate induces the accused, who is of weak mind, or little intelligence, or confiding, to believe that he has been sentenced to hard labor for a fine, when in fact no offense was charged, no warrant issued, and no judgment entered, and such person is induced by such fraudulent means to submit to restraint of his liberty, the persons so concerned are guilty of causing the accused to be held to a condition of peonage. Peonage Cases (D. C. 1903) 123 Fed. 671.

Inducing a person to labor in payment of debts by threats of prosecution may constitute intimidation and amount to peonage, if by reason of the different character of the parties such threats overcome the will of the servant and the service was involuntary. U. S. v. Clement (D. C. 1909) 171 Fed. 974.

In order to constitute the crime of holding another person in peonage, it is not necessary that the defendant should have acted corruptly. Id.

Pen. Code Ga. 1910, §§ 715, 716, making it an offense for a person to obtain money on contract for s with intent not to perform, is no trary to this section. Wilson v. (1912) 75 S. E. 619, 138 Ga. 489

Determination on habeas cor question relating to statute.—Ob that a system of peonage such a existed in New Mexico must ex fore the statute prohibiting p will apply goes to the sufficiency indictment or the evidence to be ed on the trial for violating th ute, and will not be determined application for habeas corpus. Lewis (C. C. 1902) 114 Fed. 9

Jurisdiction.—A federal court entertain a prosecution for violat Act March 2, 1867, c. 187, § Stat. 546, denouncing peonage, prosecution of the same acts und name of kidnapping and false im ment might be held in the state U. S. v. McClellan (D. C. 190 Fed. 971.

Indictment.—An indictment ch defendants with restraining named persons of African desc their personal liberty, and with pelling them to render service f fendants against their will, d state an offense within this s U. S. v. Eberhart (C. C. 189 Fed. 252.

An indictment for peonage in c ling a convict to work out a fi costs for which defendant had b surety held not to allege that th vict was unlawfully restrained condition of peonage. U. S. v. B ton (D. C. 1914) 213 Fed. 345, ment reversed Same v. Re (1914) 35 Sup. Ct. 86, 235 U. S 59 L. Ed. 162.

An indictment for peonage, c ing of defendant's holding to l convict for whom defendant bec surety for fine and costs, failing lege that the convict had ever e on the performance of the servi had done any of the work or agreed on, or had ever been in d ant's custody, held insufficient. v. Reynolds (D. C. 1914) 213 352, judgment reversed (1914) 3 Ct. 86, 235 U. S. 133, 59 L. Ed. 1

Evidence.—Evidence of a prio dition of peonage, to which the p so held were returned by the s the defendant, is essential to s a conviction under an indi charging him with returning designated persons to a condit peonage. Clyatt v. U. S. (190 Sup. Ct. 429, 432, 197 U. S. 2 L. Ed. 726.

On trial for conspiring to ar person with intent to hold hin condition of peonage, evidence o er similar acts held admissible to accord and combination and th

nts' intent. Huff v. U. S. (C. C. 916) 228 Fed. 892.

ed without definite application, klin v. South Carolina (1910) 30 Sup. Ct. 640, 644, 218 U. S. 161, 54 L. Ed. 980; Harlan v. McGourin (1910) 31 Sup. Ct. 44, 218 U. S. 442, 54 L. Ed. 1101, 21 Ann. Cas. 849.

443. (Crim. Code, § 270.) Obstructing enforcement of preceding section.

Whoever obstructs, or attempts to obstruct, or in any way interes with or prevents the enforcement of the section last preced- shall be liable to the penalties therein prescribed.

R. S. § 5527. Act March 4, 1909, c. 321, § 270, 35 Stat. 1142.

444. (Crim. Code, § 271.) Bringing kidnaped person into United States, etc.; punishment for.

Whoever shall knowingly and willfully bring into the United es or any place subject to the jurisdiction thereof, any per- inveigled or forcibly kidnaped in any other country, with intent to such person so inveigled or kidnaped in confinement or to any in- ntary servitude; or whoever shall knowingly and willfully sell, ause to be sold, into any condition of involuntary servitude, any r person for any term whatever; or whoever shall knowingly and fully hold to involuntary servitude any person so brought or sold, be fined not more than five thousand dollars and imprisoned not e than five years.

Act June 23, 1874, c. 464, § 1, 18 Stat. 251. Act March 4, 1909, c. 321, § 271, 5 Stat. 1142.

Notes of Decisions

icement and inveiglement.—Influ- brought to bear upon children by parents and uncles, and by the nents of defendant, to induce to come with him to this coun- rom Italy to act as street musi- in view of their condition in life heir ages and experience, consti- enticement and inveiglement. U. Ancarola (C. C. 1880) 1 Fed. 683.

inveigle or persuade or entice sarily implies that the person is aded or enticed, and yields con- as the result of the persuading or ng; yet the statute is founded on iew that the person so assenting o inveigled may be brought here ne who knows the circumstances e case, with the intent to hold person to involuntary service, al- though the service be the one to which the inveigling related. Id.

Involuntary service.—Where children were brought to this country from Italy to act as street musicians, for the profit and subject to the control of the defendant, and to the injury of their morals, being incapable of exercising will or choice affirmatively on the subject, their service was involuntary, rather than voluntary, though the sham form of securing their consent was gone through with. U. S. v. Ancarola (C. C. 1880) 1 Fed. 676, 683.

Evidence.—Evidence in a prosecution for violating this section by bringing children to this country from Italy to assist the defendant as street musicians held sufficient to support a conviction. U. S. v. Ancarola (C. C. 1880) 1 Fed. 676, 683.

CHAPTER ELEVEN

enses within the Admiralty and Maritime and the Territorial Jurisdiction of the United States

Sec.

5. Places and waters applicable; on board American ship on high seas, etc.; on board American vessel on Great Lakes, etc.; on land under exclusive control of United States; guano islands.
6. Murder defined; first degree; second degree.
7. Manslaughter defined; voluntary; involuntary.
10448. Punishment; murder; manslaughter.
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10450. Other attempts at murder, etc.
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10452. Having carnal knowledge of female under sixteen.
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Sec.
10454. Disposal of fine; evidence required.
10455. Loss of life by misconduct of officers, etc., of vessels; punishment for; liability of corporation officer.
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10457. Robbery; punishment for.
10458. Arson of dwelling house; punishment for.
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10460. Larceny; punishment fo termining value of writ strument.
10461. Receiving stolen goods, punishment for; trials
10462. Laws of States adopted f ishing wrongful acts, e fect of repeal, etc.

§ 10445. (Crim. Code, § 272.) Places and waters applicabl board American ship on high seas, etc.; on board Am vessel on Great Lakes, etc.; on land under exclusive c of United States; guano islands.

The crimes and offenses defined in this chapter shall be ished as herein prescribed:

First. When committed upon the high seas, or on any other within the admiralty and maritime jurisdiction of the United and out of the jurisdiction of any particular State, or when com within the admiralty and maritime jurisdiction of the United and out of the jurisdiction of any particular State on board any belonging in whole or in part to the United States or any citizen of, or to any corporation created by or under the laws of the U States, or of any State, Territory, or District thereof.

Second. When committed upon any vessel registered, licens enrolled under the laws of the United States, and being on a v upon the waters of any of the Great Lakes, namely: Lake Sup Lake Michigan, Lake Huron, Lake Saint Clair, Lake Erie, Ontario, or any of the waters connecting any of said lakes, or the River Saint Lawrence where the same constitutes the Intern al boundary line.

Third. When committed within or on any lands reserved or ac for the exclusive use of the United States, and under the exclusi risdiction thereof, or any place purchased or otherwise acquir the United States by consent of the legislature of the State in the same shall be, for the erection of a fort, magazine, arsenal, yard, or other needful building.

Fourth. On any island, rock, or key, containing deposits of g which may, at the discretion of the President, be considered as a taining to the United States.

R. S. § 5339. Act Sept. 4, 1890, c. 874, 26 Stat. 424. Act March 4 c. 321, § 272, 35 Stat. 1142.

Notes of Decisions

1. Effect of statute as to construction of section 10449.
2. Jurisdiction in general.
3. Question of law or fact.
4. High seas and other waters within admiralty and maritime jurisdiction.
5. Islands.
6. Ships of war.
7. Great Lakes and connecting waters.
8. Military posts, forts, or reservations.
9. Federal cemeteries.
10. Soldiers' home.
11. Post offices or land bought therefor.
12. Indian reservations or country.
13. District of Columbia.

1. Effect of statute as to construction of section 10449.—This section does not affect the construction of section 10449, post. U. S. v. Rodgers (1893) 14 Sup. Ct. 109, 115, 150 U. S. 249, 37 L. Ed. 1071.

2. Jurisdiction in general.— graph 1 clearly includes murde mitted on any land within the sive jurisdiction of the United and within any judicial district, as murder committed on the hig Jones v. U. S. (1890) 11 Sup. 83, 137 U. S. 202, 34 L. Ed. 691

The sole and exclusive juri of the United States contempl Act April 30, 1790, § 3 (1 Stat punishing with death the crime ful murder committed in a place such jurisdiction, is not jurisdict clusive of a state as contradisti ed from that of a territory, but national jurisdiction, as exclu the jurisdiction of local, state, ritorial government. Watts v. (1870) 1 Wash. T. 288.

e mere fact that the executive de-
ment of the federal government
possession of San Juan Island,
excluded local officers appointed
e territorial government from ex-
ing their functions there, did not
ace the territorial jurisdiction,
by virtue of the organic act ex-
ed over it, but merely suspended
execution of the territorial laws
he time being therein. Watts v.
ed States (1870) 1 Wash. T. 288.
e state courts cannot take cogni-
of offenses committed on territory
n it belonging to the United States,
which congress has exclusive pow-
legislation. Sharon v. Hill (C. C.
) 24 Fed. 726; Commonwealth v.
(1811) 8 Mass. 72; Mitchell v.
etts (1835) 34 Mass. (17 Pick.)

ere a state grants land to the gen-
government, reserving concurrent
diction in executing process there-
r offenses committed out of it, the
al courts have exclusive jurisdic-
of offenses committed within such
ory. U. S. v. Travers (C. C.
) Fed. Cas. No. 16,537.
March 3, 1825, § 3, was confined
enses committed in places the sites
eof have been ceded to and are
the jurisdiction of the United
s at the time of its enactment. U.
Davis (C. C. 1829) Fed. Cas. No.
0; U. S. v. Barney (C. C. 1866)
Cas. No. 14,524.
arceny committed in a place not
the sole and exclusive jurisdic-
of the United States may be pun-
le under Act 1825, c. 65, § 3. U.
Davis (C. C. 1829) Fed. Cas. No.
0.
United States court has exclusive
diction of offenses committed in
s in California purchased by the
d States, with the consent of the
legislature, for the erection of a
m house and other necessary pub-
ildings, and so used. Sharon v.
C. C. 1885) 24 Fed. 726.
state courts cannot take cogni-
of offenses committed on territory
n it belonging to the United States,
which congress has exclusive pow-
legislation. Id.
district court of Alaska has ju-
tion under R. S. § 5339, and sec-
5341, post, § 10447, to try and
h an inhabitant for murder or
laughter committed therein; but
aw of Oregon, defining the crime
prescribing the punishment there-
s not in force in Alaska. Kie v.
(C. C. 1886) 27 Fed. 351, 355.
United States courts have juris-
n to try charges of crime commit-
n board any vessel belonging in
or in part to the United States,
y citizen thereof, at any point on
igh seas, or in any river, haven,
basin, or bay within the admiral-
isdiction of the United States, and
out of the jurisdiction of any particular state. U. S. v. Beyer (C. C. 1887) 31 Fed. 35.

R. S. § 5339, and section 5345, post, 10451, construed together make the crime of rape committed in a place within the exclusive jurisdiction of the United States an offense against its laws. U. S. v. Partello (C. C. 1891) 48 Fed. 670, 672.

R. S. § 5339, intended cognizance only of crimes committed in places within the exclusive jurisdiction of the United States. In re Kelly (C. C. 1895) 71 Fed. 545, 547.

Jurisdiction of the United States is confined by R. S. tit. 70, c. 3 (this compilation, tit. 69a, c. 11) to offenses committed within any fort, arsenal, dock yard, magazine, or any other place or district of country under the exclusive jurisdiction of the United States, or on the high seas, or in the waters within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular state. Id.

Under Const. art. 1, § 8, cl. 17, giving the Congress power "to exercise exclusive legislation in all cases whatsoever over * * * all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings," such power extends to land purchased by the United States, by consent of the legislature of the state, and used for the public governmental purpose of maintaining thereon locks and dams for the improvement of the navigation of a river, and the United States has exclusive jurisdiction to prescribe and punish criminal offenses committed thereon; and the fact that the legislative consent was granted after the purchase is immaterial so far as relates to offenses committed thereafter. U. S. v. Tucker (D. C. 1903) 122 Fed. 518.

The exclusive jurisdiction of the United States to prescribe and punish criminal offenses committed on land or in a "place" occupied for governmental purposes may be derived either from article 1, § 8, of the constitution, where the place was purchased by consent of the state legislature, or from an express cession of such jurisdiction by the legislature. Id.

The territory of Colorado is not a "place or district of country" under the sole and exclusive jurisdiction of the United States, within the meaning of Act 1790, § 3, providing for the punishment of persons who commit murder "within any fort, arsenal, dockyard, magazine, or any other place or district of country under the sole and exclusive jurisdiction of the United States." Franklin v. U. S. (1867) 1 Colo. 35.

Where both the acts of congress and of the state make a defined act an offense, the commission of the act may be an offense against each, and punish-

able by each. Sligh v. Kirkwood (Fla. 1913) 61 So. 185.

Defendant killed one of the Nez Perce tribe of Indians. His contention that he was amenable to the law of the territory, not to the law of the United States, held untenable. Pickett v. U. S. (1874) 1 Idaho, 523.

Crimes Act 1857, § 1, was intended to provide only for cases of death on land resulting from assaults which were already made punishable when death resulted at the place where the fatal blow was given. People v. Tyler (1859) 7 Mich. 161, 74 Am. Dec. 703.

The authority to try an Indian, belonging to a tribe recognized as such by the federal government, for killing another Indian of the tribe, not having been conferred on the Nevada courts, does not exist. State v. McKenney (1883) 18 Nev. 182, 2 Pac. 171.

Where a state cedes to the United States exclusive jurisdiction over land purchased as a site for a public building, "for all purposes except the administration of the criminal laws of this state," the state has no jurisdiction for the punishment of crimes committed on the purchased land, but only the right to execute criminal process there for the violation of the laws of the state committed elsewhere within the state. State v. Mack (1897) 47 P. 763, 23 Nev. 359, 62 Am. St. Rep. 811.

Where an assault was committed on land purchased by the United States with the consent of the state of New Jersey, and jurisdiction of the state over such lands was vested in the United States by an act of the legislature and thereafter congress passed an act for the punishment of such offense, it was the exercise of power conferred by Const. art. 1, § 8, and is exclusive, and the state courts have no jurisdiction to try or punish such offense. State v. Morris (N. J. 1908) 68 A. 1103.

The federal courts have no jurisdiction of the crime of murder, except when committed "on the high seas, or within any fort, arsenal, dockyard, magazine, or in any other district, place, or country under the sole and exclusive jurisdiction of the United States." U. S. v. Pratt (N. Y. 1869) 1 Chi. Leg. N. 401.

Under 2 Edm. St. at Large N. Y. p. 588, providing that, if it appear on habeas corpus that the prisoner is detained by virtue of process issued by a court or judge of the United States having exclusive jurisdiction, the prisoner should be remanded, a state court could discharge a prisoner held for murder on a warrant issued by a United States commissioner which did not state that the crime charged was committed on the high seas, or dock, arsenal, etc., or any place solely within the jurisdiction of the federal court. Id.

Adultery, being an offense arising out of the marriage relation, is cognizable only in the state courts, except in the territories, forts, arsenals, c houses, or other places where the ed States has exclusive jurisdict which places congress may pas defining the offense and prescribi punishment. Southern Surety State (Okl. 1912) 127 P. 409.

Prior to the admission of Okl as a state, the crime of adult Indian Territory was an offense a the federal statute, but, by the en act, all persons charged therew the time of statehood were ther properly prosecuted in the d courts of the state, unless the c was committed in some part over the federal government retained sive jurisdiction. Id.

Where the circuit court of a c was temporarily sitting, with th sent and permission of the auth agent of the United States govern in a room in the custom house during such sitting the crime o jury was committed, the state had jurisdiction to punish the off Exum v. State (1891) 90 Ten Pickle) 501, 17 S. W. 107, 25 A Rep. 700, 15 L. R. A. 381.

In 1869, San Juan Island, c northwestern coast, was held in military occupancy by Great B and the United States. Held, th offense committed there was not mitted at a place within the "so exclusive jurisdiction" of the States, within the crimes acts of and that the territorial court h risdiction. Watts v. U. S. (18 Wash. T. 288; Same v. Ter (1872) 1 Wash. T. 469.

The power of congress "to ex exclusive legislation" over "all purchased by the consent of the lature of the state in which the shall be," for the purposes men in clause 16 of section 8 of artic the constitution, is limited to plac title to which is vested in the States with such consent of the lature; and even as to such plac jurisdiction of the state to enfo laws and punish crimes continue congress has, by some further l tive act, extinguished the state a ity, and vested exclusive juris over such places in the federal In re O'Connor (1875) 37 Wis. 3 Am. Rep. 765.

3. Question of law or fact.—W a homicide committed within the aries of a state constitutes an c against the laws of the United of which a federal court has ju tion, depends on two questions: whether there has been such a c by the state to the United Sta the territory upon which the act to constitute the crime was com as to render such territory a "pl district of country under the ex jurisdiction of the United States," in R. S. § 5339, which is a qu of law for the court; and, sec such cession was made, wheth

vas committed within the territory eded, which is a question of fact, e submitted to the jury. U. S. v. s (C. C. 1901) 111 Fed. 630.

High seas and other waters with- mirality and maritime jurisdiction.

e, also, notes under § 10463, post.

der Act 1790, c. 9, § 8, providing ne punishment of murder, etc., com- d "upon the high seas, or any riv- aven, basin, or bay, out of the ju- ction of any particular state," it t the offense, but the bay, etc., in it is committed, that must be out e jurisdiction of a state. U. S. v. ns (1818) 16 U. S. (3 Wheat.) 4 L. Ed. 404.

S. § 5372, does not confer on the al courts jurisdiction of a murder itted in the waters of a state e the tide ebbs and flows. Id.

e eighth section of Act 1790, c. 9, not confer on the courts of the d States jurisdiction over any of- committed on a river, haven, ba- or bay which may be within the liction of any particular state.

der Act April 30, 1790, § 12, pro- for punishment of manslaughter ne high seas, the courts of the d States have not jurisdiction of offense committed by the master ne of the seamen on board a mer- vessel of the United States, lying e river Tigris, in China, 35 miles its mouth, off Wompoa, about 100 from shore, in 4½ fathoms of wa- nd below low-water mark. U. S. Viltberger (1820) 18 U. S. (5 t.) 76, 5 L. Ed. 37.

e United States has no jurisdiction e crime of manslaughter, commit- board an American ship in a tidal within a foreign state. Id.

Act April 30, 1790, c. 9, the de- ion of places contained in section thin which offenses therein enu- ted must be committed to give the s of the United States jurisdiction, t be transferred to section 12, so give those courts jurisdiction over laughter committed in the river of eign country, and not on the high Id.

der Act 1790, c. 9, § 8, giving the d States courts jurisdiction of cer- rimes committed on the high seas, sel lying in the open roadstead of eign country is on the "high seas." v. Pirates (1820) 18 U. S. (5 t.) 184, 5 L. Ed. 64.

der Act April 30, 1790, providing nishment of murder or robbery on gh seas, out of the jurisdiction of state, United States courts have iction of such offenses, though they not committed on board a vessel ging to citizens of the United s, where the vessel did not belong bjects of any foreign state. U. S. lmes (1820) 18 U. S. (5 Wheat.) 5 L. Ed. 122.

nakes no difference on the question of jurisdiction whether a crime committed on the high seas is committed on board a vessel or in the water. Id.

The courts of the United States had jurisdiction of murder or robbery committed on a vessel in possession of persons acknowledging obedience to no government or flag and acting in defiance of law, and a murder or robbery committed on the high seas may be cognizable by the courts of the United States, though committed on board a vessel not belonging to citizens of the United States, as if she had no national character, but was possessed and held by pirates or persons not lawfully sailing under the flag of any foreign nation. Id.

Where a murder or robbery is committed on board a foreign vessel by a citizen of the United States or on board a vessel of the United States by a foreigner, or by a citizen or foreigner on board a piratical vessel, the offense is cognizable by the courts of the United States. Id.

An offense committed on board of a piratical vessel, or in the sea, as by throwing decedent overboard, or drowning him, or shooting him, or in the sea, though not thrown overboard, is within the jurisdiction of the United States. Id.

It is competent for congress, as is done by Act May 15, 1820, c. 113, § 3, R. S. 5370, post, § 10457, to prescribe the punishment of offenses committed on the high seas, open roadsteads, in any haven, basin, or bay, or in any river where the sea ebbs and flows, though within the limits of a state. U. S. v. John (1861) 1 Black, 484, 487, 17 L. Ed. 225.

One who, on a vessel owned by citizens of the United States, committed on the high seas the offense of assault with a dangerous weapon, and who was put in irons for safe-keeping, and who, on the arrival of the vessel at the lower quarantine in the Eastern district of New York, was delivered to officers of the state of New York, and who was by them carried into the Southern district and there delivered to the marshal of the United States for that district, to whom a warrant to apprehend and bring him to justice was first issued, was triable in the Southern district. U. S. v. Arwo (1873) 19 Wall. 486, 490, 22 L. Ed. 67.

A murder committed on board a ship lying in the harbor of Honolulu is cognizable in the district court of the United States for the territory of Hawaii, under R. S. § 5339, as committed in a haven or arm of the sea within the admiralty and maritime jurisdiction of the United States, and "out of the jurisdiction of any particular state." Wynne v. U. S. (1910) 30 Sup. Ct. 447, 449, 217 U. S. 234, 54 L. Ed. 748.

There is nothing in the Hawaiian organic act (Act April 30, 1900, c. 339,

31 Stat. 141) which expressly or impliedly deprives the federal courts of their jurisdiction under R. S. § 5339, to punish a murder committed on board a ship lying in the harbor of Honolulu. Id.

Waters inclosed in whole or in part by a breakwater or other artificial structure to afford a protected anchorage, as well as those so inclosed by natural land, constitute a "haven" within R. S. §§ 5346, 5361, 5362, post, §§ 10449, 10471, 10472, making certain acts offenses against the United States when committed "upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin or bay within the admiralty jurisdiction of the United States and out of the jurisdiction of any particular state." Ex parte O'Hare (1910) 179 Fed. 662, 103 C. C. A. 220, reversing order (D. C. 1909) 171 Fed. 290.

To give the federal courts jurisdiction over a murder, as having been committed on the high seas, the death, as well as the mortal stroke, must have happened on the high seas. U. S. v. McGill (C. C. 1806) Fed. Cas. No. 15,676.

A vessel lying in the mouth of a river a mile and a half wide is on the high seas, within Act April 30, 1790. U. S. v. Smith (C. C. 1811) Fed. Cas. No. 16,344.

The federal circuit court had jurisdiction of piracy in the commission of murder on board of an American ship, in an open roadstead adjacent to a foreign territory, and within half a mile of the shore. Act April 30, 1790, c. 9, § 8. U. S. v. Ross (C. C. 1813) Fed. Cas. No. 16,196.

"High seas," within Act April 30, 1790, c. 9, § 8, mean any waters on the sea coast which are without the boundaries of low-water mark. Id.

Larceny committed on board an American ship in an inclosed dock in a foreign port is not punishable under Act April 30, 1790, c. 9, § 16. U. S. v. Hamilton (C. C. 1816) Fed. Cas. No. 15,290.

A vessel lying on the sea outside of the bar of a harbor of the United States, within three miles of the shore, is on the high seas. U. S. v. Smith (C. C. 1816) Fed. Cas. No. 16,337.

Quære, whether a federal court has jurisdiction to try a person who committed murder on board an American merchant ship in the bay of Cadiz. U. S. v. Gourlay (C. C. 1823) Fed. Cas. No. 15,241.

An indictment for a crime committed on the high seas in the outer road off St. Domingo, on an American vessel, is supported by proving the offense to have been committed in the inner road, and in port. U. S. v. Stevens (C. C. 1825) Fed. Cas. No. 16,394.

An offense committed in a bay which is entirely landlocked and inclosed by reefs is not committed on the high seas, within Act March 26, 1804, c. 40. U. S. v. Robinson (C. C. 1826) Fed No. 16,176.

The words "high seas," in Act c. 276, § 22, mean the uninclosed of the ocean on the sea coast, o of the fauces terræ. U. S. v. Gru C. 1829) Fed. Cas. No. 15,268, ov ing U. S. v. Bevans (C. C. 1816) Cas. No. 14,589.

Where such arm of the sea, haven, etc., is so narrow that a standing on one shore can reas discern and distinctly see by the ed eye what is doing on the op shore, the waters are within the of a county. Id.

The county of Suffolk, Mass., e to all waters between the circum islands, down to the Great Br and Point Allerton. Id.

State courts have exclusive ju tion of offenses committed on ar the sea, creeks, havens, basins bays within the ebb and flow tide within the body of a county

Act 1790, c. 9, § 8, as well a 1820, c. 113, applies to all murde robberies committed on board of on American ships on the high U. S. v. Gibert (C. C. 1834) Fed No. 15,204.

In the case of a homicide by sh the place where the shot takes and not that from which it is fire termines the jurisdiction of the o and where a shot from an Am vessel in a foreign harbor kills a on board of a foreign vessel ly such harbor, the jurisdiction of t fense belongs to the foreign g ment, and not to the courts United States, under Act 1790, § 12. U. S. v. Davis (C. C. 1837 Cas. No. 14,932.

The court has no jurisdiction indictment for larceny upon th seas, under Act 1790, c. 9, § 16, the taking was on board of a while lying in the port of Sav U. S. v. Davis (C. C. 1841) Fed No. 14,931.

The court does not obtain juris by the fact that the property wa ried on the high seas from the p Savannah to New York. Id.

To render a vessel American, to punish offenses on board of he enough to show that she sailed and to an American port, and w parently owned and controlled b zens of the United States. U. Peterson (C. C. 1846) Fed. Ca 16,037.

An unlawful stroke on the sea, out malice, followed by death on is not within either Act April 30, § 12, or Act March 3, 1825, § 4. v. Armstrong (C. C. 1855) Fed No. 14,467.

The term "high seas" is used acts of congress in its popular a ural sense. U. S. v. Wilson 1856) Fed. Cas. No. 16,731.

A vessel lying in a harbor, fa

shore by cables, and communi- with the land by her boats, and thin any inclosed dock, or at any r wharf, is on the "high seas," e of low-water mark on the coast. v. Seagrist (C. C. 1860) Fed. o. 16,245.

ffense commenced to be commit- board an American vessel lying time in a river which is an arm sea on the coast of Africa, and ued uninterruptedly to a point in lantic Ocean several miles from ores, is within the jurisdiction of leral circuit court. U. S. v. Gor- . C. 1861) Fed. Cas. No. 15,231.

federal courts have no jurisdic- the crime of larceny under Act § 16, committed in a place where isdiction of the United States is rent with that of a state. U. S. rney (C. C. 1864) Fed. Cas. No.

United States courts have juris- to try charges of crime com- on board any vessel belonging ole or in part to the United or any citizen thereof, at any n the high seas, or in any river, creek, basin, or bay within the lty jurisdiction of the United and out of the jurisdiction of rticular state. U. S. v. Beyer 1887) 31 Fed. 35.

words "upon the high seas, or in m of the sea, or in any river, creek, basin, or bay, within the lty jurisdiction of the United and out of the jurisdiction of rticular state," used in R. S. § post, § 10449, are limited to the as, and to the waters connected iately with them. Ex parte By- . C. 1887) 32 Fed. 404.

district court has no jurisdiction assault committed on the high nless committed on an American as provided in R. S. § 5346, § 10449. U. S. v. Lewis (D. C. 36 Fed. 449.

e is punishment by statute for t of a shipmaster in unlawfully a seaman on shore in a foreign ut not for an assault on a sea- n board ship or otherwise in a port. (1856) 7 Op. Atty. Gen.

phrase "within the body of the," in St. Mass. 1804, c. 131, pro- punishment for the malicious g of a "vessel lying within the f the county," is descriptive of done within the jurisdiction of unicipal court, as distinguished one committed on the high seas, t of the body of the county, and, ore, without the jurisdiction of urt. Commonwealth v. Francis . 1830) Thacher, Cr. Cas. 240.

ffense committed on a ship lying bor between Boston and Chelsea, nstitution Wharf, at a distance -fourth mile in water four or five s deep at low tide, and within half a mile from the navy yard of Charleston, is an offense committed within the territorial jurisdiction of the Massachusetts courts, and is exclusively within their cognizance. Commonwealth v. Peters (1847) 53 Mass. (12 Metc.) 387.

Under Gen. St. Mass. c. 171, § 19, which provides that, where a mortal wound is inflicted on the high seas, the offense may be prosecuted and punished in the county where the wounded person dies, it is sufficient to render the perpetrator amenable to the justice of the state, for the homicide, that the person killed was, at the time of his death, within the jurisdiction and protection of the state under whose laws the person who killed him was indicted. Commonwealth v. Macloon (1869) 101 Mass. 1, 100 Am. Dec. 89.

An offense committed on board a vessel on the high seas is an offense against the sovereignty of the nation to which it belongs, but, when a private ship enters a foreign jurisdiction, it becomes, with all on board, in the absence of previous stipulations to the contrary, subject to municipal laws of such country. People v. Tyler (1859) 7 Mich. 161, 74 Am. Dec. 703.

Crimes Act 1857, § 1, did not make it a necessary assumption that any such bays, creeks, havens, or rivers are actually in existence within the admiralty jurisdiction of the United States. Id.

Crimes Act 1857, § 1, was not intended by congress to extend to any waters not exclusively maritime. Id.

Crimes Act 1857, § 1, did not extend to any portion of a nonnavigable river within the territorial jurisdiction of a foreign sovereignty. Id.

Crimes Act 1857, § 1, did not extend to any river in the interior of the continent not navigable from the ocean. Id.

Every vessel on the high seas is for jurisdiction purposes a part of the territory of the nation to which it belongs, and an offense committed on board of it is an offense against the sovereignty of that nation. Id.

An indictment for an offense committed on the high seas can be maintained in the court of general sessions of the city and county of New York. In re McCullough (N. Y. 1817) 2 City H. Rec. 45.

Want of jurisdiction in the state over homicides committed on the Hudson river, is not sufficiently clear to authorize the discharge on habeas corpus of a person accused of such crime. People v. Sheriff of Westchester County (N. Y. 1852) 1 Parker, Cr. R. 659.

A pilot, who by willful negligence runs his tug into a yacht on the Hudson river, within the boundaries of New York county, and causes the death of a person on the yacht, is guilty of manslaughter, both under Pen. Code N. Y. § 193, and R. S. § 5344, post, § 10455, and the jurisdiction of the state courts

of such offense as an infraction of the state laws is not ousted by R. S. § 711, ante, § 1233, which vests in the courts of the United States exclusive jurisdiction of all crimes cognizable under the authority of the United States; it being provided by R. S. § 5238, post, § 10500 (part of the title containing section 5344) that "nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several states under the law thereof." People v. Welch (1893) 74 Hun, 474, 26 N. Y. Supp. 694; Id. (1894) 141 N. Y. 266, 36 N. E. 328, 38 Am. St. Rep. 793, 24 L. R. A. 117.

There is nothing in the treaty between the United States and Sweden and Norway which precludes the courts of Philadelphia county from taking jurisdiction of an indictment for an assault and battery committed on board a Norwegian bark lying in the port of Philadelphia. Commonwealth v. Luckness (Pa. 1880) 14 Phila. 363.

By a colonial statute of Virginia, passed in 1699, treasons, felonies, or piracies, committed not only on the high seas, but on any bay, river, etc., where the admiral had jurisdiction, were to be tried by judges of admiralty appointed by the governor, under commissions of oyer and terminer. This statute was said to be superseded by the British statute of 11 Wm. III, which gave jurisdiction to commissioners of admiralty appointed under the great seal of England; and that statute seems to have been recognized by the Virginia statute of 1748. Commonwealth v. Gaines (1819) 2 Va. Cas. 172.

By the articles of confederation, the federal court of admiralty was vested with power to try piracies and felonies on the high seas only, and not on Chesapeake Bay and its waters. Id.

A United States court has jurisdiction of an indictment for a murder committed on a vessel at anchor below low-water mark in an arm of the sea, and not within the body of a county. Smith v. U. S. (1869) 1 Wash. T. 262.

5. **Islands.**—See, also, §§ 3916, 3922, ante.

Guano Islands Act Aug. 18, 1856, § 6, ante, § 3922, providing that all crimes committed on such islands shall be deemed to have been committed on the high seas on board a merchant ship belonging to the United States, and shall be punished according to the laws relating to offenses committed in such places, which laws are extended to such islands for that purpose, does not extend the admiralty jurisdiction over land, but simply extends the operation of the statutes relating to crimes and punishments to the islands which may have been determined by the president to appertain to the United States. Jones v. U. S. (1890) 137 U. S. 202, 11 Sup. Ct. 80, 34 L. Ed. 691; Smith v. Same (1890) 137 U. S. 224, 11 Sup. Ct. 88, 34 L. Ed. 700.

The criminal jurisdiction of the c of the United States extends to island of Navassa, and an indict for murder committed there ma tried in the district into which offender is first brought, as pro by R. S. § 730, ante, § 1023, in of offenses committed on the high or elsewhere, out of the jurisdi of any particular state or district.

6. **Ships of war.**—An offense con ted on a United States naval v while lying in the channel of the h of Boston, outside of low-water is committed upon the "high seas," is within the jurisdiction of the fe courts. U. S. v. Bevans (C. C. Fed. Cas. No. 14,589.

A murder committed on board a ship in Boston harbor held not c zable in the circuit court. U. Bevans (1818) 3 Wheat. 336, 3 L. Ed. 404.

The words "within any fort, ar dockyard, magazine, or any other p refer to objects in their nature, and territorial, and do not extend ship of war. Id.

The proper federal court has j diction of a murder committed on a government naval vessel lying dock within a tract the jurisdicti which has been ceded by a state t United States for the purposes navy yard and a naval hospital, th the tract has not been purchase the United States. U. S. v. Carte C. 1897) 84 Fed. 622.

A battleship, the property of United States, lying in waters w within the jurisdiction of the U States, is a "place" under the excl jurisdiction of the United States, in the meaning of subdivision 1 S. § 5339. Id.

Congress has not, by the crimes of 1825 and 1835 (4 Stat. 115, given to the civil courts any jurisdi over the crime of murder, when mitted on board a United States of war, and triable before a court- tial under the navy regulations. v. Mackenzie (D. C.) Fed. Cas. 18,313.

7. **Great Lakes and connecting ters.**—See, also, notes under § 1 post.

The courts of the United States jurisdiction, under R. S. § 5346, § 10449, of an assault with a dang weapon committed on a vessel be ing to a citizen of the United S in the Detroit river, out of the jur tion of any particular state, and in the territorial limits of the dom of Canada. U. S. v. Rodgers (1 150 U. S. 249, 14 Sup. Ct. 109, Ed. 1071, disapproving People v. ler (1859) 7 Mich. 161, 74 Am. 703.

The open waters of the Great are "high seas," within the meani

§ 5346, post, § 10449. U. S. v. ers (1893) 150 U. S. 249, 14 Sup. 09, 37 L. Ed. 1071, overruling In iller (D. C. 1867) Fed. Cas. No. , and Ex parte Byers (D. C. 1887) ed. 404.

e limitation to the jurisdiction, by ualification in R. S. § 5346, post, 449, that the offenses punishable ommitted on vessels in any arm of ea, or in any river, haven, creek, , or bay, "without the jurisdiction y particular state," does not apply essels on the "high seas" of the , but only to vessels on the wa- designated as connecting with . So far as vessels on those seas concerned, there is no limitation d to the authority of the United s. U. S. v. Rodgers (1893) 14 Ct. 109, 114, 150 U. S. 249, 37 l. 1071.

e fact that, by treaty between the d States and Great Britain, the lary line between the two coun- is run through the center of the t Lakes, does not change their acter as seas, or impair in any ct the jurisdiction of the United s over vessels of its own citizens ating those waters, and persons oard. Id.

e waters inclosed between the and the government breakwaters ake Erie at the port of Buffalo, ut as well as within the line des- ed on the government chart as falo Harbor Line," constitute a en," and not "high seas," within meaning of R. S. § 5346, post, § 9, and an assault with a dangerous on committed on a vessel belong- to the United States or citizens of anchored in such waters is n the state, and not the federal, diction. Ex parte O'Hare (1910) Fed. 662, 103 C. C. A. 220, revers- order (D. C. 1909) 171 Fed. 290.

steam vessel which has been towed her winter berth on one of the t Lakes to an anchorage to be out for the season, but which not signed a crew nor had a fire under her boilers, is not "on a ge," and jurisdiction of an of- committed thereon is not given e courts of the United States by Sept. 4, 1890, c. 874, 26 Stat. 424.

steam vessel which has been tow- om her winter berth on one of the t Lakes to an anchorage to be out for the season, but which has signed a crew nor had a fire built r her boilers, is not "on a voyage," at jurisdiction of an offense com- d thereon is given to the courts e United States by Act Sept. 4, , c. 874. Id.

e federal courts of Michigan have urisdiction of a felonious assault nitted upon an American vessel in the Detroit river. Ex parte Byers (D. C. 1887) 32 Fed. 404.

The criminal jurisdiction of the federal courts does not extend to the Great Lakes and their connecting waters. Id.

Under Act Sept. 4, 1890, extending the criminal jurisdiction of the federal courts to offenses committed upon any vessel registered or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, "or any of the waters connecting any of the said lakes," such courts have no jurisdiction of a larceny committed upon a steam barge while lying in the Menominee river, a tributary of Lake Michigan, half a mile from its mouth. U. S. v. Rogers (D. C. 1891) 46 Fed. 1.

The United States courts have no common-law jurisdiction in criminal matters, and can only take such jurisdiction as is given them by statute; and the fact that, though the larceny was committed within the limits of a state, the stolen property was not discovered in defendant's possession until the vessel was upon Lake Michigan, will not aid their jurisdiction. Id.

The district court of the Eastern district of Wisconsin has no jurisdiction of an indictment for an assault committed on a vessel on Lake Huron within the boundary of the jurisdiction of the Eastern district of Michigan. U. S. v. Peterson (D. C. 1894) 64 Fed. 145.

Crimes Act 1857, § 1, as regards its application to the Great Lakes, and their connecting waters, applies, if at all, only to vessels in British waters. People v. Tyler (1859) 7 Mich. 161, 74 Am. Dec. 703.

Crimes Act 1857, § 1, was not intended to cover any crimes except those defined as manslaughter, under former statutes to which it was amendatory and supplementary. Id.

Where a mortal blow was given on the river St. Clair beyond the boundary line between the United States and Canada, from which blow death ensued in Michigan, the offense is not within the meaning of Crimes Act 1857, § 1, providing that, if any person "on the high seas or any arm of the sea, or in any river, haven, creek, basin, or bay, within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular state, shall unlawfully * * * but without malice aforethought, wound any other person, of which * * * such person shall afterwards die on land, within or without the United States," the offender shall be deemed guilty of manslaughter; and hence the United States courts have no jurisdiction thereof. Id.

The crimes act of congress of 1857, providing for the punishment of of-

fenses on waters not within the states nor forming a part of the high seas, being amendatory to other acts of identical extent commencing in 1790, is to be construed in the same manner as those acts, and the claim of jurisdiction should not be extended to a crime committed by a vessel in a foreign port, where no such intent is clearly expressed in the act. Id.

Manslaughter, committed by a mortal blow given on the river St. Clair, beyond the boundary line between the United States and the province of Canada, and within a county in said province, from which blow death ensued upon land, is not within the crimes act March 3, 1857, and the circuit court of the United States has no jurisdiction of the same. Tyler v. People (1860) 8 Mich. 320.

8. Military posts, forts, or reservations.—In a cession to the United States by the state of land for a military post, a reservation of "concurrent jurisdiction" to serve state civil and criminal process in the ceded place does not defeat the exclusive jurisdiction of the United States over the ceded place, and the state courts have no jurisdiction of crimes committed therein. U. S. v. Travers (C. C. 1814) Fed. Cas. No. 16,537; Same v. Meagher (C. C. 1888) 37 Fed. 875; U. S. v. Knapp (D. C. 1849) Fed. Cas. No. 15,538; Lasher v. State (1891) 30 Tex. App. 387, 17 S. W. 1064, 28 Am. St. Rep. 922.

The circuit court had jurisdiction over the offense of murder committed within a fort purchased by the United States by the consent of the state legislature (Act 1790, c. 9, §§ 3, 7), although in the cession the state reserved the right to execute its civil and criminal processes in such places. U. S. v. Cornell (C. C. 1820) Fed. Cas. No. 14,868.

Under a cession of jurisdiction in places purchased by the United States "for forts or fortifications," the federal courts have no jurisdiction to punish a crime committed upon land purchased and used for the purposes of an arsenal only. U. S. v. Hopkins (C. C. 1830) Fed. Cas. No. 15,387a.

The circuit court for the Eastern district of New York has jurisdiction of an indictment for an assault with intent to kill committed in the navy yard at Brooklyn. Act March 3, 1825. U. S. v. Dolan (C. C. 1865) Fed. Cas. No. 14,978.

The federal courts have no jurisdiction to punish the crime of murder committed within a fort of the United States existing in the state of Kansas at the time such state was admitted into the Union. U. S. v. Stahl (C. C. 1868) Fed. Cas. No. 16,373.

The acceptance by congress of the cession by a state of exclusive jurisdiction over territory in a military reservation which existed before the state was created is not necessary t such jurisdiction in the United under Const. art. 1, § 8. Ex par bard (C. C. 1877) Fed. Cas. No.

Offenses committed upon land chased by the United States f erection of forts, with the cons the legislature of a state, and of jurisdiction has been ceded to th ed States, are within the jurisdic the federal courts. Kelly v. U. C. 1885) 27 Fed. 616.

The circuit court had jurisdic a homicide committed by one upon another within a military vation of the United States. U Clark (C. C. 1887) 31 Fed. 710.

The Presidio military reservat the city and county of San Fra is not a place "under the exclus risdiction of the United States;" homicide committed within the vation is not an offense again United States, within the mean R. S. § 5339, providing for the ment of murder within any place the exclusive jurisdiction of the States. U. S. v. Bateman (C. C. 34 Fed. 86.

On a trial for murder, charged been committed at Ft. Hamilt New York harbor, it appeared th fatal shot was fired 100 feet in certain fence on the line of Ha avenue. The prosecution introd deed to the United States of tain plot of ground, and also the the New York legislature coveri same plot, and testimony that th tary authorities of the United had for years past exercised a ownership and jurisdiction ov same ground, which was in the of Ft. Hamilton, adjacent to a side of the fence. Certain maps premises, sworn to by those wh them, were then put in evidence. that if the jury believed the tes of those who made the maps, an the natural and artificial mon found on the soil when the map made coincided in location wi monuments, artificial and natura were placed there when the dee given and the act of cession was they could find that the fence line of Hamilton avenue was the jurisdiction of the United State S. v. King (C. C. 1888) 34 Fed.

In a cession to the United Sta the state of land for a military reservation of "concurrent jurisd to serve state civil and criminal in the ceded place does not def exclusive jurisdiction of the States over the ceded place, a state courts have no jurisdict crimes committed therein. U. Meagher (C. C. 1888) 37 Fed. 87

After the cession by a state United States of its jurisdictio land used as a military reservatio condition that such jurisdiction

tinue only so long as the United tes shall own and occupy the reser- on; that the state shall have the t, within the reservation, to serve process, and to execute criminal cess against persons charged with e committed within the state; and roads may be opened and kept in ir within the reservation,—while municipal laws of the state govern- property and property rights con- e in force in the ceded territory, ex- t so far as in conflict with the laws regulations of the United States lying thereto, the criminal laws of state cease to be of force therein, laws regulating the sale of intoxi- ng liquors cease to be operative, as in conflict with the regulation he United States governing military rvations and as penal in character; ce officers acting under authority he state have no jurisdiction over ceded territory in matters of alleg- criminal violation of state liquor s committed in such territory. In Ladd (C. C. 1896) 74 Fed. 31.

Within the meaning of this section the ted States has exclusive jurisdiction r the entire military reservation of Leavenworth. Id.

he proper federal court has juris- ion of a murder committed on board government naval vessel lying at a k within a tract the jurisdiction of ch has been ceded by a state to the ted States for the purposes of a y yard and a naval hospital, though tract has not been purchased by United States. U. S. v. Carter (C. 1897) 84 Fed. 622.

o give a federal court jurisdiction to a person for a criminal offense, on ground that it was committed with- fort or military reservation, such or reservation must have been es- ished by law, as contemplated by st. art. 1, § 8, either by purchase h the consent of the legislature of state or by reservation of public ds therefor by compact with the te at the time of its admission, and lusive jurisdiction over the same st have been reserved to the United tes, either by express words or by essary implication. U. S. v. Tully C. 1905) 140 Fed. 899.

y executive orders certain public ds in the then territory of Montana e reserved by the president for mil- y purposes, under the designation 'Ft. Missoula Military Reservation." was subsequently ascertained that t of the buildings of the post were n the E. ½ of section 36 adjoining lands reserved, which had already n reserved by the organic act gov- ing the organization of the territory the use of the state, when admitted, school purposes. By order of the eral of the army the commander of post continued to occupy and exer- authority over such land, but no on was ever taken by congress or the president to legally include the same in the lands reserved for military purposes; but both subsequently acted on the understanding that it was not a part of the reservation. The Constitution of the state of Montana (article 2, § 1) acknowledges the authority of the United States to exercise exclusive legislation, as provided by the federal constitution over the military reservations in the state, including Ft. Missoula "as now established by law," and the enabling act under which the state was admitted reserved from the grants made all lands "embraced in Indian, military or other reservations of any character." Held, that no part of section 36 was within the reservation "as established by law," nor within the reservation of the enabling act, and that the federal court was without jurisdiction to try a person for a homicide committed on the part of said section occupied by the United States as a part of its military post, which by the organic act and the subsequent admission of the state passed to the state and under the jurisdiction of its courts. Id.

The "navy yard" includes contiguous waters necessary to float vessels of the navy while at the navy yard. Ex parte Tatem (D. C. 1877) Fed. Cas. No. 13,-759.

Under Const. art. 1, § 8, cl. 17, giving the Congress power "to exercise exclusive legislation in all cases whatsoever over * * * all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings," such power extends to land purchased by the United States, by consent of the legislature of the state, and used for the public governmental purpose of maintaining thereon locks and dams for the improvement of the navigation of a river, and the United States has exclusive jurisdiction to prescribe and punish criminal offenses committed thereon; and the fact that the legislative consent was granted after the purchase is immaterial so far as relates to offenses committed thereafter. U. S. v. Tucker (D. C. 1903) 122 Fed. 518.

The exclusive jurisdiction of the United States to prescribe and punish criminal offenses committed on land or in a "place" occupied for governmental purposes may be derived either from article 1, § 8, of the Constitution, where the place was purchased by consent of the state legislature, or from an express cession of such jurisdiction by the legislature. Id.

The jurisdiction of the United States over a military reservation is not exclusive, and the district courts of the territory have jurisdiction to try an indictment for a murder committed on such reservation. Reynolds v. People (1869) 1 Colo. 179; Clay v. State (1866) 4 Kan. 49; Burgess v. Terri-

tory (1888) 8 Mont. 57, 19 Pac. 558, 1 L. R. A. 808; Scott v. U. S. (1871) 1 Wyo. 40. CONTRA, see State v. Kelly (1884) 76 Me. 331, 49 Am. Rep. 620.

Const. art. 2, § 8, cl. 17, declaring that congress may exercise exclusive legislation over all territory purchased by the government with consent of the state in which the same may be for the erection of forts and other needful buildings, does not preclude the exercise of jurisdiction by the state of Kansas over criminal offenses committed on the military reservation at Ft. Leavenworth, for the reason that such reservation was not purchased with the consent of the state, or for the erection of forts and other buildings, but was purchased before the formation of the state as a part of the territory of Louisiana, and for the further reason that no attempt was made by congress in the act admitting the state to the Union to reserve control by exacting guaranties or otherwise against exercising jurisdiction. Clay v. State (1866) 4 Kan. 49.

Where a mortal wound is unlawfully inflicted in a fort of the United States, and the victim dies out of the fort, the state courts have no jurisdiction, although the state statute should profess to give jurisdiction. State v. Kelly (1884) 76 Me. 331, 49 Am. Rep. 620.

Under Pamph. Acts Miss. (Called Sess.) pp. 49, 50, passed November 15, 1858, for the purpose of enabling the United States to construct fortifications, magazines, arsenals, etc., on Ship Island, which ceded to the United States jurisdiction over such island "to include all of such island above and within low-water mark, and over all the contiguous shores, flats, and waters within 1,760 yards from low-water mark," but retained jurisdiction for the purpose of executing therein all criminal process for crimes committed outside of such territory, the state courts have no jurisdiction of a crime committed within 1,760 yards of low-water mark of such island, since, in the absence of a showing to the contrary, the United States will be presumed to have accepted such cession, and to be using the island for the purposes for which the same was made. State v. Seymour (1900) 28 So. 799, 78 Miss. 134.

Act Feb. 22, 1889, c. 180, § 10, 25 Stat. 679, granting land to the proposed state of Montana, provided that the thirty-sixth section in each township embraced in permanent reserves for national purposes should not at any time be subject to the grant of lands made to the proposed state by such statute, "nor shall any land embraced in military or other reserves of any character be subject to the grants * * * of this act until the reserve shall have been exhausted, and such lands be restored to, and become a part of, the public domain." Executiv ders of February 19, 1877, and gust 5, 1878, created the Ft. Mis Military Reservation. Neither of orders mentioned section 36, Tp. 1 R. 20 W., but the reservation wa cated on other and adjoining l Nevertheless some of the buildin such military post were erected portion of section 36. The atte of the Secretary of War was call the fact in 1878, and the General o Army issued orders to the post mander to prevent any encroachn on section 36; and such building section 36 were used for the pur for which they were erected from until 1889, with the consent and kn edge of the Secretary of War, an buildings were on section 36, and for the same purposes in 1903, a homicide was committed on sectio Const. reserves in Congress excl jurisdiction over military rese Held, that neither title nor sover ty over section 36 ever passed to state of Montana, and the state had no jurisdiction over the homi and this notwithstanding Act Marc 1904, c. 718, 33 Stat. 143, author the Secretary of War to accept citizens of Missoula deeds for the largement of the military reservat such lands so donated, as referre in the act, embracing a part of se 36—since the federal government the right to quiet title to its lands out litigation. State v. Tully (1 78 P. 760, 31 Mont. 365.

Act N. Y. Feb. 15, 1800 (1 Rev. L p. 189), provides that "Governor' land on which Ft. Jay is situ bounded on all sides by the water the East river and Hudson river, hereafter be subject to the jurisdi of the United States." By Const. 1, § 8, it is declared that congress have power to exercise exclusive l lation, in all cases whatsoever, such district as might become the of government of the United St "and to exercise like authority ove places purchased by the consent o legislature of the state in which same shall be, for the erection of f magazines, arsenals, dockyards and er needful buildings; and to mak laws which shall be needful and essary for carrying into executio foregoing powers." Held that, it appearing that the United States accepted the act of this state respe said island, nor that they have cised the power of exclusive legisl over the same, granted by the cons tion to congress, the court of ses of the city of New York has, not standing the above provisions, j diction of offenses committed on ernor's Island. In re Lent (N 1819) 4 City H. Rec. 27; Peop Lent (N. Y. 1819) 2 Wheeler, Cr. 548.

The land on which Ft. Niagar

ed, never having been ceded by the of New York to the United States, gs to New York state, and its s have jurisdiction of all offenses st its laws, committed within that r its precincts, though it has been oned by the United States troops, eld by them since its surrender eat Britain, pursuant to the trea- f 1783 and 1794, for the United s acquired no territory within that by virtue of those treaties. Peo- Godfrey (N. Y. 1819) 17 Johns.

tate court has jurisdiction of ha- corpus proceedings to release a er detained at West Point. In re on (N. Y. 1827) 7 Cow. 471.

ere the United States holds land rchase, with the consent of the as a military post, the federal s have exclusive jurisdiction of of- s committed thereon, including any of the grant outside of the garri- all and fence, though it is used street. Baker v. State (1904) 83 1122, 47 Tex. Cr. R. 482.

Federal cemeteries.—Const. art. 1, cl. 17, giving congress the exclu- ight of legislation over any pla- urchased by the United States, the consent of the state in which me are situated, for the erection rts, magazines, arsenals, dock- , and other needful buildings, con- no jurisdiction upon the federal s to try a person for a petty lar- committed in the National Ceme- on the Arlington estate, which urchased by the United States at sale, without the consent of the of Virginia. U. S. v. Penn (C. C. 48 Fed. 669.

ing the temporary occupation of djacent ground used by the United s forces while preparing the Unit- tates cemetery, the jurisdiction xclusive in the United States, and ded the jurisdiction of the state to h a misdemeanor committed there- ring that time. Harris v. State) 50 Tenn. (3 Heisk.) 140, note. jurisdiction of the United States the United States cemeteries, un- e cession of 1867, c. 44, does not de the right of the state to punish es committed therein. Id.

Soldiers' home.—Upon lands ced- a state to the United States, for me for disabled volunteers, the al laws of the United States, apply only to places within their sive jurisdiction, are not operative. Kelly (C. C. 1895) 71 Fed. 545.

Post offices or land bought there- A murder committed on land t for a post office and courthouse, offense against the United States, iable in the federal courts. Bat- U. S. (1908) 28 Sup. Ct. 422, 209 U. S. 36, 52 L. Ed. 670, af- g judgment U. S. v. Battle (C. C. 154 Fed. 540.

Where, on a trial for an offense committed in a building used as a post office, it was shown that the post office was rented by the postmaster, the questions of the right of the state to try offenses committed in places ceded to the United States, or of the force of Civ. Code Ala. 1896, § 628, authorizing the ceding of jurisdiction to the United States, were immaterial. Brooke v. State (Ala. 1908) 46 So. 491.

A New York state court has no jurisdiction to prosecute a person for larceny committed in the United States post office building in the city of New York. People v. Marra (1886) 4 N. Y. Cr. R. 304.

12. Indian reservations or country.—See, also, notes under § 10502, post.

Upon the admission of Colorado as a state, there being no reservation to the United States of jurisdiction over the Indian territory within the state limits, held, that the United States circuit court for the district of Colorado had no jurisdiction over the murder of one white man by another in the Ute reservation in said state. U. S. v. McBratney (1881) 104 U. S. 621, 26 L. Ed. 869.

An Indian reservation is part of the Indian country. Ex parte Wilson (1891) 11 Sup. Ct. 870, 871, 140 U. S. 575, 35 L. Ed. 513.

R. S. § 5356, post, § 10460, did not apply to Oklahoma after its organization as a territory. U. S. v. Pridgeon (1894) 14 Sup. Ct. 746, 747, 153 U. S. 48, 38 L. Ed. 631.

The Choctaw Nation having adopted its freedmen as citizens, there is no presumption that a negro found within the Indian Territory, associating with that Nation, is not a member thereof. Lucas v. U. S. (1896) 16 Sup. Ct. 1168, 1169, 163 U. S. 612, 41 L. Ed. 282.

In the prosecution, in a United States court, of an Indian for murder committed in the Indian territory, an averment that deceased was a negro, and not a white man, is jurisdictional. Id.

The provision of the enabling act of Montana that all Indian lands within the state "shall remain under the absolute jurisdiction and control of the congress of the United States" does not amount to a reservation by the United States of jurisdiction over crimes committed on such lands by or against persons not Indians. Draper v. U. S. (1896) 17 Sup. Ct. 107, 109, 164 U. S. 240, 41 L. Ed. 419.

The murder of one negro by another within the limits of an Indian reservation in a territory is committed within a place or district under the exclusive jurisdiction of the United States, within the meaning of R. S. § 5339, extended by R. S. § 2145, ante, § 4148, to the Indian country, when not within the exceptions made by R. S. § 2146, ante, § 4149, which, by reason of the race of the accused and deceased, do not apply. Pickett v. U. S. (1910) 30

Sup. Ct. 1024, 228 U. S. 708, 57 L. Ed. 566.

The killing of an Indian by one not of Indian blood on an Indian reservation within the limits of a state is cognizable in the federal courts under R. S. § 2145 (section 4148, ante), and section 5339 (embodied herein). Donnelly v. U. S. (1913) 33 Sup. Ct. 449, 228 U. S. 243, 57 L. Ed. 820, Ann. Cas. 1913E, 710, rehearing denied (1913) 33 Sup. Ct. 1024, 228 U. S. 708, 57 L. Ed. 1035.

The crime of murder, charged against a white man for killing another white man in an Indian country, within a state, cannot be punished within the courts of the United States. U. S. v. Bailey (C. C. 1834) Fed. Cas. No. 14,-495.

The treaty of March 2, 1868, with the Ute Indians is not repealed by Colorado Enabling Act March 3, 1875 (18 Stat. 474), and the Ute reservation, therefore, remains within the sole and exclusive jurisdiction of the United States. U. S. v. Berry (C. C. 1880) 4 Fed. 779, 782.

The Umatilla Indian reservation is a place within the geographical limits and general jurisdiction of the state of Oregon, but is also a tract of country to which the Indian title is not extinguished, and which has been permanently set apart by treaty as a reservation for the sole and exclusive use of the Indians thereon, and is therefore "Indian country." U. S. v. Barnhart (C. C. 1884) 22 Fed. 285.

R. S. § 5345, post, § 10451, is one of the general laws of the United States in relation to crimes committed in places within their exclusive jurisdiction, from which by virtue of R. S. §§ 2145, 2146, ante, §§ 4148, 4149, crimes committed in the Indian country by one Indian against another were excluded. U. S. v. Ward (C. C. 1890) 42 Fed. 320, 321.

R. S. § 5345, post, § 10451, provides for the punishment of rape committed in any of the places mentioned in R. S. § 5339, and the latter section specifies, among others, "any fort * * * or district of country under the exclusive jurisdiction of the United States." R. S. § 2145, ante, § 4148, declares that, "except as to crimes, the punishment of which is expressly provided for in this title, the general laws of the United States as to the punishment of crimes committed within the sole and exclusive jurisdiction of the United States * * * shall extend to the Indian country." Held that, as the punishment of rape is not specified in the title mentioned, a rape committed in "the Indian country" is punishable under section 5345. U. S. v. Partello (C. C. 1891) 48 Fed. 670.

Prior to the admission of Montana as a state, the Crow Indian reservation situated therein was part of the "Indian country." Id.

Under Act March 3, 1885, § 9, provi-

ding that an Indian committing c
named against the property or p
of another Indian or other person
in the boundaries of a state and v
the limits of a reservation "sha
subject to the same laws, tried i
same courts, and in the same ma
and subject to the same penalti
are all other persons committing a
the above crimes within the excl
jurisdiction of the United States
Indian who commits an assault wit
tent to kill upon another Indian
reservation within a state is indic
therefor in a federal court under
§ 5346, post, § 10449, which pro
for the punishment of such crime
committed by any person "withi
admiralty jurisdiction of the U
States and out of the jurisdictio
any particular state." U. S. v. I
(C. C. 1900) 105 Fed. 240.

To bring a defendant within the
vision of such two statutes, how
the indictment must allege that he
Indian. Id.

The fact that land lying in a sta
which the fee is in the United St
is set apart as an Indian reservati
not enough to give the federal c
jurisdiction over a murder comm
on the reservation. Ex parte Sloa
C. 1877) Fed. Cas. No. 12,944.

The treaty of June 9, 1855 (12
445), establishing the Umatilla res
tion for the exclusive use of certai
dian tribes, was not modified or re
ed by the Oregon enabling act
Feb. 14, 1859, 11 Stat. 383), and
the date of such treaty, such res
tion was and is "Indian country,"
all laws for the punishment of c
committed therein are applicable t
to, and may be enforced in the U
States courts for the district of Or
U. S. v. Bridleman (D. C. 1881) 7
894, 895.

Congress having provided for the
ishment of murder committed in th
dian country (R. S. § 2145, ante, §
and section 5339), the United S
circuit court for the district of O
has jurisdiction of the crime of m
committed on the Umatilla reserv
by an Indian upon a white man;
therefore it is a violation of R.
5398, ante, § 10310, for any one t
sist or obstruct the execution of s
der made by a circuit court commi
er, engaged in the examination of s
dian charged before him with the
mission of murder, under such ci
stances. U. S. v. Martin (D. C.
14 Fed. 817.

In the exercise of its constitu
power to regulate intercourse wit
Indian tribes, congress may defin
punish crimes committed by white
upon the person or property of a
dian, and vice versa, within as w
without the limits of a state. Id.

Act June 30, 1834 (4 Stat. 729
fines "Indian country," including t
in the region now included in the I

and provides that the laws of the ed States relating to the punish- t of crimes within the "exclusive ju- ction of the United States shall be orce in the Indian country," except to crimes committed by Indians nst each other. By treaty of April 1858 (11 Stat. 743), with the Yank- tribe, whereby certain lands were d, and 400,000 acres reserved to Indians, the United States agreed to ect them in their possession there- nd also in "their persons and prop- therein, during good behavior." acts creating the territory of ota and subsequently providing for organization of North and South ota reserved to the United States diction of Indian lands. Held, that United States district court has ju- ction of an indictment against a e man for stealing the horses of an an on the Yankton reservation, un- Act April 30, 1790 (R. S. § 5356, § 10460), which provides for the shment of larceny committed "with- ny of the places under the sole and usive jurisdiction of the United es." U. S. v. Ewing (D. C. 1891) ed. 809.

e state of Oregon has jurisdiction the case of a murder of one Indian nother, committed upon an Indian rvation within the limits of the e, unless the reservation was ex- ed out of the state at the time of dmission, or unless its jurisdiction estricted by the provisions of some ty with the Indians still in force. 2) 17 Op. Atty. Gen. 460.

e courts of the United States have urisdiction of a crime of murder nitted by an Indian belonging to tribe against an Indian belonging to her tribe within the reservation of ird tribe which has no law covering case. The "bad men" clause in a ty with the tribe to which the mur- d Indian belonged does not bring case within ante, § 4148, giving the ed States courts jurisdiction over offense. (1883) 17 Op. Atty. Gen.

trial for homicide in an Indian res- tion within a territory must be had the federal side of the territorial t. McCall v. U. S. (1876) 1 Dak. 46 N. W. 608.

e revocation of an executive order ting an Indian reservation does not t the jurisdiction of the United es court to try an indictment found r the revocation for a murder com- ed before. U. S. v. Brave Bear 2) 3 Dak. 34, 13 N. W. 565; Same Knowlton (1882) 3 Dak. 58, 13 N. 573.

member of the "United Tribes," commits a homicide not shown by record to be within any Indian re- e, is not exempt from prosecution efor in the state courts. Hunt v. e (1866) 4 Kan. 60.

The federal courts have no jurisdiction of the crime of larceny, alleged to have been committed on an Indian reservation in the state of Nebraska. All the territory embraced within the boundaries of the state was withdrawn from the jurisdiction of the federal courts by the act admitting the state into the Union. 13 Stat. 47. Painter v. Ives (1875) 4 Neb. 122.

The courts of Nebraska have jurisdiction and authority to try and punish persons other than Indians for crimes committed on Indian reservations within the state. Enabling Act April 19, 1864, makes no reservations within the boundaries fixed. Marion v. State (1884) 16 Neb. 349, 20 N. W. 289; Id. (1886) 20 Neb. 233, 29 N. W. 911, 57 Am. Rep. 825.

The crime of murder, committed by an Indian against a white man, the place of the crime being in the "Indian country," within the boundaries of New Mexico, is within the exclusive jurisdiction of the United States branch of the territorial district court. U. S. v. Monte (1884) 3 N. M. 173 (Gild.) 3 Pac. 45.

The Pawhuska district court has jurisdiction only of those actions, civil or criminal, in which a resident member of the Osage or Kansas tribes of Indians is a defendant. The district court of Pawnee county, when sitting as a United States court, has jurisdiction of all offenses committed by persons other than Indians upon said reservations, made punishable by the laws of the United States, and, when sitting as a territorial court, has jurisdiction of all offenses committed upon said reservations by persons other than Indians, which offenses are punishable under the laws of the territory, and are not punishable under a law of the United States, and of all civil actions arising within said reservations in which a resident member of the Osage or Kansas tribes is not a party defendant. Goodson v. U. S. (1898) 54 P. 423, 7 Okl. 117.

It is not required that the United States shall exercise sole and exclusive jurisdiction over an Indian reservation and its inhabitants, in order that the United States courts may have jurisdiction to try offenses made punishable by the laws of the United States when committed upon such reservations. Id.

The district courts of the territory, when sitting with, and exercising the powers and jurisdiction of, a United States court, have exclusive jurisdiction of all crimes punishable by the laws of the United States, when committed by persons other than Indians, upon an Indian reservation occupied by Indian tribes, and to which reservation the Indian title has not been extinguished; also, of all such crimes when committed by an Indian on such reservation, except the specific crimes of murder, manslaughter, rape, assault

with intent to kill, arson, burglary, and larceny. Id.

A district court in the Osage Indian reservation has no jurisdiction of the crime of murder committed by a white person not a member of the Indian tribes on said reservation. Ellis v. U. S. (1902) 69 P. 787, 11 Okl. 653.

Murder committed within the Osage Indian reservation by a white person is punishable under the laws of the United States and by the United States courts. Barclay v. U. S. (1902) 69 P. 798, 11 Okl. 503.

The Osage Indian reservation in Oklahoma is "Indian country" within the meaning of R. S. § 2145, ante, § 4148, which extends to the "Indian country" general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States. In re Ingram (1902) 69 P. 868, 12 Okl. 54.

Larceny committed on an Indian reservation in the territory of Oklahoma is a crime punishable under the laws of the United States on the federal side of the district court. Id.

The district court of Pawnee county, sitting as a United States court, has power and jurisdiction to punish a white person for larceny committed on the Osage Indian reservation in Oklahoma. Id.

The district courts of the territory of Oklahoma, when exercising the powers and jurisdiction of the United States court, have exclusive jurisdiction of all crimes punishable by the laws of the United States when committed by persons other than Indians on an Indian reservation occupied by Indian tribes, and to which the Indian title has not been extinguished, and also to certain crimes committed by an Indian on such reservation. Herd v. U. S. (1904) 75 P. 291, 13 Okl. 512, affirmed Brown v. U. S. (1906) 146 Fed. 975, 77 C. C. A. 173; Welty v. Same (1904) 76 P. 121, 14 Okl. 7.

The enabling act of South Dakota (Act Feb. 22, 1889, c. 180, § 4, 25 Stat. 676) provided that the state should disclaim all title to lands held by any Indian or Indian tribes until the title thereto shall have been extinguished by the United States, and the same shall remain subject to the disposition of the United States and under the absolute jurisdiction and control of congress. Act March 2, 1889, c. 405, 25 Stat. 888, restored a large amount of the Indian land to the public domain, though it allowed the Indians to take allotments therein. Held, that the enabling act did not prevent the state from taking jurisdiction over crimes committed in the territory which was restored to public domain, and the mere fact that an Indian took allotments therein did not make such allotments quasi Indian reservations under the exclusive jurisdiction of the United States. Ex parte Moore (1911) 28 S. D. 339, 133 N. 817.

Under Acts Tenn., 1833, c. 16, ext ing the criminal jurisdiction of the s to its southern boundary, the s courts have jurisdiction of an in ment for murder committed by a Ch kee Indian upon a Cherokee In within the Cherokee Nation. Stat Foreman (1835) 16 Tenn. (8 Ye 256.

A homicide committed on an In reservation is within federal juri tion, and the rules of the common govern. Shapoomash v. U. S. (186 Wash. T. 188.

The criminal laws of Wisconsin a to the Indians on their reservat within the state; and the circuit c for Brown county has jurisdiction o violations of such laws commi whether by Indians or others, in Oneida reservation, which is inclu within the boundaries of that count fixed by law. State v. Doxtater (18 47 Wis. 278, 2 N. W. 439; Sam Harris (1879) 47 Wis. 298, 2 N. 543.

13. District of Columbia.—The pr sion in section 10504, post, for ver of guilty "without capital punishme on conviction of murder, which this tion makes a crime against the Ur States when committed on lands res ed for the exclusive use of the Ur States, does not apply to the Dis of Columbia. Johnson v. U. S. (1 32 Sup. Ct. 748, 750, 225 U. S. 40 L. Ed. 1142, affirming judgment (1 38 App. D. C. 347.

The supreme court of the Distric Columbia has jurisdiction of an off committed by one Indian upon ano Indian. In re Wolf (D. C. 1886 Fed. 606, 609.

R. S. § 5339 (Act April 30, 1790, providing that every person who c mits murder within any fort, ars dockyard, magazine, or in any o place or district of country under exclusive jurisdiction of the Ur States, shall suffer death, applie murder committed within the Dis of Columbia, though it was acqu since the passage of the act. U. S Guiteau (D. C. 1882) 1 Mackey, 47 Am. Rep. 247.

Under Act April 30, 1790, § 3, pro ing that if any person shall, within fort, arsenal, dockyard, magazine, c any other place or district of cou under the sole and exclusive jurisdic of the United States commit the c of murder, he shall suffer death, courts of the District of Columbia jurisdiction of such offense, commi in the District, although that sectio territory was not acquired by the tional government until after said ute was enacted. Id.

All crimes and criminal proce known to the common law are sti force in the District of Columbia,

as otherwise provided by statute. v. U. S. (1903) 22 App. D. C. 395. ficial misconduct in office, being an nse under the common law, is an nse in the District of Columbia, and n offense against the United States, ther it is an offense against the ted States when committed by fed- officers in any of the states or ter- ries; and it is immaterial that such nse was a misdemeanor at common while the conspiracy to commit it, eason of the character of the penal- prescribed by R. S. § 5440, ante, § 91, becomes an infamous offense. er v. U. S. (1904) 23 App. D. C.

here can be no crimes against the rict of Columbia, the District not g a sovereignty; but crimes com- ed in the District of Columbia are es against the United States. U. S. ella (1911) 37 App. D. C. 433, writ certiorari denied Cella v. U. S. 12) 32 Sup. Ct. 526.

nder Code D. C. § 932 (Act March 901, c. 854, 31 Stat. 1340), prose- ons in the District of Columbia for ations of general penal statutes ld be in the name of the United es, and not in the name of the Dis- of Columbia, even though the ter- rial scope of such statutes may be ricted to the District of Columbia. ted States v. Cella (1911) 37 App. C. 433, writ of certiorari denied Cel- U. S. (1912) 32 Sup. Ct. 526, 223 S. 728, 56 L. Ed. 633.

prosecution for the violation of a statute prohibiting the business of bucketing in the District of Columbia should be in the name of the United States, and not of the District of Columbia, whether the prosecution is for the first or second offense, under Code D. C. § 932 (Act March 3, 1901, c. 854, 31 Stat. 1340). U. S. v. Cella (1911) 37 App. D. C. 433, writ of certiorari denied Cella v. U. S. (1912) 32 Sup. Ct. 526, 223 U. S. 728, 56 L. Ed. 633.

Cited without definite application, U. S. v. Dawson (1853) 15 How. 467, 487, 14 L. Ed. 775; Ex parte Kan-gi-shun-ca (1883) 3 Sup. Ct. 396, 397, 109 U. S. 556, 27 L. Ed. 1030; Cook v. U. S. (1891) 11 Sup. Ct. 268, 269, 138 U. S. 157, 34 L. Ed. 906; Ball v. U. S. (1891) 11 Sup. Ct. 761, 767, 140 U. S. 118, 35 L. Ed. 377; Addington v. U. S. (1897) 17 Sup. Ct. 288, 289, 165 U. S. 184, 41 L. Ed. 679; Bird v. U. S. (1902) 23 Sup. Ct. 42, 43, 187 U. S. 118, 47 L. Ed. 100; U. S. v. Pelican (1914) 34 Sup. Ct. 396, 397, 399, 232 U. S. 442, 58 L. Ed. 676; Ware v. U. S. (C. C. 1907) 154 Fed. 577, 84 C. C. A. 503, 12 L. R. A. (N. S.) 1053, 12 Ann. Cas. 233 (certiorari denied [1907] 28 Sup. Ct. 255, 207 U. S. 588, 52 L. Ed. 353); Summers v. U. S. (1913) 202 Fed. 457, 120 C. C. A. 563; U. S. v. Martin (D. C. 1883) 17 Fed. 150, 156; U. S. v. Burlington & Henderson County Ferry Co. (D. C. 1884) 21 Fed. 331, 336; U. S. v. Clem (D. C. 1911) 189 Fed. 201; Sparf v. U. S. (1895) 15 Sup. Ct. 273, 297, 156 U. S. 51, 39 L. Ed. 343 (dissenting opinion).

0446. (Crim. Code, § 273.) Murder defined; first degree; second degree.

Murder is the unlawful killing of a human being with malice rethought. Every murder perpetrated by poison, lying in wait, any other kind of willful, deliberate, malicious, and premeditated ing; or committed in the perpetration of, or attempt to perpetrate, arson, rape, burglary, or robbery; or perpetrated from a pre- litated design unlawfully and maliciously to effect the death of any nan being other than him who is killed, is murder in the first degree. y other murder is murder in the second degree.

R. S. § 5339. Act March 4, 1909, c. 321, § 273, 35 Stat. 1143.

Notes of Decisions

Nature and elements of crime in general.
Distinguished from manslaughter.
Malice.
Killing one with intent to kill another.
Homicide in committing or attempting to commit other offense.
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Limitations.
19. Indictment.
20. Evidence.
21. Instructions and questions for jury.

See notes under the preceding section and § 10506, post.

See, also, Sparf v. U. S. (1895) 15 Sup. Ct. 273, 318, 156 U. S. 51, 39 L. Ed. 343; U. S. v. Hewecker (C. C. 1896) 79 Fed. 59, 62.

1. Nature and elements of crime in general.—R. S. § 5339, not defining the offense of murder, the common law, as interpreted in our courts, governs, and murder is where a person of sound memory and discretion unlawfully and feloniously kills any human being in the peace of the sovereign, with malice prepense or aforethought, express or im-

plied. U. S. v. King (C. C. 1888) 34 Fed. 302.

Murder is where a person of sound memory and discretion unlawfully and feloniously kills any human being, in the peace of the sovereign, with malice prepense or aforethought, express or implied. U. S. v. Meagher (C. C. 1888) 37 Fed. 875.

The elements of felonious homicide under the laws of the United States are to be determined by the rules of the common law. U. S. v. Lewis (C. C. 1901) 111 Fed. 630.

2. Distinguished from manslaughter.—A death of a fever caused by a beating while the person was in a weak state of health is murder, where the beating was with malice aforethought; otherwise it is manslaughter. U. S. v. Woods (C. C. 1834) Fed. Cas. No. 16,760.

The difference between murder and manslaughter consists in the existence of malice, express or implied, in one case, and the absence of malice in the other. U. S. v. Outerbridge (C. C. 1868) Fed. Cas. No. 15,978.

No mere words applied by one to another will reduce the act of killing from murder to manslaughter. U. S. v. Carr (C. C. 1872) Fed. Cas. No. 14,732. But see U. S. v. Wiltberger (C. C. 1819) Fed. Cas. No. 16,738.

Where acts charged are proved to have been done willfully and with malice they constitute murder, within section 5339, R. S. The same acts done without malice constitute manslaughter, within section 5341. U. S. v. Leonard (C. C. 1880) 2 Fed. 669.

3. Malice.—Where it is shown that a person was intentionally killed, the law implies malice. U. S. v. Travers (C. C. 1814) Fed. Cas. No. 16,537; U. S. v. McGlue (C. C. 1851) Fed. Cas. No. 15,679; U. S. v. Outerbridge (C. C. 1868) Fed. Cas. No. 15,978; U. S. v. Sickles (Crim. Ct. D. C. 1859) Fed. Cas. No. 16,287a.

A particular malice against deceased is not necessary to constitute murder, if there be deliberate malignity and depravity in the conduct of the party. U. S. v. Ross (C. C. 1813) Fed. Cas. No. 16,196.

The crime will be considered to have been committed with malice aforethought, however sudden the occasion, when the act is done with such cruel circumstances as are the ordinary symptoms of a wicked, depraved, and malignant spirit. U. S. v. Cornell (C. C. 1820) Fed. Cas. No. 14,868.

The circumstances attending a homicide may be such that the law deems it malicious. U. S. v. Armstrong (C. C. 1855) Fed. Cas. No. 14,467.

Malice, as applied to murder, need not denote spite or malevolence, hatred or ill will, to the person killed, nor that the slayer killed his victim in cold blood, as with a settled design; but a killing from an evil design and malignant spirit may be of malice, impli law from the absence of lawful ex U. S. v. Meagher (C. C. 1888) 37 875.

Malice, legally speaking, in relati murder, is a conscious violation o to the prejudice of another; evi sign in general; the dictates of a ed, depraved, and malignant heart S. v. Hart (C. C. 1908) 162 Fed. 1

4. Killing one with intent to kil other.—If a man shoots at another the intention of killing him (and killing if consummated would be der), and kills a bystander or anc he is guilty of the murder of the son killed, whether the killing o latter was due to a mistake as t or her identity, or to recklessne the aim of the one doing the ki U. S. v. Hart (C. C. 1908) 162 192.

5. Homicide in committing or tempting to commit other offe Murder committed by derailing a car is punishable as such in the courts, though the act is also a fense against the laws of the U States. Crossly v. California (189 Sup. Ct. 242, 168 U. S. 640, 42 L 610.

An agreement to commit a robbe an agreement to do such an act if a person is killed in the executi it all who are in the conspiracy to and are aiding in executing it a time of the killing, are guilty of der. U. S. v. Boyd (C. C. 1890 Fed. 851, judgment reversed, Bo U. S. (1892) 12 Sup. Ct. 292, 14 S. 450, 35 L. Ed. 1077.

6. Former law as to degrees.— merly there were no degrees of der, under the laws of the U States. U. S. v. Outerbridge (C 1868) Fed. Cas. No. 15,978.

7. Insanity and intoxication.— person, while sane and respon makes himself intoxicated, and commits murder by reason of ins resulting from intoxication, he i sponsible. U. S. v. Cornell (C 1820) Fed. Cas. No. 14,868; U. McGlue (C. C. 1851) Fed. Cas. 15,679.

Insanity directly caused by the mediate influence of intoxicating li is no defense on a prosecution for der committed during such intoxica otherwise, where insanity is rem occasioned by undue indulgence in ituous liquors. U. S. v. Drew (C 1828) Fed. Cas. No. 14,993.

It is not every kind or degree o sanity which exempts from punish If the accused understood the n of his act, if he knew it was w and deserved punishment, he is re sible. U. S. v. McGlue (C. C. 1 Fed. Cas. No. 15,679; U. S. v. He (C. C. 1858) Fed. Cas. No. 15,38

If a person suffering from del tremens is so far insane as no

the nature of his act, etc., he is unishable. U. S. v. McGlue (C. 51) Fed. Cas. No. 15,679.

oxication is no excuse for crime, hould be considered as affecting dant's mental condition, with ref- e to his capability of a specific in- U. S. v. Meagher (C. C. 1888) ed. 875.

Ignorance as defense.—It is no se that one accused of murder nore ignorant, and somewhat more l, than common men of bad edu- n, bad passions, and bad habits, was not deficient in understand- U. S. v. Cornell (C. C. 1820) Fed. No. 14,868.

Excuse or justification in general. order of a superior military offi- o an inferior will not, of itself, y the willful killing of another. v. Bevans (C. C. 1816) Fed. Cas. 4,589; U. S. v. Carr (C. C. 1872) Cas. No. 14,732.

en homicide excused by the acts ceased. U. S. v. Frye (C. C. 1835) Cas. No. 15,173.

the case of shipwreck, where the ats are crowded, the seamen have ght to throw passengers overboard otect their own lives, and that of passengers. U. S. v. Holmes (C. 42) Fed. Cas. No. 15,383.

cers charged with the good order camp or fort will not be required eigh with scrupulous decision the amount of force necessary to pre- order. U. S. v. Carr (C. C. 1872) Cas. No. 14,732.

the deceased, had attacked one member of the regiment in which he accused, was a private, and had ed him into the government res- ion at Ft. Hamilton, where he him so that M. cried out, "Mur- and "Don't kill me!" K. who was end of M. and on good terms with aw the attack on M. and heard ries. He got a rifle and two cart- s—one ball and one blank— and re- ng to the place of the encounter, n M. had left, he saw W., who was werful man, and aggressive when uor, as he then was, following M. He called to W. to leave the res- ion, and did not load his piece un- ., who continued to advance with ife in his hand, and with threats he was going "to do him [K.] up." within eight feet of him. W. came rapidly that K. had no chance to his rifle, and only discharged it W. was against the muzzle, and he moment of the discharge the had not reached the horizontal, was held just above the hip. The was the ball cartridge, and W. was l. The plea was justifiable homi- Held, that to support the plea it necessary that K. must have re- ed as far as he could have done safety to himself; that the dan- of death or grievous bodily harm to elf or M. must have been appar- ently imminent, and that K.'s belief as to the character of the danger must have been honest, and founded upon grounds reasonable under the circumstances. U. S. v. King (C. C. 1888) 34 Fed. 302.

10. Right of military guard to kill prisoner seeking to escape.—The common-law distinction between felonies and misdemeanors has no application to military offenses, in considering the right of a military guard to kill a prisoner who seeks to escape from his custody. U. S. v. Clark (C. C. 1887) 31 Fed. 710.

If a homicide be committed by a military guard without malice, and in the performance of his supposed duty as a soldier, such homicide is excusable, unless it was manifestly beyond the scope of his authority, or was such that a man of ordinary sense and understanding would know that it was illegal. Id.

11. Provocation.—If upon slight provocation one inflicts with a deadly weapon a punishment outrageous in its nature, and beyond all proportion to the offense, and death results, the law presumes that the act was inspired rather by malignity and a depraved spirit recklessly bent on mischief than by human frailty. U. S. v. Bevans (C. C. 1816) Fed. Cas. No. 14,589.

Neither words nor gestures, however insulting or irritating, nor an assault, will justify the killing of the aggressor. U. S. v. Outerbridge (C. C. 1868) Fed. Cas. No. 15,978.

12. Self-defense in general.—A person may oppose force to force in defense of himself or his family, against one who manifestly endeavors by surprise or violence to commit a felony. U. S. v. Wiltberger (C. C. 1819) Fed. Cas. No. 16,738; Same v. Outerbridge (C. C. 1868) Fed. Cas. No. 15,978.

In a prosecution for murder charged to have been committed on a military reservation, if the evidence is such as to satisfy the jury that the defendant was a trespasser on the reservation, and was waiting around with the intent and purpose of bringing on a difficulty with another, and did in fact bring on the difficulty with the person killed, who met his death from a shot fired by defendant, such killing cannot be justified as in self-defense. U. S. v. Hart (C. C. 1908) 162 Fed. 192.

13. Resistance of arrest.—Where an officer attempting to execute lawful process of arrest is resisted by the party to be arrested, so that he is obliged to take the latter's life in self-defense, the process is a justification. U. S. v. Jailer (C. C. 1867) Fed. Cas. No. 15,463.

An offender having made public threats against the life of an officer having a warrant for his arrest, the latter is justified in taking his life, where he so acts with a rifle when the

attempt at arrest is made that the officer has reason to believe that he intends to execute such threats. U. S. v. Rice (C. C. 1875) Fed. Cas. No. 16,153.

14. Nature and imminence of danger.—The danger must be imminent, and the resistance used necessary to avert the danger. U. S. v. Wiltberger (C. C. 1819) Fed. Cas. No. 16,738; Same v. Outerbridge (C. C. 1868) Fed. Cas. No. 15,978.

By "imminent danger" is meant immediate danger, such as must be instantly met, and cannot be guarded against by calling upon the assistance of others, or the protection of the law. U. S. v. Outerbridge (C. C. 1868) Fed. Cas. No. 15,978.

15. Duty to retreat.—A man is bound to retreat from the moment danger becomes apparent, unless, from the fierceness of the attack, he is prevented from doing so. U. S. v. Herbert (Crim. Ct. D. C. 1856) Fed. Cas. No. 15,354a.

16. Defense of property.—A person may oppose force to force in defense of his property against one who manifestly endeavors, by surprise or violence, to commit a felony. U. S. v. Wiltberger (C. C. 1819) Fed. Cas. No. 16,738.

The setting of spring guns in open fields or outbuildings, and not within the privilege of the domicile, without notice, will not excuse or justify a homicide which may ensue. U. S. v. Gilliam (Crim. Ct. D. C. 1882) Fed. Cas. No. 15,205a.

17. Accident.—The killing of a person by the accidental discharge of a pistol by one engaged in no unlawful act, and without negligence, is homicide by misadventure, and is no crime. U. S. v. Meagher (C. C. 1888) 37 Fed. 875.

18. Limitations.—See, also, §§ 1707, 1709, ante, and notes thereunder.

A seaman on the American schooner M. was indicted for having shot in the harbor of Havana one Miller, who died therefrom in the hospital, three days afterwards, at Havana, on January 21, 1892. The indictment was not found until March 10, 1896, and H. in the meantime had been imprisoned at Havana upon conviction for an assault, and on the expiration of his sentence delivered to the United States authorities. On demurrer to the indictment: Held (1) that the defendant was not a fugitive from justice under R. S. § 1045, ante, § 1709, so as to be excepted from the exemption of indictment after three years, provided by R. S. § 1043, ante, § 1707; (2) that the death having taken place on land within a foreign jurisdiction, the case was not one of "willful murder" at common law, under the federal authorities; (3) that the only United States statute cable, viz., R. S. § 5339, though ing the offense punishable with neither declares it to be "murder does it limit that offense to ca death within a year and a day, at common law was an essentia ment of the offense of murde held, therefore, that the case w one of "willful murder" within R 1043, ante, § 1707, and the indic was therefore barred by the year limitation. U. S. v. He (C. C. 1896) 79 Fed. 59.

19. Indictment.—There is no e refusing to compel an election be two murders charged in se counts of the same indictment, it appears that they were so connected in respect of time, and occasion that it is difficult, impossible, to separate the pr one from the proof of the other. er v. U. S. (1894) 151 U. S. 3 Sup. Ct. 410, 38 L. Ed. 208.

An indictment charging sever fendants, jointly with murder by ing, beating, and drowning, nee show which one or more of them mitted the alleged assault. St. v. U. S. (1894) 154 U. S. 134, 1 Ct. 1002, 38 L. Ed. 936.

Where one count charges the der to have been committed w gun, and another charges it to been committed "with a certain instrument," and there is ev that deceased was shot in the head, and also hit on the head w hammer, the question whethe prosecution shall be compelled to between the counts, is a matter within the court's discretion. v. U. S. (1896) 160 U. S. 355, 16 Ct. 321, 40 L. Ed. 454.

Where deceased was first sho afterwards thrown into the sea, fendant, an indictment which c both acts in the same count, an death resulted from both shootin drowning, is not objectionable o ground of duplicity or uncert Andersen v. U. S. (1898) 18 Su 689, 170 U. S. 481, 42 L. Ed. 11

An allegation in an indictme murder that the crime was com "within the Fort Worden Military ervation, a place under the ex jurisdiction of the United S charges with sufficient clearness such reservation was under the sive jurisdiction of the United at the time of the murder. Holt S. (1910) 31 Sup. Ct. 2, 218 U. S 54 L. Ed. 1021, affirming judgme S. v. Holt (C. C. 1909) 168 Fe

An indictment for murder charges that the acts constituti assault were made feloniously with malice aforethought need n tain such allegations in the prelim averment of assault. Id.

Where an indictment for mur the Chickasaw Nation, Ind. T.,

both deceased and accused were e men, proof that deceased was a e man establishes the jurisdiction, the averment as to citizenship of accused is surplusage. Stevenson . S. (1898) 86 Fed. 106, 29 C. C. 00.

indictment for murder on the seas need not state the length and h of the wound which caused h. U. S. v. Maunier (C. C. 1792) Cas. No. 15,746.

allegation that the crime was mitted on board a vessel belonging itizens of the United States, with- he admiralty and maritime juris- on of the United States, and with- he jurisdiction of the court, and out the jurisdiction of any partic- state, sufficiently shows the juris- on. U. S. v. Plumer (C. C. 1859) Cas. No. 16,056.

der Act April 30, 1790, § 8 (1 . 113), it is sufficient, in an indict- t for a murder committed on board vessel on the high seas, by an , to allege that the vessel was ed by a citizen of the United es, without alleging otherwise the onal character of the vessel. U. Demarchi (C. C. 1862) Fed. Cas. 14,944.

an indictment for a crime com- ed on board of a vessel on the seas by an alien, it is sufficient to e that the vessel was owned by a en of the United States, without ing otherwise the national char- r of the vessel. Id.

S. § 5339, provides that when one ders, or maliciously commits cer- injuries on another whereof the r dies, he shall suffer death. R. 5341, post, § 10447, makes the of- e manslaughter when the injuries done willfully and unlawfully, but out malice. R. S. § 1035, ante, § , provides that one may be found y of any offense the commission of h is necessarily included in that ged. Held, that one indicted for der could be convicted of man- ghter. U. S. v. Leonard (C. C.) 2 Fed. 669.

fficiency of indictment for murder r the act of congress punishing sition to the enrollment of the onal forces. U. S. v. Scott (D. C.) Fed. Cas. No. 16,241.

S. § 5339, providing for the pun- ent of the crime of murder, hav- made no provision as to the form rocedure, resort must be had, in ng the sufficiency of an indict- t for a murder committed in Alas- o the laws of Oregon in force May 1884, rather than to the rules of common law. U. S. v. Clark (D. C.) 46 Fed. 633.

cused must be apprised with rea- ble certainty of the nature of the sation against him, and the acts intent constituting the crime must et forth in the indictment with reasonable particularity of time, place, and circumstance. Id.

20. Evidence.—Testimony against the accused, on a trial for murder, that more than a month before the homicide he threatened violence to another member of the same party, and that he was very disagreeable and abusive and vulgar in his language toward the others, and testimony that he tried to pick a fight with another about six months after the homicide, is inadmissible because the time is too remote, and because the facts do not show enmity toward the person whom he killed. Bird v. U. S. (1901) 21 Sup. Ct. 403, 404, 180 U. S. 356, 45 L. Ed. 570.

Any circumstances in mitigation or of excuse or justification must be proved by the prisoner. U. S. v. Travers (C. C. 1814) Fed. Cas. No. 16,537; U. S. v. Bevans (C. C. 1816) Fed. Cas. No. 14,589; U. S. v. Armstrong (C. C. 1855) Fed. Cas. No. 14,467.

Proof that the blows were given by a dangerous weapon, were followed by alarming symptoms, and soon afterwards by death, is sufficient prima facie proof that the blows caused the death. U. S. v. Wiltberger (C. C. 1819) Fed. Cas. No. 16,738.

On an indictment for murder by throwing a child overboard, the prosecution must prove (where such a defense is set up) that the child had not died in a fit before it was thrown overboard. U. S. v. Hewson (C. C. 1844) Fed. Cas. No. 15,360.

21. Instructions and questions for jury.—R. S. § 5339, declares that every person who commits murder shall suffer death and Act July 15, 1897, c. 29 (section 10504, post), provides that in all cases in which accused is found guilty under section 5339, the jury may qualify their verdict by adding thereto "without capital punishment." Held, that the latter provision authorized the jury to limit their verdict in any case, without regard to the existence of mitigating circumstances, and that instructions confining the right were erroneous. Winston v. U. S. (1899) 19 Sup. Ct. 212, 172 U. S. 303, 43 L. Ed. 456.

Where there is evidence tending to show that the accused, after provoking a quarrel with deceased, withdrew therefrom, and was thereafter fired upon without warning by deceased, whom he then shot and killed, it is the duty of the court to instruct the jury as to the effect of such withdrawal, and its refusal to do so when requested is reversible error. Stevenson v. U. S. (1898) 86 Fed. 106, 29 C. C. A. 600.

Where, in a prosecution for homicide, defendant claimed that the killing was done in self-defense, an instruction that the jury should say from the evidence whether it was necessary for defendant to kill deceased to protect him-

self, in order that the killing should be justified, was erroneous, since defendant was entitled to defend himself against attack by deceased, to the extent of killing deceased, if it appeared to defendant at the time of the encounter, acting as a reasonable man, that it was necessary for him to kill deceased to prevent injury to himself. Owens v. U. S. (1904) 130 Fed. 279, 64 C. C. A. 525.

Where intoxication is set up as a defense, it is for the jury to determine whether or not the accused was at that time capable of a specific intent to take life. U. S. v. King (C. C. 1888) 34 Fed. 302.

The elements of the crime of murder, under the laws of the United States, and of the included crime of manslaughter, and the facts which must a to render the homicide justifiable ground of self-defense, defined a plained in a charge to the jury. v. Lewis (C. C. 1901) 111 Fed. 6

The finding of the body of a dent on a military reservation, marks on it of injuries suffici cause death, showing that it mus been placed there by the hand o warrants the jury in concludin the homicide was committed o reservation and within the juris of the district court. U. S. v. (D. C. 1911) 189 Fed. 201.

Cited without definite appli U. S. v. Wiltberger (1820) 5 W 76, 93, 5 L. Ed. 37; U. S. v. P (1914) 34 Sup. Ct. 396, 397, 232 442, 58 L. Ed. 676.

§ 10447. (Crim. Code, § 274.) Manslaughter defined; volun involuntary.

Manslaughter is the unlawful killing of a human being wit malice. It is of two kinds:

First. Voluntary—Upon a sudden quarrel or heat of passion.

Second. Involuntary—In the commission of an unlawful act amounting to a felony, or in the commission of a lawful act w might produce death, in an unlawful manner, or without due ca and circumspection.

R. S. § 5341. Act March 4, 1909, c. 321, § 274, 35 Stat. 1143.

Notes of Decisions

See notes under the preceding section.

Nature and elements of crime in general.—If two fight with deadly weapons in a mutual combat, begun in hot blood, and death ensue, it is manslaughter. U. S. v. Mingo (C. C. 1854) Fed. Cas. No. 15,781.

Any unlawful and willful killing of a human being without malice, including a negligent killing, which is also willful, is manslaughter, and it may exist where there is no evidence of sudden heat of passion. U. S. v. Meagher (C. C. 1888) 37 Fed. 875.

Malice.—Malice is not an element of manslaughter as defined by R. S. § 534 (embodied herein). U. S. v. King (C. C. 1888) 34 Fed. 302, 306.

Resisting arrest.—Homicide in resisting an arrest substantially illegal will, at most, amount to manslaughter. U. S. v. Travers (C. C. 1814) Fed. Cas. No. 16,537.

Killing person interfering with enforcement of revenue laws.—Revenue officers searching for illicit distilleries came upon a furnace from which the still fixtures had been recently removed. A man was seen observing their movements, who afterwards offered to conduct them to a certain house, and walked in front of them for that purpose. Soon he began to run towards the house, and the officers ran after him, when he seized a gun, fired upon and wounded one of them, and was sl another. Held, that the officers warranted in suspecting him of tention to warn guilty parties, a though they had no warrant for l rest, were justified in running afte to frustrate that design, and the shooting deceased was not guil manslaughter. State v. Kirkp (C. C. 1890) 42 Fed. 689.

Jurisdiction.—See, also, notes u 10445, ante.

The place where the death ha and not that where the mortal is given, determines the juris of the court on an indictment for slaughter; otherwise where th dictment is for assault and batter S. v. Bladen (C. C. 1809) Fed. Ca 14,605.

Indictment.—Under an indictme manslaughter on board a vessel high seas or in a foreign port, the ecutor must prove that the vess longed to a citizen of the United S U. S. v. Imbert (C. C. 1827) Fed No. 15,438.

An indictment for manslaughte not contain the words, "in the f his mind." U. S. v. Frye (C. C. Fed. Cas. No. 15,173.

R. S. § 5339, provides that whe murders or maliciously commits c injuries on another, whereof the dies, he shall suffer death. R. S. (embodied herein), makes the c manslaughter when the injurie

e willfully and unlawfully, but with-
malice. R. S. § 1035, ante, § 1701,
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l, that one indicted for murder
d be convicted of manslaughter. U.
. Leonard (C. C. 1880) 2 Fed. 669.

structions and questions for jury.—
prosecution for homicide, an in-
ction that the term "willfully" as
in R. S. § 5341 (embodied here-
defining manslaughter as the unlaw-
nd willful killing of another without
ce, means a killing done wrongful-
nd with evil intent, committed by
act which a person of reasonable
wledge and ability must know to be
rary to duty, and that, while the
must be done with evil design and
vingly, a killing under circumstanc-
howing a reckless disregard for the
of another, and the reckless and
igent use of means calculated to
the life of another, would be a
ul killing, as defined, was proper.
erts v. U. S. (1903) 126 Fed. 897,
C. C. A. 427, rehearing denied
4) 127 Fed. 818, 62 C. C. A. 134,
writ of certiorari denied (1904) 24
Ct. 855, 193 U. S. 673, 48 L. Ed.

a tenant kill a constable who comes
ake an unlawful distress, the jury
according to the circumstances,
a verdict of manslaughter. U. S.
v. Williams (C. C. 1823) Fed. Cas. No. 16,710.

The elements of the crime of murder, under the laws of the United States, and of the included crime of manslaughter, and the facts which must appear to render the homicide justifiable on the ground of self-defense, defined and explained in a charge to the jury. U. S. v. Lewis (C. C. 1901) 111 Fed. 630.

Civil action for causing death on the high seas.—Action lies under the New York statute for negligently causing the death of a citizen of New York on the high seas on board a vessel registered in a port of New York, and at the time employed by the owners in their own business. McDonald v. Mallory (1879) 77 N. Y. 546, 33 Am. Rep. 664.

Cited without definite application, U. S. v. Wiltberger (1820) 5 Wheat. 76, 93, 5 L. Ed. 37; Ex parte Kan-gi-shun-ca (1883) 3 Sup. Ct. 396, 403, 109 U. S. 556, 27 L. Ed. 1030; Wallace v. U. S. (1896) 16 Sup. Ct. 859, 863, 162 U. S. 466, 40 L. Ed. 1039; U. S. v. Leonard (C. C. 1880) 2 Fed. 669; U. S. v. Meagher (C. C. 1888) 37 Fed. 875, 880; U. S. v. Hewecker (C. C. 1896) 79 Fed. 59, 63; U. S. v. Hart (C. C. 1908) 162 Fed. 192; U. S. v. Bedgood (D. C. 1891) 49 Fed. 54, 57; U. S. v. Clark (D. C. 1891) 46 Fed. 633, 635; U. S. v. Nelson (D. C. 1912) 199 Fed. 464.

0448. (Crim. Code, § 275.) Punishment; murder; manslaughter.

very person guilty of murder in the first degree shall suffer th. Every person guilty of murder in the second degree shall imprisoned not less than ten years and may be imprisoned for Every person guilty of voluntary manslaughter shall be imoned not more than ten years. Every person guilty of involuntary slaughter shall be imprisoned not more than three years, or fined exceeding one thousand dollars, or both.

R. S. §§ 5339, 5343. Act March 4, 1909, c. 321, § 275, 35 Stat. 1143.

The manner of inflicting the punishment of death was prescribed by Crim. Code, § 323, post, § 10497.

Conviction works no corruption of blood or forfeiture of estate, by Crim. Code, § 324, post, § 10498.

Provisions authorizing the jury where the accused is found guilty of murder n the first degree, or rape, to qualify their verdict of guilty so as to provide for life imprisonment, made by Act Jan. 15, 1897, c. 29, § 1, were incorporated into Crim. Code, § 330, post, § 10504.

Notes of Decisions

rder.—R. S. § 5339, declares that y person who commits murder in place or district under the exclu- jurisdiction of the United States suffer death; and Act Jan. 15, , c. 29 (29 Stat. 487), provides in all cases in which the accused und guilty of murder under section , the jury may qualify their ver- by adding thereto "without capital shment." Held, that the latter ision authorized the jury to so lim- heir verdict in any case, without rd to the existence of mitigating circumstances, and that instructions confining the right to such cases were erroneous. Winston v. U. S. (1899) 19 Sup. Ct. 212, 172 U. S. 303, 43 L. Ed. 456.

The murder of one Indian by another is punishable with death, under R. S. § 5339, and 23 Stat. 385, c. 341, § 9. The power of the federal courts to punish this offense with death was not revoked by 29 Stat. 487, c. 29. Good Shot v. U. S. (1900) 104 Fed. 257, 43 C. C. A. 525.

The organic act of the district of

Alaska (Act May 17, 1884, 23 Stat. 24) declares the general laws of the state of Oregon in force at that date to be the law of the district so far as the same may be applicable, and not in conflict with the provisions of that act or the laws of the United States, and, in another section, that the laws of the United States not locally inapplicable, and not inconsistent with the provisions of that act, are thereby extended thereto. Held, that the laws of the United States would take precedence of the laws of Oregon relating to the same subjects, and the crime of murder committed in such district would be punished in accordance with R. S. § 5339, and not with Crim. Code Or. § 506. U. S. v. Clark (D. C. 1891) 46 Fed. 633.

Manslaughter.—Manslaughter, in the District of Coumbia, is punishable by fine and imprisonment. U. S. v. McLaughlin (C. C. 1807) Fed. Cas. No. 15,697; U. S. v. Anderson (C. C. 1827) Fed. Cas. No. 14,451.

A slave found guilty of manslaughter was sentenced to be burned in the hand and whipped with 10 stripes. U. S. v. Tom (C. C. 1815) Fed. Cas. No. 16,-531; U. S. v. Clark (C. C. 1825) Fed. Cas. No. 14,802.

Under Act May 7, 1884 (23 Stat. 24, § 7), declaring that the general laws of Oregon shall be the law in Alaska so far as applicable, and not in conflict with United States laws; and Crim. Code, Or. §§ 509, 518, punishin slaughter with ten years' im ment and $100 fine, with power pose additional imprisonment u fine is paid; and Act March (18 Stat. 473), punishing mansl with 10 years' imprisonment and fine, without giving power to i until fine is paid—held, one g manslaughter in Alaska could imprisoned under the state la he paid the fine. There is a within the meaning of the stat only when these laws contain d provisions on the same subje when they contain similar or i ones. In the latter case it is of congress that applies, and n of the state. Kie v. U. S. (C. C 27 Fed. 351.

The plaintiff in error, being co of manslaughter, was sentenced ishment therefor under the law gon, instead of the Act 1875 (1 473), whereby his imprisonme authorized for 20 days in excess punishment allowed by said act. that the judgment was erroneo the same was reversed, with di to have plaintiff in error senten cording to law. Id.

Cited without definite appl Johnson v. U. S. (1912) 32 S 748, 750, 225 U. S. 405, 56 1142; U. S. v. Bedgood (D. C. 49 Fed. 54, 57.

§ 10449. (Crim. Code, § 276.) Felonious assaults; to mur rape; other felony; with weapons, etc.; beating, etc.; assault.

Whoever shall assault another with intent to commit m or rape, shall be imprisoned not more than twenty years. ever shall assault another with intent to commit any felon cept murder, or rape, shall be fined not more than three thousan lars, or imprisoned not more than ten years, or both. Whoever intent to do bodily harm, and without just cause or excuse, assault another with a dangerous weapon, instrument, or other shall be fined not more than one thousand dollars, or imprisone more than five years, or both. Whoever shall unlawfully strike, or wound another, shall be fined not more than five hundred doll imprisoned not more than six months, or both. Whoever sha lawfully assault another, shall be fined not more than three hu dollars, or imprisoned not more than three months, or both.

R. S. § 5346. Act March 4, 1909, c. 321, § 276, 35 Stat. 1143.

Notes of Decisions

Assault and battery in general.—If a man be present, and encourage an assault and battery, he is a principal. U. S. v. Ricketts (C. C. 1804) Fed. Cas. No. 16,158.

The builders of a house have a right to remove, without unnecessary violence, all persons who come into the building without authority, and refuse to depart upon request. U. S. v. Bartle (C. C. 1805) Fed. Cas. No. 14,531.

It is an assault to double the fist and run it at another, saying, "If you say so again, I will knock you down." U. S. v. Myers (C. C. 1806) Fe No. 15,845.

In cases of mutinous condu master may use a greater de violence than where there is havior only. U. S. v. Wickham 1806) Fed. Cas. No. 16,689.

The mere taking hold of a coat, if done in anger, or a ru insolent manner, or with a view tility, constitutes an assault a tery. U. S. v. Ortega (C. C. Fed. Cas. No. 15,971.

Striking at a person, though n

nflicted, or raising the arm to e, or holding up one's fist, if done nger or a menacing manner, con- tes an assault. Id.

person who flourishes or points a y weapon at another, intending onal harm, is guilty of an assault, n Act March 3, 1825, § 22, al- gh no battery has been committed. . v. Kierman (C. C. 1829) Fed. No. 15,529; U. S. v. Salisbury C. 1843) Fed. Cas. No. 16,214.

is a misdemeanor at common law ersuade, instigate, and incite an- to commit an assault and bat- U. S. v. Lyles (C. C. 1834) Fed. No. 15,646.

is an assault to threaten to strike oman with an uplifted club if she her mouth. U. S. v. Richardson C. 1837) Fed. Cas. No. 16,155.

person is guilty of the offense if ould have reached the person in- ed by extending his arm, so as to t a blow, although no blow was ac- y given. U. S. v. Salisbury (C. C.) Fed. Cas. No. 16,214.

ere is no punishment provided by laws of the United States for a le assault by one private person another in places under the ex- ve jurisdiction of the government. S. v. Barnaby (C. C. 1892) 51 20.

"assault" is an unlawful attempt, led with a present ability, to com- a violent injury upon the person of her. Id.

e of the elements of crime de- ced by this section is that the as- must take place on board a ves- belonging in whole or in part to United States or a citizen thereof. S. v. Lewis (D. C. 1888) 36 Fed. 450.

ssault with a dangerous weapon.— mere pointing of an unloaded pis- t another does not constitute the e of assault with a dangerous pon. Price v. U. S. (1907) 156 950, 85 C. C. A. 247, 15 L. R. A. S.) 1272, 13 Ann. Cas. 483.

e who, within shooting distance of her, points at him a pistol appar- y loaded, and believed to be loaded he person at whom it is pointed, mits a criminal assault, although pistol is not in fact loaded. Id.

ere is no punishment provided for assault with a dangerous weapon, mitted within the exclusive juris- on of the United States, if com- ed on land, even if it should in- e an attempt to commit murder. S. v. Williams (C. C. 1880) 2 Fed.

here the master assaults a seaman, seaman may endeavor to escape, if pursued by the master and the ult is repeated, the seaman may st in such manner as to protect self from injury, and if the assault ade with a deadly weapon, or oth- ise dangerously, and the facts are such as to justify the belief that he is in serious bodily danger, the seaman is authorized to use equivalent and necessary force in his own protection. U. S. v. Beyer (C. C. 1887) 31 Fed. 35.

Where a mate in command of a vessel lying at anchor after working hours ordered a seaman to wash his (the mate's) clothes, and the seaman declined in respectful terms, an assault upon the seaman was wholly unjustifiable. Id.

The master is justified in using a deadly weapon to reduce a seaman to obedience only in cases of apparent necessity, such as the situation of the ship and the manifestation of a hostile disposition on the part of the crew. U. S. v. Colby (D. C. 1845) Fed. Cas. No. 14,830.

If a person injure another while using a dangerous weapon in a reckless manner, having reasonable cause to believe that he may injure some one, he is as guilty of a criminal intent as if he had a special intent to injure the person hurt. U. S. v. McClare (D. C. 1854) Fed. Cas. No. 15,659.

Malice is not an ingredient of the offense of an assault with a dangerous weapon, under the federal statute. U. S. v. Lunt (D. C. 1855) Fed. Cas. No. 15,643.

A master is justified in using a deadly weapon, though the necessity be apparent only. Id.

See U. S. v. Hunt (C. C. 1841) Fed. Cas. No. 15,423.

Assault with intent to kill.—See, also, notes under § 10462, post.

A mere intention to give pain, or to torture the person assaulted, will not support an indictment against the master for an assault on the mate with intent to kill. U. S. v. Riddle (C. C. 1827) Fed. Cas. No. 16,162.

An indictment will not lie under the penitentiary act for an assault with intent to kill. There must be a battery also. U. S. v. Turley (C. C. 1833) Fed. Cas. No. 16,546.

There is no punishment provided for an assault with a dangerous weapon, committed within the exclusive jurisdiction of the United States, if committed on land, even if it should involve an attempt to commit murder. U. S. v. Williams (C. C. 1880) 2 Fed. 61.

The only provision in the statutes of the United States for punishing an attempt to commit murder or manslaughter on land, is found in R. S. § 5342, post, § 10450, which is confined to cases where the means used do not constitute "the offense of assault with a dangerous weapon." Id.

Attempt to commit rape.—An attempt by a seaman to commit rape upon a female passenger in a foreign port, and her refusal to remain on board unless he is discharged, justify his im-

mediate dismissal. Nieto v. Clark (D. C. 1858) Fed. Cas. No. 10,261.

Indictment.—An indictment for confining the captain, for an assault in a foreign port on a vessel belonging to a citizen of the United States, need not negative the fact that defendant was tried and convicted or acquitted by the foreign tribunal. U. S. v. Stevens (C. C. 1825) Fed. Cas. No. 16,394.

An assault with a dangerous weapon under Act March 3, 1825, § 22, is a misdemeanor; and the indictment need not charge that it was committed feloniously, or with intent to perpetrate a felony. U. S. v. Gallagher (C. C. 1832) Fed. Cas. No. 15,185.

An indictment charging an assault may be good, although not setting forth the name of the person assaulted, if it avers that the name was unknown to the grand jury. U. S. v. Davis (C. C. 1833) Fed. Cas. No. 14,924.

In an indictment for assault and battery with intent to kill, it is not necessary to state the manner and extent of the assault and battery, nor the particular weapon used, nor to charge the assault to be felonious or malicious, or with malice prepense, nor to show that, if death had ensued, it would have been murder. U. S. v. Herbert (C. C. 1836) Fed. Cas. No. 15,354.

In an indictment for committing an offense on shipboard under Act 1825, c. 276, §§ 22, 25, the particular ownership of the vessel is immaterial, and a misnomer of the owner is of no consequence. U. S. v. Howard (C. C. 1837) Fed. Cas. No. 15,403.

An indictment for assault and battery with intent to kill need not show that the crime would have been murder if death had ensued. U. S. v. Tharp (C. C. 1838) Fed. Cas. No. 16,458.

In an indictment for an assault with a dangerous weapon on board a vessel, under R. S. § 5346 (embodied herein), alleging the place as the harbor of Guantanamo, in the island of Cuba, does not dispense with the allegation that the place was out of the jurisdiction of a state of the United States. U. S. v. Anderson (C. C. 1879) Fed. Cas. No. 14,448.

An indictment purporting to be founded on R. S. § 5346 (embodied herein), charging the commission of an assault with a dangerous weapon on board a vessel belonging in whole or in part to a citizen of the United States, alleged the assault to have taken place "in the harbor of Guantanamo; in the island of Cuba," but did not allege that that place was out of the jurisdiction of any state of the United States. Held, that the indictment was bad for that reason. Id.

An indictment for an attempt to commit murder is insufficient where it merely charged that defendant made an assault with a knife upon a person named, with intent to kill, wil feloniously, and of his malice thought, without disclosing the acter of the knife. U. S. v. Ba (C. C. 1892) 51 Fed. 20.

An indictment for an attempt to mit murder is insufficient whe merely charges that defendant ma assault with a knife upon a p named, with intent him to kill, wil feloniously, and of his malice thought, without averring tha struck him with it or inflicted wound having a tendency to pr death. Id.

Under R. S. § 5391, post, § 1 and the Kentucky statute, in for April 5, 1866, 1873, and 1878, de the offense of cutting, stabbing, an indictment for the offense of c and stabbing with intent to kill, mitted at a place within the exc jurisdiction of the United States uated within the state of Kent which avers that the accused did fully and unlawfully, in sudden and passion, and not in self-def cut, stab, and wound a certain p without killing him, is sufficient. S. v. Tucker (D. C. 1903) 122 518.

Evidence.—On the trial of a de ant for assault with a dang weapon, where it was shown th went upon a mining claim in the p able possession of a lessee, and, o ing ordered off, threatened such with a revolver, evidence offere show that a third person owned a terest in the claim, and that such ership had been recognized by lessee, who had acknowledged the of such person to have a repres tive on the claim, was properly ex ed as having no tendency in any to justify the assault or to establ defense, especially where defe made no claim to represent such son, who already had a represent on the claim with the lessee's co Johnston v. U. S. (1907) 154 Fed. 83 C. C. A. 299.

On the trial of a defendant, c ed with assaulting a person with volver while attempting by forc eject such person and others fr mining claim of which they we possession, evidence offered by de ant to show that he was the own the claim was not pertinent to th sue, since such fact, if shown, w justification for the assault. H v. U. S. (1909) 168 Fed. 536, 93 A. 616, 22 L. R. A. (N. S.) 728.

Instructions and questions for j On the trial of a defendant for a sault with a dangerous weapon, he admitted striking the perso saulted with a revolver, the only tion for the jury was whether de ant was guilty of the offense cha

guilty, and it was not error to to charge that he might be con- of assault and battery, or simple t. Hickey v. U. S. (1909) 168 36, 93 C. C. A. 616, 22 L. R. A.) 728.

prosecution for assault and bat- esulting from a dispute over the ship of certain gold dust or royal- he court properly charged that it nmaterial whether defendant had ed an interest in the gold extract- m the mine, or whether he had a to be on the premises to collect ies, or to make a clean-up. v. U. S. (1911) 190 Fed. 538, 111 A. 370.

ether an assault was with a dan- s weapon or not may depend upon r of fact, as upon the manner of ssault; and the court cannot de- as a matter of law, that an as- if committed with a belaying pin, vith a dangerous weapon. U. S. v. (C. C. 1855) Fed. Cas. No. 16,-

l liability.—A receipt acknowledg- atisfaction of all claims for as- and battery is not binding unless n to have been the result of a fair romise, on compensation given. en v. Gordon (C. C. 1823) Fed. No. 6,047; Heard v. Rogers (D. 54) Fed. Cas. No. 6,298; Hanson owle (D. C. 1871) Fed. Cas. No.

receipt for all "demands and dues" st a vessel, her master and offi- is not, upon its face, a receipt for lt and battery. Mitchell v. Pratt C. 1841) Fed. Cas. No. 9,668; e v. Allen (D. C. 1855) Fed. Cas. 10,855; Hanson v. Fowle (D. C.) Fed. Cas. No. 6,042.

fixing the amount of damages in a of assault and battery, the court consider the situation of the par- and the various aggravating and ating circumstances of the case. lter v. York (C. C. 1841) Fed. Cas. 12,446; Whitney v. Eager (D. C.) Fed. Cas. No. 17,584.

adly weapons should only be used n a mutiny exists or is threatened. er v. Colby (C. C. 1846) Fed. Cas. 5,149; Jarvis v. The Claiborne (D. 808) Fed. Cas. No. 7,225.

nder the maritime law of the Unit- States a suit may be maintained by aman against the ship to recover ages for the neglect of the master urnish him proper care and medical ndance after he was injured by be- assaulted by the master. The Mat- orn (1904) 128 Fed. 863, 63 C. C. 31.

belant, who was a seaman, became xicated while on shore leave, and on return to the ship was violent and abusive toward the captain, refus- to go forward when ordered, and sted when the captain and mate un- ook to lead him. The captain then procured a pair of handcuffs, but, when he attempted to put them on, libelant struck him in the face two or three times, and he then struck libelant on the head with the handcuffs, inflicting slight injuries. Held, that the captain's assault was justified, as repelling an attack in defense of his own person, and did not entitle libelant to recover from the ship for breach of contract. The David Evans (1911) 187 Fed. 775, 109 C. C. A. 623.

Where a master, being present, does not interfere to prevent an assault on a seaman by his officers, he is jointly liable for the tort. Thomas v. Lane (C. C. 1813) Fed. Cas. No. 13,902.

A receipt given on payment of wages, stating that it is in full for all demands for assault, battery, etc., will not bar a suit for damages. Id.

In an action for an assault and battery committed by a master on a seaman where the defense of justification is set up the burden of proof is on respondent. Treadwell v. Joseph (C. C. 1833) Fed. Cas. No. 14,157.

Where a seaman is attacked by the master or mate without provocation or disobedience, he may defend himself; and a seaman, on receiving such a blow for such an offense, is not justified in brandishing a knife or an ax, nor in using them to prevent his arrest; and the master is justified in using a deadly weapon to cause his submission. Fuller v. Colby (C. C. 1846) Fed. Cas. No. 5,-149.

Actions for aggravated assaults upon seamen are in personam only. Id.

It is the duty of the master to interpose and quell an affray between the mate and the crew. Jordan v. Williams (C. C. 1851) Fed. Cas. No. 7,528.

In a suit by a seaman against the owner of a vessel, for an assault committed by the master, to make the owner liable, it must be shown that the master was acting within the scope of his duty, and in the exercise of his control over plaintiff. Spencer v. Kelley (C. C. 1887) 32 Fed. 838.

Where, after the voyage is ended, the master again takes an offending seaman on board, he cannot justify an assault and imprisonment without any new offense. Roberts v. Dallas (D. C. 1807) Fed. Cas. No. 11,898.

To entitle a seaman to damages for an assault by the master, he must show that the punishment was excessive. Elwell v. Martin (D. C. 1824) Fed. Cas. No. 4,425; Carleton v. Davis (D. C. 1844) Fed. Cas. No. 2,408.

Proof that the master and mate separately assaulted and illtreated a seaman will not support an allegation of a combination between them to illtreat and oppress him, without some presumptive evidence of concert between them. Jenks v. Lewis (D. C. 1824) Fed. Cas. No. 7,280.

An assault with a dangerous weapon cannot be justified by showing that the weapon was casually in the hands of

the master, and was used by him in a moment of excitement, under circumstances justifying punishment of the seamen. Saunders v. Buckup (D. C. 1831) Fed. Cas. No. 12,373.

The conduct of both parties will be considered in estimating the amount of damages for assault and battery. Id.

The court will consider the fact, in estimating damages for an assault and battery by the master, that the mate, in no way connected therewith, was made a party to the libel, to render him incompetent as a witness. Id.

A mate cannot justify an assault and battery by the orders of the master, not knowing them to be illegal. Sheridan v. Furbur (D. C. 1834) Fed. Cas. No. 12,761.

A seaman is, in general, entitled to recover damages for an assault and battery from the officer of a ship where personal violence is inflicted, not excessively, but wantonly and without provocation or cause; where there was provocation or cause, but the punishment was cruel or excessive; or when the punishment is inflicted with a deadly, or dangerous weapon. Forbes v. Parsons (D. C. 1839) Fed. Cas. No. 4,929.

The law which governs the deportment of men to each other on shore cannot be applied to their habits and intercourse on board of a ship. That which would be an assault, or an assault and battery, in a drawing room, or in the streets of a city, and punishable by indictment or a civil suit, cannot be considered among the rough inmates of a ship at sea. Id.

A blow with a dirty frying-pan, or wiping a dirty knife on the face of the person whose duty it was to keep those articles clean, held not an aggravated or cruel assault. Id.

Case of a libel by a seaman on board of a whaling ship against the captain for an assault, in causing him to be seized up and flogged. The court refused, under the circumstances of the case, to make a decree of damages in favor of the libelant. Bennett v. Sherman (D. C. 1840) Fed. Cas. No. 1,324.

A libel for assault and battery must be made out by clear, credible, and consistent proof. Benton v. Whitney (D. C. 1841) Fed. Cas. No. 1,335.

The weapon used for punishing is entitled to consideration and weight. Id.

A saucy retort of the second mate held no justification for the master's violently assaulting and inflicting an injury upon him. Morris v. Cornell (D. C. 1843) Fed. Cas. No. 9,829.

Habitual carelessness, disobedience, or negligence of the seaman may be shown in justification or in mitigation of damages in a libel against the master for assault; but such conduct must be pleaded. Pettingill v. Dinsmore (D. C. 1843) Fed. Cas. No. 11,045.

The master may use a deadly weapon, when necessary in order to suppress a mutiny. Roberts v. Eldridge 1843) Fed. Cas. No. 11,901.

Knocking a man down with a ing pin is an illegal mode of ment. Shorey v. Rennell (D. C Fed. Cas. No. 12,806.

When one of the crew of a resists a person in authority o while in the discharge of his du latter may lawfully use sufficien to overcome such resistance. grast v. Lampman (D. C. 186 Cas. No. 10,919.

The master is not justified in ing a seaman at the wheel, h flagrant his demeanor may be. ener v. Minot (D. C. 1870) Fe No. 17,033.

Master liable for failure to seamen from violence of officer derson v. Ross (D. C. 1871) Fe No. 361.

The master is liable for an un able assault by one of his office one of the crew, when done by nivance, consent, or authority. son v. Fowle (D. C. 1871) Fe No. 6,042.

Such consent and authority presumed when it appears t knew of the trespass, or had re know it, and did not interfere vent it. Id.

A master sued for an assau denying the same in his answe not, on proof of the assault, re a justification. The George K (D. C. 1879) Fed. Cas. No. 5,3

In an action in rem a seaman join a claim for wages with an assault and battery by an of the vessel. The Guiding Star 1880) 1 Fed. 347, 348.

Where a seaman leaves a ves cause of an assault and batter mitted by the mate, the vessel liable to such seaman for wages medical services, and railroad fa er invitation by the master, i faith, to return to the vessel, offer to stand between him and McKinnon v. The Reed Case 1889) 39 Fed. 624.

Libelant, while cook on a sc during an altercation was assau the captain, and, on freeing seized an ax, with which he inf wound on the captain's hand. seized and placed in irons by t tain's order, and thrown down where he was chained and kept oner for about 10 days, and t leased and discharged. He was with unnecessary roughness, by one of his ribs was broken, and ceived other injuries, none of were given any attention or ca ing his imprisonment, and from he was disabled and suffered fo time thereafter. Held, in a rem to recover wages and d that while, under admiralty rule could not recover for the assa battery, he was entitled to his

damages for the failure to give him per care after injury, but, in view is being also in fault, such damages ld be limited to $200. The Fred Sander (D. C. 1899) 95 Fed. 829.

eamen on a British vessel, by mak- no complaint of assaults on them their officers, and failing to an- nce a severance of their contracts hire at the first port thereafter hed, at which there is a British sul,—making such announcement after the vessel had been some at the next port,—are deemed to condoned the wrongful acts, so as they affect continuance of such racts. The Kentigern (D. C. 1900) Fed. 443.

vidence considered, and held insuffi- t to sustain a libel filed against the ter of a steamer by the steward to ver damages for personal injuries ged to have resulted from an un- voked assault made upon him by the ter. Dorrell v. Schwerman (D. C. 1) 111 Fed. 209.

ship is not liable to a seaman in ages because of personal injuries ained through the failure of the master to maintain proper discipline and to protect the libelant from abuse at the hands of subordinate officers. The Astral (D. C. 1905) 134 Fed. 1017.

Assaults made by a master upon seamen or their confinement by him in unnecessarily cruel position are violations of their personal rights for which both the master and vessel are liable in damages. Belyea v. Cook (D. C. 1908) 162 Fed. 180.

The master of a vessel will be liable for trespass for assault and battery if he is guilty of unnecessary severity in the punishment of seamen. Sampson v. Smith (1819) 15 Mass. 365.

A master of a vessel, who unnecessarily chastises and abuses a seaman, and refuses to rebuke the mate for like maltreatment, may be arrested in an action for assault and battery. Wedman v. Kendall (Pa. 1884) 14 Wkly. Notes Cas. 157.

Cited without definite application, The North Star (1894) 62 Fed. 71, 75, 10 C. C. A. 262; Rundell v. La Compagnie Generale Transatlantique (D. C. 1899) 94 Fed. 366, 367.

0450. (Crim. Code, § 277.) Other attempts at murder, etc.

Whoever shall attempt to commit murder or manslaughter, ex- t as provided in the preceding section, shall be fined not more n one thousand dollars and imprisoned not more than three years.

R. S. § 5342. Act March 4, 1909, c. 321, § 277, 35 Stat. 1143.

ited without definite application, parte Kan-gi-shun-ca (1883) 3 Sup. 396, 403, 109 U. S. 556, 27 L. Ed. 1030; U. S. v. Bedgood (D. C. 1891) 49 Fed. 54, 57; U. S. v. Nelson (D. C. 1912) 199 Fed. 464.

0451. (Crim. Code, § 278.) Rape.

Whoever shall commit the crime of rape shall suffer death.

R. S. § 5345. Act March 4, 1909, c. 321, § 278, 35 Stat. 1143.
See notes to Crim. Code, § 275, ante, § 10448.

Notes of Decisions

ffense in general.—R. S. § 5339, and ion 5345, post, § 10451, construed ether, make the crime of rape com- ed in a place within the exclusive sdiction of the United States an of- e against its laws. U. S. v. Par- (C. C. 1891) 48 Fed. 670, 672.

ape committed in Indian country.— S. § 5345 (embodied herein), pro- s for the punishment of rape com- ed in any of the places mentioned ection 5339, and the latter section cifies, among others, "any fort * or district of country under exclusive jurisdiction of the United tes. R. S. § 2145, ante, § 4148, de- es that, "except as to crimes, the ishment of which is expressly pro- d for in this title, the general laws he United States as to the punish- t of crimes committed within the and exclusive jurisdiction of the ted States * * * shall extend to the Indian country." Held that, as the punishment of rape is not specified in the title mentioned, a rape committed in "the Indian country" is punishable under section 5345. U. S. v. Partello (C. C. 1891) 48 Fed. 670.

Crimes by Indians.—R. S. § 5345, post, § 10451, is one of the general laws of the United States in relation to crimes committed in places within their exclusive jurisdiction, from which by virtue of R. S. §§ 2145, 2146, ante, §§ 4148, 4149, crimes committed in the Indian country by one Indian against another were excluded. U. S. v. Ward (C. C. 1890) 42 Fed. 320, 321.

Cited without definite application, Ex parte Kan-gi-shun-ca (1883) 3 Sup. Ct. 396, 403, 109 U. S. 556, 27 L. Ed. 1030; Johnson v. U. S. (1912) 32 Sup. Ct. 748, 750, 225 U. S. 405, 56 L. Ed. 1142.

.0452. (Crim. Code, § 279.) Having carnal knowledge of female under sixteen.

Whoever shall carnally and unlawfully know any female under

the age of sixteen years, or shall be accessory to such carn unlawful knowledge before the fact, shall, for a first offense, prisoned not more than fifteen years, and for a subsequent offe imprisoned not more than thirty years.

Act Feb. 9, 1889, c. 120, 25 Stat. 658. Act March 4, 1909, c. 321, § Stat. 1143.

Notes of Decisions

Indictment.—Treating a count charging rape as surplusage held not error. In re Lane (1890) 10 Sup. Ct. 7 135 U. S. 443, 34 L. Ed. 219.

§ 10453. (Crim. Code, § 280.) Seduction of female passeng vessel; punishment for.

Every master, officer, seaman, or other person employ board of any American vessel who, during the voyage, under ise of marriage, or by threats, or the exercise of authority, licitation, or the making of gifts or presents, seduces and has connection with any female passenger, shall be fined not mor one thousand dollars, or imprisoned not more than one year, or but subsequent intermarriage of the parties may be pleaded in conviction.

R. S. § 5349. Act March 4, 1909, c. 321, § 280, 35 Stat. 1143.

§ 10454. (Crim. Code, § 281.) Disposal of fine; evidence req

When a person is convicted of a violation of the sectio preceding, the court may, in its discretion, direct that the a of the fine, when paid, be paid for the use of the female seduc her child, if she have any; but no conviction shall be had testimony of the female seduced, without other evidence, nor the indictment is found within one year after the arrival of the on which the offense was committed at the port of its destinatio

R. S. §§ 5350, 5351. Act March 4, 1909, c. 321, § 281, 35 Stat. 1144.

§ 10455. (Crim. Code, § 282.) Loss of life by misconduct cers, etc., of vessels; punishment for; liability of corpo officer.

Every captain, engineer, pilot, or other person employ any steamboat or vessel, by whose misconduct, negligence, attention to his duties on such vessel the life of any person is de ed, and every owner, charterer, inspector, or other public through whose fraud, neglect, connivance, misconduct, or vi of law the life of any person is destroyed, shall be fined not than ten thousand dollars, or imprisoned not more than ten yea both: Provided, That when the owner or charterer of any stea or vessel shall be a corporation, any executive officer of such ration, for the time being actually charged with the control and agement of the operation, equipment, or navigation of such boat or vessel, who has knowingly and willfully caused or allowe fraud, neglect, connivance, misconduct, or violation of law, by the life of any person is destroyed, shall be fined not more th thousand dollars, or imprisoned not more than ten years, or bot

R. S. § 5344, as amended, Act March 3, 1905, c. 1454, § 5, 33 Stat. 102 March 4, 1909, c. 321, § 282, 35 Stat. 1144.

Notes of Decisions

1. Original law as enacted to regulate commerce.
2. Nature and elements of offenses in general.
3. Intent and malice.
4. Person employed on board.
5. Meaning of word "vessel."
6. Principals.
7. Offense by pilot.
8. Offense by corporation.
9. Inevitable accident.
10. Neglect to equip vessels with life preservers.
11. Failure to take proper precauti fires.
12. Forcing debilitated or exhaust man to go aloft.
13. Failure to rescue passenger or falling overboard.
14. Negligence or ignorance causi explosion.
15. Failure of government inspe their duty as defense.
16. Jurisdiction of state court.
17. Indictment.
18. Evidence.

Original law as enacted to regu- commerce.—R. S. § 5344 (embodied n), was enacted by congress in the ise of its power to regulate com- e, which includes the power to ate navigation as connected with nerce, and it is not in pari ma- with the preceding section un- he title of "Crimes Arising with- e Territorial and Maritime Juris- on of the United States." U. S. oltzhauer (C. C. 1889) 40 Fed. 8.

Nature and elements of offenses in al.—Loss of life is not the neces- result of a collision where the per- indiscreetly took to floats or rafts ad of remaining upon the upper of the sinking steamer, as com- led, where it appears that they l have been safe; otherwise where ch case they acted with ordinary ence and discretion under the cir- tances. U. S. v. Warner (C. C.) Fed. Cas. No. 16,643.

e captain is responsible where he l at once, after a collision, to as- in the extent of the injuries, and n his vessel ashore if he finds she go down. Id.

ere the captain has employed ul and faithful subordinate offi- and employés, he cannot be held where the destruction of the lives ersons on board is directly caused eir misconduct, negligence, or in- tion. U. S. v. Collyer (C. C. 1855) Cas. No. 14,838.

S. § 5344 (embodied herein), pro- that "every captain, engineer, pi- or other person employed on any nboat or vessel, by whose miscon- negligence, or inattention to his s the life of any person is de- ed, * * * shall be deemed of manslaughter." Held that, r this section, destruction of life is essence of the offense. In re Doig C. 1880) 4 Fed. 193.

Intent and malice.—The essence of crime under Act July 7, 1838, § consists in the fact of there being conduct, negligence, or inattention" ch degree and of such a character o have produced the result set in the indictment, irrespective of ntention of the person charged. U. Warner (C. C. 1848) Fed. Cas. No. 43; Charge to Grand Jury (D. C.) Fed. Cas. No. 18,253.

S. § 5344 (embodied herein), pro- that every captain on any steam- or vessel, by whose misconduct, gence, or inattention to his duties uch vessel the life of any person is royed, etc., shall be guilty of man- ghter. Held, that intent or malice not an element of such offense, and f that accused was the captain of vessel; that he was guilty of mis- uct, negligence, or inattention to duties thereon; and that by reason eof human life was destroyed—was sufficient to sustain a conviction. Van Schaick v. U. S. (1908) 159 Fed. 847, 87 C. C. A. 27, 14 Ann. Cas. 456.

A willful or intentional mismanagement or misconduct is not of the essence of the offense, but it consists in an improper act of the kind designated, and having the results named. U. S. v. Farnham (C. C. 1853) Fed. Cas. No. 15,071; U. S. v. Collyer (C. C. 1855) Fed. Cas. No. 14,838.

In trials for manslaughter, under the statute of the United States, making the officers of a steamer, in case of a fatal accident, liable to prosecution for that offense, it is not necessary to prove malice, provided negligence is proved, and a violation of the navigation laws, nor need it be proved that such negligence or violation was willful and intentional. U. S. v. Keller (C. C. 1884) 19 Fed. 633.

4. Person employed on board.—A person who takes the place of the captain while he is sick, and exercises the authority and control, and discharges the duties, of that office, is a person "employed on board," within the meaning of the statute. U. S. v. Collyer (C. C. 1855) Fed. Cas. No. 14,838.

5. Meaning of word "vessel."—R. S. § 5344 (embodied herein), first enacted in 1838, and revised in 1871, which subjects to prosecution for manslaughter "any captain, engineer or pilot or other person employed on any steamboat or vessel, by whose misconduct, negligence or inattention to his or their respective duties on such vessel the life of any person shall be destroyed," is not restricted in its application to vessels propelled in whole or in part by steam, as was the original statute, but the word "vessel" must be construed in accordance with its definition given in R. S. § 3, ante, § 3, as including "every description of water craft, or other artificial contrivance used, or capable of being used, as a means of transportation on water." U. S. v. Holmes (C. C. 1900) 104 Fed. 884.

6. Principals.—In order to constitute an aider and abettor a principal in the violation of the law requiring steamship owners to equip ships with life preservers, etc., it is not necessary that he should have been present at the time it was consummated by the death of a person, since the conduct or omission which constituted the criminal breach of duty was continuous. U. S. v. Van Schaick (C. C. 1904) 134 Fed. 592.

7. Offense by pilot.—A pilot cannot be convicted under a clause of R. S. § 5344 (embodied herein), making "every owner, inspector, or other public officer, through whose fraud, connivance," etc., the life of any person is destroyed, guilty of manslaughter. U. S. v. Holtzhauer (C. C. 1889) 40 Fed. 76.

A pilot was indicted under a state statute for manslaughter, in that he

willfully and feloniously propelled a tugboat in his charge against a yacht in which the deceased was, and did thereby willfully and feloniously cast the deceased into the river, whereby he was drowned. By R. S. § 5344 (embodied herein), every pilot, "by whose misconduct, negligence, or inattention to his duties" the life of any person is destroyed, is guilty of manslaughter. Held that, as the offense charged in the indictment consisted in a willful and felonious assault, it was different from that provided for by the Revised Statutes, and the state may punish therefor. In re Welch (C. C. 1893) 57 Fed. 576.

A pilot who by willful negligence runs his tug into a yacht on the Hudson river, within the boundaries of New York county, and causes the death of a person on the yacht, is guilty of manslaughter, both under Pen. Code N. Y. § 193, and R. S. § 5344 (embodied herein), and the jurisdiction of the state courts of such offense as an infraction of the state laws is not ousted by R. S. § 711, ante, § 1233, which vests in the courts of the United States exclusive jurisdiction of all crimes cognizable under the authority of the United States; it being provided by R. S. § 5328 (part of the title containing section 5344), as in section 10500, post, that "nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several states under the law thereof." People v. Welch (1893) 74 Hun, 474, 26 N. Y. Supp. 694; Id. (1894) 141 N. Y. 266, 36 N. E. 328, 38 Am. St. Rep. 793, 24 L. R. A. 117.

8. Offense by corporation.—A corporation owner of a steam vessel may be guilty of the offense stated in R. S. § 5344 (embodied herein), which provides that "every owner * * * through whose fraud, connivance, misconduct or violation of law the life of any person is destroyed shall be deemed guilty of manslaughter and upon conviction therefor * * * shall be sentenced to confinement at hard labor," etc., notwithstanding the fact that it cannot be subjected to the punishment imposed; and such fact does not affect the right of the government to prosecute individuals under said section, who aid and abet the corporation in the commission of the crime. U. S. v. Van Schaick (C. C. 1904) 134 Fed. 592.

9. Inevitable accident.—Where an excursion steamboat was burned while plying quiet inland waters on a pleasant day with no vis major or unusual disturbance of the elements, and within half an hour after the fire broke out, 90 per cent. of the passengers had been drowned or burned to death, such catastrophe was not the result of inevitable accident, but was itself evidence of negligence and inattention to duty on the part of the master and crew. Van Schaick v. U. S. (1908) 159 Fed. 847, 87 C. C. A. 27, 14 Ann. Cas. 456.

10. Neglect to equip vessels w preservers.—The owner of a stea who fails to comply with the requiring it to be equipped wi preservers and proper fire appl either by supplying none, or b plying those that are unsuitable ficient, and useless, and do not c to the inspectors' rules, is guil "violation of law," and subject t ecution under R. S. § 5344 (em herein), where such violation in the death of a person; and in case the offense is one which aided and abetted by a third pers "causes and procures" the omissi such person may properly be c in the indictment as a principal. v. Van Schaick (C. C. 1904) 13 592.

11. Failure to take proper tions as to fires.—Where an ex steamer in New York Harbor ha inspected early in May, 1904, a ready for navigation about Ma she having been out but nine tim or to June 15th, when she was fire, it was no excuse for the ca failure to maintain fire drills as ed by Inspectors' Rule 5, § 15, had had no time or opportunity for, or that his crew was comp raw material, and was constantly ing. Van Schaick v. U. S. (190 Fed. 847, 87 C. C. A. 27, 14 An 456.

Where a station bill posted on sel assigning the crew to quar case of fire referred to the c number instead of names, but th bers of the crew were not nu the posting of the bill did not tute a compliance with the law ing the posting of a station b signing the crew to quarters i of fire. Id.

The burning and loss of life n shown to have been the direct quences of the negligence or duct shown, but the degree of duct is immaterial. U. S. v. Coll C. 1855) Fed. Cas. No. 14.838.

While it is not primarily th of the master, under the statut inspectors' regulations, to equip with life preservers or fire app it is his duty before navigating ercise care to know whether t has such equipment, and wheth apparently sufficient and in acc with law, and afterwards to e some care respecting its maint the extent of such care being de on his opportunities to exami appliance and perceive its co other duties relating to the pos station bills for the crew and th ercise in fire drill and the use o ances, are imposed directly u master by rule 5, § 15, of the tors' rules and regulations; neglect of any of such duties, by the life of any person is de

ers him subject to indictment and ecution for manslaughter, under R. 5344 (embodied herein). U. S. v. Schaick (C. C. 1904) 134 Fed. 592.

. **Forcing debilitated or exhausted an to go aloft.**—A master who out malice, and by physical force, pels a seaman to go aloft, when, by on of great debility or exhaustion, cannot do so without danger, is y of manslaughter, where the sea- falls and is drowned. U. S. v. man (C. C. 1827) Fed. Cas. No. 32.

. **Failure to rescue passenger or an falling overboard.**—Death of a an being as the immediate result e omission by another to perform gal duty makes the latter guilty of ious homicide, and where the mas- fails to rescue a passenger or sea- who has fallen overboard regard- of delay or expense, and willfully s to stop the ship, he is guilty of slaughter. U. S. v. Knowles (D. 864) Fed. Cas. No. 15,540.

. **Negligence or ignorance causing l explosion.**—Any officer of a steam-, through whose negligence or ig- nce an explosion takes place, which estructive of life, is guilty of man- ghter. U. S. v. Taylor (C. C. 1851) Cas. No. 16,441; The Henry Clay C. 1852) Fed. Cas. No. 6,375.

. **Failure of government inspectors heir duty as defense.**—In a prose- on of the captain of a vessel for slaughter, due to his negligence, onduct. and inattention to duty in performance of certain duties im- d on him by law, it was no defense the government inspectors had fail- n their duty to properly inspect the el and its safety appliances, and wrongfully issued a certificate of ection. Van Schaick v. U. S. 08) 159 Fed. 847, 87 C. C. A. 27, Ann. Cas. 456.

. **Jurisdiction of state court.**—A pi- was indicted under a state statute manslaughter, in that he willfully feloniously propelled a tugboat in charge against a yacht in which the ased was, and did thereby willfully feloniously cast the deceased into river, whereby he was drowned. By S. § 5344 (embodied herein), every t, "by whose misconduct, negligence, nattention to his duties" the life of person is destroyed, is guilty of slaughter. Held that, as the of- e charged in the indictment con- ed in a willful and felonious assault, as different from that provided for he Revised Statutes, and the state punish therefor. In re Welch (C. 893) 57 Fed. 576.

pilot who by willful negligence runs tug into a yacht on the Hudson riv- within the boundaries of New York nty, and causes the death of a per- on the yacht, is guilty of man- slaughter, both under Pen. Code, N. Y. § 193, and R. S. § 5344 (embodied herein), and the jurisdiction of the state courts of such offense as an infraction of the state laws is not ousted by R. S. § 711, ante, § 1233, which vests in the courts of the United states exclusive jurisdiction of all crimes cognizable under the authority of the United States; it being provided by R. S. § 5328, post, § 10500 (part of the title containing section 5344), that "nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several states under the law thereof." People v. Welch (1893) 74 Hun. 474, 26 N. Y. Supp. 694; Id. (1894) 141 N. Y. 266, 36 N. E. 328, 38 Am. St. Rep. 793, 24 L. R. A. 117.

17. **Indictment.**—An indictment, under R. S. § 5344 (embodied herein), for manslaughter by the captain of a steamboat, which alleges the absence of a deck rail through his inattention to his duties, and the falling overboard and death of a passenger in consequence thereof, clearly alleges that the loss of life complained of was directly due to the captain's inattention to duty. U. S. v. Beacham (C. C. 1886) 29 Fed. 284.

An indictment under R. S. § 5344 (embodied herein), for manslaughter upon navigable waters, will not be held defective because it does not state that the place of offense—the Chesapeake Bay—is one of the navigable waters of the United States, that being a fact of which the courts will take judicial notice. Id.

An indictment under R. S. § 5344 (embodied herein), for manslaughter by the captain of a steamboat, based upon R. S. § 4477, ante, § 8247, requiring passenger steamers to keep night watchmen on deck, is sufficient if it alleges the captain's neglect to keep a sufficient number of watchmen on deck and the failure, in consequence thereof, to rescue a passenger who had fallen overboard. Id.

An indictment for violating R. S. § 5344 (embodied herein), which provides that "every captain * * * or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties * * * the life of any person is destroyed, * * * shall be deemed guilty of manslaughter," need not allege that the offenses charged were committed at a place under the exclusive jurisdiction of the United States, or on the high seas, and outside the jurisdiction of any state. U. S. v. Holtzhauer (C. C. 1889) 40 Fed. 76.

A count in such indictment which charges that, by defendants' negligence, misconduct, and inattention to their duties, a certain person's life was destroyed, without setting out the facts on which such charge is based, is defective. Id.

But a count charging that defendants

took on board their vessel more passengers than were allowed by law, by reason of which it became unmanageable, and that decedent's death by drowning was caused thereby, is sufficient. Id.

Such indictment need not expressly charge defendants with having committed the crime of manslaughter. Id.

Under such statute the offense is complete when the misconduct, negligence, or inattention in the navigation of a vessel by one of the persons named results in the loss of human life, and an indictment thereunder need not charge a criminal intent. U. S. v. Holmes (C. C. 1900) 104 Fed. 884.

An indictment charging a violation of the statute and rules, in that, of the life preservers supplied and kept on a steamship for the use of passengers thereon, upward of 900 were unsuitable, inefficient, and useless, and not in accordance with the statutory requirement, is not bad because it does not also charge a failure to supply the requisite number of good life preservers; the furnishing to a passenger of a useless life preserver being as r violation of the law as a failure nish him with any. U. S. v Schaick (C. C. 1904) 134 Fed. 8

18. Evidence.—In a prosecuti the captain of a vessel for misc and inattention to duty, resulting of life from a fire started in th ward hold of the vessel, evidenc to justify a finding that the capta negligent in failing to provide, pr and inspect necessary fire app and life preservers. Van Schaick S. (1908) 159 Fed. 847, 87 C. C. 14 Ann. Cas. 456.

Where the defense to a cha manslaughter by a sea captain, in ting any attempt to rescue a s who fell from the rigging into th was that he was killed by the fal that the burden was on defend show that the fall was fatal, or t a reasonable doubt on the subje S. v. Knowles (D. C. 1864) Fe No. 15,540.

Cited without definite appli Holmes v. Oregon & C. R. Co. 1881) 5 Fed. 523, 544.

§ 10456. (Crim. Code, § 283.) Maiming; punishment for.

Whoever, with intent to maim or disfigure, shall cut, bi slit, the nose, ear, or lip, or cut out or disable the tongue, c out or destroy an eye, or cut off or disable a limb or any memb another person; or whoever, with like intent, shall throw or pour another person, any scalding hot water, vitriol, or other corrosive or caustic substance whatever, shall be fined not more than one sand dollars, or imprisoned not more than seven years, or both.

R. S. § 5348. Act March 4, 1909, c. 321, § 283, 35 Stat. 1144.

Notes of Decisions

Nature and elements of offense.—The particular weapon, means, or instrument used is not material, providing the result is maiming or disfiguring with intent to do so. U. S. v. Scroggins (C. C. 1847) Fed. Cas. No. 16,243.

The disabling or disfiguring of any limb or member of a person need not be done by cutting, to constitute an offense under Act 1790, § 13. Id.

Evidence.—On an indictment, fidavit is admissible in evidence formal proof that the justice peace before whom it was tak duly qualified as such justice. ham v. U. S. (1894) 15 Sup. C 149, 155 U. S. 434, 39 L. Ed. 21

Cited without definite appl Ex parte Kan-gi-shun-ca (1883) Ct. 396, 403, 109 U. S. 556, 27 1030.

§ 10457. (Crim. Code, § 284.) Robbery; punishment for.

Whoever, by force and violence, or by putting in fear, feloniously take from the person or presence of another any of value, shall be imprisoned not more than fifteen years.

R. S. § 5370. Act March 4, 1909, c. 321, § 284, 35 Stat. 1144.

Notes of Decisions

See notes under § 10445, ante, and §§ 10463, 10500, post.

Nature and elements of robbery in general.—Robbery is the felonious taking of goods from the person of another, or in his presence, by violence, or by putting him in fear, and against his will. U. S. v. Jones (C. C. 1813) Fed. Cas. No. 15,494.

Robbery constituting piracy in al.—See, also, notes under § 1046

Robbery committed by an alien high seas on board a foreign ves not piracy under the act of 17 S. v. Palmer (1818) 3 Wheat. 61 630, 4 L. Ed. 471.

Formerly a robbery committed high seas was piracy, and the courts had jurisdiction thereof.

e term "robbery" in R. S. § 5372, be understood in the sense in h it is recognized and defined at non law. Id.

e rule that robbery on the high is piracy has no exception or quali- ion in favor of commissioned pri- ers. U. S. v. Jones (C. C. 1813) Cas. No. 15,494.

e meaning of "robbery," as used lation to acts declared piratical, is e ascertained by reference to the non law. Id.; U. S. v. Durkee (C. 856) Fed. Cas. No. 15,009.

the seamen participated in taking erty from a Spanish ship, it must nown that they knew or might have n that robbery, and not capture as , was contemplated. U. S. v. Jones C. 1814) Fed. Cas. No. 15,496.

bbery on the high seas is piracy; to constitute the offense the taking be felonious, and the quo animo be inquired into. Davison v. Seal- s (C. C. 1835) Fed. Cas. No. 3,-

t May 15, 1820, § 3, in regard to ery on the high seas, applies to all ons, whether citizens or foreigners. . v. Baker (C. C. 1861) Fed. Cas. 14,501.

constitute robbery on the high within Act May 15, 1820, § 3, the g need not be such as to amount iracy according to the law of na- . Id.

bbery on vessel within tide water. S. § 5370 (embodied herein), mak- obbery, etc., on a vessel within tide rs piracy, punishable in the federal s, is limited by R. S. § 5328, post, 500, to acts committed outside the torial jurisdiction of the state s; and hence a robbery committed ferryboat while passing on the Potomac river, between Washington, D. C., and Alexandria, Va., is not cognizable in the federal court in Virginia. Ex parte Ballinger (D. C. 1882) 88 Fed. 781.

Plundering vessels under authority of insurgent government.—The United States court will treat as pirates all persons engaged in plundering vessels of the United States citizens under authority of a government set up by insurgents against whom a civil war is being waged. U. S. v. Smith (C. C. 1861) Fed. Cas. No. 16,318.

Larceny connected with offense.—A person who takes and carries away muskets with intent to appropriate them, or any of them, to his own use, or permanently to deprive the owner of them, is guilty of larceny; otherwise where the taking was with the sole intent to prevent the use of them upon himself or his associates. U. S. v. Durkee (C. C. 1856) Fed. Cas. No. 15,-009.

Indictment, proof, and variance.—There is no substantial variance between an indictment for robbery which describes the property taken as "pieces of paper money of the dominion of Canada" of stated denominations and value, and evidence showing that the bills taken were issued either by the dominion of Canada or by banks chartered by the Canadian government circulating as money in the dominion. Allen v. U. S. (1902) 115 Fed. 3, 52 C. C. A. 597.

An indictment alleging articles stolen to belong to owners unknown is good on its face, and the objection that the owners were in fact known must be taken to the evidence at the trial for a variance or by special plea. U. S. v. Stetson (C. C. 1847) Fed. Cas. No. 16,-390.

0458. (Crim. Code, § 285.) Arson of dwelling house; punishment for.

Whoever shall willfully and maliciously set fire to, burn, or attempt to burn, or by means of a dangerous explosive destroy or attempt to destroy, any dwelling house, or any store, barn, stable, other building, parcel of a dwelling house, shall be imprisoned not e than twenty years.

R. S. § 5385. Act March 4, 1909, c. 321, § 285, 35 Stat. 1144.

Notes of Decisions

ictment.—An indictment for arson e burning of "a certain dwelling e of the United States of America situate, such dwelling house be- hen and there known as the 'Girls' ling of the Menominee Indian ning School,' and then and there oc- d and used as such dwelling house e United States of America by the ers of the said United States in the Indian service, and by other persons, such teachers and other persons being to the grand jury unknown," is sufficient in its description of the building and of the persons occupying the same, and shows, within the fair intendment of the law, that the building was not the habitation of defendants. U. S. v. Cardish (D. C. 1906) 145 Fed. 242.

0459. (Crim. Code, § 286.) Arson of other buildings, etc.; punishment for.

Whoever shall maliciously set fire to, burn, or attempt to burn, by any means destroy or injure, or attempt to destroy or in-

jure, any arsenal, armory, magazine, ropewalk, ship house, v house, blockhouse, or barrack, or any storehouse, barn, or stable parcel of a dwelling house, or any other building not mentioned i section last preceding, or any vessel built, building, or underg repair, or any light-house, or beacon, or any machinery, timber, ca rigging, or other materials or appliances for building, repairing fitting out vessels, or any pile of wood, boards, or other lumbe any military, naval, or victualing stores, arms, or other munitio war, shall be fined not more than five thousand dollars and impris not more than twenty years.

R. S. §§ 5386, 5387. Act March 4, 1909, c. 321, § 286, 35 Stat. 1144.

Provisions defining and punishing the offense of malicious injury to fications or harbor defenses, made by Act July 7, 1898, c. 576, § 1, 30 Sta were incorporated into Crim. Code, § 44, ante, § 10208.

Cited without definite application,
U. S. v. Cardish (D. C. 1906) 143 Fed. 640.

§ 10460. (Crim. Code, § 287.) Larceny; punishment for; termining value of written instrument.

Whoever shall take and carry away, with intent to steal or loin, any personal property of another, shall be punished as lows: If the property taken is of a value exceeding fifty dollars, taken from the person of another, by a fine of not more than ten t sand dollars, or imprisonment for not more than ten years, or b in all other cases, by a fine of not more than one thousand dollar by imprisonment not more than one year, or both. If the pro stolen consists of any evidence of debt, or other written instru the amount of money due thereon, or secured to be paid thereby remaining unsatisfied, or which in any contingency might be coll thereon, or the value of the property the title to which is shown t by, or the sum which might be recovered in the absence thereof, be deemed to be the value of the property stolen.

R. S. § 5356. Act March 4, 1909, c. 321, § 287, 35 Stat. 1144.

Provisions defining and punishing the crime of embezzling, stealing, etc. ey or property of the United States, made by Act March 3, 1875, c. 14 18 Stat. 479, were incorporated into Crim. Code, § 47, ante, § 10214.

Notes of Decisions

1. Personal goods of another.
2. Stealing bank note.
3. Stealing ship's provisions.
4. Stealing in District of Columbia.
5. Place of offense.
6. Indictment.
7. Evidence.
8. Question for jury.
9. Punishment.
10. Malicious prosecution.

See notes under § 10445, ante, and § 10462, post.

1. Personal goods of another.—Under Act 1790, "personal goods," in such statute, do not include choses in action. U. S. v. Davis (C. C. 1829) Fed. Cas. No. 14,930.

Foreign and domestic coin and bank bills are "personal goods," within Act 1790, c. 9, § 16, relating to larceny on the high seas. U. S. v. Moulton (C. C. 1830) Fed. Cas. No. 15,827.

The phrase "personal goods of another," in Act April 30, 1790, § 16, embraces the personal goods of the United States. U. S. v. Maxon (C. C. 1866) Fed. Cas. No. 15,748.

2. Stealing bank note. — Quære: Whether stealing a bank note is larceny, within the act of April 30, 1790, U. S. v. Murray (C. C. 1803) Fe No. 15,842.

3. Stealing ship's provisions.—A dictment for larceny on the hig for taking the ship's provision selling them to steerage passe held sustainable, under Act Ap 1790, § 16. U. S. v. Holland 1843) Fed. Cas. No. 15,378.

4. Stealing in District of Colu Horse stealing in the District of C bia held punishable as an ordina ceny under Act April 30, 1790. v. Black (C. C. 1819) Fed. Ca 14,601.

A complaint charging theft, un S. § 5356 (embodied herein), com in the District of Columbia, tes tending to prove such theft, and dictment showing that the pris wanted in that District, consti sufficient showing to warrant moval there to answer the char re Price (C. C. 1897) 83 Fed. S

5. Place of offense.—A perso steals goods in one jurisdictio brings them into another, is gu

eny in the latter place. U. S. v. son (C. C. 1803) Fed. Cas. No. 16,-; U. S. v. Haukey (C. C. 1812) l. Cas. No. 15,328; U. S. v. Mason C. 1823) Fed. Cas. No. 15,738.

larceny committed at West Point, Y., was punishable in the federal rts, under the crimes act of 1790. S. v. Knapp (D. C. 1849) Fed. Cas. 15,538.

ee, also, notes under § 10445, ante.

. Indictment.—R. S. § 5356 (embod- herein), providing for the punish- nt of larceny, does not make the val- of the property stolen an element of offense nor a factor determining its ishment, and it is not necessary that indictment thereunder allege the ne. Brown v. U. S. (1906) 146 Fed. 5, 77 C. C. A. 173, affirming judg- nt Herd v. U. S. (1904) 75 P. 291, Okl. 512.

dead man cannot be the owner of ds, and it is therefore insufficient to ge them to be the goods of one A. deceased. U. S. v. Mason (C. C. 3) Fed. Cas. No. 15,738.

n indictment for larceny under Act 0, c. 9, must aver that the act was mitted in a place under the sole and lusive jurisdiction of the United tes. U. S. v. Davis (C. C. 1829) l. Cas. No. 14,930.

n indictment for a larceny commit- "in the county of Charles Mix, in district aforesaid, and at a place in d county of Charles Mix within the eat Sioux Indian reservation and hin the Indian country," sufficiently eges the venue, although the name reat Sioux Reservation" is more perly applicable to another Sioux ervation in the state. U. S. v. Ew- (D. C. 1891) 47 Fed. 809.

7. Evidence.—The owner of property eged to have been stolen on board an nerican vessel on the high seas is a mpetent witness to prove the owner- ip on an indictment against the one arged with the offense, since the fine posed in case of a conviction is a rt of the punishment rather than an lemnity to the owner. U. S. v. Mur- y (1842) 16 Pet. 203, 208, 10 L. Ed. 7.

Where there is a reasonable pre- mption that the taking of the prop- erty was felonious, and against the will of the true owner, although such own- er be unknown, a conviction will be sustained. U. S. v. Davis (C. C. 1841) Fed. Cas. No. 14,931.

8. Question for jury.—Where defend- ant, indicted for larceny for taking ship's provisions and selling them to steerage passengers, acted in the ca- pacity of cook and steward for the ves- sel, it is a question for the jury whether the taking originally was felonious. U. S. v. Holland (C. C. 1843) Fed. Cas. No. 15,378.

9. Punishment.—The imprisonment provided for by R. S. § 5356 (embodied herein), being limited to one year, cannot be enforced in a state penitentiary, under R. S. section 5541, ante, § 10447. In re Bonner (1894) 14 Sup. Ct. 323, 324, 151 U. S. 242, 38 L. Ed. 149.

10. Malicious prosecution.—Plaintiff hired to defendant for service upon a steamer during the season, and was furnished a suit of clothes to be worn on the vessel, which he was told would be his if he remained in the service through the season. He quit the serv- ice in violation of his contract, and as he was leaving the vessel carrying the suit he was arrested by a police offi- cer, on request of defendant's agent, for the theft of the clothes. He was detained a short time, but released on the same day, because defendant did not prosecute. It did not appear that the agent had ever seen plaintiff be- fore causing his arrest on information given him by one of the officers of the vessel. Held that, while not technically guilty of theft, there was probable cause for plaintiff's arrest, and on that ground, and because it did not appear that there was any malice on the part of the agent, an action for malicious prosecution could not be maintained. Van v. Pacific Coast Co. (C. C. 1903) 120 Fed. 699.

Cited without definite application. Ex parte Kan-gi-shun-ca (1883) 3 Sup. Ct. 396, 403, 109 U. S. 556, 27 L. Ed. 1030; Cochran v. U. S. (1906) 147 Fed. 206, 77 C. C. A. 432; U. S. v. Stone (C. C. 1881) 8 Fed. 232, 249; U. S. v. Bridleman (D. C. 1881) 7 Fed. 894, 895.

10461. (Crim. Code, § 288.) Receiving stolen goods, etc.; punishment for; trials.

Whoever shall buy, receive, or conceal, any money, goods, bank otes, or other thing which may be the subject of larceny, which s been feloniously taken, stolen, or embezzled, from any other rson, knowing the same to have been so taken, stolen, or embezzled, all be fined not more than one thousand dollars and imprisoned not ore than three years; and such person may be tried either before or ter the conviction of the principal offender.

R. S. § 5357. Act March 4, 1909, c. 321, § 288, 35 Stat. 1145.

The receiving of stolen or embezzled property of the United States was made

punishable by Act March 3, 1875, c. 144, § 2, 18 Stat. 479, which was in rated into Crim. Code, § 48, ante, § 10215.

Notes of Decisions

Place of offense.—The receiving of stolen goods in one jurisdiction with knowledge that they were stolen in another is an offense in the former jurisdiction. U. S. v. Mortimer (C. C. 1845) Fed. Cas. No. 15,821; U. S. v. Montgomery (D. C. 1875) Fed. Cas. No. 15,800.

Indictment.—Under R. S. § 5357 (embodied herein), it is not essential to allege that the property was received without the consent of the owner or with intent to deprive him of its value and benefit; it being sufficient to allege that the act was unlawful and felonious. Bise v. U. S. (1906) 144 Fed. 374, 74 C. C. A. 1, 7 Ann. Cas. 165.

An indictment charging that defendants on a certain date, within a certain district of the Indian Territory, unlawfully, feloniously, and knowing the same to have been previously stolen, did receive certain described pro which had been previously felon stolen, taken, and carried away the owner, sufficiently charges th fense of receiving stolen goods R. S. § 5357 (embodied herein). v. U. S. (Ind. T. 1904) 82 S. W.

Trial.—On trial for receiving property under this section, in tions as to what would cons knowledge held erroneous as just a conviction on suspicion or be other persons would have believe property stolen under the same cumstances. Peterson v. U. S. (213 Fed. 920, 130 C. C. A. 398.

Cited without definite applic Ex parte Kan-gi-shun-ca (1883) 3 Ct. 396, 403, 109 U. S. 556, 27 L 1030; U. S. v. Stone (C. C. 18 Fed. 232, 249.

§ 10462. (Crim. Code, § 289.) Laws of States adopted for ishing wrongful acts, etc.; effect of repeal, etc.

Whoever, within the territorial limits of any State, orga Territory, or District, but within or upon any of the places existing or hereafter reserved or acquired, described in section hundred and seventy-two of this Act, shall do or omit the doin any act or thing which is not made penal by any law of Congress which if committed or omitted within the jurisdiction of the S Territory, or District in which such place is situated, by the thereof now in force would be penal, shall be deemed guilty of a offense and be subject to a like punishment; and every such S Territorial, or District law shall, for the purposes of this section, tinue in force, notwithstanding any subsequent repeal or amend thereof by any such State, Territory, or District.

R. S. § 5391. Act July 7, 1898, c. 576, § 2, 30 Stat. 717. Act March 4, c. 321, § 289, 35 Stat. 1145.

Notes of Decisions

1. Constitutionality.
2. Design of statute in general.
3. Statute as incorporating into federal law state statute of limitations.
4. Statute as limited to fixing of punishment for offenses under federal laws.
5. Application to offenses under state laws in general.
6. State statutes to which law applies.
7. Common-law crimes.
8. State crime committed in post office building.
9. Criminal libel.
10. Offenses by Indians.
11. Assault to kill in navy yard.
12. False pretenses.
13. Larceny.
14. Indictment.
15. Punishment.

1. Constitutionality.—The claim that power of legislation is unconstitutionally delegated to the state legislatures by Act July 7, 1898, § 2, adopting such punishment for offenses committed in places under the exclusive jurisdiction and control of the United States as the laws of the state in which such places are situated "now provide" for offense, the punishment therefo being otherwise provided for by law of the United States, is too c unfounded to serve as the basis writ of error from a federal su court to a circuit court. Franklin S. (1909) 30 Sup. Ct. 434, 435, 2 S. 559, 54 L. Ed. 615.

Congress may lawfully declare the criminal law of a state as it at the time shall be the law o United States in force in part portions of the territory of the U States, subject to the latter's sive jurisdiction. Washington P. Ry. Co. v. Magruder (D. C. 1912 Fed. 218.

2. Design of statute in gen Congress, with the design tha places under the exclusive jurisd of the United States shall not be from the restraints of the law, h acted for them, a criminal code with this section. Western Unio

Chiles (1909) 29 Sup. Ct. 613, 214 U. S. 274, 53 L. Ed. 994.

tatute as incorporating into fed-aw state statute of limitations.—uly 7, 1898, c. 576, § 2, providing when any offense is committed in place, jurisdiction over which has retained by, or ceded to, the Unit-ates the punishment for which is provided for by any law of the d States, the offender shall re-the same punishment as the laws e state provide for the like of-, does not incorporate into the al law the general statute of limi-ns of the state relating to crimes, a prosecution thereunder is gov-d as to limitation by the federal te. U. S. v. Andem (D. C. 1908) Fed. 996.

Statute as limited to fixing of shment for offenses under federal —R. S. § 5391 (embodied herein), Act July 7, 1898, c. 576, 30 Stat. the former of which provides in case of any offense committed y place ceded to and under the ju-ction of the United States, "which se is not prohibited or the punish-t thereof is not specially provided by any law of the United States, offense shall be liable to and re-e the same punishment as the laws he state in which such place is sit-d now in force provide for the like nse," and the latter of which con-s similar provisions respecting of-ses committed in any place juris-ion over which has been retained the United States or ceded to it, , "the punishment for which of-se is not provided for by any law the United States," are neither of m limited to the fixing of punish-nt for offenses expressly created by federal laws, but they apply to d make punishable any act commit-d in such places not so provided for, t which is an offense under the laws the state. U. S. v. Franklin (C. C. 09) 174 Fed. 163.

. Application to offenses under state vs in general.—This section is limit-to offenses committed in places ced-to the United States and adopts e state law as to such offenses if not herwise provided for, and in such ses, if the offense is a felony by state w, it becomes a felony by this sec-on. U. S. v. Coppersmith (C. C. 80) 4 Fed. 198, 204.

An act not specifically made an of-nse by the statute of the United ates, but which is an offense under e laws of the state wherein perform-d, is made, by R. S. § 5391 (embodied erein) an offense under the laws of e United States, and punishable by e same penalties which are inflicted nder the laws of the state. Sharon v. ill (C. C. 1885) 24 Fed. 726, 731.

6. State statutes to which law ap-lies.—In U. S. v. Paul (1832) 6 Pet. 141, 8 L. Ed. 348, this provision was held to be limited to the laws of the several states in force at the time of its enactment. Hollister v. U. S. (1906) 145 Fed. 773, 76 C. C. A. 337.

R. S. § 5391 (embodied herein), providing that when an offense not provided for by the laws of the United States is committed in a place ceded to the government, the same shall be subject to the same penalties provided for the like offense by the laws "now in force" of the state in which such place is situated, applied only to state, statutes existing at the time of its passage, in 1825. U. S. v. Barnaby (C. C. 1892) 51 Fed. 20, following U. S. v. Paul (1832) 6 Pet. 141, 142, 8 L. Ed. 348.

R. S. § 5391 (embodied herein), making criminal offenses committed in any place under the jurisdiction of the United States, not prohibited or provided for by any law of the United States, subject to punishment in accordance with the laws of the state in which such place is situated, "now in force," is not referable, for the purpose of ascertaining the state laws applicable, to the date when it was first enacted, in 1825, but to the date of the adoption of the Revised Statutes, in 1878, by sections 5595 and 5596 (post, §§ 10592, 10593), of which the prior act was superseded and repealed. In no event could such section relate back to an earlier date than April 5, 1866, when the old act was substantially re-enacted. U. S. v. Tucker (D. C. 1903) 122 Fed. 518.

7. Common-law crimes.—The common law of crimes is in force in the state, except where affected by statute, and common-law procedure is in force unless special provision is made by statute to exclude the same. Territory v. Montoya (N. M. 1912) 125 P. 622.

8. State crime committed in post office building.—Act July 7, 1898, c. 576, § 2, provides that, when any offense is committed in any place jurisdiction over which has been retained by or ceded to the United States the punishment for which is not provided for by any law of the United States, the offender shall receive the same punishment as the laws of the state provide for a like offense. Held, that under such statute a federal court has jurisdiction to prosecute and punish for a crime denounced by the state law committed in a post office building owned and occupied by the United States within a state over which legislative jurisdiction has been ceded by the state. U. S. v. Andem (D. C. 1908) 158 Fed. 996.

9. Criminal libel.—The circulation in the government reservation at West Point and in the post office building in New York City of copies of a newspaper containing a criminal libel printed and

primarily published in such city cannot be punished in the federal courts under Act July 7, 1898, c. 576, § 2, providing that offenses committed in places under the exclusive jurisdiction and control of the United States, when not expressly made criminal by any law of the United States, shall be punished in accordance with the laws of the state in which such places are situated, since the state laws afford adequate punishment for the offense, without resorting to the federal courts, and the plain purpose is that there shall be but a single prosecution and conviction for a criminal libel. U. S. v. Press Pub. Co. (1911) 31 Sup. Ct. 212, 219 U. S. 1, 55 L. Ed. 65, 21 Ann. Cas. 942.

10. Offenses by Indians.—R. S. § 5391 (embodied herein), providing that, when an offense not provided for by the laws of the United States is committed in a place ceded to the government, the same shall be subject to the same penalties provided for the like offense by the laws "now in force" of the state in which such place is situated, does not apply to an offense committed by one Indian against another on the Flathead reservation, because Indians living in the tribal relation are not subject, in their internal social relations, either to the laws of the states or of the United States. U. S. v. Barnaby (C. C. 1892) 51 Fed. 20.

11. Assault to kill in navy yard.—The circuit court for the eastern district of New York had jurisdiction of an indictment for an assault with intent to kill committed in the navy yard at Brooklyn. Act March 3, 1825. U. S. v. Dolan (C. C. 1865) Fed. Cas. No. 14,978.

12. False pretenses.—Under this Act July 7, 1898, § 1, which is in substance a re-enactment of R. S. § 5391 (embodied herein), any act committed in any place under the jurisdiction of the United States, if made an offense by the laws of the state in which such place is situated when committed elsewhere in the state is an offense against the United States and punishable as in the state law provided, since at the date of the passage of this act the act of obtaining money or goods by false pretenses was made a crime by most of the laws of the states of the Union and is therefore under this act also made a crime against the United States in all places over which the United States exercises exclusive legislative jurisdiction, within the several states having laws providing for the punishment of such an act as a crime. Biddle v. U. S. (1907) 156 Fed. 759, 763, 84 C. C. A. 415.

13. Larceny.—A larceny committed in a place not under the sole and exclusive jurisdiction of the United States may be punishable under Act 1825, c. 65, § 3. U. S. v. Davis (C. C. 1829) Fed. Cas. No. 14,930.

14. Indictment.—In an indictm under Act April 5, 1866, c. 24, § 2 is not necessary to aver that the fense is not punishable by any law congress, and is punishable by the st laws, and a conclusion "against form of the statute" is correct. U. v. Wright (D. C. 1871) Fed. Cas. 16,774.

Under R. S. § 5391 (embodied he in), and the Kentucky statute, in fo on April 5, 1866, 1873, and 1878, fining the offense of cutting, stabbi etc., an indictment for the offense cutting and stabbing with intent to committed at a place within the ex sive jurisdiction of the United Sta situated within the state of Kentu which avers that the accused did w fully and unlawfully, in sudden h and passion, and not in self-defe cut, stab, and wound a certain pers without killing him, is sufficient. U v. Tucker (D. C. 1903) 122 Fed. 5

15. Punishment.—Punishment in federal courts as an offense against United States, but only in the way to the extent that such offense wo have been punishable if the territ embraced by the government reser tion where the crime was commit had remained subject to the juris tion of the state, is what was inten by Act July 7, 1898, c. 576, § 2, ado ing such punishment for offenses c mitted in places under the exclu jurisdiction and control of the Uni States as the laws of the state which such places are situated provide for a like offense, the puni ment therefor not being otherwise p vided for by any law of the Uni States. U. S. v. Press Pub. Co. (19 31 Sup. Ct. 212, 219 U. S. 1, 55 L. 65, 21 Ann. Cas. 942.

An act of congress adopting the p ishment fixed by a state law held va Hollister v. U. S. (1906) 145 Fed. 7 76 C. C. A. 337.

Under a statute providing that ev person convicted of larceny shall su punishment by imprisonment in penitentiary for not less than one more than three years, it is not en for the trial court, in sentencing a c victed person for three years, to c the period of imprisonment from arrival at the penitentiary, and from the date of sentence. Price U. S. (1899) 14 App. D. C. 391.

Cited without definite applicat U. S. v. Lewis (1906) 26 Sup. Ct. 231, 200 U. S. 1, 50 L. Ed. 343; Fra lin v. U. S. (1910) 30 Sup. Ct. 434, 216 U. S. 559, 54 L. Ed. 615; U v. King (C. C. 1897) 81 Fed. 625, 6 Boyd v. Great Western Coal & C Co. (C. C. 1911) 189 Fed. 115; U v. Zes Cloya (D. C. 1888) 35 Fed. 4 U. S. v. Clark (D. C. 1891) 46 633, 636; U. S. v. Beavers (D. 1903) 125 Fed. 778; Ex parte B (D. C. 1907) 157 Fed. 130; Woo U. S. (1913) 48 Ct. Cl. 80.

CHAPTER TWELVE

Piracy and Other Offenses upon the Seas

Sec.
63. Piracy; punishment for.
64. Maltreatment of crew by officers of vessel; punishment for; flogging.
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66. Revolt or mutiny on shipboard; punishment for.
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10478. Piracy by aliens; punishment for.
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10480. Confederating, etc., with pirates; confining master; punishment for.
10481. Selling arms, intoxicants, etc., in Pacific islands; punishment for; medicinal use of spirits, etc.
10482. Offenses deemed on high seas.
10483. "Vessels of the United States" defined.

10463. (Crim. Code, § 290.) Piracy; punishment for.

Whoever, on the high seas, commits the crime of piracy as de-ed by the law of nations, and is afterwards brought into or und in the United States, shall be imprisoned for life.

R. S. § 5368. Act Jan. 15, 1897, c. 29, § 2, 29 Stat. 487. Act March 4, 1909, c. 321, § 290, 35 Stat. 1145.

Notes of Decisions

ee notes under §§ 10445, 10457, e, and § 10506, post.

ee, also, §§ 8039–8045, ante, and es thereunder.

ffense is general.—See, also, § 20, ante, and notes thereunder.

he crime of robbery, committed by person who is not a citizen of the ted States, on the high seas, on rd of a ship belonging exclusively subjects of a foreign state, is not acy under Act 1790, c. 9, § 8 and is punishable in the courts of the ted States. U. S. v. Palmer (1818) U. S. (3 Wheat.) 610, 4 L. Ed. 471.

ct April 30, 1790, § 8, incorporated R. S. §§ 5360, 5369, 5383, post, 10466, 10467, 10479, and R. S. § 2, defining and punishing piracy was repealed by Act March 3, 1819, orporated into R. S. §§ 4293–4295, e, §§ 8039–8041, to protect the com-rce of the United States and to pun-piracy, and when embarked on a atical cruise every individual be-es doubly punishable whatever may his national character, or whatever have been that of the vessel in ch he sailed, or of the vessel attack-ed. U. S. v. Furlong (1820) 5 Wheat. 184, 193, 202, 206, 5 L. Ed. 64.

Robbery or forcible depredation on the sea animo furandi is piracy by the law of nations and by act of congress. U. S. v. Smith (1820) 5 Wheat. 153, 161, 5 L. Ed. 57.

Act March 3, 1819, § 5, incorporated into this section, furnishes a sufficient definition of piracy, and it is defined to be robbery on the seas. U. S. v. Furlong (1820) 5 Wheat. 184, 204, 5 L. Ed. 64.

The crime of piracy, as defined by the law of nations and the acts of congress, consists of robbery or forcible depredation upon the sea. U. S. v. Chapels (C. C. 1819) Fed. Cas. No. 14,782.

A pirate is one who acts solely on his own authority, without any commission or authority from a sovereign state, seizing by force, and appropriating to himself, without discrimination, every vessel he meets with. Davison v. Seal-Skins (C. C. 1835) Fed. Cas. No. 3,661.

Congress may make depredations upon the high seas punishable as piracy, though they do not strictly constitute

such crime as known to international law. Charge to Grand Jury, Treason and Piracy (C. C. 1861) Fed. Cas. No. 18,277.

An association of persons who undertake to establish a new government and assume the character of a nation may be recognized by other governments in whole or in part, or they may be utterly ignored by them. Id.

"Depredating on the high seas without authority from any sovereign power" is piracy by the law of nations. It is not necessary that the motive be plunder, or that the depredations be directed against the vessels of all nations indiscriminately. As in robbery upon the land, it is only essential that the spoliation, or intended spoliation, be felonious; i. e., done willfully, with intent to injure, and without legal authority or lawful excuse. The Ambrose Light (D. C. 1885) 25 Fed. 408.

As war means and intends spoliation of property and life, if the war be unlawful, the animus belligerandi is in the eye of the law felonious. It includes the animus furandi in the intentional destruction of life and property. Id.

The offense of piracy may be complete, though but a single act be committed or intended. Id.

Jurisdiction.—See, also, notes under § 10445, ante.

Under Act 1790, c. 9, § 8, the United States circuit courts had jurisdiction of piracy committed on the high seas. U. S. v. Palmer (1818) 16 U. S. (3 Wheat.) 610, 4 L. Ed. 471.

The courts of the United States have jurisdiction of a piratical murder committed on the high seas, from a vessel belonging to the United States, by a foreigner, being on board of such vessel, upon another foreigner on board of a foreign vessel, but not of a murder committed by one foreigner on another, both being on board of a foreign vessel. U. S. v. Pirates (1820) 18 U. S. (5 Wheat.) 184, 5 L. Ed. 64.

Meaning of "high seas."—See, also, § 10445, ante.

It is competent under an indictment for piracy for the jury to find that a vessel within a marine league of the shore at anchor in an open roadstead, where vessels only ride under shelter of the land at a season when the course of the winds is variable, is on the high seas. U. S. v. The Pirates (1 Wheat. 184, 200, 206, 5 L. Ed. (

The federal circuit court had j tion of piracy in the commis murder on board of an America committed in an open roadstea cent to a foreign territory, and half a mile of the shore. Act A 1790, c. 9, § 8. U. S. v. Ross 1813) Fed. Cas. No. 16,196.

"High seas" (Act April 30, 1 9, § 8) mean any waters on t coast which are without the bou of low-water mark. Id.

The term "high seas" is used acts of congress in its popular a ural sense. U. S. v. Wilson 1856) Fed. Cas. No. 16,731.

Firing by one vessel into ano To make the fire of one vessel in other a piratical aggression with March 3, 1819, c. 77, it must be aggression, unprovoked by any ous act of hostility or menace fro other side. (1860) 9 Op. Atty. 456.

Seizure of vessel carrying arm munitions.—The seizure of a carrying arms and munitions of a port of the enemy by an armed whose officers held commissions the hostile country, is not piracy S. v. Smith (D. C. 1820) Fed. Ca 16,339a.

Vessels throwing off national ch ter and cruising piratically.—Act 30, 1790, c. 9, § 8, extends to all sons on board of vessels which off the national character by cru piratically and committing pirac other vessels. U. S. v. Klintock (1 5 Wheat. 144, 151, 5 L. Ed. 55.

A vessel loses her national char by assuming a piratical character a piracy committed by a foreigner on board such a vessel upon any vessel whatever is punishable. v. Furlong (1820) 5 Wheat. 184, 203, 205, 5 L. Ed. 64.

Where offense should be prosec —Piracy committed on the high or out of the jurisdiction of a par lar state, should be prosecuted in district where the offender is ap hended or first brought. (1815) 1 Atty. Gen. 185.

Cited without definite applica U. S. v. The Three Friends (1897 Sup. Ct. 495, 498, 166 U. S. 1, 4 Ed. 897.

§ 10464. (Crim. Code, § 291.) Maltreatment of crew by offi of vessel; punishment for; flogging.

Whoever, being the master or officer of a vessel of the Un States, on the high seas, or on any other waters within the miralty and maritime jurisdiction of the United States, be wounds, or without justifiable cause, imprisons any of the crew such vessel, or withholds from them suitable food and nourishm or inflicts upon them any cruel and unusual punishment, shall be fi not more than one thousand dollars, or imprisoned not more than

rs, or both. Nothing herein contained shall be construed to repeal modify section forty-six hundred and eleven of the Revised Stat-

R. S. § 5347, as amended, Act March 3, 1897, c. 389, § 18, 29 Stat. 691. Act March 4, 1909, c. 321, § 291, 35 Stat. 1145.

R. S. § 4611, mentioned in this section, abolishing flogging on vessels, was amended by Act Dec. 21, 1898, c. 28, § 22, to read as set forth ante, § 8391.

Notes of Decisions

"Officer" within meaning of statute.
Meaning of "crew."
Nature and elements of offense in general.
Cruel and unusual or excessive punishment.
Flogging or beating roustabout.
Location of vessel.
Acts of subordinate or inferior officers.
Refusal of seaman to inflict punishment.
Trial of mate of vessel extradited on charge of murder.
Evidence.
Civil liability.

"Officer" within meaning of stat--Where the roustabouts belonging e crew of a steamboat are divided watches, and one of their number et over them as "captain of the h," with power to direct their and demand obedience to his or- he is an officer within the mean- of the statute (R. S. § 5347 [em- ed herein]), and may be held to er a charge of beating and wound- one of the crew so placed under command. U. S. v. Trice (D. C.) 30 Fed. 490.

e who by authority exercises con- over the actions of the crew, or part of it, by giving direction to work, is an "officer," within the ning of R. S. § 5347 (embodied n), and is liable to the penalty by prescribed if he beat or wound of the crew. Id.

Meaning of "crew."—Under Act , c. 40, 4 Stat. 776, providing "that y master or other officer * * * from malice, hatred or revenge, without justifiable cause, beat, d or imprison any one or more of rew," etc., he shall be punished by etc., held that the word "crew" intended to include the officers, as as the common seamen, and that ster was liable under the statute n imprisonment of the first mate s ship. U. S. v. Winn (C. C. 1838) Cas. No. 16,740.

Nature and elements of offense in ral.—To authorize a conviction, un- Act 1835, c. 40, § 3, for injury to aman, both malice, hatred, or re- e and a want of justifiable cause be shown. U. S. v. Taylor (C. C.) Fed. Cas. No. 16,442.

t Sept. 28, 1850, § 1, ante, § 8391, shing the punishment of flogging t a penal law, and no indictment be framed upon it; but it makes mportant change in the powers of master, and has an important effect on the question of justifiable cause and malice arising under indictments framed on this section. U. S. v. Cutler (C. C. 1853) Fed. Cas. No. 14,910.

On an indictment under Act March 3, 1835, § 3, the government must show that the act was without justifiable cause, and a willful departure from a known duty. Id.

4. Cruel and unusual or excessive punishment.—Flogging is not a cruel and unusual punishment, within the meaning of Act March 3, 1835, § 3. U. S. v. Collins (C. C. 1854) Fed. Cas. No. 14,836.

It is not a cruel or excessive punishment to keep two waiters ironed together for 10 hours for fighting in the cabin of a vessel. Lindrop v. Dall (D. C. 1868) Fed. Cas. No. 8,365.

5. Flogging or beating roustabout.—It is no more lawful to flog a "roustabout" than it is to so discipline a common seaman, and it never was lawful to beat them with sticks and clubs, for which the officers are liable, both civilly and criminally. Riley v. Allen (D. C. 1885) 23 Fed. 46, 47.

6. Location of vessel.—The offense of maltreating a seaman on board an American vessel is punishable, under R. S. § 5347 (embodied herein), regardless of the location of such vessel. U. S. v. Bennett (D. C. 1877) Fed. Cas. No. 14,574.

The master of a ship is indictable for acts of violence to a seaman on board the ship in the harbor of Charleston. (1856) 7 Op. Atty. Gen. 732.

7. Acts of subordinate or inferior officers.—A master, who is present when punishment is inflicted by a subordinate officer, is personally responsible therefor. U. S. v. Taylor (C. C. 1837) Fed. Cas. No. 16,442.

In the absence of the master, the next highest officer on board succeeds to his rights and authority pro tempore, so far as they are necessary for the due performance of the ship's duties. Id.

An inferior officer cannot inflict blows upon a seaman for disobedience without consulting the master, except in a case which will not admit of delay. U. S. v. Harriman (D. C. 1876) Fed. Cas. No. 15,311.

8. Refusal of seaman to inflict punishment.—A seaman may refuse to inflict punishment on one of the crew unless some justifiable cause is point-

ed out to him. U. S. v. Winn (C. C. 1838) Fed. Cas. No. 16,739a.

9. Trial of mate of vessel extradited on charge of murder.—Where a mate of a vessel is extradited on a charge of murder under a treaty providing for extradition on that charge, he cannot be tried for cruel and unusual punishment of the man he was charged with murdering, under R. S. § 5347 (embodied herein), which was an offense not included in the treaty. U. S. v. Rauscher (1886) 7 Sup. Ct. 234, 235, 119 U. S. 407, 30 L. Ed. 425.

10. Evidence.—In order to justify a conviction under R. S. § 5347 (embodied herein), imposing a penalty upon the master or other officer of a vessel who withholds suitable food and nourishment from the crew, each of the statutory elements of lack of a suitable food supply, absence of justifiable cause, and the presence of malice, hatred, or revenge, must be found beyond a reasonable doubt. U. S. v. Reed (C. C. 1897) 86 Fed. 308.

11. Civil liability.—In an action by a member of the crew of a vessel against the owners to recover damages for his unlawful imprisonment by the master, where the answer alleged as a special defense that plaintiff had become mentally deranged, rendering his confinement necessary and proper, it was not error to instruct the jury that the burden of proving such defense rested on defendant; nor was such instruction inconsistent with the general charge that plaintiff had the burden of proving that his restraint was unlawful, malicious, and without probable cause. Pacific Packing & Navigation Co. v. Fielding (1905) 136 Fed. 577, 69 C. C. A. 325.

A corporation owner of a vessel cannot be subjected to punitive damages because of the unlawful, oppressive, and malicious action of the master in imprisoning a member of the crew while at sea, which action was not authorized nor ratified by the corporation. Id.

The punishment must not be excessive, considering the nature of the offense. A single blow with the hand, producing no wound, is not excessive. Fuller v. Colby (C. C. 1846) Fed. Cas. No. 5,149.

Where a seaman has been wrongfully imprisoned, vindictive damages are not allowed, in the absence of bad motives; but compensation will be allowed for the time of the imprisonment and the articles lost, with interest thereon, and passage home. Jay v. Almy (C. C. 1846) Fed. Cas. No. 7,236.

The master is not justified in imprisoning a seaman on mere suspicion that he is a dangerous man, or on request of the crew; and, if his effects are lost while thus imprisoned, the master is liable. Id.

An action for damages for maltreatment of a seaman by the master is based on breach of the duty of good treatment, and a statute limiting th for bringing actions for assau battery does not apply. Gabrie Waydell (C. C. 1895) 67 Fed. 34

The action of the master in co seamen for insubordination, sending seamen on shore for s of wood and water, where the attacked by savages, held just Healey v. Martin (D. C. 1823 Cas. No. 6,295.

Officers are liable only for the pecuniary damages sustained wh administering merited punishmen unnecessary harshness, a severe is unintentionally done. Elwell v tin (D. C. 1824) Fed. Cas. No. 4

Seamen not liable for board wh justly detained in foreign jail b ter. Anonymous (D. C. 1829) Cas. No. 473.

Advice of consul will not jus master in illegally imprisoning s in foreign jail, or deprive sean legal remedies. Id.; The Willian ris (D. C. 1837) Fed. Cas. No.

A mate will not be held resp as a joint trespasser in assisti master, in obedience to his ord inflicting punishment on a seama less obviously and grossly excessi unjust. Butler v. McClellan (1831) Fed. Cas. No. 2,242.

An action against a mate by man, for false imprisonment, w lie, where the imprisonment w dered by the master through t vice and request of the mate. G v. Bibbins (D. C. 1833) Fed. Ca 5,222.

The master is liable in damag flogging a seaman without a h for disobeying orders, where th man acted in good faith. Sheri Furbur (D. C. 1834) Fed. Ca 12,761.

Measure of damages for excess unlawful punishment. Gould v. tianson (D. C. 1836) Fed. Ca 5,636.

The crew are entitled to the tion of the master against illeg lence from his officers; and if fuse to hear their complaints, an no assurance against future wro has no right to require further s from them. Shorey v. Rennell 1858) Fed. Cas. No. 12,806.

Where the master causes any crew to be confined in a foreig he must see that they have h treatment. Id.

A seaman is not authorized any kind and degree of resi where the wrong done him will of complete indemnity. Id.

The master is civilly responsi his ill treatment of the crew on notwithstanding the advice or di of a consul. Id.

A master who, without investi the circumstances, unjustly ca seaman to be punished for an he did not commit, is liable, tho did not act in a cruel or opp

it. Lindrop v. Dall (D. C. 1868) . Cas. No. 8,365.

ules for assessment of damages in s of beating and wounding a sea- . Hanson v. Fowle (D. C. 1871) . Cas. No. 6,042.

ate is liable for striking in anger, not as discipline, a boy, for using opprobrious epithet in reply to a rge of theft. Backstack v. Banks C. 1874) Fed. Cas. No. 711.

uthority from a consul will not ex- excessive punishment of a seaman the master. Peters v. Martens (D. 1875) Fed. Cas. No. 11,031.

ourts of admiralty do not allow ex- agant damages for personal injuries are not permanent or serious, on consideration of personal indignity red to a roustabout who is beaten the mate while at work. The Gen- Rucker (D. C. 1888) 35 Fed. 152.

an action by a cook against the ter of a vessel for injuries caused an assault with a belaying pin, for bedience, the assertion by the mas- of the lawfulness of such punish- t will be regarded as an aggrava- rather than a defense; a resort he use of a weapon or violence be- only justifiable when necessary to rce instant obedience in a case of rgency at sea. Padmore v. Piltz C. 1890) 44 Fed. 104.

a libel by a cook against the mas- of an American vessel, it was shown the master punished the cook for ful disobedience on board of the el in port, by assaulting and strik- him upon his head with a belaying seriously injuring him. Held, that libelant should recover as damages 00, besides the value of personal ts lost in consequence of the in- . Id.

a libel by a seaman against the ter for personal injuries, the mas- denied the allegations of cruel tment, which were testified to by ant and other seamen only. There no evidence of cruel treatment ei- before or after one transaction tioned, though the voyage was a long The master, libelant, and vessel British. It appeared that libel- saw a British consul at the port re the alleged cruel treatment oc- ed, but made no complaint; that on ving at this port he saw the consul, complained of the mate only; that previous suit he claimed his dis- rge by reason of nonage, and said ing of bad treatment. Held, that libel would be dismissed. Mellor v. (D. C. 1891) 45 Fed. 115.

e master of a vessel is not liable personal injuries inflicted on a sea- by the mate before the master d interfere. Id.

A libel for personal injuries by a seaman against the master will be dismissed where it appears that the injuries consisted of striking libelant on the head with a broomstick, causing him to have a stiff neck for several days; this being done as a punishment, libelant and other seamen having been suspected of stealing certain ship stores which were found in libelant's bunk. Healy v. Cox (D. C. 1891) 45 Fed. 119.

The rule that a ship is not liable to a seaman in damages for injuries resulting from negligence of the officers is not applicable when such negligence amounts to a breach of duty; as where the master fails to protect the seamen from continued violence and brutal treatment at the hands of a subordinate officer. The Marion Chilcott (D. C. 1899) 95 Fed. 688.

Libelants were seamen on board an American bark of which respondent was master, and while in Havana, during their term of service, refused to work longer. Respondent reported the matter to the captain of the port, who was a military officer of the United States, and requested permission to discharge the men. This was refused, and the captain of the port had the men taken on shore and imprisoned. On their return to the vessel one of them was placed in irons by the mate. Respondent was absent and it did not appear that the act was done by his orders. Shortly after his return such libelant was released. Held that, conceding the imprisonment in both instances to have been unlawful, there was no ground for holding respondent personally liable therefor. Johnston v. Mowatt (D. C. 1902) 115 Fed. 844.

The master of a ship while on board is the agent of the owners in respect to all matters which come within the scope of his duty, and the owners and ship are liable in damages to a seaman, not only for the unwarranted ill treatment of such seamen by the master himself, but for his failure to perform his duty to protect the seaman from assaults and ill treatment by other officers. The Lizzie Burrill (D. C. 1902) 115 Fed. 1015.

Although a master may give moderate correction to mariners for neglect or refusal to do their duty, if he beats them cruelly, or uses improper weapons, he is answerable in damages. Flemming v. Ball (S. C. 1784) 1 Bay, 3.

Cited without definite application, Memphis & Newport Packet Co. v. Hill (1903) 22 Fed. 246, 58 C. C. A. 610; In re Smith (C. C. 1882) 13 Fed. 25; The T. F. Oakes (D. C. 1897) 82 Fed. 759, 760.

0465. (Crim. Code, § 292.) Inciting revolt or mutiny on shipboard; punishment for.

Whoever, being of the crew of a vessel of the United States, on high seas, or on any other waters within the admiralty and

maritime jurisdiction of the United States, endeavors to ma
revolt or mutiny on board such vessel, or combines, conspires, or
federates with any other person on board to make such revo
mutiny, or solicits, incites, or stirs up any other of the crew to di
or resist the lawful orders of the master or other officer of such v
or to refuse or neglect their proper duty on board thereof, or t
tray their proper trust, or assembles with others in a tumultuou
mutinous manner, or makes a riot on board thereof, or unlaw
confines the master or other commanding officer thereof, shall be
not more than one thousand dollars, or imprisoned not more tha
years, or both.

R. S. § 5359. Act March 4, 1909, c. 321, § 292, 35 Stat. 1146.

Notes of Decisions

1. Repeal of statute.
2. American ship within statute.
3. "Seaman" within statute.
4. Pilot as "officer."
5. Mutiny.
6. Endeavor to make revolt in general.
7. Where offense may be committed.
8. Crew not enrolled and licensed.
9. Refusal to go to sea in general.
10. Unseaworthiness of vessel.
11. Substitution of master.
12. Confinement of master.
13. Indictment, proof, and variance.
14. Evidence.
15. Arrest of judgment.

1. Repeal of statute.—The provision of R. S. § 5359 (embodied herein), which makes it a criminal offense "if any one of the crew of an American vessel on the high seas, or other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt * * * on board such vessel," was not repealed by implication by the provision of the shipping commissioners' act of June 7, 1872 (R. S. § 4596, par. 7 [ante, § 8380]), which makes it an offense for any seaman to "combine with any others of the crew to disobey lawful commands." In re Simpson (D. C. 1901) 119 Fed. 620.

2. American ship within statute.—Where a registered vessel has entered on a whaling voyage without surrender of her register, she is not an American ship, within Act 1835, c. 40, and an indictment will not lie against her crew for an endeavor to make a revolt. U. S. v. Rogers (C. C. 1838) Fed. Cas. No. 16,189.

3. "Seaman" within statute.—Seamen of the United States, put on board a vessel of the United States by a consul, are bound to the same obligations which exist in cases of articled seamen. U. S. v. Sharp (C. C. 1815) Fed. Cas. No. 16,264.

The mate is a seaman, within Act 1790, c. 36, § 12. U. S. v. Savage (C. C. 1830) Fed. Cas. No. 16,225.

A cooper of the ship is a seaman, within the provisions of the act. U. S. v. Thompson (C. C. 1832) Fed. Cas. No. 16,492.

Foreign seamen on board of American vessels are as much subject to punishment for acts of revolt, or attempts to commit revolts, as Americans. U
Peterson (C. C. 1846) Fed. Ca
16,037.

R. S. §§ 5359, 5360 (this compi
§§ 10465, 10466), punishing "an
of the crew of an American vess
making revolt, or endeavoring to
revolt, on board, within the adm
and maritime jurisdiction of the
States, embrace the mate and all
officers inferior to the master.
v. Huff (C. C. 1882) 13 Fed. 630.

4. Pilot as "officer."—The pilo
vessel which is cleared and rea
sea is an officer of the vessel,
Act 1835, § 2; and a disobedie
his orders is a revolt, under Act
U. S. v. Lynch (C. C. 1843) Fe
No. 15,648.

5. Mutiny.—See, also, notes und
following section.

In a prosecution for mutiny,
this and the following section, i
be proved that the offense wa
mitted on a United States vessel
high seas, that defendants were
bers of the crew, and while so
the master or person in charge,
ed him, and were apprehended
first brought within the district.
v. Reid (D. C. 1913) 210 Fed. 4

**6. Endeavor to make revolt in
al.**—To constitute an endeavor t
mit a revolt, within Crimes Act 1
36, it is necessary that there sho
some effort or act to stir up oth
the crew to disobedience of the
U. S. v. Kelly (1826) 24 U.
Wheat.) 417, 6 L. Ed. 508.

A conspiracy to usurp the au
and command of a ship, and ove
that of the master or commandi
ficer, or to resist a lawful comm
the master for such purpose, a
endeavor to stir up others of th
to such resistance, is an endea
commit a revolt. U. S. v. Smith
1816) Fed. Cas. No. 16,337; U
Hemmer (C. C. 1825) Fed. Ca
15,345; U. S. v. Gardner (C. C.
Fed. Cas. No. 15,188; U. S. v.
(C. C. 1830) Fed. Cas. No. 16,2
S. v. Thompson (C. C. 1832) Fe
No. 16,492; U. S. v. Cassedy
1837) Fed. Cas. No. 14,745.

nsolence, disobedience of orders, or lence to the master, unaccompanied other acts showing an intent to subt his command, is not an endeavor make a revolt. U. S. v. Kelly (C. 1825) Fed. Cas. No. 15,516.

Neither is mere conspiracy of the w to displace the master, unaccomied by overt acts; nor is concert ong the crew to that end essential to offense. Id.

Where the crew combined together to do duty, it is an endeavor to ke a revolt, within Act 1790, c. 9, § although no orders are actually giv- afterwards. U. S. v. Barker (C. C. 9) Fed. Cas. No. 14,516.

f the shipping articles are to the l port of discharge, the voyage is ended until the cargo is wholly unen. The owner may order the vesfrom port to port until the whole is charged. Id.

Port of destination" and "port of charge" are not equivalent words. e port of destination is not the port discharge, unless the voyage is acly terminated there, or some caris unladen. Id.

nterposition of a crew, by violence l intimidation, whereby the master compelled to desist from punishing eaman for gross misbehavior, is an leavor to commit a revolt. U. S. v. rrison (C. C. 1833) Fed. Cas. No. 818.

'o constitute the offense, neither a vious deliberate combination for tual aid and encouragement, nor any concerted plan, is necessary. Id.

Refusal to do duty after a deviation m the voyage described in the ship- articles is not an endeavor to com- a revolt. U. S. v. Matthews (C. C. 7) Fed. Cas. No. 15,742.

seaman who comes on deck to astain the cause of a disturbance, and uses to go below when ordered by master, may be punished for an envor to make a revolt. U. S. v. Rob- s (C. C. 1843) Fed. Cas. No. 16,173.

ct March 3, 1835, carried into the vised Statutes as sections 5359, 5360, rges the original act of April 30, 0 (this compilation, §§ 10465, 66), punishing offenses on vessels adding distinct offenses to the "envor to make a revolt" contained in U. S. v. Huff (C. C. 1882) 13 Fed.

. S. §§ 5359, 5360 (this compilation, 10465, 10466), do not include every e of simple passive disobedience of master's orders on the part of one the crew, not participated in by oth- , but do embrace every case of reance to the free and lawful exercise the master's authority, when acpanied by force, fraud, intimidation, lence, a conspiracy among the crew, concerted action in such resistance disobedience by one of them. Id.

he fact that the master displaces the mate from his position on the boat and discharges him will not release the latter from the operation of R. S. §§ 5359, 5360 (this compilation, §§ 10465, 10466), while he remains on board, and certainly not while he is acting, or claiming to act, as an officer. Every member of the crew, while on board, is bound to obedience and subordination to all proper control and discipline. Id.

7. Where offense may be committed.— The offense of endeavoring to make a revolt (Act 1790, c. 9, § 12) may be committed in any kind of vessel. U. S. v. Kelly (C. C. 1825) Fed. Cas. No. 15,516.

And in a foreign port. U. S. v. Keefe (C. C. 1824) Fed. Cas. No. 15,509.

On an indictment for such offense, it is not necessary to prove that it was committed on the high seas. U. S. v. Hamilton (C. C. 1818) Fed. Cas. No. 15,291.

The federal admiralty courts have jurisdiction under the act of 1835 of an indictment for an endeavor to make a revolt on a ship lying 60 yards from the wharf in New York City, ready for sea, and in the East river, where the tide ebbs and flows. U. S. v. Lynch (C. C. 1843) Fed. Cas. No. 15,648.

The federal courts have jurisdiction, under the act of 1825 (4 Stat. 115), of the offense of endeavoring to make a revolt and mutiny on board an American vessel lying in an inclosed dock within the jurisdiction of a foreign sovereign. U. S. v. Roberts (C. C. 1843) Fed. Cas. No. 16,173.

8. Crew not enrolled and licensed.— The crew of a vessel not enrolled and licensed under Act 1793, for the coasting trade and fisheries, cannot be convicted for making a revolt. Such a case is not within the crimes act of 1835. U. S. v. Jenkins (C. C. 1843) Fed. Cas. No. 15,473a.

9. Refusal to go to sea in general.— Seamen defending against a prosecution for endeavoring to commit a revolt, on the ground that they were ordered to go on a voyage for which they were not bound by the shipping articles, must show that they made the objection at the time of disobedience. U. S. v. Lynch (C. C. 1843) Fed. Cas. No. 15,-648.

The master has a discretion as to the number requisite for his crew, and the seamen cannot refuse obedience on the ground of going to sea short-handed. Id.

A combination by the crew to prevent the vessel from going to sea pursuant to the order of the master is an attempt to commit a revolt. U. S. v. Nye (C. C. 1855) Fed. Cas. No. 15,906.

10. Unseaworthiness of vessel.—A bona fide combination to compel the master to return into port for the actual unseaworthiness of the vessel, or where seaworthiness is doubtful, is not

punishable as an endeavor to revolt, under Act 1790, c. 36, § 12. U. S. v. Ashton (C. C. 1834) Fed. Cas. No. 14,-470.

Seamen who, with good reason, believe a vessel to be unseaworthy before the voyage is begun, may lawfully refuse to go to sea in her. U. S. v. Nye (C. C. 1855) Fed. Cas. No. 15,906.

11. Substitution of master.—The contract is not affected by the death, removal, or resignation of the original master, but the seaman must perform the voyage under the person lawfully substituted in his stead. U. S. v. Hamilton (C. C. 1818) Fed. Cas. No. 15,291; U. S. v. Haines (C. C. 1829) Fed. Cas. No. 15,275; U. S. v. Cassedy (C. C. 1837) Fed. Cas. No. 14,745.

Seamen who combine together to refuse all duty on board, and refuse obedience to a new master lawfully appointed, are guilty of an endeavor to commit a revolt. U. S. v. Haines (C. C. 1829) Fed. Cas. No. 15,275.

Where the person substituted as master is grossly incompetent from want of skill or bad habits or profligate and cruel behavior, seamen are justified in refusing to do duty. U. S. v. Cassedy (C. C. 1837) Fed. Cas. No. 14,745.

The owners may change the master after the seamen have shipped. U. S. v. Nye (C. C. 1855) Fed. Cas. No. 15,906.

12. Confinement of master.—The offense of seamen who revolt against the master on the ground of his intemperance and danger to the vessel, and place him in confinement, continuing the voyage under the mate, is not a felony. The Ulysses (C. C. 1800) Fed. Cas. No. 14,330.

Assault and battery by a seaman upon the master is not a confinement of the master, or an attempt to excite a revolt, within the statute. U. S. v. Lawrence (C. C. 1802) Fed. Cas. No. 15,575.

A confinement of the master, within Act 1790, c. 9, § 12, extends to all restraints of personal liberty in freely going about the ship, by present force or threats of bodily injury. U. S. v. Smith (C. C. 1811) Fed. Cas. No. 16,344; U. S. v. Sharp (C. C. 1815) Fed. Cas. No. 16,264; U. S. v. Hemmer (C. C. 1825) Fed. Cas. No. 15,345; U. S. v. Thompson (C. C. 1832) Fed. Cas. No. 16,492.

One who joins in the general conspiracy, and by his presence countenances acts of violence, but who does not individually use force or threats to compel the master to resign the command, is guilty of the offense of confining the master. U. S. v. Sharp (C. C. 1815) Fed. Cas. No. 16,264.

The master cannot be confined by the officers and crew, except in a clear case, to prevent his committing acts which might endanger the lives of all on board. Id.

Restraining the master from forming the duties of his stati such mutinous conduct of the cr would reasonably intimidate a firm is confining him, within Act Ap 1790, § 12. U. S. v. Bladen (1816) Fed. Cas. No. 14,606.

Seizing the person of the mast though the restraint be but mome is a confinement prohibited by lav

Where the master uses an un weapon, or the seaman is expos danger of his life or limbs, he m sort to any necessary species o fense to avoid the danger. U. Smith (C. C. 1819) Fed. Cas. N 345.

Where the master strikes a se and is seized and so firmly held b that he cannot extricate himsel seaman is guilty of confining the ter. Id.

A seaman may endeavor to escap infliction of personal chastisemen offensive language used, and may for the mere purpose of protecting self from injury. Id.

To constitute the offense of con the master, the act of confinement be feloniously done. U. S. v. (C. C. 1824) Fed. Cas. No. 15,35

To constitute a confinement o master (Act 1790, c. 36), it is suf that there is a personal seizure straint, although it may be for th pose of inflicting personal chastise U. S. v. Savage (C. C. 1830) Fed No. 16,225.

An unlawful confinement of the ter is not restricted to a physica finement of his person. If the m is prevented or restrained by for timidation, or threats of bodily from the free use of every part vessel in the performance of his tions as master, it is a confin within the meaning of this statut S. v. Huff (C. C. 1882) 13 Fed. 6

13. Indictment, proof, and varia Proof of an endeavor to commit volt in a foreign port will sustain dictment for an endeavor to com revolt on the high seas. U. S. v. (C. C. 1824) Fed. Cas. No. 15,50

An indictment for confining th tain, for an assault in a foreign on a vessel belonging to a citizen United States, need not negativ fact that defendant was tried an victed or acquitted by the foreig bunal. U. S. v. Stevens (C. C. Fed. Cas. No. 16,394.

An indictment for an endeav commit a revolt and for confinin master need not allege that he v the time in the peace of the States, or a citizen thereof. Act c. 9, § 12. U. S. v. Thompson (1832) Fed. Cas. No. 16,492.

The crime of endeavoring to m revolt is one against the master, is sufficient to charge it in the of the act of 1835 to give the cognizance of it, even within th

irements of Act March 3, 1825. U. v. Seagrist (C. C. 1860) Fed. Cas. . 16,245.

Sufficiency of indictment against a man for endeavoring to make a re-lt on board an American vesel in for-n waters. U. S. v. Turner (D. C. 43) Fed. Cas. No. 16,549.

The charge that defendants, "with rce and arms, did then and there oniously make a revolt on board the d ship, contrary," etc., is insufficient charge the offense of revolt or mu-y under the act of 1835. U. S. v. meida (D. C. 1847) Fed. Cas. No. 433.

4. Evidence.—The logbook kept by e master is not evidence in an in-tment for a revolt and confining the ster. U. S. v. Sharp (C. C. 1815) d. Cas. No. 16,264.

On the trial of an indictment for en-avoring to make a mutiny and revolt, e American character of the vessel must be proved, but the title may be proved by parol. U. S. v. Crawford (C. C. 1843) Fed. Cas. No. 14,890; U. S. v. Seagrist (C. C. 1860) Fed. Cas. No. 16,245.

On a charge of revolt a copy of the shipping articles cannot be given in evidence to show that the prisoner was part of the crew, without proof of loss or destruction of the original. U. S. v. Doughty (C. C. 1855) Fed. Cas. No. 14,987.

The original articles cannot be given in evidence unless the handwriting of the prisoner is proved. Id.

15. Arrest of judgment.—Where there is a verdict of guilty on two counts, one for a revolt, and another for an attempt to excite it, the judgment will not be arrested. U. S. v. Peterson (C. C. 1846) Fed. Cas. No. 16,037.

Cited without definite application, U. S. v. Stone (C. C. 1881) 8 Fed. 232.

10466. (Crim. Code, § 293.) Revolt or mutiny on shipboard; punishment for.

Whoever, being of the crew of a vessel of the United States, the high seas, or on any other waters within the admiralty d maritime jurisdiction of the United States, unlawfully and with rce, or by fraud, or intimidation, usurps the command of such vessel om the master or other lawful officer in command thereof, or de-ives him of authority and command on board, or resists or prevents m in the free and lawful exercise thereof, or transfers such authority d command to another not lawfully entitled thereto, is guilty of a volt and mutiny, and shall be fined not more than two thousand llars and imprisoned not more than ten years.

R. S. § 5360. Act March 4, 1909, c. 321, § 293, 35 Stat. 1146.

Notes of Decisions

See notes under §§ 8380, 10463, ante.

Revolt or mutiny in general.—A re-lt, under Act March 3, 1835, c. 40, nsists, not only in an attempt to urp the command from the master, to transfer it to another, or to de-ive him of it, for any purpose, by olence, but in resisting him in the e and lawful exercise of his author-. U. S. v. Peterson (C. C. 1846) d. Cas. No. 16,037.

Foreign seamen on board American ssels are as much subject to punish-nt for acts of revolt, or attempts to nmit revolts, as Americans. Id.

The circuit court had jurisdiction er a revolt on a vessel which has not ared, but is lying at anchor in a vigable stream where the tide ebbs d flows. U. S. v. Staly (C. C. 1846) d. Cas. No. 16,374; U. S. v. Collyer . C. 1855) Fed. Cas. No. 14,838.

R. S. §§ 5359, 5360 (this compilation, 10465, 10466), punishing "any one the crew of an American vessel" for king revolt, or endeavoring to make volt, on board, within the admiralty l maritime jurisdiction of the United ites, embrace the mate and all other officers inferior to the master. U. S. v. Huff (C. C. 1882) 13 Fed. 630.

The fact that the master displaces the mate from his position on the boat and discharges him will not release the latter from the operation of R. S. §§ 5359, 5360 (this compilation, §§ 10465, 10466), while he remains on board, and certainly not while he is acting, or claiming to act, as an officer. Every member of the crew, while on board, is bound to obedience and subordination to all proper control and discipline. Id.

The act of March 3, 1835, carried into the Revised Statutes as sections 5359, 5360, enlarges the original act of April 30, 1790 (this compilation, §§ 10465, 10466), punishing offenses on vessels by adding distinct offenses to the "endeavor to make a revolt" contained in it. Id.

R. S. §§ 5359, 5360 (this compilation, §§ 10465, 10466), do not include every case of simple passive disobedience of the master's orders on the part of one of the crew, not participated in by others, but do embrace every case of resistance to the free and lawful exercise of the master's authority, when

accompanied by force, fraud, intimidation, violence, a conspiracy among the crew, or concerted action in such resistance or disobedience by one of them. Id.

A mere disobedience of orders by one or two seamen, without combining with the others, is not a revolt. U. S. v. Forbes (D. C. 1845) Fed. Cas. No. 15,129.

The prevention of a single lawful command by willful and unlawful combination, which intimidates the master, makes the act a revolt within the statute. Id.; U. S. v. Borden (D. C. 1857) Fed. Cas. No. 14,625.

To constitute the crime of making a revolt, under Act 1835, c. 40, § 1, a certain end must have been accomplished by certain means unlawfully and willfully done. U. S. v. Borden (D. C. 1857) Fed. Cas. No. 14,625.

Mutiny consists in attempting to deprive the master by violence of his authority as such, whether by resisting him in its exercise, or by actual usurpation of the command. Thompson v. The Stacey Clarke (D. C. 1892) 54 Fed. 533.

In a prosecution for mutiny, under this and the preceding section, it must be proved that the offense was committed on a United States vessel on the high seas, that defendants were members of the crew, and while so seized the master or person in charge, confined him, and were apprehended when first brought within the district. U. S. v. Reid (D. C. 1913) 210 Fed. 486.

Where a portion of the crew of the steamer Edgar Stewart forcibly displaced the master thereof from command, and took possession of the vessel, held, that this did not constitute the offense of piracy, but of mutiny; that for the latter offense the parties charged are liable to be tried and punished under the laws of the United States; and that they may be tried therefor in any district in which they are first brought. (1872) 14 Op. Atty. Gen. 589.

Intoxication as excuse for offense.—Intoxication is an excuse for the offense where an habitual or fixed frenzy is produced thereby. U. S. v. Forbes (D. C. 1845) Fed. Cas. No. 15,129.

Fear as excuse.—Fear, to exc seaman guilty of making a revolt, be fear of death, such as a man dinary courage and fortitude yield to. U. S. v. Haskell (C. C. Fed. Cas. No. 15,321.

Misconduct of officers as justific —That officers of a vessel used pr ty, opprobrious epithets, and were of rough, insulting, and inconsi treatment of the crew, and fail furnish proper allowances, will no tify mutiny, which can be def only by such misconduct as will ably result in loss of life, limb, o er grave bodily harm. U. S. v. (D. C. 1913) 210 Fed. 486.

Protection of crew from wrong. crew may take reasonable measu protect one of their number fro infliction of what they have rea believe to be a great wrong. U. Borden (D. C. 1857) Fed. Ca 14,625.

Disarming master.—The crew no right to disarm the master, t using a deadly weapon, if they ar mutinous state, and exercising pe violence to resist his lawful com U. S. v. Peterson (C. C. 1846) Cas. No. 16,037.

Unseaworthy vessel.—Where s who request a survey, when in p within sight of land, are treate unnecessary severity, their rem at law after their return, and not sort to violence, unless in danger actual loss of life, and then at peril, as the result may turn ou S. v. Staly (C. C. 1846) Fed. Ca 16,374.

Seamen are not liable crim where, on going on board, and aft amining the vessel, they refuse to on the ground that she is unseaw though she was not in fact uns thy. Id.; U. S. v. Givings (1844) Fed. Cas. No. 15,212.

Evidence.—In a prosecution of bers of the crew of a vessel fo tiny, so-called logs, kept by two defendants of the occurrences ship from the time of leaving po til the mutiny, were admissible against them. U. S. v. Reid (1913) 210 Fed. 486.

§ 10467. (Crim. Code, § 294.) Seaman laying violent hand commander; punishment for.

Whoever, being a seaman, lays violent hands upon his mander, thereby to hinder and prevent his fighting in defen his vessel or the goods intrusted to him, is a pirate, and shall b prisoned for life.

R. S. § 5369. Act Jan. 15, 1897, c. 29, § 2, 29 Stat. 487. Act March 4 c. 321, § 294, 35 Stat. 1146.

Notes of Decisions

See notes under § 10463, ante.

Cited without definite application, U. S. v. Palmer (1818) 3 Whea 627, 4 L. Ed. 471.

0468. (Crim. Code, § 295.) Abandonment of mariner in foreign port; punishment for.

Whoever, being master or commander of a vessel of the United tes, while abroad, maliciously and without justifiable cause ces any officer or mariner of such vessel on shore, in order to leave behind in any foreign port or place, or refuses to bring home again such officers and mariners of such vessel whom he carried out with , as are in a condition to return and willing to return, when he is dy to proceed on his homeward voyage, shall be fined not more n five hundred dollars, or imprisoned not more than six months, both.

R. S. § 5363. Act March 4, 1909, c. 321, § 295, 35 Stat. 1146.

Notes of Decisions

e notes under § 8371, ante.

ature and elements of offense in oral.—The forcing a mariner on e must be done both without justie cause, and maliciously, to justify onviction under Act 1825, c. 65, § U. S. v. Ruggles (C. C. 1828) Fed. No. 16,205; U. S. v. Lunt (D. C.) Fed. Cas. No. 15,642.

is an offense, under such act, to e behind a seaman imprisoned by master for using abusive language he refusal of his application for a harge. U. S. v. Netcher (C. C.) Fed. Cas. No. 15,866.

complete the offense of malicious- nd without justifiable cause forcing fficer or mariner on shore, or leav- him behind in a foreign port (Act , c. 276, § 10), it is not necessary he should be in a condition to re- , and willing to return. Id.

here is punishment by statute for act of a shipmaster in unlawfully ing a seaman on shore in a foreign . But not for assault on a seaman oard ship or otherwise in a foreign . (1856) 7 Op. Atty. Gen. 721.

eaning of "maliciously."—"Mali- sly," in such statute, means with a ful disregard of right and duty, or g the act against a man's own con- ion of duty. U. S. v. Ruggles (C. 828) Fed. Cas. No. 16,205.

se of physical force.—The offense of iciously forcing a mate on shore at oreign port and leaving him there, be committed, although no physi- force was used, as in the case where mate left the ship under a well- nded fear of his life had he remain- on board. U. S. v. Riddle (C. C.) Fed. Cas. No. 16,162.

stifiable cause.—"Justifiable cause" forcing a seaman on shore (Act , c. 276, § 10) means a case of al necessity, for the safety of the and crew, or the due performance of the voyage, and not merely a cause justifying a discharge. U. S. v. Coffin (C. C. 1833) Fed. Cas. No. 14,824.

To justify leaving men in a foreign port, there must be such an exigency as would control the judgment of masters of reasonable firmness. U. S. v. Lunt (D. C. 1855) Fed. Cas. No. 15,642.

Advice or intervention of consul.—Masters act on their own responsibility in leaving men in foreign ports for misconduct. It is proper to take the advice of the consul, but his opinion is only advice. U. S. v. Lunt (D. C. 1855) Fed. Cas. No. 15,642.

Masters of American vessels cannot lawfully discharge seamen in foreign ports without intervention of the consul. (1855) 7 Op. Atty. Gen. 349.

It does not help the matter to allege that the seamen consent, or have misconducted themselves, or are not Americans; of all that it is for the consul to judge. Id.

Violation of contract.—Wrongfully setting a seaman ashore in a foreign country is a violation of the contract. Crapo v. Allen (D. C. 1849) Fed. Cas. No. 3,360.

Driving deck hand from a steamboat.—A deck hand cannot, for mere inefficiency, be driven from a steamboat at an inhospitable place on a dark, cold night, subjecting him to unnecessary suffering and discomfort, without rendering the officers liable to damages for such treatment. Riley v. Allen (D. C. 1885) 23 Fed. 46.

Indictment. — No indictment lies against a master of a ship for discharging irregularly in a foreign port a seaman shipped irregularly in the United States. But a qui tam suit lies for the irregular shipment under section 8365. (1856) 7 Op. Atty. Gen. 730.

Cited without definite application, In re Ah Tie (C. C. 1882) 13 Fed. 291, 293.

0469. (Crim. Code, § 296.) Conspiracy to cast away vessel; punishment for.

Whoever, on the high seas, or within the United States, willly and corruptly conspires, combines, and confederates with other person, such other person being either within or without

the United States, to cast away or otherwise destroy any vessel, intent to injure any person that may have underwritten or may t after underwrite any policy of insurance thereon or on goods on b thereof, or with intent to injure any person that has lent or adva or may lend or advance, any money on such vessel on bottomry o spondentia; or whoever, within the United States, builds, or fits or aids in building or fitting out, any vessel with intent that the be cast away or destroyed, with the intent hereinbefore menti shall be fined not more than ten thousand dollars and imprisone more than ten years.

R. S. § 5364. Act March 4, 1909, c. 321, § 296, 35 Stat. 1146.

Notes of Decisions

Constitutionality.—Act March 3, 1825, § 23, which punishes a conspiracy to destroy a vessel or cargo with intent to defraud the underwriters, is within the power of congress to protect commerce, and applies to internal commerce. U. S. v. Cole (C. C. 1853) Fed. Cas. No. 14,832.

Burning as necessary to offense.—Under Act March 3, 1825, § 23, which punishes a conspiracy to destroy a vessel or cargo with intent to defraud the underwriters, the burning of the vessel is not necessary to complete the offense. U. S. v. Cole (C. C. 1853) Fed. Cas. No. 14,832.

Indictment.—The intention to injure underwriters is an essential ingredient of the crime of conspiring to cast burn, or destroy a vessel (Act 3, 1825, § 23), and must be aver the indictment. U. S. v. Hand (1854) Fed. Cas. No. 15,296.

Evidence.—The destruction o vessel by the defendants, or by an of them, identified with defendar conspirators, is conclusive against U. S. v. Cole (C. C. 1853) Fed. No. 14,832.

That a ship is insured by a policy, beyond what the jury belie true value, is no evidence that her er insured her, and sent her out intent to have her cast away, to the insurance money. U. S. v. (D. C. 1868) Fed. Cas. No. 15,81

§ 10470. (Crim. Code, § 297.) Plundering vessel in distress, punishment for; obstructing escape of wrecked person; ing false light; punishment for.

Whoever plunders, steals, or destroys any money, goods, chandise, or other effects, from or belonging to any vessel in tress, or wrecked, lost, stranded, or cast away, upon the sea, or any reef, shoal, bank, or rocks of the sea, or in any other place w the admiralty and maritime jurisdiction of the United States, sh fined not more than five thousand dollars and imprisoned not than ten years; and whoever willfully obstructs the escape of person endeavoring to save his life from such vessel, or the thereof; or whoever holds out or shows any false light, or extingu any true light, with intent to bring any vessel sailing upon th into danger, or distress, or shipwreck, shall be imprisoned no than ten years and may be imprisoned for life.

R. S. § 5358. Act March 4, 1909, c. 321, § 297, 35 Stat. 1146.

Notes of Decisions

Constitutionality.—Act 1825, c. 276, § 9, making it felonious to steal from stranded vessels, is not authorized by the constitutional provision extending the admiralty jurisdiction to the federal courts. U. S. v. Coombs (1838) 37 U. S. (12 Pet.) 72, 9 L. Ed. 1004.

Nature and elements of offense.—R. S. § 5358 (embodied herein), is a comprehensive statute, affording extraordinary protection to property within the admiralty and maritime jurisdiction of the United States, by creating and punishing a substantive and distinct offense for all acts of spoliation upon the property belonging to a vessel w or in distress. It is not alone the of larceny that is punished by th ute, but any act of depredation, er it be of the character that wo piracy if committed on the high robbery or other forcible taking, trespass, malicious mischief, o fraudulent and criminal breach of if committed on land or property under the protection of the comm statutory law of the state within the offense is committed; and n cific intent, as in larceny, is sary to constitute the offense. A

ent except that of restoring the goods o the vessel or owner is unlawful, un- er this statute, and whether conceived t the time of the taking or subse- uently thereto, if carried out by a rongful appropriation or destruction f the property, the offense is complete. or is it material whether the property taken from off the wrecked vessel it- elf, or out of the water while floating way, or while cast upon the shore. or is the value material; all prop- rty belonging to the vessel, of any alue, in any situation or condition, eing under the protection of the stat- te. U. S. v. Stone (C. C. 1881) 8 ed. 232.

Meaning of the words "steal" and plunder."—While it is true that when n act of congress uses a common-law rm it is to be interpreted according o its common-law meaning, this must e understood of words that are plain- used in their technical sense; and by the context, the object of the stat- te, or otherwise, by the rules of con- ruction it appears that the word is ot so used, it will be given that mean- g which it must have to effect the bject of the statute, and will not be estricted to a technical meaning that ould defeat that object. The word teal," if used alone, might necessarily nport larceny as at common law; but hen used in connection with "plunder" nd "destroy," as found in R. S. § 5358 embodied herein), punishing the plun- er of wrecked vessels, it will not be estrained, so as to define only the rime of larceny of lost goods on land s known to the common law. U. S. Stone (C. C. 1881) 8 Fed. 232.

"Plunder," as used in Act 1825, c. 5, § 9, includes the criminal taking of ne goods of another by open force, or secret fraud, and furtively, from a essel in distress, etc., and also an em- ezzlement by the master and others. . S. v. Pitman (D. C. 1852) Fed. Cas. 6,051.

Abandoned property.—Property aban- oned is not, within the meaning of ct March 3, 1825, § 9, against plun- ering or stealing property from or be- nging to a vessel in distress or wreck- d, lost or abandoned. U. S. v. Smiley C. C. 1864) Fed. Cas. No. 16,317.

Place where plundering is prohibited. Act March 3, 1825, c. 276, § 9, means qually to prohibit and punish such undering or destroying of such prop- ty, whether the act be done on shore in any of the enumerated places be- w high-water mark. U. S. v. Coombs 838) 12 Pet. 72, 79, 9 L. Ed. 1004.

Jurisdiction of offense.—Where de- fendants were indicted for feloniously stealing a quantity of merchandise be- longing to a certain ship in distress and cast away on a shoal of the sea on the coast of New York, and the goods were taken above high-water mark on the beach, the offense committed was with- in the jurisdiction of the circuit court of the United States for the southern district of New York. U. S. v. Coombs (1838) 12 Pet. 72, 82, 9 L. Ed. 1004.

An American vessel was wrecked within 150 feet of the Mexican shore, and completely broken up and destroy- ed. Defendant recovered a part of her treasure, buried in the sand under wa- ter, and converted the same. Held, that the United States courts had no jurisdiction either over the place or property. U. S. v. Smiley (C. C. 1864) Fed. Cas. No. 16,317.

The federal courts have jurisdiction of the offense of plundering property from a stranded vessel or after it has been thrown upon the shore. Act 1825, c. 65, § 9. U. S. v. Pitman (D. C. 1852) Fed. Cas. No. 16,051.

Conspiracy.—A conspiracy to plunder a wrecked vessel within the admiralty and maritime jurisdiction of the United States is an offense against the United States, within the meaning of R. S. § 5440, ante, § 10201. U. S. v. Sanche (C. C. 1881) 7 Fed. 715.

Jurisdiction.—The federal courts have jurisdiction of the offense of plundering property from a stranded vessel or after it has been thrown upon the shore. Act 1825, c. 65, § 9. U. S. v. Pitman (D. C. 1852) Fed. Cas. No. 16,051.

Indictment.—It is not necessary, in an indictment charging the offense de- clared by the R. S. § 5358 (embodied herein), punishing the plunder of wrecked vessels, to distinguish between acts supposed to be characterized as "plundering" and those supposed to be characterized as "stealing" or "destroy- ing." It may well be charged in the language of the statute as a single of- fense, and will be supported by proof of any act that could be denominated plun- dering, stealing, or destroying; nor is it necessary to distinguish between acts of depredation committed on the wreck and those on property belonging to it, but separated from it. If the indict- ment be so drawn, the separation may be disregarded, and a general verdict had upon the whole indictment. U. S. v. Stone (C. C. 1881) 8 Fed. 232.

Cited without definite application, U. S. v. Lyndale (1902) 116 Fed. 820, 54 C. C. A. 324.

10471. (Crim. Code, § 298.) Attacking vessel with intent to plunder; punishment for.

Whoever, upon the high seas or on any other waters within ne admiralty and maritime jurisdiction of the United States, by rprise or by open force, maliciously attacks or sets upon any vessel

belonging to another, with an intent unlawfully to plunder the s
or to despoil any owner thereof of any moneys, goods, or merc
dise laden on board thereof, shall be fined not more than five t
sand dollars and imprisoned not more than ten years.

R. S. § 5361. Act March 4, 1909, c. 321, § 298, 35 Stat. 1147.

Notes of Decisions

See notes under § 10457, ante.

Cited without definite application, Ex parte O'Hare (D. C. 1909) 171 Fed. 290, reversed (1910) 179 Fed. 66 C. C. A. 220.

§ 10472. (Crim. Code, § 299.) Breaking and entering vessel, punishment for.

Whoever, upon the high seas or on any other waters w
the admiralty and maritime jurisdiction of the United States,
out of the jurisdiction of any particular State, breaks or e
any vessel, with intent to commit any felony, or maliciously cuts, s
or destroys any cordage, cable, buoys, buoy-rope, head-fast, or
fast, fixed to the anchor or moorings belonging to any vessel,
be fined not more than one thousand dollars and imprisoned
more than five years.

R. S. § 5362. Act March 4, 1909, c. 321, § 299, 35 Stat. 1147.

Cited without definite application, Ex parte O'Hare (D. C. 1909) 171 Fed. 290, reversed (1910) 179 Fed. 66 C. C. A. 220.

§ 10473. (Crim. Code, § 300.) Owner destroying vessel at punishment for.

Whoever, upon the high seas or on any other waters w
the admiralty and maritime jurisdiction of the United States,
fully and corruptly casts away or otherwise destroys any vess
which he is owner, in whole or in part, with intent to prejudice
person that may underwrite any policy of insurance thereon, o
merchant that may have goods thereon, or any other owner of
vessel, shall be imprisoned for life or for any term of years.

R. S. § 5365, as amended, Act Aug. 6, 1894, c. 227, § 1, 28 Stat. 233.
March 4, 1909, c. 321, § 300, 35 Stat. 1147.

Notes of Decisions

See, also, notes under following section.

Necessity of offense being committed on high seas.—The circuit court has no jurisdiction of the offense of willfully destroying a vessel (Act March 26, 1804, § 1), unless it was committed upon the high seas, and not merely upon waters within the jurisdiction of the United States. U. S. v. Wilson (C. C. 1856) Fed. Cas. No. 16,731.

High seas within statute.—An offense committed in a bay which is entirely landlocked and inclosed by reefs is not committed on the high seas, within Act March 26, 1804, c. 40. U. S. v. Robinson (C. C. 1826) Fed. Cas. No. 16,176.

Underwriters meant in statute.—On an indictment for destroying a vessel with intent to prejudice the underwriters, it is sufficient to show the existence of an association actually carrying on the business of insurance by whose known officers de facto the policy was executed. U. S. v. Amedy (1826) 11 Wheat. 392, 409, 6 L. Ed. 502.

The underwriters meant in the statute are those upon the vessel, and not those upon the cargo. U. S. v. (C. C. 1806) Fed. Cas. No. 15,4

Term "person" as extending t porations.—The term "person" i statute extends to corporations. v. Amedy (1826) 11 Wheat. 392 6 L. Ed. 502.

Destroying or casting away ve To "destroy" a vessel is to unfit service beyond the hope of re by ordinary means; casting awa species of destroying. U. S. v. (C. C. 1806) Fed. Cas. No. 15, Dall. 412, 417, 1 L. Ed. 888.

What constitutes the casting a a vessel under Act March 26, 180 U. S. v. Vanranst (C. C. 1812) Cas. No. 16,608.

Indictment.—The indictment aver an intent to prejudice the writers, but an allegation of an of the owner to gain corrupt adv to himself is surplusage. U. Johns (C. C. 1806) Fed. Cas. N 481.

Evidence.—The prosecutor mus that the insurance was valid;

de by a corporation, the act of in-rporation must be shown. U. S. v. hns (C. C. 1806) Fed. Cas. No. 15,-1.

Evidence of the value of the property insured is admissible to show the inducement for destroying or preserving it. Id.

10474. (Crim. Code, § 301.) Other person destroying or attempting to destroy vessel at sea; punishment for.

Whoever, not being an owner, upon the high seas or on any ner waters within the admiralty and maritime jurisdiction of the nited States, willfully and corruptly casts away or otherwise destroys y vessel of the United States to which he belongs, or, willfully, th intent to destroy the same, sets fire to any such vessel, or otherse attempts the destruction thereof, shall be imprisoned not more an ten years.

R. S. §§ 5366, 5367, as amended, Act Aug. 6, 1894, c. 227, § 2, 28 Stat. 233. Act March 4, 1909, c. 321, § 301, 35 Stat. 1147.

Notes of Decisions

Great Lakes as "high seas" within tute.—See, also, notes under § 10445, e.

The Great Lakes are not "high seas" hin the meaning of Act July 29, 50, punishing the burning of vessels. ler's Case (D. C. 1867) Fed. Cas. 9,558.

Offense by master.—The master of a sel is indictable for willfully destroyher with intent to defraud the unwriters, though the owner be on rd, and authorize or command her truction. U. S. v. Jacobson (C. C. 7) Fed. Cas. No. 15,461.

Offense by minor.—A minor who ships a vessel without the knowledge of parents may be convicted of the ofse of burning a vessel on the high seas. U. S. v. Lockman (C. C. 1848) Fed. Cas. No. 15,620.

Indictment.—The offense of willfully setting fire to a ship at sea, created by Act July 29, 1850, § 7, is sufficiently charged in the words of the statute, without adding the averment that the offense was feloniously committed. U. S. v. McAvoy (C. C. 1860) Fed. Cas. No. 15,654.

Evidence.—On an indictment for setting fire to a vessel on the high seas, the mere possibility that the fire might have originated by accident or spontaneous combustion is no answer to strong probable evidence against the accused. U. S. v. Lockman (C. C. 1848) Fed. Cas. No. 15,620.

10475. (Crim. Code, § 302.) Robbery on shore by piratical crew; punishment for.

Whoever, being engaged in any piratical cruise, or enterprise, being of the crew of any piratical vessel, lands from such vessel, d on shore commits robbery, is a pirate, and shall be imprisoned life.

R. S. § 5371. Act Jan. 15, 1897, c. 29, § 2, 29 Stat. 487. Act March 4, 1909, c. 321, § 302, 35 Stat. 1147.

Notes of Decisions

Meaning of "robbery."—And the ning of "robbery," as used in reon to acts declared piratical, is to ascertained by reference to the com a law. U. S. v. Jones (C. C. 1813) d. Cas. No. 15,494.

Cited without definite application, St. Clair v. U. S. (1894) 14 Sup. Ct. 1002, 1006, 154 U. S. 134, 38 L. Ed. 936.

10476. (Crim. Code, § 303.) Arming vessel to cruise against citizens; punishment for; trials.

Whoever, being a citizen of the United States, without the limits reof, fits out and arms, or attempts to fit out and arm, or pores to be fitted out and armed, or knowingly aids or is concerned furnishing, fitting out, or arming, any private vessel of war or vateer, with intent that such vessel shall be employed to cruise commit hostilities upon the citizens of the United States, or their perty, or whoever takes the command of or enters on board of any h vessel, for such intent, or who purchases any interest in any such sel with a view to share in the profits thereof, shall be fined not re than ten thousand dollars and imprisoned not more than ten

years. The trial for such offense, if committed without the lin
the United States, shall be in the district in which the offende
be apprehended or first brought.

R. S. § 5324. Act March 4, 1909, c. 321, § 303, 35 Stat. 1147.

§ 10477. (Crim. Code, § 304.) Piracy under color of foreign mission; punishment for.

Whoever, being a citizen of the United States, commit
murder or robbery, or any act of hostility against the United S
or against any citizen thereof, on the high seas, under color o
commission from any foreign prince, or state, or on pretense
thority from any person, is, notwithstanding the pretense of su
thority, a pirate, and shall be imprisoned for life.

R. S. § 5373. Act Jan. 15, 1897, c. 29, § 2, 29 Stat. 487. Act M
1909, c. 321, § 304, 35 Stat. 1147.

Notes of Decisions

See notes under § 10463, ante.

Statute as applying only to citizens and not to foreigners.—Act April 30, 1790, § 9, in regard to piracy or robbery on the high seas, applies only to citizens, and not to foreigners. U. S. v. Baker (C. C. 1861) Fed. Cas. No. 14,501.

Capture of American merchantman by insurgent vessel.—A Texan armed schooner cannot be treated as a pirate, under Act April 30, 1790, c. 9, § 9 (R. S. § 5373 [embodied herein]), for capturing an American merchantman on the alleged ground that she was laden with provisions, stores, and munitions of war for the use of the army of Mexico, with the government of which Texas, at the time, was in a state of revolt and civil war. (1836) 3 Op. Atty. Gen. 120.

Commission justifying acts or exempting from charge.—A forged commission under which an officer acts in good faith held a good defense to an indictment for piracy. U. S. v. Bass (C. C. 1819) Fed. Cas. No. 14,537; U. S. v. Smith (D. C. 1820) Fed. Cas. No. 16,339a.

A commission issued by Aury as "brigadier of the Mexican republic," a republic whose existence was then unknown, or as generalissimo of
ince in the possession of Sp
not authorize armed vessels t
captures at sea, and where seizu
made, not jure belli, but animo
the commission did not exemp
the charge of piracy. U. S. v. B
(1820) 5 Wheat. 144, 151, 5 L.

A commission from a gove
whose independence has not be
ognized may be given as e
merely as a paper found on boa
not to justify acts done under
S. v. Hutchings (C. C. 1817) Fe
No. 15,429.

As respects its own governm
nation becomes independent fr
declaration thereof, but, as
other nations, only when recogn
them. Id.

A commission by a nation at
a private armed vessel will affo
tection even in the judicial tribu
the enemy, against a charge of
or piracy. U. S. v. Baker (C. C
Fed. Cas. No. 14,501.

Cited without definite appl
U. S. v. Palmer (1818) 3 Whe
629, 4 L. Ed. 471; U. S. v. Wil
(1820) 5 Wheat. 76, 93, 5 L.
Mauran v. Ins. Cos. (1867) 6 W
3, 6, 18 L. Ed. 836.

§ 10478. (Crim. Code, § 305.) Piracy by aliens; punishmen

Whoever, being a citizen or subject of any foreign state, is
and taken on the sea making war upon the United States, or
ing against the vessels and property thereof, or of the citiz
the same, contrary to the provisions of any treaty existing be
the United States and the state of which the offender is a citi
subject, when by such treaty such acts are declared to be pir
guilty of piracy, and shall be imprisoned for life.

R. S. § 5374. Act Jan. 15, 1897, c. 29, § 2, 29 Stat. 487. Act M
1909, c. 321, § 305, 35 Stat. 1147.

Notes of Decisions

See notes under § 10463, ante.

§ 10479. (Crim. Code, § 306.) Running away with or yieldi vessel or cargo; punishment for.

Whoever, being a captain or other officer or mariner of a
upon the high seas or on any other waters within the adm

d maritime jurisdiction of the United States, piratically or feloni-
sly runs away with such vessel, or with any goods or merchandise
ereof, to the value of fifty dollars, or who yields up such vessel
luntarily to any pirate, shall be fined not more than ten thou-
nd dollars, or imprisoned not more than ten years, or both.

R. S. § 5383. Act March 4, 1909, c. 321, § 306, 35 Stat. 1148.

Notes of Decisions

See notes under § 10463, ante.

Running away with vessel.—To con-
itute the offense of piracy (Act April
, 1790, c. 9) by piratically and felo-
ously running away with the vessel,
rsonal force and violence is not nec-
sary. There must be a fraudulent
d unlawful conversion. U. S. v. Tully
. C. 1812) Fed. Cas. No. 16,545.

To constitute the offense of running
ay with a vessel, it must appear that
e command was taken from the mas-
r, and that the act was done feloni-
sly, and with intent to convert the
ssel and cargo or either of them to
e use of the persons concerned in the
t. U. S. v. Haskell (C. C. 1823) Fed.
s. No. 15,321.

It is piratical, both under the com-
on law and the statute, for mariners
feloniously rise against the master
d run away with the ship. The Am-
ose Light (D. C. 1885) 25 Fed. 408,
4.

**Failure to remit proceeds after sale
vessel and cargo.**—It was not piracy,
der Act April 30, 1790, c. 9, for the
captain of a vessel, to whom the ves-
sel and cargo had been consigned, with
instructions to proceed to the Pacific
and there sell the vessel and cargo and
remit the proceeds to the owners, to
fail to remit such proceeds after hav-
ing made sale according to instructions.
(1825) 2 Op. Atty. Gen. 19.

Nor has the government the right to
order a captain thus in default to be
seized and brought to the United States
to be tried for his conduct. Such a
seizure would be false imprisonment,
for which the captain might recover
damages. Id.

**Confederating with pirates and yield-
ing vessel thereto.**—A confederacy by
American citizens on land or on board
an American vessel, with pirates, under
the laws of nations, or the yielding up
of a vessel by a citizen to such pirates,
is punishable, under Act April 30, 1790,
§ 8. U. S. v. Howard (C. C. 1818) Fed.
Cas. No. 15,404.

So, also, is an endeavor by a mariner
to corrupt the master of the vessel and
induce him to go over to such pirates.
Id.

10480. (Crim. Code, § 307.) Confederating, etc., with pirates; confining master; punishment for.

Whoever attempts or endeavors to corrupt any commander, mas-
r, officer, or mariner to yield up or to run away with any vessel,
with any goods, wares, or merchandise, or to turn pirate or to
over to or confederate with pirates, or in any wise to trade with
y pirate, knowing him to be such, or furnishes such pirate with any
mmunition, stores, or provisions of any kind, or fits out any vessel
owingly and, with a design to trade with, supply, or correspond
th any pirate or robber upon the seas; or whoever consults, com-
nes, confederates, or corresponds with any pirate or robber upon the
as, knowing him to be guilty of any piracy or robbery; or who-
er, being a seaman, confines the master of any vessel, shall be fined
t more than one thousand dollars and imprisoned not more than
ree years.

R. S. § 5384. Act March 4, 1909, c. 321, § 307, 35 Stat. 1148.

Notes of Decisions

See § 10465, ante, and note thereun-
r.

Confinement of master.—See notes
der the preceding section.

**Statute as implying contract and as-
sociation with pirates.**—The language of
Act April 30, 1790, c. 9, § 12, implies
contract and association with the pi-
rates as well in relation to the past as
to the future. U. S. v. Howard (C. C.
1818) Fed. Cas. No. 15,404.

10481. (Crim. Code, § 308.) Selling arms, intoxicants, etc., in Pacific islands; punishment for; medicinal use of spirits, etc.

Whoever, being subject to the authority of the United States,
all give, sell, or otherwise supply any arms, ammunition, ex-
osive substance, intoxicating liquor, or opium to any aboriginal na-

tive of any of the Pacific islands lying within the twentieth pa of north latitude and the fortieth parallel of south latitude, an one hundred and twentieth meridian of longitude west and one dred and twentieth meridian of longitude east of Greenwich, not in the possession or under the protection of any civilized power, be fined not more than fifty dollars, or imprisoned not more than months, or both. In addition to such punishment, all articles similar nature to those in respect to which an offense has been mitted, found in the possession of the offender, may be declare feited. If it shall appear to the court that such opium, wine, or have been given bona fide for medical purposes, it shall be lawf the court to dismiss the charge.

Act Feb. 14, 1902, c. 18, §§ 1, 2, 32 Stat. 33. Act March 4, 1909, c. 321, 35 Stat. 1148.

§ 10482. (Crim. Code, § 309.) Offenses deemed on high seas.

All offenses against the provisions of the section last prec committed on any of said islands or on the waters, rocks, or adjacent thereto, shall be deemed committed on the high se board a merchant ship or vessel belonging to the United S and the courts of the United States shall have jurisdiction accord

Act Feb. 14, 1902, c. 18, § 3, 32 Stat. 33. Act March 4, 1909, c. 321, 35 Stat. 1148.

§ 10483. (Crim. Code, § 310.) "Vessels of the United State fined.

The words "vessel of the United States," wherever they in this chapter, shall be construed to mean a vessel belongi whole or in part to the United States, or any citizen thereof, c corporation created by or under the laws of the United Stat of any State, Territory, or District thereof.

Act March 4, 1909, c. 321, § 310, 35 Stat. 1148.

Notes of Decisions

American vessel.—To render a vessel American, so as to punish offenses on board of her, it is enough to show that she sailed from and to an American port, and was apparently own controlled by citizens of the States. U. S. v. Peterson (C. C. Fed. Cas. No. 16,037.

CHAPTER THIRTEEN

Certain Offenses in the Territories

Sec.
10484. Places applicable.
10485. Circulating obscene literature, etc.; punishment for.
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10487. Unlawful cohabitation; punishment for.
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riage; punishment for
tions; application.
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ment for; accomplices;
10496. Discrimination by prop
etc., of theaters, etc.,
persons wearing unifo
Army, Navy, etc.

§ 10484. (Crim. Code, § 311.) Places applicable.

Except as otherwise expressly provided, the offenses defin this chapter shall be punished as hereinafter provided, when

ted within any Territory or District, or within or upon any ce within the exclusive jurisdiction of the United States.

Act March 4, 1909, c. 321, § 311, 35 Stat. 1148.

Notes of Decisions

nstitutionality.—The government of United States retains constitution- ower to punish, through its courts, ime committed against it in one of the territories, although such territory is admitted as a state pending the prosecution, and before conviction. U. S. v. Baum (C. C. 1896) 74 Fed. 43.

0485. (Crim. Code, § 312.) Circulating obscene literature, etc.; punishment for.

Vhoever shall sell, lend, give away, or in any manner exhibit, offer to sell, lend, give away, or in any manner exhibit, or shall erwise publish or offer to publish in any manner, or shall have his possession for any such purpose, any obscene book, pamet, paper, writing, advertisement, circular, print, picture, draw- or other representation, figure, or image on or of paper or other erial, or any cast, instrument, or other article of an immoral nature, any drug or medicine, or any article whatever, for the prevention conception, or for causing unlawful abortion, or shall advertise the e for sale, or shall write or print, or cause to be written or print- any card, circular, book, pamphlet, advertisement, or notice of any d, stating when, where, how, or of whom, or by what means, any of articles above mentioned can be purchased or obtained, or shall nufacture, draw, or print, or in anywise make any of such articles, ll be fined not more than two thousand dollars, or imprisoned not re than five years, or both.

R. S. § 5389. Act March 4, 1909, c. 321, § 312, 35 Stat. 1149.

ted without definite application, 484, 488; U. S. v. Wilson (D. C. 1893) 3. v. Williams (C. C. 1880) 3 Fed. 58 Fed. 768, 769.

0486. (Crim. Code, § 313.) Polygamy defined; punishment for; exceptions.

Every person who has a husband or wife living, who marries other, whether married or single, and any man who simultaneely, or on the same day, marries more than one woman, is guilty polygamy, and shall be fined not more than five hundred dollars imprisoned not more than five years. But this section shall not end to any person by reason of any former marriage whose husd or wife by such marriage shall have been absent for five succsive years, and is not known to such person to be living, and is eved by such person to be dead, nor to any person by reason of any mer marriage which shall have been dissolved by a valid decree of ompetent court, nor to any person by reason of any former marriage ch shall have been pronounced void by a valid decree of a coment court, on the ground of nullity of the marriage contract.

R. S. § 5352, as amended, Act March 22, 1882, c. 47, § 1, 22 Stat. 30. Act March 4, 1909, c. 321, § 313, 35 Stat. 1149.

Notes of Decisions

ee § 3450, ante, and notes thereun-

onstitutionality.—R. S. § 5352 (emied herein), held constitutional. nolds v. U. S. (1878) 98 U. S. 145, 25 L. Ed. 244.

urpose of statute in general.—The ect of Act March 22, 1882, is not punish meretricious, unmarital inourse with more than one woman, does it pry into the intimacies of marriage relation. It seeks, not to punish bigamy and polygamy when direct proof of the existence of those relations can be made, but to prevent a man from flaunting in the face of the world the ostentation and opportunities of a bigamous household, with all the outward appearances of the continuance of the same relations as existed before the act was passed, and without reference to what may occur in the privacy of those relations. Cannon v. U. S. (1885) 6 Sup. Ct. 278, 286, 116 U. S. 55, 29 L. Ed. 561.

Statute as excluding or abrogating territorial legislation.—A Utah law per-

mitting illegitimate children to inherit from the father held not abrogated by the act of 1862. Cope v. Cope (1891) 11 Sup. Ct. 222, 223, 137 U. S. 682, 34 L. Ed. 832.

Act March 22, 1882, and Act March 3, 1887, prescribing punishment for adultery in the territories, as a crime against the United States, were not exclusive of territorial legislation on the same subject, and did not prevent a territorial legislature from enacting a statute making the same act an offense against the territorial government. State v. Norman (1898) 52 P. 986, 16 Utah, 457.

Nature and elements of offense in general.—A man who lives in the same house with two women, eats at their respective tables one-third of his time, and holds them out to the world, by his language or conduct, as his wives, is guilty of the offense of polygamy, under Act March 22, 1882, c. 47, 22 Stat. 31, although he may not occupy the same bed or sleep in the same room with either of them, or actually have sexual intercourse with either of them. Cannon v. U. S. (1885) 116 U. S. 55, 6 Sup. Ct. 278, 29 L. Ed. 561, affirming (1885) 4 Utah, 153, 7 Pac. 389; U. S. v. Musser (1885) 4 Utah, 153, 7 Pac. 389.

Marriage.—The federal statute being silent as to what shall constitute a marriage, as well as the method of proving marriage, the statute of the territory may be properly resorted to and applied in a prosecution under the act of congress. U. S. v. Tenney (Ariz. 1885) 8 Pac. 295.

A valid marriage existing, a valid marriage with another wife cannot be contracted; but a polygamous marriage may be, and such are the marriages that the Edmunds law aims to suppress. Knowledge by second wife of former existing marriage, though vitiating the second marriage, does not make it any less a polygamous marriage. U. S. v. Tenney (Ariz. 1886) 11 Pac. 472; Same v. Christofferson, Id. 480.

No particular form or ceremony being essential, and no witnesses being required in Utah territory, a marriage is complete when there is a full and mutual consent by the parties, and may be proved, on an indictment for polygamy, by the declarations and admissions of defendant. U. S. v. Simpson (1885) 4 Utah, 227, 7 Pac. 257.

Indictment, proof, and variance.—There is no variance between an indictment for bigamy, alleging a second marriage with Caroline Owens, and evidence that such marriage was with Caroline Owen Maile, afterwards and generally known as Caroline Owen. U. S. v. Miles (1880) 103 U. S. 304, 26 L. Ed. 481; U. S. v. Miles (1880) 2 Utah, 19.

An indictment for bigamy in the district court in the territory of found by a grand jury consisting fifteen persons, is valid. Reyn U. S. (1878) 98 U. S. 145, 154, Ed. 244.

An indictment under the Ed act, that charges the offense of amy substantially in the langu the act, is not bad because it in the same count cohabitation lowing the polygamous marriag S. v. Tenney (Ariz. 1885) 8 Pac.

In an indictment alleging a amous marriage it is not fatal lege that cohabitation followe marriage. At best, it is but s age. Such allegations are not of two offenses. U. S. v. Tenne 1886) 11 Pac. 472; Same v. C ferson, Id. 480.

Evidence.—Evidence is ad that the alleged second wife was Endowment House, in Salt Lak where secret and clandestine ma are solemnized, on a certain d that she then wore such a dres worn usually by those who go t contract such marriages. Mile S. (1880) 103 U. S. 304, 26 L. E U. S. v. Miles (1880) 2 Utah, 19.

On indictment for bigamy, t marriage may be proved by the sions of the prisoner, and it is jury to say whether what he s an admission that he was actu legally married according to t of the country where the marri solemnized. Id.

It is not error, on an indictm der the Edmunds act, to admit dence of the marriage the re of the parties in the community the jury are instructed that t dence of general reputation, s alone, would amount to nothing, only a circumstance to be co in connection with other proof a cumstances, there being no proof of the marriage. U. S. ney (Ariz. 1885) 8 Pac. 295.

Proof that defendant, with th en alleged, lived together in U claiming them as his wives, is tent as tending to show the r of the parties if sustained by p marriage or cohabitation in thi tory. U. S. v. Tenney (Ariz. 1 Pac. 472; Same v. Christoffers 480.

It is competent to prove the mous marriage by admissions of fendant of the fact. Id.

As tending to prove a poly marriage, it is competent to pro defendant openly and notoriousl with the women alleged, claimin as his wives. Id.

It is not proper for the court low evidence of the general re the guilt of defendant in the ne hood in which he lives in order tablish that guilt. The facts

ves must be shown, and it is for the y to draw inferences. U. S. v. Lang- d (1889) 2 Idaho, 519, 21 Pac. 409.

Direct proof of a criminal intent is t necessary where defendant, know- that he was already married, de- erately contracted a second mar- ge, although impelled thereto by his igious belief. A man is presumed to end the necessary and legitimate nsequences of what he knowingly es. U. S. v. Reynolds (1875) 1 ah, 226, affirmed in (1878) 98 U. S. 5, 25 L. Ed. 244.

On an indictment for polygamy, the t of the first marriage may be prov- by the declarations and admissions the accused, and such declarations e proper to be considered by the y as tending to prove an actual mar- ge. U. S. v. Simpson (1885) 4 Utah, 7, 7 Pac. 257.

A lawful marriage, followed by the th of children, raises a prima facie esumption of matrimonial cohabita- n. U. S. v. Clark (1887) 5 Utah, 6, 14 Pac. 288.

It will be presumed that a man does e and cohabit with his lawful wife, t such presumption may be rebutted evidence. U. S. v. Smith (1887) 5 ah, 232, 14 Pac. 291; Id., 5 Utah, 3, 15 Pac. 1.

This presumption is stronger in case a lawful than an unlawful marriage.

Where cohabitation with both wives proved to have continued for years, d cohabitation is proved to exist at e time of the indictment for polyg- ny, evidence that defendant had been equently seen about the house of the st wife, with the confession that he ould not obey the laws against polyg- ny, and believed them unconstitu- onal, and a further statement that he ould live with his wives, and he dn't care who knew it," is sufficient sustain a verdict of guilty. Id.

Where the evidence shows that de- ndant had been married to two wives r 25 years, and a third woman had en recognized as his wife for 20 ars, and each had borne children by fendant, they and their children bear- g his name, by his consent; that two the families lived on a farm, and e other, that by his first wife, in wn; that the former was visited and pported regularly by defendant, he ng at the farm house from 50 to 100 ghts during the year, and this contin- g up to the time of trial—a verdict guilty under an indictment charging lawful cohabitation is supported by e evidence. U. S. v. Peay (1887) 5 ah, 263, 14 Pac. 342.

There was evidence of cohabitation, missions of defendant, and recogni- n by him of the marriage relation, d the alleged plural wife's testimony ght have been construed to show an reement to be husband and wife. Held, that a conviction would not be disturbed. U. S. v. Harris (1888) 5 Utah, 621, 19 Pac. 197.

The general reputation in the community of the existence of the marriage relation is competent as tending to prove such relation. U. S. v. Higgerson (C. C. 1891) 46 Fed. 750.

The evidence showed that there was no other family in the neighborhood by defendant's name; that there were two women there, known by his name, and as his wives; that he was found in a small house on his farm, with two women and four or five small children, each woman having a child eight or nine months old; that he afterwards had on his farm a house for each woman, not over a quarter of a mile apart; that the women had been seen there for over a year past, and when arrested he told the officer that one of the women was his second wife. Held, that the evidence sustained a conviction under the Edmunds-Tucker anti-polygamy act. Id.

See, also, note, ante, as to "marriage."

Instructions and questions for jury.—On the trial of defendant for polygamy, the court, among other things, told the jury that they "should consider what are to be the consequences to the innocent victims of the delusion." Held not erroneous. U. S. v. Reynolds (1876) 1 Utah, 319, affirmed in (1878) 98 U. S. 145, 25 L. Ed. 244.

In a trial for bigamy, the charge properly left it to the jury to presume that a man who habitually visits his lawful wife does so in the character of husband. U. S. v. Clark (1887) 5 Utah, 226, 14 Pac. 288.

A charge to the effect that the law aims at the unlawful example or the appearance, as well as the actual continuance, of the polygamous relation, without reference to what actually occurs with the plural wives, is not error. Actual sexual connection is not essential to guilt. The law punishes the semblance of polygamous living. U. S. v. Smith (1887) 5 Utah, 232, 14 Pac. 291; Id., 5 Utah, 273, 15 Pac. 1.

The court instructed that the jury might consider the fact of cohabitation as bearing on the question of marriage, and give it such weight as they considered it entitled to. Held not error, though there was evidence of occasional acts of intercourse before the alleged marriage, especially as it also tended to show open recognition by the parties of the marriage relation, and continuous cohabitation as husband and wife only thereafter. U. S. v. Harris (1888) 5 Utah, 621, 19 Pac. 197.

See, also, note, ante, as to "Evidence."

Writ of error.—In view of R. S. § 1011, ante, § 1672, it was held that the supreme court could not re-examine a

question of fact on a writ of error in a bigamy case under R. S. § 5352 (embodied herein). Miles v. U. S. (1880) 103 U. S. 304, 312, 313, 26 L. Ed. 481.

Cited without definite application, Ex parte Kan-gi-shun-ca (1883) 3 Sup. Ct. 396, 403, 109 U. S. 556, 27 L. Ed. 1030; Snow v. U. S. (1886) 6 Sup. Ct. 1059–1061, 118 U. S. 346, 30 L. Ed. 207; Late Corporation of the of Jesus Christ v. U. S. (1890) Ct. 792, 136 U. S. 1, 34 L. E Ex parte Mayfield (1891) 11 S 939, 141 U. S. 107, 35 L. E Logan v. U. S. (1892) 12 Sup. 629, 144 U. S. 263, 36 L. E France v. Connor (1896) 16 S 497, 498, 161 U. S. 65, 40 L. Ed.

§ 10487. (Crim. Code, § 314.) Unlawful cohabitation; punish for.

If any male person cohabits with more than one woman, he be fined not more than three hundred dollars, or imprisone more than six months, or both.

Act March 22, 1882, c. 47, § 3, 22 Stat. 31. Act March 4, 1909, c. 314, 35 Stat. 1149.

Notes of Decisions

See notes under the preceding section.

Statute as excluding territorial legislation.—Acts March 22, 1882, and March 3, 1887, prescribing punishment for adultery in the territories, as a crime against the United States, were not exclusive of territorial legislation on the same subject, and did not prevent a territorial legislature from enacting a statute making the same act an offense against the territorial government. State v. Norman (1898) 52 P. 986, 16 Utah, 457.

Nature and elements of offense in general.—A man cohabits with more than one woman, in the sense of Act March 22, 1882, §§ 3, 5, 8, when, holding out to the world two women as his wives by his language or conduct, or both, he lives in the house with them, and eats at the table of each a portion of his time, although he may not occupy the same bed or sleep in the same room with either of them, or actually have sexual intercourse with either. Cannon v. U. S. (1885) 6 Sup. Ct. 278, 288, 116 U. S. 55, 29 L. Ed. 561.

The offense of cohabiting with more than one woman, as defined in Act March 22, 1882, c. 47, § 3, is committed when there is a living or dwelling together as husband and wife, and is inherently a continuous offense, having duration, and not an offense consisting of an isolated act. Ex parte Snow (1887) 7 Sup. Ct. 556, 120 U. S. 274, 30 L. Ed. 658.

Act March 22, 1882, § 3, providing that "if any male person in a territory * * * shall hereafter cohabit with more than one woman, he shall be deemed guilty of a misdemeanor," is intended to prohibit a man from living with more than one woman in the relation of husband and wife; and on an indictment therefor proof of sexual intercourse is not necessary. U. S. v. Musser (1885) 4 Utah, 153, 7 Pac. 389.

Defendant had been married to seven women, all of whom lived in houses provided by defendant, and were supported by him. Defendant lived in the house with one of the women, visited the others, and acknov them as his wives. Held, that ant was "cohabiting with more th woman," within the inhibition statute. U. S. v. Snow (1886) 4 280, 9 Pac. 501.

Where a man, while recognizin porting, and holding out to the his lawful wife as a wife, live holds out, and supports and rec as a wife another woman, he i under the statute. U. S. v. (1886) 4 Utah, 295, 9 Pac. 68 (1886) 4 Utah, 313, 9 Pac. 697.

Under the Edmunds law agai lygamy, the gist of the offense living ostensibly with more th wife, but the fact of such cohab whether ostensibly or in secret. v. Peay (1887) 5 Utah, 263, 1 342.

A polygamist whose wives, b lawful and the plural, are living the jurisdiction of the court, bot ing his name, and known as his is guilty of violating the Ed Tucker law, against cohabitin more than one woman, though exclusively with the plural wi deserts the lawful one. U. S. v (1889) 6 Utah, 120, 21 Pac. 463

Continuous offense.—The offe cohabiting with more than one is committed when there is a li dwelling together as husband a and it is a continuous offens where three indictments were against accused for unlawful co tion with more than one woman indictments were alike except th covered a different period of time was but one entire offense alle tween the earliest day laid in dictment and the latest day any, and the court could only i punishment under one convictio the want of jurisdiction to infli ishment in more than one con appearing on the face of the jud the objection that he was punis der more than one may be ta habeas corpus, whenever the s on more than one is sought to

ed. Ex parte Snow (1887) 7 Sup. 556, 120 U. S. 274, 30 L. Ed. 658.

lthough unlawful cohabitation is a tinuous offense, and separate indict- ts will not lie for successive periods time covered by such cohabitation r to the finding of the indictments, if, after one indictment, the co- itation is continued, another indict- t will lie for such subsequent co- itation. U. S. v. Eldredge (1887) 5 h, 161, 13 Pac. 673; Id. (1887) 5 h, 189, 14 Pac. 42.

ffect of admission of territory as a e.—Even if the Edmunds-Tucker which defines and prescribes a pun- nent for adultery committed in the itories (24 Stat. 635, § 3), was im- dly repealed as to Utah by its ad- sion as a state, the power to punish ending cases was saved by the ex- s language of section 17 of that and by the general provisions of 3. § 13, ante, § 14. U. S. v. Baum C. 1896) 74 Fed. 43.

dultery, being an offense arising out he marriage relation, is cognizable in the state courts, except in the itories, forts, arsenals, custom ses, or other places where the Unit- States has exclusive jurisdiction, in h places congress may pass laws ing the offense and prescribing the shment. Southern Surety Co. v. e (Okl. 1912) 127 Pac. 409.

ior to the admission of Oklahoma state, the crime of adultery in an Territory was an offense against federal statute, but, by the enabling all persons charged therewith at time of statehood were thereafter erly prosecuted in the district ts of the state, unless the offense committed in some part over which federal government retained exclu- jurisdiction. Id.

nviction under statute as bar to ecution under section 10489.—A iction under this section bars a ecution under Act March 3, 1887, (post, § 10489), when the offense fact a part of a continuous co- tation with the woman named in the indictment, though the time of its nission is laid after the period dur- which the cohabitation was alleged ave continued. Ex parte Nielsen 9) 9 Sup. Ct. 672, 673, 131 U. S. 33 L. Ed. 118.

dictment.—An indictment under Act h 22, 1882, § 3, providing that, "if male person in a territory * * * hereafter cohabit with more than woman, he shall be deemed guilty of sdemeanor," which charges that de- nt "did unlawfully cohabit with than one woman," need not allege defendant was a "male person." on v. U. S. (1885) 116 U. S. 55, p. Ct. 278, 29 L. Ed. 561, affirm- (1885) 4 Utah, 122, 7 Pac. 369; . v. Musser (1885) 4 Utah, 153, 7 389; Same v. Eldredge (1887) 5 Utah, 161, 13 Pac. 673; Id. (1887) 5 Utah, 189, 14 Pac. 42.

An indictment which charges that "Angus M. Cannon * * * did unlawfully cohabit with more than one woman," in violation of Act March 22, 1882, § 3, sufficiently shows that defendant was a male person. Cannon v. U. S. (1885) 116 U. S. 55, 6 Sup. Ct. 278, 29 L. Ed. 561, affirming (1885) 4 Utah, 122, 7 Pac. 369; U. S. v. Musser (1885) 4 Utah, 153, 7 Pac. 389.

Though Act March 22, 1882, c. 47, § 3, 22 Stat. 31, makes the offense of polygamy punishable when committed by a male person, a defendant who pleads to an indictment containing no allegation that the defendant was a male person, instead of demurring thereto, will be held under Crim. Proc. Act Utah (Laws 1878, p. 91) § 200, requiring objections appearing on the face of the indictment to be taken by demurrer, to have understood that, as the offense could only be committed by a male person, the charge was against a male person, and not to have been prejudiced in respect to any substantial right. Cannon v. U. S. (1885) 6 Sup. Ct. 278, 289, 116 U. S. 55, 29 L. Ed. 561.

Under an indictment containing two counts charging the defendant with having committed separate offenses in cohabiting with the same women on two different occasions, the prosecution need not select one of the counts, and proceed to trial on it, but may proceed and convict on both before the same jury. U. S. v. Groesbeck (1886) 4 Utah, 487, 11 Pac. 542; Same v. Bromley (1886) 4 Utah, 498, 11 Pac. 619.

Evidence.—On a trial for unlawful cohabitation with two women as wives, in violation of 22 Stat. 31, § 33, proof of the existence of the marriage relation is pertinent; it being a collateral fact which aids in explaining the association of a man and woman, and tends to show whether such association is justified and innocent, or that of unlawful cohabitation. U. S. v. Higgerson (C. C. 1891) 46 Fed. 750.

On such a trial, the general reputation in the community of the existence of the marriage relation is competent, as tending to prove such relation, but is not alone sufficient to establish it. Id.

On an indictment for unlawful cohabitation, it may be shown that defendant cohabited with the women named in the indictment before the law took effect, as tending to explain his conduct with them after that time. U. S. v. Musser (1885) 4 Utah, 153, 7 Pac. 389; Same v. Cannon (1885) 4 Utah, 122, 7 Pac. 369.

In Utah, upon an indictment charging unlawful cohabitation with two women within two years next preceding January 1, 1887, evidence having shown that defendant had married the two women named in the indictment; that the first was a lawful wife, and had never been

divorced; that defendant, at the time in question, was living with the polygamous wife,—it was material for the prosecution to show that defendant had said, in regard to polygamy or unlawful cohabitation, that "we" or "they" (uncertain which) "would never give it up; that the law against it was unconstitutional; and that he had just as good a right to decide on it as the supreme court." U. S. v. Smith (1887) 5 Utah, 232, 14 Pac. 291; Id. (1887) 5 Utah, 273, 15 Pac. 1.

The conduct of defendant towards the women he married previous to the time stated in the indictment may be considered, in order to determine the relation defendant bore to them during that time. Id.

Evidence of a witness that he saw the defendant going towards the abode of his polygamous wives in the evening, and returning in the morning, from 50 to 100 times a year, though the place where he was seen was one and a half miles from the residence, the intervening country being open prairie; that he saw defendant drive his cattle to such premises frequently,—is competent on the question of cohabitation, the remoteness going simply to the weight of the evidence. U. S. v. Peay (1887) 5 Utah, 263, 14 Pac. 342.

Evidence of the course of life, the polygamous marriage, and the continuance of the marital relations between defendant and his wives, previous to the time stated in the indictment, are admissible and proper evidence to throw light on the acts charged within the time. Id.

The fact that a woman, not the lawful wife of defendant, bore his name, is properly considered as a circumstance tending to prove the unlawful cohabitation. Id.

Cohabitation with a woman to whom defendant has been legally m proved by showing that she liv vicinity and bears his name; contributes to her support a her. U. S. v. Harris (1888) 436, 17 Pac. 75.

Defendant's deliberate admiss he committed the offense, mad court, and proved at the trial witnesses, are sufficient to s verdict of guilty. U. S. v (1890) 6 Utah, 381, 24 Pac. 30.

Instructions.—A charge to that: "When you come to the cohabitation with the illegal wi quires actual proof of the fa presumption would be agains commence with. The presump the law are in favor of innoce until some evidence has bee tending to show these acts of c tion on his part, the presumptio be he didn't do that; but whe shown these acts of cohabitati taken place with the plural w shown beyond a reasonable dou it is cohabitation within the me the law,"—is not error. U. S. (1887) 5 Utah, 263, 14 Pac. 34

Punishment.—Where three ments are found against an acc unlawful cohabitation with mo one woman, under Act March 2 c. 47, § 3, alike in all respects that each covers a different p time, and the defendant is foun on each indictment, the court jurisdiction to inflict punishmen spect of more than one of the tions, as the offense is to be r as single and entire between the and latest days laid in any of dictments. Ex parte Snow (Sup. Ct. 556, 120 U. S. 274, 30 658.

§ 10488. (Crim. Code, § 315.) Joinder of counts.

Counts for any or all of the offenses named in the two se last preceding may be joined in the same information or indic

Act March 22, 1882, c. 47, § 4, 22 Stat. 31. Act March 4, 1909, c. 321 35 Stat. 1149.

§ 10489. (Crim. Code, § 316.) Adultery; punishment for.

Whoever shall commit adultery shall be imprisoned not than three years; and when the act is committed between a ried woman and a man who is unmarried, both parties to act shall be deemed guilty of adultery; and when such act is mitted between a married man and a woman who is unmarrie man shall be deemed guilty of adultery.

Act March 3, 1887, c. 397, § 3, 24 Stat. 635. Act March 4, 1909, c. 316, 35 Stat. 1149.

Notes of Decisions

See notes under § 10445, ante.

Infamous crime.—Act March 3, 1891, § 5, provides that appeals or writs of error may be taken from the district courts, or the existing circuit courts, direct to the supreme court, "in cases of conviction of a capital, or otherwise infamous, crime." Section 6 appellate jurisdiction upon the States circuit court of appeals cases other than those provided the preceding section of this act, otherwise provided for by law." in view of this section, that adul

"infamous crime," within section 5, not being "otherwise provided for law," an appeal from a conviction reof is not within the jurisdiction of circuit court of appeals. U. S. v. on (1891) 47 Fed. 129, 2 C. C. A. applied Mackin v. U. S. (1886) 117 S. 348, 6 Sup. Ct. 777, 29 L. Ed. 909.

ommission of offense on Indian res-ation.—Adultery is a crime, under laws of the United States, when mitted on an Indian reservation, and United States court exercising ju-iction over such reservation has ju-iction to try and determine such case. Goodson v. U. S. (1898) 54 Pac. 423, 7 Okl. 117.

Conviction under section 10487 as bar to prosecution.—A conviction under Act March 22, 1882, § 3 (ante, § 10487), bars a prosecution under this section, when the offense is in fact a part of a continuous cohabitation with the woman named in the first indictment, though the time of its commission is laid after the period during which the cohabitation was alleged to have continued. Ex parte Nielsen (1889) 9 Sup. Ct. 672, 673, 131 U. S. 176, 33 L. Ed. 118.

0490. (Crim. Code, § 317.) Incest defined; punishment for.

Whoever, being related to another person within and not includ- the fourth degree of consanguinity computed according to the es of the civil law, shall marry or cohabit with, or have sexual ercourse with such other so related person, knowing her or him be within said degree of relationship, shall be deemed guilty of est, and shall be imprisoned not more than fifteen years.

Act March 3, 1887, c. 397, § 4, 24 Stat. 635. Act March 4, 1909, c. 321, § 317, 35 Stat. 1149.

Notes of Decisions

tatute as repealing territorial stat-—Act March 3, 1887, did not, by lication, repeal the territorial stat- of Washington relating to incest. re Nelson (D. C. 1895) 69 Fed. 712.

ffenses by Indians.—The statute defining and prescribing the punishment for the crime of incest held not applicable, where the alleged act was committed between Indians on a reservation. Ex parte Hart (D. C. 1907) 157 Fed. 130, 134.

0491. (Crim. Code, § 318.) Fornication; punishment for.

f any unmarried man or woman commits fornication, each shall fined not more than one hundred dollars, or imprisoned not more n six months.

Act March 3, 1887, c. 397, § 5, 24 Stat. 636. Act March 4, 1909, c. 321, § 318, 35 Stat. 1149.

Notes of Decisions

ee notes under § 10487, ante.

aw as in force in Alaska.—The de-dant was indicted in Alaska terri- for the crime of fornication, under section. By Act March 3, 1899, 29, 30 Stat. 1253, Congress enacted pecial criminal code for Alaska ter-ry, and in section 121 thereof de-nced the crime of cohabiting with ther in a state of fornication in Alaska, and provided a special and different penalty than that fixed in the general statute cited. Upon demurrer to the indictment, held, the law was in force in Alaska, and, since the indictment was not sufficient under section 121 of the Alaska Criminal Code, the demurrer was sustained. U. S. v. Worcester (1910) 4 Alaska, 239.

0492. (Crim. Code, § 319.) Recording, etc., certificates of mar-riage; evidence of marriage; punishment for violations; ap-plication.

Every ceremony of marriage, or in the nature of a marriage emony of any kind, whether either or both or more of the par- to such ceremony be lawfully competent to be the subjects of h marriage or ceremony or not, shall be certified by a certificate ing the fact and nature of such ceremony, the full name of each the parties concerned, and the full name of every officer, priest, and son, by whatever style or designation called or known, in any way ing part in the performance of such ceremony, which certificate ll be drawn up and signed by the parties to such ceremony and by ry officer, priest, and person taking part in the performance of h ceremony, and shall be by the officer, priest, or other person emnizing such marriage or ceremony filed in the office of the pro-

bate court, or, if there be none, in the office of the court havir bate powers in the county or district in which such ceremon take place, for record, and shall be immediately recorded, anc all times subject to inspection as other public records. Such cate, or the record thereof, or a duly certified copy of such shall be prima facie evidence of the facts required by this sec be stated therein in any proceeding, civil or criminal, in whi matter shall be drawn in question. But nothing in this sectio be held to prevent the proof of marriages, whether lawful or ful, by any evidence otherwise legally admissible for that p Whoever shall willfully violate any provision of this section s fined not more than one thousand dollars, or imprisoned not than two years, or both. The provisions of this section shall only within the Territories of the United States.

Act March 3, 1887, c. 397, §§ 9, 10, 24 Stat. 636. Act March 4, 1909 § 319, 35 Stat. 1149.

Notes of Decisions

See notes under § 10486, ante.

§ 10493. (Crim. Code, § 320.) Prize fights, bull fights, etc.; p ment for; application.

Whoever shall voluntarily engage in a pugilistic encount tween man and man or a fight between a man and a bull other animal, for money or for other thing of value, or f championship, or upon the result of which any money or ar of value is bet or wagered, or to see which any admission directly or indirectly charged, shall be imprisoned not more th years. The provisions of this section shall apply only within th ritories of the United States and the District of Columbia.

Act Feb. 7, 1896, c. 12, § 1, 29 Stat. 5. Act March 4, 1909, c. 321, § Stat. 1150.

§ 10494. (Crim. Code, § 321.) Definition of "pugilistic encou

By the term "pugilistic encounter," as used in the sectic preceding, is meant any voluntary fight by blows by me fists or otherwise, whether with or without gloves, between more men, for money or for a prize of any character, or for an thing of value, or for any championship, or upon the result of any money or anything of value is bet or wagered, or to see any admission fee is directly or indirectly charged.

Act Feb. 7, 1896, c. 12, § 2, 29 Stat. 5. Act March 4, 1909, c. 321 35 Stat. 1150.

§ 10495. (Crim. Code, § 322.) Train robberies, etc.; punis for; accomplices; proofs.

Whoever shall willfully and maliciously trespass upon or upon any railroad train, railroad car, or railroad locomotive the intent to commit murder, or robbery, shall be fined not than five thousand dollars, or imprisoned not more than twenty or both. Whoever shall willfully and maliciously trespass upon ter upon any railroad train, railroad car, or railroad locomotiv intent to commit any unlawful violence upon or against any pas on said train, or car, or upon or against any engineer, conducto man, brakeman, or any officer or employee connected with sai motive, train, or car, or upon or against any express messenger agent on said train or in any car thereof, or to commit any cr offense against any person or property thereon, shall be fin more than one thousand dollars, or imprisoned not more tha year, or both. Whoever shall counsel, aid, abet, or assist in th petration of any of the offenses set forth in this section shall be d to be a principal therein. Upon the trial of any person charge

offense set forth in this section, it shall not be necessary to set ı or prove the particular person against whom it was intended ɔmmit the offense, or that it was intended to commit such offense ınst any particular person.

Act July 1, 1902, c. 1376, 32 Stat. 727. Act March 4, 1909, c. 321, § 322, 35 tat. 1150.

496. (Act March 1, 1911, c. 187.) Discrimination by propri-etors, etc., of theaters, etc., against persons wearing uniform of Army, Navy, etc.

ereafter no proprietor, manager, or employee of a theater or r public place of entertainment or amusement in the District Columbia, or in any Territory, the District of Alaska or Insular ession of the United States, shall make, or cause to be made, discrimination against any person lawfully wearing the uniform ıe Army, Navy, Revenue-Cutter Service or Marine Corps of United States because of that uniform, and any person mak- or causing to be made, such discrimination shall be guilty of a lemeanor, punishable by a fine not exceeding five hundred dollars.

Act March 1, 1911, c. 187, 36 Stat. 963.

This was an act entitled "An act to protect the dignity and honor of the uni-ɔrm of the United States."

CHAPTER FOURTEEN

General and Special Provisions

Sec.

7. Death penalty by hanging.
8. Corruption of blood and forfeiture of estate excluded.
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497. (Crim. Code, § 323.) Death penalty by hanging.

he manner of inflicting the punishment of death shall be by ging.

R. S. § 5325. Act March 4, 1909, c. 321, § 323, 35 Stat. 1151.

The addition to the judgment of death, on conviction of murder or rape, that ıe body of the offender be delivered to a surgeon for dissection, was provided ɔr by Crim. Code, § 331, post, § 10505.

Provisions prescribing the punishment of rescuing the offender while going to r during execution were made by Crim. Code, § 142, ante, § 10312.

Provisions, authorizing the jury, where the accused is found guilty of mur-er in the first degree or rape, to qualify their verdict were made by Crim. Code, § 331, post, § 10505.

Notes of Decisions

ıctice as to capital sentences.— president will issue death war- ı in order to give effect to the in cases where they are neces- by the practice of the state in h the sentence is passed. (1818) . Atty. Gen. 228.

the early period of the govern- there was irregularity in the ice regarding capital sentences under acts of congress; that is, upon the point whether the convict should be executed on a warrant of the court by which he was tried, or of the president. (1855) 7 Op. Atty. Gen. 561.

But in the administration of President Jackson it was determined and made known, by circular from the office of the Attorney General, in all cases to leave the execution of the sen-

tence of the law to the discretion of the court, in confidence that the courts will give a reasonable time for the interposition of executive clemency in cases where it ought to be interposed. Id.

Cited without definite appl Wilkerson v. Utah (1878) 99 130, 133, 25 L. Ed. 345; Joh U. S. (1912) 32 Sup. Ct. 748, 7 U. S. 405, 56 L. Ed. 1142.

§ 10498. (Crim. Code, § 324.) Corruption of blood and forf of estate excluded.

No conviction or judgment shall work corruption of blood forfeiture of estate.

R. S, § 5326. Act March 4, 1909, c. 321, § 324, 35 Stat. 1151.

§ 10499. (Crim. Code, § 325.) Whipping and pillory abolish

The punishment of whipping and of standing in the pillor not be inflicted.

R. S. § 5327. Act March 4, 1909, c. 321, § 325, 35 Stat. 1151.

Notes of Decisions

What constituted punishment by the pillory.—To chain a prisoner by the neck with a trace and padlock, so that he could neither lie down nor sit down for several hours in the nighttime, was punishment by the pillory, whi abolished by this section. In r song (D. C. 1889) 39 Fed. 599, L. R. A. 628.

§ 10500. (Crim. Code, § 326.) Jurisdiction of State courts.

Nothing in this Title shall be held to take away or impa jurisdiction of the courts of the several States under the thereof.

R. S. § 5328. Act March 4, 1909, c. 321, § 326, 35 Stat. 1151.

Notes of Decisions

1. Concurrent jurisdiction in general.
2. Execution of state writ of habeas corpus within land ceded to United States.
3. Decision of question of jurisdiction on habeas corpus.
4. Treason.
5. Perjury.
6. Passing counterfeit bank notes.
7. Loss of life on vessels by misconduct of officers and others.
8. Extortion.
9. Murder.
10. Robbery.
11. Larceny.
12. Burglary of post office.

See notes under § 10445 ante, and § 10502, post.

1. Concurrent jurisdiction in general.—The provision of the enabling act of Montana, that all Indian lands within the state "shall remain under the absolute jurisdiction and control of the congress of the United States," does not amount to a reservation by the United States of jurisdiction over crimes committed on such lands by or against persons not Indians. Draper v. U. S. (1896) 17 Sup. Ct. 107, 109, 164 U. S. 240, 41 L. Ed. 419.

The rule that in cases of concurrent jurisdiction the court that first gets control of the subject-matter will continue to exercise exclusive jurisdiction until judgment is applicable to criminal cases. U. S. v. Wells (D. C. 1872) Fed. Cas. No. 16,665.

The same offenses may be made punishable under both state and federal laws, and both state and federal courts will have concurrent jurisdicti them. Id.

Where both the acts of congr of the state make a defined act fense, the commission of the be an offense against each, a ishable by each. Sligh v. K (Fla. 1913) 61 So. 185.

Under R. S. § 5328 (embodie in), a state court's jurisdictio offense is not impaired by the f the same transaction may cons distinct offense punishable und eral statutes. Weil v. Black 1915) 86 S. E. 666.

2. Execution of state writ of corpus within land ceded to States.—A writ of habeas co suing under the authority of may be executed within the l the land ceded by the state United States for the purpose and lighthouse. State v. (1841) 12 N. H. 194, 37 Am. D

3. Decision of question of tion on habeas corpus.—Deat caused by the burning of a st the accident resulting from e fires made for the purpose of The offense was committed on ble tide waters wholly within of New York, and the Unite courts and the state courts jurisdiction thereof; the Unite court being prior in point of writ of habeas corpus issued the legality of the arrest u state court. Held, that it wa

; clear that the state court had urisdiction over the subject-mat- the offense, whereof jurisdiction already been exercised by the d States tribunals. At all events uestion was considered too impor- o be decided summarily on habeas s. Held, also, that the conflict of iction could only be avoided by g up a judgment pronounced in f the tribunals, which, when ob- l, would be a bar to the proceed- the other. People v. Westches- ounty Sheriff (N. Y. 1852) 2 Edm. Cas. 324.

Treason.—The jurisdiction of state as to treason is not limited. v. Kennedy (C. C. 1808) Fed. No. 7,686.

Perjury.—Perjury committed dur- judicial investigation, conducted authority of congress, is an of- against the public justice of the d States, and is exclusively cog- e in their courts. Ex parte es (C. C. & D. C. 1875) Fed. Cas. ,862.

Passing counterfeit bank notes.— te court has no jurisdiction over ffense of passing counterfeit na- bank notes with knowledge of counterfeit character. There- where one has been convicted of offense by a state court and sen- d to imprisonment, he will be dis- ed on motion in habeas corpus edings taken in the district court. arte Houghton (D. C. 1881) 7 357; Id. (D. C. 1881) 8 Fed. 897.

Loss of life on vessels by miscon- of officers and others.—A pilot ndicted under a state statute for aughter, in that he willfully and ously propelled a tugboat in his e against a yacht in which the sed was, and did thereby willful- d feloniously cast the deceased he river, whereby he was drown- By R. S. § 5344, ante, § 10455, pilot, "by whose misconduct, ence, or inattention to his du- the life of any person is destroy- guilty of manslaughter. Held as the offense charged in the in- ent consisted in a willful and ous assault, it was different from provided for by the Revised Stat- and the state may punish there- In re Welch (C. C. 1893) 57 Fed.

pilot who by willful negligence his tug into a yacht on the Hud- river, within the boundaries of York county, and causes the death person on the yacht, is guilty of aughter, both under Pen. Code § 193, and R. S. § 5344, ante, § , and the jurisdiction of the state s of such offense as an infraction e state laws is not ousted by R. 711, ante, § 1233, which vests in ourts of the United States exclu- jurisdiction of all crimes cogniza- ble under the authority of the United States; it being provided as in the present section by R. S. § 5328 (part of the title containing R. S. § 5344), that "nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several states under the law thereof." People v. Welch (1893) 74 Hun, 474, 26 N. Y. Supp. 694, affirmed in (1894) 141 N. Y. 266, 36 N. E. 328, 38 Am. St. Rep. 793, 24 L. R. A. 117.

8. Extortion.—The offense of extorting money under a threat to accuse a person of a criminal violation of a federal internal revenue law, though made a crime by R. S. § 5484, ante, § 10315, is excepted from the exclusive jurisdiction conferred on the federal courts by R. S. §§ 629, 711, ante, §§ 991, 1233, of "all crimes and offenses cognizable under the authority of the United States," by a provision of R. S. § 5328 (embodied herein). Sexton v. California (1903) 23 Sup. Ct. 543, 545, 189 U. S. 319, 47 L. Ed. 833, affirming judgment People v. Sexton (1901) 64 Pac. 107, 132 Cal. 37.

So a state court had jurisdiction of a violation of a state statute against extortion committed by threats of prosecution for violation of the internal revenue laws, notwithstanding R. S. § 5484, ante, § 10315, and R. S. §§ 629, 711, ante, §§ 991, 1233. Id.

9. Murder.—Murder committed by derailing a mail train is punishable as such in the state courts, though the act is also an offense against the laws of the United States. Crossley v. State of California (1898) 18 Sup. Ct. 242, 168 U. S. 640, 42 L. Ed. 610.

10. Robbery.—R. S. § 5370, ante, § 10457, making robbery, etc., on a vessel within the tide waters piracy, punishable in the federal courts, is limited by R. S. § 5328 (embodied herein), to acts committed outside the territorial jurisdiction of the state courts; and hence a robbery committed on a ferryboat while passing on the Potomac river, between Washington, D. C., and Alexandria, Va., is not cognizable in the federal court in Virginia. Ex parte Ballinger (D. C. 1882) 88 Fed. 781.

11. Larceny.—The federal courts have no jurisdiction of the crime of larceny under Act 1790, § 16, committed in a place where the jurisdiction of the United States is concurrent with that of a state. U. S. v. Tierney (C. C. 1864) Fed. Cas. No. 16,517.

12. Burglary of post office.—R. S. § 5478, ante, § 10362, provides a punishment for persons breaking into any post office or any building used in whole or in part as a post office with intent to commit therein larceny or other depredation. R. S. § 5328 (embodied herein), provides that nothing in this title ("Crimes") shall impair the jurisdiction of the courts of the several states

under the laws thereof. Comp. Laws Mich. § 11547, provides the punishment for any person who shall break and enter an office, not adjoining to or occupied as a dwelling house, with intent to commit larceny. Held that, where an information charged an offense within section 11547, the state courts had jurisdiction, and the description of the apartment entered as a post office, in conformity with the fact, would not give the federal courts exclusive jurisdiction. People v. Burke (1910) 126 N. 161 Mich. 397.

Cited without definite appl Thomas v. Loney (1890) 10 S 584, 585, 134 U. S. 372, 33 L. (affirming [C. C. 1889] 38 Fed New York v. Eno (1894) 15 S 30, 31, 155 U. S. 89, 39 L. Ed. re Loney (C. C. 1889) 38 Fed. 1 (affirmed [1890] 10 Sup. Ct. 5 U. S. 372, 33 L. Ed. 949).

§ 10501. (Crim. Code, § 327.) Pardoning power.

Whenever, by the judgment of any court or judicial offi the United States, in any criminal proceeding, any person i tenced to two kinds of punishment, the one pecuniary an other corporal, the President shall have full discretionary pov pardon or remit, in whole or in part, either one of the two without, in any manner, impairing the legal validity of the kind, or of any portion of either kind, not pardoned or remit

R. S. § 5330. Act March 4, 1909, c. 321, § 327, 35 Stat. 1151.

Notes of Decisions

See Const. art. 2, § 2, cl. 1, and notes thereunder.

Remission of fine only.—Where a prisoner was sentenced to both fine and imprisonment, and the President, by a pardon, remitted the fine only, held, that he had no authority to thereupon order the prisoner's discharge. U. S. v. Lukins (C. C. 1841) Fed. Cas. No. 15,638.

Pardon before conviction.—The President has power to grant a pardon, though the person pardoned ha been charged or convicted of fense. U. S. v. Burdick (D. C 211 Fed. 492; (1820) 1 Op. Att 342. But it is a power only to ercised with reserve and for exc al considerations. (1853) 6 Op Gen. 20. It is generally inex for the President to grant a par fore the applicant is tried. (1 Op. Atty. Gen. 275.

§ 10502. (Crim. Code, § 328.) Indians committing certain cr acts on reservations, etc.; punishment for; rape on I woman.

All Indians committing against the person or property of a er Indian or other person any of the following crimes, nam murder, manslaughter, rape, assault with intent to kill, assaul a dangerous weapon, arson, burglary, and larceny, within any ritory of the United States, and either within or without an reservation, shall be subject therefor to the laws of such Ter relating to said crimes, and shall be tried therefor in the same and in the same manner and shall be subject to the same penal are all other persons charged with the commission of said c respectively; and the said courts are hereby given jurisdiction such cases. And all such Indians committing any of the above- crimes against the person or property of another Indian or othe son within the boundaries of any State of the United States, and in the limits of any Indian reservation, shall be subject to the laws, tried in the same courts and in the same manner, and b ject to the same penalties as are all other persons committin of the above crimes within the exclusive jurisdiction of the U States: Provided, That any Indian who shall commit the offe rape upon any female Indian within the limits of any Indian re tion shall be imprisoned at the discretion of the court.

Act March 3, 1885, c. 341, § 9, 23 Stat. 385. Act Jan. 15, 1897, c. 29, Stat. 487. Act March 4, 1909, c. 321, § 328, 35 Stat. 1151.

Notes of Decisions

1. Constitutionality.
2. Repeal or modification of statute.
3. Statute as repealing sections 4148.

Who are Indians within statute.
"Indian reservation" or "Indian country."
Jurisdiction of offenses within state or territory in general.
Conclusiveness of adjudication as to jurisdiction.
Offenses by Indian allottees.
Offenses by Indians not in tribal relations.
Offenses by persons not Indians.
Crimes against United States officers.
Larceny.
Homicide.
Incest.
Rape.
Indictment.
Evidence.

ee notes under §§ 10445, 10451, ante.

Constitutionality.—Act March 3, 5, § 9, providing that all Indians mitting certain crimes "against the son or property of another Indian other person, within the boundaries any state of the United States, and hin the limits of any Indian reserva-n. shall be subject to the same laws, d in the same courts, and in the ne manner, and subject to the same alties, as are all other persons com-ting any of the same crimes within exclusive jurisdiction of the United ites," is a valid and constitutional , for, so long as the Indians preserve ir tribal relations, they owe no al-iance to the state in which they live, d the state has no power over them; t, being within the limits of the Unit-States, they are subject to acts of ngress. U. S. v. Kagama (1886) 6 p. Ct. 1109, 1114, 118 U. S. 375, 30 Ed. 288.

2. Repeal or modification of statute.—t 1887 (ante, § 4195 et seq.) does not peal or modify Act March, 1885 (in-rporated into this section). State v. olumbia George (1901) 65 Pac. 604, Or. 127.

3. Statute as repealing sections 4146 d 4148.—Act March 3, 1885, confer-ng upon the territory of Arizona and r courts full jurisdiction of the of-nse of murder committed on an In-an reservation by an Indian, did not ke away from the courts of the Unit-l States jurisdiction over the offense ere committed by one other than an dian, conferred by R. S. § 2145, ante, 4148, on the ground that the United tates, by yielding up a part of her risdiction over the offense, lost all. ongress could provide for the punish-ent in one court of an offense com-itted by one person, and in another ourt of the same offense committed by nother person. Ex parte Wilson 1891) 11 Sup. Ct. 870, 140 U. S. 575, 5 L. Ed. 513.

No implied repeal of section 4148, nte, can be inferred from this section. Donnelly v. U. S. (1913) 33 Sup. Ct. 49, 228 U. S. 243, 57 L. Ed. 820, Ann. Cas. 1913E, 710, rehearing denied 1913) 33 Sup. Ct. 1024, 228 U. S. 708, 57 L. Ed. 1035.

Act March 3, 1885, c. 341, § 9, 23 Stat. 385, which provides that all Indians committing any one of certain enumerated crimes against the person or property of another Indian or other person within the boundaries of any state and within the limits of any Indian reservation shall be subject to the same laws and penalties "as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States," by implication repeals R. S. § 2143, ante, § 4146, in so far as that section makes a distinction between white persons and Indians in respect to the crime of arson committed in the Indian country, and under the later statute the crime and the punishment are the same whether committed by a white person or an Indian, or against a white person or an Indian. U. S. v. Cardish (D. C. 1906) 145 Fed. 242.

4. Who are Indians within statute.—An illegitimate child of a Choctaw Indian by a colored woman, who was a slave in the Cherokee Nation, must be regarded, not as an Indian, but as a negro, for the purposes of the jurisdiction of the United States courts. Alberty v. U. S. (1896) 16 Sup. Ct. 864, 865, 162 U. S. 499, 40 L. Ed. 1051.

The son of a negro father by an Indian mother is not an Indian, within this section, as the child follows the condition of the father. U. S. v. Ware (C. C. 1890) 42 Fed. 320, 321.

Half-breeds who are citizens by birth cannot be brought to trial in the federal courts. U. S. v. Hadley (C. C. 1900) 99 Fed. 437.

Half-breeds, who never receive recognition from their white parents, but are left to be nurtured during childhood by Indian relatives, and live as savages, and are subjects of governmental care, have the status of Indians. Id.

Where defendant was a mixed blood Indian, who for many years had been enrolled as a member of the Stockbridge and Munsee Tribe in Wisconsin, had been recognized as such by the tribe and by the government, and as such was enrolled and became an allottee of land, and for many years lived within the limits of the reservation under the care of an Indian agent and policed by Indian police, he was an Indian, within this section, though his father was a white man and his mother a part blood Indian who had never been enrolled. U. S. v. Gardner (D. C. 1911) 189 Fed. 690.

5. "Indian reservation" or "Indian country."—See, also, notes under §§ 3980–4240, 10503, 10593, post.

Railroad right of way over Nez Perce Indian reservation, granted by Act May 8, 1890, held neither "Indian reservation" nor "Indian country," so that a crime committed there by an Indian was not within the exclusive jurisdiction of the federal courts, under this

section. Ex parte Tilden (D. C. 1914) 218 Fed. 920.

Under this section, the term "reservation" defined, and held not to include the Tuscarora reservation, in Niagara county, so that a Tuscarora Indian, committing an assault on another Indian on such reservation, was subject to the jurisdiction of the state of New York. People ex rel. Cusick v. Daly (1912) 138 N. Y. S. 817, 78 Misc. Rep. 657.

6. Jurisdiction of offenses within state or territory in general.—The circuit court of the district of Arkansas, in the absence of any statute attaching the Indian country west of Arkansas thereto, had no jurisdiction over such country, and could not punish offenses committed therein. U. S. v. Alberty (C. C. 1844) Fed. Cas. No. 14,426.

The provisions of Act March 3, 1885 that all Indians committing certain crimes within the boundaries of any state, and within the limits of any Indian reservation, shall be subject to the same laws, and be tried in the same courts and in the same manner, and be subject to the same penalties, as are all other persons committing any of said crimes within the exclusive jurisdiction of the United States, do not apply to such a crime committed within the sixteenth section of a township, which section, although within the outside limits of an Indian reservation established in accordance with a treaty with the Indians, was ceded to the state for the use of schools by the act of congress admitting the state into the Union, passed previous to the treaty, and, after the lands were surveyed, subsequent to the treaty, was sold by the state to a grantee, who entered into possession thereof long before the commission of such crime therein. Bunn, J., dissenting. U. S. v. Thomas (C. C. 1891) 47 Fed. 488, motion for new trial denied (1894) 14 Sup. Ct. 426, 151 U. S. 577, 38 L. Ed. 276.

The first part of the section does not apply to a crime committed by an Indian within a state. U. S. v. Barnaby (C. C. 1892) 51 Fed. 20, 22.

The authorities of the state of Wisconsin have no jurisdiction to enforce the game and fish laws of the state against members of the Chippewa Indian tribe residing on the Bad River reservation by arresting and punishing them for acts committed on their reservation. By Act March 3, 1885, § 9, congress prescribed what acts should constitute crimes when committed by tribal Indians on a reservation within a state, and by what courts they should be tried therefor, and the jurisdiction so conferred is exclusive, a state having no power to add to the number of crimes defined by such act, nor its courts any jurisdiction to try or punish an Indian for any act done on his reservation. Moreover, by the terms of the treaty of September 30, by which the Chippewas ceded lands to the United States, and reserved certain lands which wer erwards formed into the reserv now occupied by them, they were the right to hunt and fish therei til otherwise ordered by the pres In re Blackbird (D. C. 1901) 109 139.

That accused was discharging h ties as Indian policeman when he mitted the offense charged did no der him immune from prosecuti the state courts. Ex parte Tilde C. 1914) 218 Fed. 920.

State courts have jurisdicti crimes committed against whites side of an Indian reservation, b dians maintaining tribal relations reservation within the state, in of the federal government. St Spotted Hawk (1899) 55 Pac. 10 Mont. 33; State v. Little Whi (1899) 56 P. 820, 22 Mont. 425.

State courts have no authori prosecute and punish one Indian crime committed against another reservation to which they each b so long as they maintain their relations. In re Cross (1886) 2 417, 30 N. W. 428.

All kinds of misdemeanors com by Indians, and not expressly re by section 9 of the act approved 3, 1885, held within the jurisdict the state courts, as provided by ac proved March 3, 1863, and Febru 1887. Kitto v. State (Neb. 1915 N. W. 380, L. R. A. 1915F, 587.

Jurisdiction of state courts ov fenses committed by others than I on Indian reservations is not af by the provision in the enablin providing that such lands sha main under the absolute juris of congress. Ex parte Crosby 1915) 149 Pac. 989.

The district courts of the ter when sitting with, and exercisi powers and jurisdiction of, a States court, have exclusive ju tion of all crimes punishable b laws of the United States, when mitted by persons other than I upon an Indian reservation occup Indian tribes, and to which reser the Indian title has not been guished; also, of all such crimes committed by an Indian on such vation, except the specific crim murder, manslaughter, rape, a with intent to kill, arson, burglar larceny. Goodson v. U. S. (189 Pac. 423, 7 Okl. 117.

7. Conclusiveness of adjudicati to jurisdiction.—Act March 3, 18 341, § 9, declares that all Indians mitting certain crimes within any tory of the United States, and within or without any Indian re tion, shall be subject to the la such territory relating to the

ecified, and shall be tried therefor the same courts and in the same nner and be subject to the same nalties as all other persons charged h the commission of such crimes, and Indians committing such offenses thin any state and within the limits any Indian reservation shall be subt to the same penalties as are all ner persons committing any of the mes within the exclusive jurisdicn of the United States. Held, that ere petitioner was indicted in a fedl court within the district of Oregon an offense committed on an Indian servation, and he was convicted and ntenced on a plea of not guilty, the dgment constituted a conclusive adlication that petitioner was a nonotted Indian, and therefore triable the federal court, and hence he could t obtain his discharge on habeas cors on the ground that both he and victim were allotted Indians, and at the federal court had no jurisdicn to try him. Ex parte Savage (C. 1908) 158 Fed. 205.

3. Offenses by Indian allottees.—Land thin the Tulalip Indian reservation, in e state of Washington, allotted and tented in severalty, pursuant to treas which provide for a conditional enation only, is not, by reason such otment and patent, excepted from the servation, so as to defeat the exclure jurisdiction of the federal courts der Act March 3, 1885. U. S. v. lestine (1909) 30 Sup. Ct. 93, 94, 5 U. S. 278, 54 L. Ed. 195.

Crimes committed by one Indian up the person of another within the lim of the Tulalip reservation, in the ate of Washington, are not excepted om the exclusive jurisdiction of the deral courts, under Act March 3, 85, § 9, because both parties hold tents from the United States, issued der the authority of the treaty with e Omahas of March 16, 1854, and the eaty of Point Elliot of January 22, 55, and are therefore, by virtue of t Feb. 8, 1887, c. 119, § 6, 24 Stat. 8, citizens of the United States. Id.

Habeas corpus will not lie to release Indian convicted and imprisoned unr this section, on the ground that he entitled to be tried under the laws of e state of his residence, by virtue of ction 3951, ante, declaring Indians, rn within the United States, to whom nds have been allotted, to be citizens the United States; such facts be; matter of defense, reviewable by it of error. In re Blackbird (C. C. 95) 66 Fed. 541.

Under sections 4195, 4201, 4203, ante, ter public land had been allotted to Indian, he is not subject to prosecun for violating this section, but was bject to the laws of the state in which e crime was committed. U. S. v. Kiya . C. 1903) 126 Fed. 879.

Under Dawes Act, § 6, upon the completion of allotments and the patenting of land to the allottees, each member of the respective tribes of Indians to whom allotments are made is subject to the laws of the state in which he resides; and the state courts have jurisdiction to try an Indian for any public offense, except the introduction of liquor into the Indian territory. State v. Lott (1912) 123 Pac. 491, 21 Idaho, 646.

Act March 3, 1885, § 9, reserving to the federal government jurisdiction to try charges against Indians for certain crimes, does not apply to Indians whose reservation was thrown open, and who received allotments, under Dawes Act, § 6, prior to the amendment by Act May 8, 1906. Id.

Act May 8, 1906, amending Dawes Act, § 6, was not retroactive in its effect, and did not affect the jurisdiction of the state courts to try Indians who had received their allotments under the Dawes Act prior to the amendment. Id.

Act Feb. 8, 1887, c. 119, 24 Stat. 388, providing for the allotting of lands constituting an Indian reservation to the Indians in severalty, and the issuing of patents to the allottees therefor, and further providing that upon the completion of said allotments and the issuing of patents to each of the allottees constituting the tribe, each allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the state in which they may reside, upon completion of the allotments and the issuing of patents to each of the allottees, confers jurisdiction on the state courts to try and punish an allottee for any violation of the laws of the state, though the offense committed be one against the person or property of an Indian or other person within the limits of an Indian reservation. In re Now-ge-zhuck (1904) 76 Pac. 877, 69 Kan. 410.

The crime of assault by an allottee Indian on another allottee Indian in Nebraska within an Indian reservation, not being one reserved by act of congress to the jurisdiction of federal courts, is within the jurisdiction of the state courts. Kitto v. State (1915) 98 Neb. 164, 152 N. W. 380, L. R. A. 1915F, 587.

Since the general government did not relinquish jurisdiction in the federal courts conferred by such act by Act Feb. 8, 1887 (24 Stat. 388, c. 119, § 4), allotting public lands to Indians, and declaring that allottees to whom such land should be patented should be subject to the laws of the state in which they reside, and shall be citizens of the United States with all the privileges as such, an allottee of the Umatilla reservation, charged with murder on such reservation, could only be tried in the federal courts. State v. Columbia George (1901) 65 Pac. 604, 39 Or. 127.

The United States courts have not

exclusive jurisdiction over an offense committed by one Indian against another Indian on an Indian allotment upon the public domain outside the boundaries of any reservation and within the limits of the state. Ex parte Moore (S. D. 1911) 133 N. W. 817.

An Indian who has taken land in severalty under the Dawes Act, and who has voluntarily taken up within the limits of the state his residence separate and apart from any tribe of Indians, and who has adopted the habits of civilized life, is amenable to the general criminal laws of the state, except where the acts of congress make the laws of the United States applicable. State v. Nimrod (S. D. 1912) 138 N. W. 377.

The Puyallup Indian reservation having been abandoned, the lands allotted to the Indians in severalty, and the tribe having abandoned its tribal organization, laws, habits, and customs, and the only parcel of reservation land retained by the government being such as was used for school purposes, a homicide committed by one of such Indians on another within the territory previously embraced in the reservation was punishable by the state court. and was not within Act Cong. March 3, 1885. State v. Smokalem (1905) 79 Pac. 603, 37 Wash. 91.

9. Offenses by Indians not in tribal relations.—Under Act March 3, 1885, making all Indians amenable to the criminal laws of the United States for the offenses therein designated, and Act March 3, 1871, prohibiting future recognition of tribal independence among the Indians, the Alaska Indians are amenable to the penal laws of the United States; they being dependent subjects though not citizens within the full meaning of the term. In re Sah Quah (D. C. 1886) 31 Fed. 327.

Where both defendant, in a prosecution under an indictment for murder, and the deceased, are full-blooded Indians, but it does not appear that defendant is a member of any tribe of Indians having its chief and tribal laws, nor that his ancestral tribe had been treated with by the government, but it does appear that he had lived among the whites several years, the state courts of California have jurisdiction to punish him for the crime. People v. Ketchum (1887) 73 Cal. 635, 15 Pac. 353.

An Indian who has severed his tribal relations may be prosecuted in the courts of the state, whether the crime was committed within or without the reservation. State v. Williams (1895) 13 Wash. 335, 43 Pac. 15.

Act March 3, 1885, c. 341, § 9, providing that Indians committing certain crimes within the limits of an Indian reservation shall be subject to the same laws, and be tried in the same courts, and be subject to the same penalties as all other persons committing said crimes within the exclusive ju tion of the United States, wher strued in connection with the which it is the concluding section, showed its purpose to be to mak tain appropriations for the ben the Indian department, fulfill stipulations, provide for depre claims, for schools, and other mi neous matters connected with t dian service, refers only to Indian taining tribal relations, and doe deprive the state courts of juris over crimes committed by Indian either have never sustained or severed all tribal relations. St Howard (1903) 74 Pac. 382, 33 250.

In a prosecution for murder, t risdiction of the court was chal on the ground that defendant a ceased were Indians; that the was committed on a reservatio the proof did not show that def had severed his tribal relations. the first two points were sustai evidence, defendant's own testim to the latter was that he was birth a member of the tribe on reservation the crime was com nor did he show that he had other manner become allied wit tribe, or that he ever lived with limits of the reservation, but t had lived for a number of year members of his own family, white people, and away from a dian tribe or reservation. Held t that defendant sustained no trib lation. Id.

10. Offenses by persons not i —See, also, notes under § 10445.

An offense committed upon dian reservation within a state cognizable in a federal court, Act March 3, 1885, unless the o is an Indian. U. S. v. Hadley 1900) 99 Fed. 437.

11. Crimes against United Stat cers.—Under Act June 9, 1888, 25 Stat. 178, providing that a dian committing certain crimes any deputy marshal, posse com or guard while engaged in the pe ance of duty, or who shall com ther of such crimes in the India ritory against any person who time of the commission of such or at any time previous theret longed to either of the classes cials named, shall be subject laws of the United States relat such crimes, the offense of ki posse man or guard is within the diction of the United States, the killing occurred when de was not engaged in performin services. Wright v. U. S. (18 Sup. Ct. 819, 822, 158 U. S. 232, Ed. 963.

A de facto deputy marshal is the protection of Act June 9, 1

2, 25 Stat. 178, giving the federal rts jurisdiction of certain crimes nmitted by Indians against certain ited States officers. Id.

2. **Larceny.**—Where, on scire facias a forfeited recognizance, the record not disclose that the accused was Indian or that he stole the property rged from another Indian, he was subject to Act March 3, 1885, § 9, laring that all Indians committing tain designated offenses against the son or property of another Indian hin or without the territory of an In- n reservation shall be subject to the s of the territory relating to such mes, and shall be tried in the same rts and be subject to the same pen- ies as are all other persons charged h the commission of such crimes. llister v. U. S. (1906) 145 Fed. 773, C. C. A. 337.

nder R. S. § 2145, ante, § 4148, and t March 3, 1885, § 9, the superior rt of Washington did not have isdiction of the crime of larceny nmitted on an Indian reservation hin the state by one Indian against property of another Indian; the lusive jurisdiction of such crime be- vested in the federal court. State Condon (Wash. 1914) 139 Pac. 871.

3. **Homicide.**—Act March 3, 1885, vides that all Indians committing crime of murder against the person another Indian or other person with- any territory of the United States, hin or without an Indian reserva- n, shall be subject therefor to the s of such territory relating to said me, and shall be tried therefor in same courts and in the same man- as other persons charged with the nmission of said crime, and also that en an Indian commits the crime hin a state, and within an Indian ervation, he shall be tried as are er persons committing crimes with- the exclusive jurisdiction of the ited States. Held that, when the In- n is charged with committing the me within a territory, it is improper indict and try him before the district rt of the territory, while sitting for trial of cases arising under the con- tution and laws of the United States. parte Gon-shay-ee (1889) 9 Sup. 542, 130 U. S. 343, 32 L. Ed. 973; parte Captain Jack (1889) 9 Sup. 546, 130 U. S. 353, 32 L. Ed. 976. Under Act March 3, 1885, when an dian is charged with committing mur- within a territory, it is improper to lict and try him before the district rt of the territory while sitting for trial of cases arising under the con- tution and laws of the United States. parte Gon-shay-ee (1889) 9 Sup. 542, 544, 130 U. S. 343, 32 L. Ed. 3.

Murder committed by Indians on a servation within a state is a crime against the United States, punishable by this section. Apapas v. U. S. (1914) 34 Sup. Ct. 704, 233 U. S. 587, 58 L. Ed. 1104.

The murder of one Indian by another is punishable with death, under R. S. § 5339, ante, § 10448, and 23 Stat. 385, c. 341, § 9. The power of the federal courts to punish this offense with death was not revoked by 29 Stat. 487, c. 29. Good Shot v. U. S. (1900) 104 Fed. 257, 43 C. C. A. 525.

Act March 3, 1885, provides that "immediately upon and after the passage of this act all Indians committing against the person or property of another Indian or other person any of the following crimes, namely, murder, manslaughter," etc., shall be subject to the same laws, and tried in the same courts, as are all other persons. Held, on indictment of Indians for the killing of another Indian, in obedience to tribal resolutions, that it was no defense that defendants never had notice of the statute. U. S. v. Whaley (C. C. 1888) 37 Fed. 145.

Under Act March 3, 1885 (23 Stat. 385, § 9), which provides that an Indian committing any one of certain named crimes against the person or property of another Indian or other person within the boundaries of any state and within the limits of any Indian reservation "shall be subject to the same laws, tried in the same courts, and in the same manner, and subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States," an Indian who commits an assault with intent to kill upon another Indian on a reservation within a state is indictable therefor in a court of the United States, under R. S. § 5346, ante, § 10449, which provides for the punishment of such crime when committed by any person "within the admiralty jurisdiction of the United States and out of the jurisdiction of any particular state." U. S. v. Logan (C. C. 1900) 105 Fed. 240.

The fact that both defendant and the person whom he is alleged to have murdered were Indians does not deprive the superior court of jurisdiction of the crime. People v. Turner (1890) 85 Cal. 432, 24 Pac. 857.

Under Act March 3, 1885, giving territorial and federal courts jurisdiction to punish Indians for murder and other crimes committed by one Indian against another, whether on or off a reservation, an Indian, tribal or otherwise, is amenable to state jurisdiction for the murder of another Indian outside of the reservation. Pablo v. People (1896) 46 Pac. 636, 23 Colo. 134, 37 L. R. A. 636.

Where a Nez Perce Indian police went upon a right of way where it crosses the former Nez Perce Indian reservation, to search for intoxicants,

and in an encounter killed a Nez Perce Indian, held, that the state and not the federal, courts had jurisdiction to try him. State v. Tilden (1915) 147 Pac. 1056, 27 Idaho, 262.

14. Incest.—The statute defining and prescribing the punishment for the crime of incest held not applicable where the alleged act was committed between Indians on a reservation. Ex parte Hart (D. C. 1907) 157 Fed. 130, 134.

Sections 4148, 4149, ante, are not affected by any subsequent legislation, except by this section and section 10490, ante, is not in force within an Indian reservation, where both parties to the alleged act are Indians and there is no law making such act a crime. Id.

15. Rape.—The offense of assault with intent to commit rape, committed by an Indian upon an Indian woman, both residing upon an Indian reservation is not cognizable as a crime by any statute of the United States, and United States courts have no jurisdiction of such offense. U. S. v. King (D. C. 1897) 81 Fed. 625.

16. Indictment.—To bring a defendant within the provision of Act March 3, 1885, § 9, and R. S. § 5346, ante, § 10449, the indictment must allege that he is an Indian. U. S. v. Logan (C. C. 1900) 105 Fed. 240.

Act March 3, 1885, c. 342, § 9, which provides for the trial and punishment of any Indian who shall commit any one of the crimes enumerated, including "arson," upon an Indian reservation, uses such term in its common-law meaning and is in effect an extension of the provisions of R. S. § 5385, ante, § 10458, punishing the offense of arson within a fort, dockyard, etc., to the same offense committed by an Indian on a reservation; and an indictment charging an Indian with the burning of a "building" on a reservation, not averred to have been a dwelling house, nor occupied as such, does not state an offense thereunder. U. S. v. Cardish (D. C. 1906) 143 Fed. 640.

A prosecution for an alleged homicide on an Indian reservation was not maintainable in the federal courts, under Act March 3, 1885, c. 341, 23 Stat. 362, 385, where the indictment did not allege either that the defendant or the person killed was an Indian. U. S. v. La Plant (D. C. 1911) 200 Fed. 92.

Since a district court has general jurisdiction of all felonies committed within the limits of the county where it sits, an indictment against an Indian for murdering a white man in a certain county need not show that the crime was not committed within the limits of any Indian reservation. State v. Spotted Hawk (1899) 55 Pac. 1026, 22 Mont. 33.

Under Act Nev. 1885 (Comp § 4655), extending all criminal all Indians, excepting offenses ted upon a reservation by one against another, and under Act 3, 1885, c. 341, making Indian mitting, against another Indian, or other designated crimes, on a ervation in a state, subject to t governing other persons com such offenses within the exclu risdiction of the United State not necessary that a state ind against one Indian, for an against another, charge, and t state prove, that the offense wa mitted off a reservation, since i necessary, in a state prosecut negative the federal jurisdicti for the state to prove more th the offense was committed wit county. State v. Buckaroo Jack 1908) 96 Pac. 497.

17. Evidence.—A declaration ceased that he did not belong Indian country, but had come fr other state, is not admissibl prosecution for murder to sus averment that deceased was a and not a member of an Indian Lucas v. U. S. (1896) 16 S 1168, 1169, 163 U. S. 612, 41 282.

Admission of a written do purporting to be a confession of the defendants, was error, the circumstances under which made are not shown, and the de is an Indian, and denies maki statement. State v. Lott (191 Pac. 491, 21 Idaho, 646.

The burden is on an Indian, by the state of an offense agai other Indian, to show that the was committed on a reservation to give the federal courts exclu risdiction, under the express te Act Nev. 1885 (Comp. Laws, and Act March 3, 1885, c. 341, cepting cases where judicial not be taken of the existence of a l established and defined Indian r tion. State v. Buckaroo Jack 1908) 96 Pac. 497.

That a homicide occurred at about a quarter of a mile from dian day school is insufficient t that it occurred on a reservatio

Under Act Jan. 15, 1897, 29 St providing that an Indian wh commit rape within the limits Indian reservation shall be puni imprisonment at the discretion court, it is necessary for the e to show that defendant was not dian before the question of the penalty can be submitted to th Vickers v. U. S. (Okl. Cr. App. 98 Pac. 467.

Cited without definite appl Corralitos Co. v. U. S. (1900) 2

941, 943, 178 U. S. 280, 44 L. Ed. 9; Wisconsin v. Hitchcock (1906) Sup. Ct. 498, 501, 201 U. S. 202, 50 L. Ed. 727; U. S. v. King (D. C. 1897) 81 Fed. 625; U. S. v. Hall (D. C. 1909) 171 Fed. 214.

0503. (Crim. Code, § 329.) Crimes committed on Indian reservations in South Dakota; rape of female Indian.

The [circuit and] district courts of the United States for the trict of South Dakota shall have jurisdiction to hear, try, and determe all actions and proceedings in which any person shall be charged h the crime of murder, manslaughter, rape, assault with intent to , assault with a dangerous weapon, arson, burglary, or larceny, comted within the limits of any Indian reservation in the State of South kota. Any person convicted of murder, manslaughter, rape, arson, burglary, committed within the limits of any such reservation, shall subject to the same punishment as is imposed upon persons comting said crimes within the exclusive jurisdiction of the United tes: Provided, That any Indian who shall commit the crime of e upon any female Indian within any such reservation shall be imsoned at the discretion of the court. Any person convicted of the me of assault with intent to kill, assault with a dangerous weapon, larceny, committed within the limits of any such reservation, shall subject to the same punishment as is provided in cases of other sons convicted of any of said crimes under the laws of the State South Dakota. This section is passed in pursuance of the cession jurisdiction contained in chapter one hundred and six, Laws of uth Dakota, nineteen hundred and one.

Act Feb. 2, 1903, c. 351, 32 Stat. 793. Act March 4, 1909, c. 321, § 329, 35 Stat. 1151.

The words "circuit and," inclosed in brackets in this section, were superseded by the abolition of the circuit courts and the transfer of their jurisdiction to the district courts, by Jud. Code, §§ 289–291, ante, §§ 1266–1268.

Provisions similar to those in the first sentence of this section are contained in Judicial Code, § 27, ante, § 1009.

Notes of Decisions

ee, also, § 1009, ante, and notes reunder.

tatute as discharge of national duty Indians.—This section as originally cted (Act Feb. 2, 1903), conferring isdiction on the federal district rts of the district of South Dakota try prosecutions for larceny commit- by any person on any Indian reser- ion within the state, was within the wer of congress as an instrumental- employed in the discharge of a na- nal duty to the Indians. Hollister v. S. (1906) 145 Fed. 773, 76 C. C. A. .

tatute as delegating to state author- to fix punishment.—This section as ginally enacted (Act Feb. 2, 1903), viding for the punishment of certain enses committed on any Indian res- ation in South Dakota, and declar- that persons committing such of- ses shall be subject to the same alties and punishments as "are" all er persons convicted of such crimes der the laws of the state of South kota, fixed the punishment for the enses as provided by the laws of uth Dakota at the time the act was sed, and was not objectionable as egating to the state authority to fix punishment in the future for such eral offenses. Hollister v. U. S. 06) 145 Fed. 773, 76 C. C. A. 337.

Assent of people of state to statute.—Const. S. D. art. 26, declares that all Indian lands within the state shall remain under the absolute jurisdiction and control of congress until the Indian title thereto shall be extinguished by the United States, and that jurisdiction be ceded to the United States over the military reservations and shall be irrevocable without the consent of the United States, and also the people of South Dakota "expressed in their legislative assembly." By Act Feb. 8, 1887 (ante, § 4195), large bodies of lands embraced within the several reservations within South Dakota, permanent improvements erected thereon, and stock and personal property derived from the government became exempt from state taxation, and the state by Sess. Laws S. D. 1901, c. 106, relinquished to the United States exclusive jurisdiction to arrest, prosecute, and punish all persons committing offenses denounced by congress on any Indian reservation within the state. Held, that such acts were sufficient to evidence the assent of the people of South Dakota to this section. Hollister v. U. S. (1906) 145 Fed. 773, 76 C. C. A. 337.

Offense on town-site lot withdrawn from reservation.—Under this section, an offense committed on a lot in a town

site withdrawn from an Indian reservation in South Dakota, under Act May 29, 1908, c. 218, 35 Stat. 460, was not within the jurisdiction of the federal courts. U. S. v. La Plant (D. C. 1911) 200 Fed. 92.

Statute as inoperative on extinguishment of Indian title.—This section held inoperative, so far as any particular reservation was concerned, on the extinguishment of the Indian title. U. S. v. La Plant (D. C. 1911) 200 Fed. 92.

"Indian country."—See, also, notes under the preceding section and under §§ 3980–4240.

Lands within Treaty April 29, 1868, 15 Stat. 635, allotted to an Indian under Act March 2, 1889, on the Great Sioux reservation in Dakota, but not within any of the separate rese established by the act, and held trust patent, held Indian lands part of the "Indian country." te Van Moore (D. C. 1915) 2 954.

Prosecution of Indians in stat —A state court of South Dako without jurisdiction to convict a tence an Indian for a crime co against another Indian on an al which was a part of the India try. Ex parte Van Moore 1915) 221 Fed. 954.

An Indian amenable to the criminal laws of the state may ecuted in the state courts for committed within an Indian res notwithstanding this section. Nimrod (S. D. 1912) 138 N. W

§ 10504. (Crim. Code, § 330.) Qualified verdicts in certain

In all cases where the accused is found guilty of the cri murder in the first degree, or rape, the jury may qualify the dict by adding thereto "without capital punishment;" and wh the jury shall return a verdict qualified as aforesaid, the perso victed shall be sentenced to imprisonment for life.

Act Jan. 15, 1897, c. 29, § 1, 29 Stat. 487. Act March 4, 1909, c. 321 35 Stat. 1152.

The punishment of death was prescribed for murder in the first deg for rape, by Crim. Code, §§ 275, 278, ante, §§ 10448, 10451.

Notes of Decisions

See notes under § 10183, ante.

Application to District of Columbia.—The provision for verdict of guilty of murder "without capital punishment" contained in section 330 of the Criminal Code, which, in section 272, makes murder a crime against the United States when committed on lands reserved for the exclusive use of the United States, does not apply to the District of Columbia. Johnson v. U. S. (1912) 32 Sup. Ct. 748, 750, 225 U. S. 405, 56 L. Ed. 1142, affirming judgment (1912) 38 App. D. C. 347.

Statute as abolishing death penalty.—A sentence to imprisonment for life for conspiracy accompanied with murder, in violation of R. S. §§ 5508 (ante, § 10183), 5509, providing for such punishment as the laws of the state in which the offense is committed may impose, is not in excess of the authority of a circuit court of the United States, although the verdict of the jury has not indicated the punishment, as required by the state statutes in case of murder, since Act Jan. 15, 1897, c. 29, abolishes the death penalty in such cases, and provides for a sentence to imprisonment for life. Motes v. U. S. (1900) 20 Sup. Ct. 993, 995, 178 U. S. 458, 44 L. Ed. 1150.

Discretion of jury.—This stat thorizes the jury to limit their in any case, without regard to istence of mitigating circumstan instructions confining the right roneous. Winston v. U. S. (1 Sup. Ct. 212, 172 U. S. 303, 43 456.

The statute, in giving the cases of murder the right to their verdict of guilty, leaves th cise of such right entirely to th ment and discretion of the jury, instruction which might be co to require them to find palliat cumstances to authorize such q tion is erroneous. U. S. v. V (D. C. 1900) 103 Fed. 938.

Duty to instruct jury.—It is t of the trial court on a trial f to instruct that if the jury sh a verdict of guilty they may their verdict by the words " capital punishment," no matte the evidence is. Vickers v. U. 1908) 98 Pac. 467.

Cited without definite app U. S. v. Celestine (1909) 30 S 93, 94. 215 U. S. 278. 54 L. E In re Welty (D. C. 1903) 123 F 123.

§ 10505. (Crim. Code, § 331.) Delivery of body of execut fender for dissection.

The court before which any person is convicted of mur the first degree, or rape, may, in its discretion, add to the jud of death, that the body of the offender be delivered to a surge

dissection; and the marshal who executes such judgment shall deliver the body, after execution, to such surgeon as the court may direct; and such surgeon, or some person appointed by him, shall receive and take away the body at the time of execution.

R. S. § 5340. Act March 4, 1909, c. 321, § 331, 35 Stat. 1152.

Provisions defining and punishing the offense of rescuing the body of the offender after execution were made by Crim. Code, § 144, ante, § 10314.

Cited without definite application,
Johnson v. U. S. (1912) 32 Sup. Ct. 748, 750, 225 U. S. 405, 56 L. Ed. 1142.

§ 10506. (Crim. Code, § 332.) Principals defined.

Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.

R. S. §§ 5323, 5427. Act March 4, 1909, c. 321, § 332, 35 Stat. 1152.

Notes of Decisions

1. Original statute construed in general.
2. Principals and accessories in general.
3. Parties aiding and abetting in violation of internal revenue law.
4. Parties aiding corporation to violate law.
5. Violating law as to equipping ships with life preservers, etc.
6. Aiding and abetting postmaster to commit offense.
7. Use of mails to defraud.
8. Murder and piracy.
9. Death of principal before indictment.
10. Necessity of convicting principal.
11. Indictment.
12. Necessity of proving knowledge of principal's mode of committing offense.
13. Evidence on trial for aiding and abetting in commission of offense.
14. Verdict.

See notes under §§ 10326, 10367, 10376, ante.

1. Original statute construed in general.—R. S. § 5427 (embodied herein), provides that "every person who knowingly and intentionally aids or abets any person in the commission of any felony denounced in the three preceding sections" (sections 10244–10246, ante) shall be punished the same as the principal. In the original statute said four sections were all embraced in one section, which expressly declared the offenses now contained in the first three sections to be felonious, and the part which now constitutes section 5427 read, "Any person who shall * * * aid and abet any person in the commission of any such felony," etc. In the revision such express declaration was omitted, and it has since been settled by decision that the offenses described in the first three sections are not felonies, but misdemeanors, under the common-law rule of construction applied to federal statutes, although the punishment prescribed is imprisonment in a penitentiary at hard labor, which, by the general understanding in this country, makes the offense a felony. Held, that such construction does not render section 5427 a nullity, but that the word "felony," as used therein, should be given its popular meaning, in order to give effect to the section in accordance with the manifest intention of Congress. Dolan v. U. S. (1904) 133 Fed. 440, 69 C. C. A. 274.

2. Principals and accessories in general.—All who are present, either actually or constructively, at the place of a crime, and are either aiding, abetting, assisting, or advising its commission, or are present for such purpose, are principals in the crime. U. S. v. Snyder (C. C. 1882) 14 Fed. 554; U. S. v. Boyd (C. C. 1890) 45 Fed. 851 (judgment reversed Boyd v. U. S. [1892] 12 Sup. Ct. 292, 142 U. S. 450, 35 L. Ed. 1077); Same v. Hughes (D. C. 1888) 34 Fed. 732.

Under Pen. Code Alaska, §§ 186, 188, which abolish the old distinctions between principal and accessory before the fact, one who aids and abets another in the commission of a crime may be charged in the indictment and convicted as a principal. Rosencranz v. U. S. (1907) 155 Fed. 38, 83 C. C. A. 634.

An owner of property, or an agent of such owner, who knowingly rents the same to another to be used as a bawdy house, the keeping of which is a misdemeanor, aids and abets the commission of the offense, and under Pen. Code Alaska, § 188, which provides that in misdemeanors there are no accessories, is punishable as a principal. Id.

Where an act is done by the procurement of a person, it is his act in effect, even where it is a crime. Richardson v. U. S., 181 Fed. 1, 104 C. C. A. 69.

In order that a principal shall be answerable for a felony he must have been actually or constructively present where another equally guilty committed the offense. Id.

Where an offense is a misdemeanor all participants are principals. Id.

One who persuades another to commit a crime is an accessory. Ackley v. U. S. (1912) 200 Fed. 217, 118 C. C. A. 403.

This section abolishes the distinction between principals and accessories, and makes them all principals; and this

is true, whether the offenses are felonies or misdemeanors. Rooney v. U. S. (1913) 203 Fed. 928, 122 C. C. A. 230.

Courts are not authorized to hold as a matter of law that one who aids and abets another in the commission of an offense is a conspirator, and may plead an acquittal of a conspiracy charge in bar of a prosecution on a charge under this section. Louie v. U. S. (1914) 218 Fed. 36, 134 C. C. A. 58.

If many go to do an unlawful act, and one only does it, all are principals. If they go to do a lawful act, and all but one commit a felony, in his presence, but without his participation, he is not guilty. U. S. v. Jones (C. C. 1813) Fed. Cas. No. 15,494.

If a principal in a transaction be not liable, another cannot be charged merely for aiding and abetting him, unless the other perform acts which render himself liable as a principal. U. S. v. Libby (C. C. 1846) Fed. Cas. No. 15,-597.

On a joint indictment against two or more for a statutory misdemeanor, defendants not personally present may be found guilty as principals in the second degree if they participated in the fraud. U. S. v. Harries (C. C. 1869) Fed. Cas. No. 15,309.

All aiders, procurers, or abettors in statutory offenses are punishable as principals, under the statute, although not expressly referred to in the statute, and a defendant, though incompetent to commit the offense, as principal, by reason of not being of the particular age, particular sex, condition, or class, may nevertheless be punished as procurer or abettor. U. S. v. Snyder (C. C. 1882) 14 Fed. 554.

This section apparently is declaratory of the existing rule that those who are present aiding, commanding, or abetting are principals. U. S. v. Young & Holland Co. (C. C. 1909) 170 Fed. 110, modified (1912) 195 Fed. 353, 115 C. C. A. 255, certiorari denied (1912) 32 Sup. Ct. 840, 225 U. S. 710, 56 L. Ed. 1267.

A clerk who knowingly assists in the fraudulent practices of his principal is as much a party to the fraud as the principal himself. U. S. v. Flemming (D. C. 1883) 18 Fed. 907.

When a person commits a misdemeanor under the instructions of another, it is only necessary, in order to implicate the latter, that his instructions have been substantially complied with. U. S. v. Sykes (D. C. 1893) 58 Fed. 1000.

A person not falling within the class described in a penal statute may nevertheless, under the rules of the common law, be charged with aiding and abetting another person embraced in the statute in the commission of the crime. U. S. v. Williams (D. C. 1908) 159 Fed. 310.

The rule that all persons concerned in the commission of misdemeanors if guilty are guilty as principals, and may be indicted, tried and convicted as is applicable to statutory misdemea whether the aiders and abettor referred to in the statute or not S. v. Martin (D. C. 1910) 176 Fed.

3. Parties aiding and abetting in lation of internal revenue law.— fact that the statute makes the a and abetting of another in the rem of illicit spirits a distinct offense not prevent a person so aiding abetting from being convicted as a cipal in the removal, under the making all participants in misdeme liable as principals. U. S. v. S (D. C. 1893) 58 Fed. 1000.

Persons not in the business of ufacturing oleomargarine cannot mit the offense denounced by se 6229, ante, unless they aid and the act of one so engaged, or o wise come within this section. v. Orr (D. C. 1915) 223 Fed. 222

An indictment against officers, ag and employés of a corporation for lating section 6229, ante, held in cient, notwithstanding this section.

4. Parties aiding corporation to late law.—Defendants, who aided a poration in violating the federal li law, are guilty as principal offen Wood v. U. S. (1913) 204 Fed 122 C. C. A. 369.

Where accused was charged with ing and abetting a corporation of w he was president and manager in cealing its assets from its truste bankruptcy, it was not necessary the corporation be first convicted fore accused could be convicted, u this section, making aiders and abe principals. Kaufman v. U. S. (1 212 Fed. 613, 129 C. C. A. 149.

Bankr. Act 1898, § 29b, prohib the concealment of assets by a b rupt, held not to apply to the pres of a bankrupt corporation who charged with aiding and abetting such concealment, but only to one has been adjudicated a bankrupt.

In a prosecution of the presiden manager of a bankrupt corporatio aiding and abetting it in the con ment of assets from its trustee fact that there was no evidence defendant was holding the money the bankrupt did not impair the ernment's case. Id.

5. Violating law as to equipping with life preservers, etc.—In ord constitute an aider and abettor a cipal in the violation of the law quiring steamship owners to equip with life preservers, etc., it is not essary that he should have been ent at the time it was consummat the death of a person, since the co or omission which constituted the inal breach of duty was contin U. S. v. Van Schaick (C. C. 1904 Fed. 592.

6. Aiding and abetting postmast commit offense.—One who aids

ets a postmaster in committing the fense provided against by the provions of the statute, declaring that a ostmaster making a false return shall e deemed guilty of a misdemeanor, etc., guilty of the same offense, and liable the same punishment, as his principal. U. S. v. Snyder (C. C. 1881) 8 ed. 805.

7. Use of mails to defraud.—R. S. § 480, ante, § 10385, makes it an offense for any person to place any letter in a post office in furtherance of ny scheme to defraud. Held, that if he offense, under the statute, be a elony, so as to render the doctrine of rincipal and accessory applicable, one ho performs a part of the scheme, or ho is a party to the scheme or plan, a principal, though he is not present hen the letters are mailed. Hume v. . S. (1902) 118 Fed. 689, 55 C. C. A. 07, writ of certiorari denied (1903) 3 Sup. Ct. 850, 189 U. S. 510, 47 L. Ed. 23.

8. Murder and piracy.—If a number f persons combine together to do an nlawful act, and death happen in the rosecution of the design, it is murder n all. If the unlawful act was a tresass, the murder, to affect all, must be one in the prosecution of the design. f the unlawful act be a felony, it will e murder in all, although the death appen collaterally, or beside the prinipal design. U. S. v. Ross (C. C. 1813) Fed. Cas. No. 16,196.

To make a man a principal in murder, t is not necessary that he should inflict he mortal wound, if he be present, aidng and abetting the act. Id.

In order to convict a seaman on a rivateer for piracy committed in conunction with the officers, he must be hown to have participated feloniously n the taking, and proof of acts of robery generally by officers and crew is nsufficient. U. S. v. Jones (C. C. 1814) Fed. Cas. No. 15,496.

Sections 10 and 11, Act April 30, 1790, s to accessories, refer to the piracy nentioned in section 8, which includes nly crimes committed by American citzens, or on board American vessels. U. S. v. Howard (C. C. 1818) Fed. Cas. No. 15,404.

In order to affect all the officers and crew of a piratical vessel with guilt, the original voyage must have been undertaken with a piratical design, and the officers and crew have known and acted upon such design; otherwise, those only are guilty who actively cooperated in the piracy. U. S. v. Gibert (C. C. 1834) Fed. Cas. No. 15,204.

The simple fact of presence on board the piratical vessel, where there was no original piratical design, is not sufficient per se to affect a party with a crime. Id.

An indictment as accessory before the fact of murder will not lie in the federal courts. U. S. v. Ramsay (C. C. 1847) Fed. Cas. No. 16,115.

A person present, actually or constructively, at a murder, aiding and abetting it, may be convicted under an indictment charging him with the murder. U. S. v. Douglass (C. C. 1851) Fed. Cas. No. 14,989.

A person who encourages, countenances, and supports another in a murder is an accessory. Baker v. Kansas City Times Co. (C. C. 1879) Fed. Cas. No. 773.

A subordinate officer, who in good faith enters a formal protest against a seizure by his vessel, is not guilty with the others of an act of piracy. U. S. v. Smith (D. C. 1820) Fed. Cas. No. 16,339a.

9. Death of principal before indictment.—The death of the principal before indictment is no obstacle to the prosecution and punishment of one charged with aiding and abetting an officer, clerk, or agent of a national bank to abstract, misapply, or embezzle the funds thereof, in violation of R. S. § 5209, ante, § 9772, which makes such offense a misdemeanor. Gallot v. U. S. (1898) 87 Fed. 446, 31 C. C. A. 44, certiorari denied (1898) 19 Sup. Ct. 884, 171 U. S. 689, 43 L. Ed. 1179.

10. Necessity of convicting principal.—It is not necessary to the conviction of a defendant indicted under Act May 16, 1884, c. 52, § 1, for aiding and abetting another in counterfeiting notes of a foreign government, intended to circulate as money, that the alleged principal should have been convicted; the offense being a misdemeanor, in which all who are concerned are principals. Bliss v. U. S. (1900) 105 Fed. 508, 44 C. C. A. 324.

In a prosecution for aiding and abetting a criminal offense, the commission of the offense by the principal and his criminal intent are fundamental issues, and are provable primarily without reference to connection with the defendant or the line of evidence which may establish the further issue against him. Brown v. U. S. (1905) 142 Fed. 1, 73 C. C. A. 187.

Under this section, where accused was charged with aiding the felonious importation of liquor into the Indian country in one count, and with the same offense as the principal in another count, the acquittal of his codefendant was no objection to the conviction of accused. Rooney v. U. S. (1913) 203 Fed. 928, 122 C. C. A. 230.

In the absence of statute abolishing the distinction between principal and accessory in felonies all present aiding and abetting when a felony is committed being principals, either in the first or second degree, if in the second degree, may be tried and convicted, though the principal in the first degree is acquitted. Id.

The person charged as accessory may

be tried and convicted, if the principal cannot be found; but, where the principal has been tried and acquitted, a person charged as accessory will be discharged on motion. U. S. v. Crane (C. C. 1847) Fed. Cas. No. 14,888.

All persons acting together in the commission of an offense are principals; but, where there is no necessary connection between them, one may be convicted and another acquitted. U. S. v. Hughes (D. C. 1888) 34 Fed. 732.

11. Indictment. — Separate indictments against the same persons under R. S. § 5427 (embodied herein), each charging them with having aided and abetted a different person in using a false certificate of citizenship as evidence of a right to vote, the acts charged being the furnishing of such false certificates for the use of such persons by the defendants, all of which were made by them at the same time, charge acts or transactions connected together, and may properly be consolidated under R. S. § 1024, ante, § 1690. Dolan v. U. S. (1904) 133 Fed. 440, 69 C. C. A. 274.

An indictment for aiding and abetting a national bank clerk to misappropriate its funds in violation of R. S. § 5209, ante, § 9772, need not state with particularity the nature of the aid or abetting rendered. Keliher v. U. S. (1912) 193 Fed. 8, 114 C. C. A. 128.

An indictment against the president and manager of a bankrupt corporation, charging him with knowingly and fraudulently aiding and abetting it in the concealment of its assets from its trustee, held to charge a felony under Bankr. Act 1898, § 29b (ante, § 9613), and Cr. Code, §§ 332, 335. Kaufman v. U. S. (1914) 212 Fed. 613, 129 C. C. A. 149.

To make those liable who are only present aiding and abetting, it is not necessary that they be indicted jointly or with a simul cum. U. S. v. Hunter (C. C. 1807) Fed. Cas. No. 15,425.

An accessory after the fact cannot be tried as a principal unless the indictment show either that the principal has been convicted, or has fled from justice, or cannot be found. U. S. v. New (C. C. 1859) Fed. Cas. No. 15,866a.

Under the New York statutes, an indictment against several defendants, charging a felony, is good without averments showing the degrees of guilt, whether a principal in the first or second degree or as accessory before or after the fact. In re Roberts (D. C. 1885) 24 Fed. 132, judgment affirmed Roberts v. Reilly (1885) 6 Sup. Ct. 291, 116 U. S. 80, 29 L. Ed. 544.

An indictment in substance charging that defendants unlawfully conspired with one P. to commit an offense against the United States, by conspiring and inducing certain named persons to obtain, accept, and receive certain certificates of citizenship for themselves, by means of certain false state made with intent to procure th suance of said certificates of citiz to them, and that said P., to effe object of said conspiracy entere between him and the defendant appear before the district court certain district, and did then and make certain false statements t court, with intent to procure fro court the issuance to such name sons of certain certificates of citiz under the laws of the United Stat lating to the naturalization of which said false statements were and there well known by defendan P. to be false, and which said statements consisted in the maki said P. of certain statements t court in a matter material to th ceedings then and there pending it, and concerning which said cou jurisdiction, that said named p had resided within a certain state one year at least, whereas in and in fact they had not resided i state as alleged, but had lived a at that time live in another stat not a charge of conspiracy to R. S. § 5427 (embodied herein). v. Melfi (D. C. 1902) 118 Fed. 89

Indictment for conspiracy United States held not bad for du in alleging overt acts in and of selves constituting a crime under § 5209, ante, § 9772, in view o section, making an abettor a pri U. S. v. Rogers (D. C. 1915) 22 512.

An indictment for conspiracy t mit a crime against the gover charging bank teller's abstraction application, and embezzlement funds, and the other defendants having abetted such acts, was n for duplicity, since under this s all were principals in the same Id.

12. Necessity of proving kne of principal's mode of committi fense.—In a prosecution for aidin abetting a national bank clerk i appropriating its funds in violat R. S. § 5209, ante, § 9772, the g ment was not bound to prove th fendant knew the clerk's modus andi. Keliher v. U. S. (1912) 19 8, 114 C. C. A. 128.

13. Evidence on trial for aidi abetting in commission of offen the trial of a defendant for aidi abetting an officer of a national in the misapplication of bank fu lending the same to an insolven poration, of which defendant was ident and principal owner, evide the relations between defendan such officer prior to the transact question is admissible, as bearing the question of the officer's kno of the financial conditions of d ant and his corporation. Brown S. (1905) 142 Fed. 1, 73 C. C. A.

14. Verdict.—Under this section and 10305, ante, making an endeavor to luence, intimidate, or impede a witss in a federal court a misdemeanor, verdict finding in favor of accused on charge of endeavoring to influence a tness but convicting him of aiding d abetting another in doing so was t inconsistent with itself. Davey v. S. (1913) 208 Fed. 237, 125 C. C. 437.

Under this section and § 10305, ante, king it a misdemeanor to influence, intimidate, or impede a witness, an indictment for aiding and abetting the bribing of a witness was not defective for failure to brand accused as a principal. Id.

Cited without definite application, U. S. v. Palmer (1818) 3 Wheat. 610, 629, 4 L. Ed. 471; Levin v. U. S. (1904) 128 Fed. 826, 63 C. C. A. 476; Schmidt v. U. S. (1904) 133 Fed. 257, 66 C. C. A. 389; U. S. v. Rosenstein (D. C. 1914) 211 Fed. 738, 741.

10507. (Crim. Code, § 333.) Punishment of accessories.

Whoever, except as otherwise expressly provided by law, being accessory after the fact to the commission of any offense defined any law of the United States, shall be imprisoned not exceeding e-half the longest term of imprisonment, or fined not exceeding e-half the largest fine prescribed for the punishment of the prinpal, or both, if the principal is punishable by both fine and imisonment; or if the principal is punishable by death, then an acssory shall be imprisoned not more than ten years.

R. S. §§ 5533–5535. Act March 4, 1909, c. 321, § 333, 35 Stat. 1152.

Cited without definite application, U. S. v. Rosenstein (D. C. 1914) 211 Fed. 738, 741.

10508. (Crim. Code, § 334.) Accessories to robbery or piracy.

Whoever, without lawful authority, receives or takes into cusdy any vessel, goods, or other property, feloniously taken by y robber or pirate against the laws of the United States, knowg the same to have been feloniously taken, and whoever, knowing at such pirate or robber has done or committed any such piracy or bbery, on the land or at sea, receives, entertains, or conceals any ch pirate or robber, is an accessory after the fact to such robbery piracy, and shall be imprisoned not more than ten years.

R. S. §§ 5324, 5533. Act March 4, 1909, c. 321, § 334, 35 Stat. 1152.

Notes of Decisions

Piracy.—Sections 10 and 11, Act ril 30, 1790, as to accessories, refer the piracy mentioned in section 8, ich includes only crimes committed by erican citizens, or on board American vessels. U. S. v. Howard (C. C. 1818) Fed. Cas. No. 15,404.

Cited without definite application, U. S. v. Palmer (1818) 3 Wheat. 610, 630, 4 L. Ed. 471; U. S. v. Coombs (1838) 12 Pet. 72, 78, 9 L. Ed. 1004.

10509. (Crim. Code, § 335.) Felonies and misdemeanors.

All offenses which may be punished by death, or imprisonment r a term exceeding one year, shall be deemed felonies. All other fenses shall be deemed misdemeanors.

Act March 4, 1909, c. 321, § 335, 35 Stat. 1152.

Notes of Decisions

See, also, notes under §§ 10199, 201, 10215, 10296, 10362, 10365, 367, and 10376, ante.

See, also, § 1686, ante, and notes reunder.

Application to offenses prior to enment of the code.—Cr. Code, § 335, es not, because of section 342, ap- to a prosecution under R. S. § 40, ante, § 10201, for the offense of nspiracy committed prior to the enment of the Criminal Code, and the fendant in such prosecution is entid to but three peremptory challenges. Heike v. U. S. (1911) 192 Fed. 83, 112 C. C. A. 615, affirming judgment U. S. v. Heike (C. C. 1910) 175 Fed. 852, and writ of certiorari granted Heike v. U. S. (1912) 32 S. Ct. 527, 223 U. S. 730, 56 L. Ed. 633, and judgment affirmed (1912) 33 S. Ct. 226, 227 U. S. 131, 57 L. Ed. 450, Ann. Cas. 1914C, 128.

Violations of statute as crimes in view of this section.—Section 10381, ante, relative to nonmailable matter, is not a mere direction to the post office officials, and violations thereof are pun-

ishable as crimes, in view of the enacting clause and this section. Coomer v. U. S. (1914) 213 Fed. 1, 129 C. C. A. 617.

Felonies.—There are no crimes or offenses cognizable in the federal courts outside of maritime or international law or treaties except such as are created and defined by act of congress, and where the statute designates and denounces a crime of the character or class which at common law was regarded as a felony, without naming it as a misdemeanor, it is to be classed as a felony, but not if it is termed by the statute a misdemeanor. If the statute adopts a state statute as to an offense made a felony by the state law, it may be so treated by the federal courts. Morris v. U. S. (1909) 161 Fed. 672, 88 C. C. A. 532, judgment reversed on rehearing (1909) 168 Fed. 682, 94 C. A. 168, and writ of certiorari denied (1909) 29 S. Ct. 704, 214 U. S. 527, 53 L. Ed. 1068.

Since the offense of depositing obscene and filthy matter in the mails, prohibited by section 10381, ante, is made a felony by this section, section 10381, ante, is not objectionable for failure to provide that persons who shall deposit nonmailable matter are guilty of a felony or misdemeanor. Tyomies Pub. Co. v. U. S. (1914) 211 Fed. 385, 128 C. C. A. 47.

An indictment against the president and manager of a bankrupt corporation, charging him with knowingly and fraudulently aiding and abetting it in the concealment of its assets from its trustee, held to charge a felony under Bankr. Act 1898, § 29b (ante, § 9613), and Cr. Code, §§ 332, 335. Kaufman v. U. S. (1914) 212 Fed. 613, 129 C. C. A. 149.

The Virginia statute declaring all offenses punishable capitally or by imprisonment in the penitentiary to be felonies, does not apply to criminal trials in the federal courts sitting in that state. U. S. v. Baugh (C. C. 1880) 1 Fed. 784, 788.

Under the federal laws, nothing is a felony unless expressly so declared by congress, except capital offenses, and it is the policy of congress to avoid, as much as possible, the multiplication of statutory felonies. Id.

Under the laws of the United States, the following crimes are felonies: Those declared expressly or impliedly by statute to be such, those punished under their common-law name and which are at common law felonies, and those made a felony by a state law which is adopted by congress. U. S. v. Coppersmith (C. C. 1880) 4 Fed. 198.

Rev. Laws Mass. c. 215, § 1, provides that any crime punishable by death or by imprisonment in the state prison is a felony, and that all other crimes are misdemeanors. When such statute was enacted the state had but one state prison, in which both men and were confined, but subsequently tablished a women's prison, an vided by statute that women co of offenses for which they would ously have been sent to the stat on should thereafter be senten the women's prison, and also th men convicted of lesser offenses able by imprisonment in a jail or of correction might be sentenced women's prison. Held, that the class of offenses were not thereb felonies, but that so far as rels women the grade of the offense longer determined by the place prisonment to which they might tenced, but rather by the place in a man guilty of the same offense be confined. Ex parte Brown 1907) 151 Fed. 710.

The offense defined in R. S. ante, § 10201, is not a felony, conviction thereunder will not d ify the offender to note or hold Gandy v. State (1880) 10 Neb. N. W. 1019.

Misdemeanors.—As at common conspiracy to commit a misde or felony was only a misdemea a conspiracy under R. S. § 5440 § 10201, not being declared a fel also merely a misdemeanor. witz v. U. S. (1899) 93 Fed. 4 C. C. A. 379.

R. S. § 5478, ante, § 10362, the breaking into a post office a punishable by a fine and by im ment at hard labor for not mor five years, creates a purely st offense "against the operation government," which was unkno the common law, and is therefo within the class of crimes kno felonies at the common law, and absence of any definition in the must be classed as a misdemean not a felony. Considine v. U. S. 112 Fed. 342, 50 C. C. A. 272, certiorari denied (1902) 22 S. C 184 U. S. 699, 46 L. Ed. 765.

Offenses under the post offic are not felonies, but misdemeano S. v. Lancaster (C. C. 1841) Fe No. 15,556; U. S. v. Baugh (C. C 1 Fed. 784, 787.

The defendant was indicted f lawfully fishing. The penalty is not exceeding $1,000, "or impris at hard labor for a term not e ing ninety days," or both. He offense is a misdemeanor, and felony. U. S. v. Doo-noch-keen 2 Alaska, 624.

Cited without definite appli Wood v. U. S. (1913) 204 Fed. 5 C. C. A. 369; Thompson v. U. S. 204 Fed. 973, 975, 123 C. C. A. 2 S. v. Thompson (D. C. 1912) 20 346.

10510. (Crim. Code, § 336.) Place of committal of murder or manslaughter determined.

In all cases of murder or manslaughter, the crime shall be deemed) have been committed at the place where the injury was inflicted, r the poison administered, or other means employed which caused ıe death, without regard to the place where the death occurs.

Act March 4, 1909, c. 321, § 336, 35 Stat. 1152.

Notes of Decisions

See, also, notes under § 10445, ante.

Homicide in Indian Territory.—Mur-r or manslaughter was committed ithin the central district of the Indian Territory, if the felonious act was committed there, though the death occurred in Texas. Havill v. U. S. (Okl. Cr. App. 1911) 115 P. 119.

10511. (Crim. Code, § 337.) Construction of designated words.

Words used in this title in the present tense include the future s well as the present; words used in the masculine gender include ıe feminine and neuter; the singular number includes the plural, ıd the plural the singular; the word "person" and the word "who-ver" include a corporation as well as a natural person; writing cludes printing and typewriting, and signature or subscription in-udes a mark when the person making the same intended it as such. he words "this title," wherever they occur herein, shall be construed) mean this Act.

Act March 4, 1909, c. 321, § 337, 35 Stat. 1152.

Notes of Decisions

Word "person" in larceny statute.—ıe word "person," as used in an act congress punishing any person who all steal, etc., held to include slaves well as freemen; and such construc-ɔn does not render the act uncon-tutional. U. S. v. Amy (C. C. 1859) ed. Cas. No. 14,445.

Word "person" as including corporation.—See, also, notes under § 10381, ante.

The word "person" in federal legislation includes corporations. U. S. v. First Nat. Bank of Anamoose (D. C. 1911) 190 Fed. 336.

10512. (Crim. Code, § 338.) Effect of omitting "hard labor."

The omission of the words "hard labor" from the provisions pre-cribing the punishment in the various sections of this Act, shall ɔt be construed as depriving the court of the power to impose ırd labor as a part of the punishment, in any case where such power ɔw exists.

Act March 4, 1909, c. 321, § 338, 35 Stat. 1153.

Notes of Decisions

Statute as permissive.—This section nply gives the court power to im-se hard labor as part of the punish-ent, but does not make it obligatory. Brien v. McClaughry (1913) 209 d. 816, 818, 126 C. C. A. 540.

Sentence to hard labor.—The sen-ncing of a federal convict to the peni-ntiary of Pennsylvania, with a provi-ɔn that he shall be subject in all re-ects to the same discipline and treat-ent as state convicts, is not a sen-nce to hard labor. It adds nothing the punishment described by the ıtute, but relates only to prison gov-nment and control. Hart v. U. S. 898) 84 Fed. 799, 28 C. C. A. 612, irming judgment U. S. v. Hart (D. 1897) 78 Fed. 868.

A sentence to imprisonment at "hard ɔor" is erroneous, because of the e of the quoted words, and it will be amended by striking them out. Dowling v. U. S. (1912) 193 Fed. 1020, 113 C. C. A. 667.

Omitting hard labor.—A person convicted in a United States court of a crime punishable by imprisonment in a penitentiary may lawfully be sentenced to confinement in the Leavenworth penitentiary, although the sentence does not mention hard labor. O'Brien v. McClaughry (1913) 209 Fed. 816, 126 C. C. A. 540.

Where a person convicted of mailing obscene papers is sent to the penitentiary, a failure to sentence him to hard labor, as required by R. S. § 3893, ante, § 10381, is a fatal error, for which the judgment will be reversed. Harman v. U. S. (C. C. 1892) 50 Fed. 921.

A judgment and sentence of imprisonment omitting any reference to hard labor is illegal where one is indicted

and convicted under R. S. § 5392, ante, § 10295, which imposes, as a penalty for perjury, "imprisonment at hard labor." In re Christian (C. C. 1897) 82 Fed. 199.

One convicted cannot complain that the sentence omitted a provision for hard labor, and where the sentence omitted such provision the court had jurisdiction at a subsequent term by a nunc pro tunc order to direct an amendment of the entry to include such requirement, on conclusive evidence that its omission was an error of the clerk, and that the sentence as actually pronounced was in conformity to the statute. In re Welty (D. C. 1903) 123 Fed. 122, 127.

Sentence under statute prescribing punishment.—A defendant, convicted under a criminal statute of the United States prescribing punishment by "imprisonment," cannot be sentenced to hard labor. Haynes v. U. S. (1900) 101 Fed. 817, 42 C. C. A. 34.

Where a statute under which a defendant is convicted in a court of the United States prescribes "imprisonment in the penitentiary" as a punishment for its violation, it is error to add the words "at hard labor" to a sentence thereunder, although hard labor may be required of the er under the disciplinary regula the prison where the sentence is ed to be executed. Jackson v (1900) 102 Fed. 473, 42 C. C.

A judgment in a criminal cas conform strictly to the act of co and any departure from the sta to the extent or character of th ishment is a fatal error. Wh v. U. S. (1902) 114 Fed. 302, 5 A. 214.

Where imprisonment at hard prescribed by the statutes as a ment for an offense, it must be i in the sentence of the person ed. In re Johnson (C. C. 18 Fed. 477.

When statutes prescribe pa modes of punishment, a court inflict another, and hence under 5440, ante, § 10201, authorizi prisonment for conspiracy to a federal offense, imprisonme hard labor" is unauthorized. E Harlan (C. C. 1909) 180 Fed. 1 cree affirmed Harlan v. Mc (1910) 31 S. Ct. 44, 218 U. S. L. Ed. 1101, 21 Ann. Cas. 849.

Cited without definite appl U. S. v. Thompson (D. C. 191 Fed. 346.

§ 10513. (Crim. Code, § 339.) Arrangement and classificati sections.

The arrangement and classification of the several sections c title have been made for the purpose of a more convenient ar derly arrangement of the same, and therefore no inference o sumption of a legislative construction is to be drawn by reas the chapters under which any particular section is placed.

Act March 4, 1909, c. 321, § 339, 35 Stat. 1153.

§ 10514. (Crim. Code, § 340.) Jurisdiction of [circuit and] di courts.

The crimes and offenses defined in this Title shall be cogn in the [circuit and] district courts of the United States, as scribed in sections five hundred and sixty-three and six hu and twenty-nine of the Revised Statutes.

Act March 4, 1909, c. 321, § 340, 35 Stat. 1153.

The words "circuit and," inclosed in brackets in this section, were seded by the abolition of the circuit courts and the transfer of their diction to the district courts, by Jud. Code, §§ 289–291, ante, §§ 1266–12

The provisions of R. S. §§ 563, 629, mentioned in this section were in rated into the Judicial Code, chiefly in chapter 2 thereof, ante, § 991, an repealed by section 297 of said code, ante, § 1274.

Notes of Decisions

Jurisdiction of common-law offenses.
—See notes under § 991 (2), ante.

CHAPTER FIFTEEN

Repealing Provisions

Sec.
15. Sections, acts, and parts of acts repealed; general repeal.
16. Pending actions, etc., not affected.
10517. Prosecutions, etc., prior to taking effect of this law.
10518. Limitations; prosecutions, etc.
10519. In effect January 1, 1910.

10515. (Crim. Code, § 341.) Sections, acts, and parts of acts repealed; general repeal.

The following sections of the Revised Statutes and Acts and parts Acts are hereby repealed:

Sections four hundred and twelve, fifteen hundred and fifty-three, teen hundred and sixty-eight; sections seventeen hundred and hty to seventeen hundred and eighty-three, both inclusive; secns seventeen hundred and eighty-five, seventeen hundred and eightyen, seventeen hundred and eighty-eight, seventeen hundred and hty-nine, twenty-three hundred and seventy-three, twenty-four hund and twelve, thirty-five hundred and eighty-three, thirty-seven hund and eight, thirty-seven hundred and thirty-nine, thirty-seven hund and forty, thirty-seven hundred and forty-two, thirty-eight hund and thirty-two, thirty-eight hundred and fifty-one, thirty-eight ndred and sixty-nine, thirty-eight hundred and eighty-seven; secns thirty-eight hundred and ninety to thirty-eight hundred and ninefour, both inclusive; section thirty-eight hundred and ninety-nine; tions thirty-nine hundred and twenty-two to thirty-nine hundred l twenty-five, both inclusive; sections thirty-nine hundred and forseven, thirty-nine hundred and fifty-four, thirty-nine hundred and enty-seven, thirty-nine hundred and seventy-nine; sections thirtye hundred and eighty-one to thirty-nine hundred and eighty-six, h inclusive; sections thirty-nine hundred and eighty-eight, thirtye hundred and ninety-two, thirty-nine hundred and ninety-five, thirnine hundred and ninety-six, four thousand and thirteen, four thoud and sixteen, four thousand and thirty, four thousand and fiftyee, fifty-one hundred and eighty-eight, fifty-one hundred and eightye; sections fifty-two hundred and eighty-one to fifty-two hundred l ninety-one, both inclusive; sections fifty-three hundred and twenthree to fifty-three hundred and ninety-five, both inclusive; secns fifty-three hundred and ninety-eight to fifty-four hundred and , both inclusive; sections fifty-four hundred and thirteen to fiftyr hundred and eighty-four, both inclusive; sections fifty-four hund and eighty-seven to fifty-five hundred and ten, both inclusive; tions fifty-five hundred and sixteen, fifty-five hundred and eighteen, y-five hundred and nineteen; sections fifty-five hundred and twenfour to fifty-five hundred and thirty-five, both inclusive; sections y-five hundred and fifty-one to fifty-five hundred and sixty-seven, h inclusive, of the Revised Statutes;

That part of section thirty-eight hundred and twenty-nine of the vised Statutes which reads as follows: "And every person who, hout authority from the Postmaster-General, sets up or professes keep any office or place of business bearing the sign, name, or title post-office, shall, for every such offense, be liable to a penalty of more than five hundred dollars;"

That part of section thirty-eight hundred and sixty-seven of the Red Statutes which reads as follows: "And any person not conted with the letter-carrier branch of the postal service who shall ar the uniform which may be prescribed shall, for every such offense,

be punishable by a fine of not more than one hundred dollars imprisonment for not more than six months, or both;"

That part of section four thousand and forty-six of the Statutes which reads as follows: "Every postmaster, assistant or other person employed in or connected with the business or tions of any money-order office who converts to his own any way whatever, or loans, or deposits in any bank, except thorized by this title, or exchanges for other funds, any por the public money-order funds, shall be deemed guilty of embezz and any such person, as well as every other person advising or pating therein, shall, for every such offense, be imprisoned less than six months nor more than ten years, and be fined in equal to the amount embezzled; and any failure to pay over or any money-order funds intrusted to such person shall be take prima facie evidence of embezzlement; and upon the trial of dictment against any person for such embezzlement, it shall b facie evidence of a balance against him to produce a transcri the money-order account books of the Sixth Auditor. But herein contained shall be construed to prohibit any postmaster ing, under the direction of the Postmaster-General, in a nation designated by the Secretary of the Treasury for that purpose own credit as postmaster, any money order or other funds in his nor prevent his negotiating drafts or other evidences of debt such bank, or through United States disbursing officers, or otl when instructed or required to do so by the Postmaster-General, purpose of remitting surplus money-order funds from one po to another, to be used in payment of money orders."

"An Act to protect lines of telegraph constructed or used United States from malicious injury and obstruction," approv twenty-third, eighteen hundred and seventy-four;

"An Act to protect persons of foreign birth against forcil straint or involuntary servitude," approved June twenty-third een hundred and seventy-four;

That part of "An Act making appropriations for the service Post-Office Department for the fiscal year ending June thirtieth een hundred and seventy-five, and for other purposes," approv twenty-third, eighteen hundred and seventy-four, which reads lows: "That any postmaster who shall affix his signature to proval of any bond of a bidder or to the certificate of suffici sureties in any contract before the said bond or contract is si the bidder or contractor and his sureties, or shall knowingly, out the exercise of due diligence, approve any bond of a bidd insufficient sureties, or shall knowingly make any false or fra certificate, shall be forthwith dismissed from office and be th disqualified from holding the office of postmaster, and shall deemed guilty of a misdemeanor, and on conviction thereof ished by a fine not exceeding five thousand dollars, or by in ment not exceeding one year, or both;"

Sections one, two, and three of "An Act to protect ornamen other trees on Government reservations and on lands purch the United States, and for other purposes," approved Marc eighteen hundred and seventy-five;

"An Act to punish certain larcenies and the receivers o goods," approved March third, eighteen hundred and seventy-

"An Act to amend section fifty-four hundred and fifty-seve Revised Statutes of the United States, relating to counterfeitin proved January sixteenth, eighteen hundred and seventy-seven

That part of section five of "An Act establishing post-roa for other purposes," approved March third, eighteen hundr seventy-seven, which reads as follows: "And if any perso

ke use of any such official envelope to avoid the payment of post-
on his private letter, package, or other matter in the mail, the
son so offending shall be deemed guilty of a misdemeanor and
ject to a fine of three hundred dollars, to be prosecuted in any
rt of competent jurisdiction;"

That part of section one of "An Act making appropriations for the
vice of the Post-Office Department for the year ending June thirti-
, eighteen hundred and seventy-nine, and for other purposes," ap-
ved June seventeenth, eighteen hundred and seventy-eight, which
ds as follows: "And any postmaster who shall make a false re-
n to the auditor, for the purpose of fraudulently increasing his
npensation under the provisions of this or any other Act, shall be
med guilty of a misdemeanor, and, on conviction thereof, shall
fined in a sum not less than fifty nor more than five hundred dol-
, or imprisoned for a term not exceeding one year, or punished by
h such fine and imprisonment, in the discretion of the court; and
postmaster of any class, or other person connected with the postal
vice, intrusted with the sale or custody of postage stamps, stamped
elopes, or postal cards, shall use or dispose of them in the payment
debts or in the purchase of merchandise or other salable articles,
pledge or hypothecate the same, or sell or dispose of them except
cash, or sell or dispose of postage stamps or postal cards for any
ger or less sum than the values indicated on their faces, or sell or
pose of stamped envelopes for a larger or less sum than is charged
refor by the Post-Office Department for like quantities, or sell or
pose of postage stamps, stamped envelopes, or postal cards other-
e than as provided by law and the regulations of the Post-Office De-
tment; and any postmaster or other person connected with the
tal service who shall violate any of these provisions shall be deemed
lty of a misdemeanor, and, on conviction thereof, shall be fined in
sum not less than fifty nor more than five hundred dollars, or im-
soned for a term not exceeding one year;"

An Act to amend section fifty-four hundred and ninety-seven of
Revised Statutes, relating to embezzlement by officers of the Unit-
States," approved February third, eighteen hundred and seventy-
e;

That part of section one of "An Act making appropriations for the
vice of the Post-Office Department for the fiscal year ending June
tieth, eighteen hundred and eighty, and for other purposes," ap-
ved March third, eighteen hundred and seventy-nine, which reads
follows: "That nothing contained in section thirty-nine hundred
l eighty-two of the Revised Statutes shall be construed as prohib-
g any person from receiving and delivering to the nearest post-
ce or postal car mail matter properly stamped." Also sections thir-
n, twenty-three, twenty-seven, and twenty-eight of said Act;

An Act to amend section fifty-four hundred and forty of the Re-
ed Statutes," approved May seventeenth, eighteen hundred and
enty-nine;

ections one, three, and four of "An Act to amend section fifty-
ee hundred and fifty-two of the Revised Statutes of the United
tes, in reference to bigamy, and for other purposes," approved
rch twenty-second, eighteen hundred and eighty-two;

ections eleven, twelve, thirteen, fourteen, and fifteen of "An Act
regulate and improve the civil service of the United States," ap-
ved January sixteenth, eighteen hundred and eighty-three;

An Act making it a felony for a person to falsely and fraudulently
ume or pretend to be an officer or employee acting under authority
the United States or any department or officer thereof, and pre-
bing a penalty therefor," approved April eighteenth, eighteen hun-
d and eighty-four;

"An Act to prevent and punish the counterfeiting within the States of notes, bonds, or other securities of foreign govern approved May sixteenth, eighteen hundred and eighty-four;

Section nine of "An Act making appropriations for the curr contingent expenses of the Indian Department and for fulfillin stipulations with various Indian tribes for the year ending Ju tieth, eighteen hundred and eighty-six, and for other purpos proved March third, eighteen hundred and eighty-five;

Section two of "An Act to amend the Act entitled 'An Act t ify the money-order system, and for other purposes,' approved third, eighteen hundred and eighty-three," approved January eighteen hundred and eighty-seven;

Sections three, four, five, nine, and ten of "An Act to am Act entitled 'An Act to amend section fifty-three hundred an two of the Revised Statutes of the United States, in reference amy, and for other purposes,' approved March twenty-second, e hundred and eighty-two," approved March third, eighteen h and eighty-seven;

Section two of "An Act relating to permissible marks, prin writing, upon second, third, and fourth class matter, and to the twenty-second and twenty-third sections of an Act entitl Act making appropriations for the service of the Post-Office ment for the fiscal year ending June thirtieth, eighteen hundr eighty, and for other purposes,'" approved January twentieth, e hundred and eighty-eight;

"An Act to amend section fifty-three hundred and eighty-e the Revised Statutes of the United States in relation to timber dations," approved June fourth, eighteen hundred and eighty

"An Act relating to postal crimes, and amendatory of the s therein mentioned," approved June eighteenth, eighteen hundr eighty-eight;

"An Act amendatory of 'An Act relating to postal crimes and datory of the statutes therein mentioned,' approved June eigh eighteen hundred and eighty-eight, and for other purposes," ap September twenty-sixth, eighteen hundred and eighty-eight;

"An Act to punish, as a felony, the carnal and unlawful know any female under the age of sixteen years," approved February eighteen hundred and eighty-nine;

Sections one and two of "An Act to punish dealers and pre dealers in counterfeit money and other fraudulent devices for the United States mails," approved March second, eighteen h and eighty-nine;

Section one of "An Act to amend certain sections of the R Statutes relating to lotteries, and for other purposes," approve tember nineteenth, eighteen hundred and ninety;

"An Act further to prevent counterfeiting or manufacture o tools, or other implements used in counterfeiting, and providin alties therefor, and providing for the issue of search warrants tain cases," approved February tenth, eighteen hundred and one;

"An Act to amend sections fifty-three hundred and sixty-fi fifty-three hundred and sixty-six of the Revised Statutes relat barratry on the high seas," approved August sixth, eighteen h and ninety-four;

Sections one and two of "An Act for the suppression of traffic through national and interstate commerce and the postal s subject to the jurisdiction and laws of the United States," ap March second, eighteen hundred and ninety-five;

"An Act to prohibit prize fighting and pugilism and fights b men and animals, and to provide penalties therefor in the T

s and the District of Columbia," approved February seventh, eight-
ı hundred and ninety-six;
That part of "An Act making appropriations for the Department
Agriculture for the fiscal year ending June thirtieth, eighteen hun-
d and ninety-five," approved August eighth, eighteen hundred and
ety-four, and that part of "An Act making appropriations for the
partment of Agriculture for the fiscal year ending June thirtieth,
hteen hundred and ninety-six," approved March second, eighteen
ndred and ninety-five, and that part of "An Act making appropria-
ns for the Department of Agriculture for the fiscal year ending
e thirtieth, eighteen hundred and ninety-seven," approved April
enty-fifth, eighteen hundred and ninety-six, which reads as fol-
vs: "Any person who shall knowingly issue or publish any weather
ecasts or warnings of weather conditions falsely representing such
ecasts or warnings to have been issued or published by the Weather
reau, United States Signal Service, or other branch of the gov-
ment service, shall be deemed guilty of a misdemeanor, and, on
viction thereof, for each offense be fined in a sum not exceeding
e hundred dollars, or imprisoned not to exceed ninety days, or be
h fined and imprisoned, in the discretion of the court;"
That part of "An Act making appropriations for current and con-
gent expenses of the Indian Department and fulfilling treaty stipu-
ions with various Indian tribes for the fiscal year ending June
rtieth, eighteen hundred and ninety-seven, and for other purposes,"
proved June tenth, eighteen hundred and ninety-six, which reads as
lows: "Provided further, That hereafter it shall be unlawful for
y person to destroy, deface, change, or remove to another place
y section corner, quarter-section corner, or meander post on any
vernment line of survey, or to cut down any witness tree or any
e blazed to mark the line of a Government survey, or to deface,
ange, or remove any monument or bench mark of any Government
rvey. That any person who shall offend against any of the provi-
ns of this paragraph shall be deemed guilty of a misdemeanor,
d, upon conviction thereof in any court, shall be fined not exceed-
g two hundred and fifty dollars or be imprisoned not more than
e hundred days. All the fines accruing under this paragraph shall
paid into the Treasury, and the informer in each case of convic-
n shall be paid the sum of twenty-five dollars;"
"An Act to reduce the cases in which the penalty of death may be
licted," approved January fifteenth, eighteen hundred and ninety-
ven;
'An Act to prevent the carrying of obscene literature and articles
signed for indecent and immoral use from one State or Territory
o another State or Territory," approved February eighth, eighteen
ndred and ninety-seven;
'An Act to prevent forest fires on the public domain," approved
bruary twenty-fourth, eighteen hundred and ninety-seven;
'An Act to prevent the purchasing of or speculating in claims against
Federal Government by United States officers," approved Febru-
y twenty-fifth, eighteen hundred and ninety-seven;
'An Act to amend section fifty-four hundred and fifty-nine of the
vised Statutes, prescribing the punishment for mutilating United
ates coins, and for uttering or passing or attempting to utter or
ss such mutilated coins," approved March third, eighteen hundred
d ninety-seven;
Section eighteen of "An Act to amend the laws relating to naviga-
n," approved March third, eighteen hundred and ninety-seven;
That part of section one of "An Act making appropriations for the
vice of the Post-Office Department for the fiscal year ending June
rteenth, eighteen hundred and ninety-nine," approved June thir-

teenth, eighteen hundred and ninety-eight, which reads as fo
"Provided, That any person or persons who shall place or ca
be placed any matter in the mails during the regular weighing
for the purpose of increasing the weight of the mails with int
cause an increase in the compensation of the railroad mail
over whose route such mail matter may pass, shall be deemed
of a misdemeanor, and shall on conviction thereof be fined n
than five hundred dollars nor more than twenty thousand dollar
shall be imprisoned at hard labor not less than thirty days nor
than five years;"

Section seventeen of "An Act to provide revenue for the G
ment, and to encourage the industries of the United States," app
July twenty-fourth, eighteen hundred and ninety-seven;

Section three of an Act entitled "An Act making appropriatio
the service of the Post-Office Department for the fiscal year
June thirtieth, nineteen hundred and four, and for other purp
approved March third, nineteen hundred and three;

"An Act to protect the harbor defenses and fortifications con
ed or used by the United States from malicious injury, and for
purposes," approved July seventh, eighteen hundred and ninety-

"An Act to amend an Act entitled 'An Act to prevent fores
on the public domain,' approved February twenty-fourth, ei
hundred and ninety-seven," approved May fifth, nineteen hund

Sections two, three, and four of "An Act to enlarge the pow
the Department of Agriculture, prohibit the transportation by
state commerce of game killed in violation of local laws, and for
purposes," approved May twenty-fifth, nineteen hundred;

"An Act to prevent the sale of firearms, opium, and intoxicati
uors in certain islands of the Pacific," approved February fourt
nineteen hundred and two;

"An Act for the suppression of train robbery in the Territor
the United States and elsewhere, and for other purposes," app
July first, nineteen hundred and two;

"An Act conferring jurisdiction upon the circuit and district
for the district of South Dakota in certain cases, and for othe
poses," approved February second, nineteen hundred and three;

"An Act to amend section three of the 'Act further to prevent
terfeiting or manufacturing of dies, tools, or other implements
in manufacturing,' and so forth, approved February tenth, ei
hundred and ninety-one," approved March third, nineteen hu
and three;

"An Act for the protection of the Bull Run Forest Reserve a
sources of the water supply of the city of Portland, State of Or
approved April twenty-eighth, nineteen hundred and four;

"An Act to amend the Act of February eighth, eighteen hu
and ninety-seven, entitled 'An Act to prevent the carrying of o
literature and articles designed for indecent and immoral use
one State or Territory into another State or Territory,' so as t
vent the importation and exportation of the same," approved
ruary eighth, nineteen hundred and five;

"An Act to amend section thirteen of chapter three hundre
ninety-four of the Supplement to the Revised Statutes of the
States," approved March second, nineteen hundred and five;

Section five of "An Act to amend sections forty-four hundre
seventeen, forty-four hundred and fifty-three, forty-four hundre
eighty-eight, and forty-four hundred and ninety-nine of the R
Statutes relating to misconduct by officers or owners of vessels
proved March third, nineteen hundred and five;

"An Act to punish the cutting, chipping, or boxing of trees
public lands," approved June fourth, nineteen hundred and six

Sections sixteen, seventeen, and nineteen of "An Act to establish ɔureau of immigration and naturalization, and to provide for a uni- ɪm rule for the naturalization of aliens throughout the United ıtes," approved June twenty-ninth, nineteen hundred and six.

An Act entitled "An Act to prohibit corporations from making mon- contributions in connection with political elections," approved Janu- ' twenty-sixth, nineteen hundred and seven.

An Act entitled "An Act to amend sections one, two, and three of Act entitled 'An Act to prohibit shanghaiing in the United States,' ɔroved June twenty-eighth, nineteen hundred and six," approved ırch second, nineteen hundred and seven.

An Act entitled "An Act to promote the safe transportation in in- state commerce of explosives and other dangerous articles, and to ɔvide penalties for its violation," approved May thirtieth, nineteen ndred and eight.

An Act entitled An "Act to amend section fifty-four hundred and rty-eight of the Revised Statutes," approved May thirtieth, nineteen ndred and eight.

Also all other sections and parts of sections of the Revised Statutes d Acts and parts of Acts of Congress, in so far as they are em- aced within and superseded by this Act, are hereby repealed; the maining portions thereof to be and remain in force with the same ect and to the same extent as if this Act had not been passed.

Act March 4, 1909, c. 321, § 341, 35 Stat. 1153.

ited without definite application, S. v. Pelican (1914) 34 Sup. Ct. 396, , 232 U. S. 442, 58 L. Ed. 676; Heike U. S. (1911) 192 Fed. 83, 112 C. C. A. 5 (certiorari granted [1912] 32 Sup. Ct. 527, 223 U. S. 730, 56 L. Ed. 633, and affirmed [1912] 33 Sup. Ct. 226, 227 U. S. 131, 57 L. Ed. 450, Ann. Cas. 1914C, 128).

10516. (Crim. Code, § 342.) Pending actions, etc., not affected.

The repeal of existing laws or modifications thereof embraced this title shall not affect any act done, or any right accruing or crued, or any suit or proceeding had or commenced in any civil use prior to said repeal or modifications, but all liabilities under id laws shall continue and may be enforced in the same manner if said repeal or modifications had not been made.

Act March 4, 1909, c. 321, § 342, 35 Stat. 1159.

Notes of Decisions

onspiracy.—Cr. Code, § 335, does , because of section 342, apply to a secution under R. S. § 5440, ante, 0201, for the offense of conspiracy mmitted prior to the enactment of Criminal Code, and the defendant such prosecution is entitled to but ee peremptory challenges. Heike v. U. S. (1911) 192 Fed. 83, 112 C. C. A. 615, affirming judgment U. S. v. Heike (C. C. 1910) 175 Fed. 852, and writ of certiorari granted Heike v. U. S. (1912) 32 S. Ct. 527, 223 U. S. 730, 56 L. Ed. 633, and judgment affirmed (1912) 33 S. Ct. 226, 227 U. S. 131, 57 L. Ed. 450.

10517. (Crim. Code, § 343.) Prosecutions, etc., prior to taking effect of this law.

All offenses committed, and all penalties, forfeitures, or liabilities curred prior to the taking effect hereof, under any law embraced or changed, modified, or repealed by this title, may be prosecut- and punished in the same manner and with the same effect as this Act had not been passed.

Act March 4, 1909, c. 321, § 343, 35 Stat. 1159.

Notes of Decisions

sing mails to defraud.—Under this tion and section 10385, ante, which ame effective in January, 1910, one indicted for using the mails to defraud subsequent to January, 1910, may be prosecuted under section 10385, ante,

though the indictment charges that the scheme was devised in 1909. Sandals v. U. S. (1914) 213 Fed. 569, 130 C. C. A. 149.

Cited without definite appli Ex parte King (D. C. 1912) 2 622, 630.

§ 10518. (Crim. Code, § 344.) Limitations; prosecutions, etc

All acts of limitation, whether applicable to civil cause proceedings, or for the recovery of penalties or forfeitures braced in, modified, changed, or repealed by this title, shall not fected thereby; and all suits or proceedings for causes arising done or committed prior to the taking effect hereof may be comm and prosecuted within the same time and with the same effect said repeal had not been made.

Act March 4, 1909, c. 321, § 344, 35 Stat. 1159.

§ 10519. (Crim. Code, § 345.) In effect January 1, 1910.

This Act shall take effect and be in force on and after th day of January, nineteen hundred and ten.

Act March 4, 1909, c. 321, § 345, 35 Stat. 1159.

Notes of Decisions

Time when statute takes effect in general.—A penal statute takes effect from time of passage, when no other time is fixed. The Ann (C. C. 1812) Fe No. 397.

DECISIONS RELATING TO SUBJECT IN GENERAL

Common-law offenses.—See notes under § 991 (2), ante.

Construction of statutes.—The rule that penal statutes are to be strictly construed will not prevent the courts from inquiring into the intention of the legislature. The Enterprise (C. C. 1810) Fed. Cas. No. 4,499; The Bolina (C. C. 1812) Fed. Cas. No. 1,608.

The language of the statute is to be particularly adhered to in the construction of penal laws. U. S. v. Wilson (C. C. 1830) Fed. Cas. No. 16,730; Ferrett v. Atwill (C. C. 1846) Fed. Cas. No. 4,747; U. S. v. Clayton (C. C. 1871) Fed. Cas. No. 14,814.

In construing penal statutes courts will not, by construction, ingraft words in one section upon those of another, unless the legislative intention be plain and clear. U. S. v. Twenty-Four Coils of Cordage (C. C. 1832) Fed. Cas. No. 16,566; U. S. v. Clayton (C. C. 1871) Fed. Cas. No. 14,814.

In the construction of penal statutes that sense will be adopted which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature. U. S. v. Winn (C. C. 1838) Fed. Cas. No. 16,740.

All the provisions or sections of a penal statute must be taken together, and interpreted according to the import of the words, so as to give effect to its objects and intent. The Harriet (C. C. 1840) Fed. Cas. No. 6,099.

In the construction of a penal statute an offender who is protected by its letter cannot be deprived of its benefit on the ground that his case is not within the spirit and intention of the law. U. S. v. Ragsdale (C. C. 1847) Fed. Cas. No. 16,113.

Where a penal statute is complete without certain words, and givin effect will render the whole act ingless, they should be rejected plusage. U. S. v. Stern (C. C. Fed. Cas. No. 16,389.

And a doubt whether an act in an indictment is embraced criminal prohibition must be r in favor of the accused. U. S. v. (C. C. 1879) Fed. Cas. No. 16,1

Unintentional violations of Consent is essential to guilt, a legislature is supposed to pass nal laws with the understandi courts will not inflict the penalt such violations as are uninte The William Gray (C. C. 1810 Cas. No. 17,694.

Procedure when no penalty scribed for act declared unla Where an act is declared unlawf a penalty prescribed, but no specially provided, an offender proceeded against either by indi or by an action of debt. U. Bougher (C. C. 1854) Fed. C 14,627.

Indictment where no mode of cution is provided.—Where an is made punishable by impris but the statute provides no m prosecution, an indictment will S. v. Malebran (C. C. 1820) Fe No. 15,711.

Sentence and punishment.—W statute directs a fine and impris to be imposed for an offense, th on conviction, is bound to inflic U. S. v. Vickery (C. C. 1803 Cas. No. 16,619.

Where a statute merely alt punishment of a common-law the statuory punishment may flicted, although the indictmen not conclude against the form

tute. U. S. v. Norris (C. C. 1807) l. Cas. No. 15,899.

n cases of statutory crimes punish- e by fine, or by fine and imprison- nt, the federal courts may sentence endant to confinement in jail until fine is paid. U. S. v. Robbins (C. 1872) Fed. Cas. No. 16,171.

The sections of the Revised Statutes in relation to crime are not repealed by subsequent statutes prescribing different punishments. U. S. v. Ulrici (C. C. 1875) Fed. Cas. No. 16,594.

Cited without definite application, O'Brien v. McClaughry (1913) 209 Fed. 816, 817, 126 C. C. A. 540.

REFERENCES

TO PENAL PROVISIONS NOT CONTAINED IN T
CRIMINAL CODE

Many penal provisions, general and permanent in their nature, wer
corporated into the Criminal Code, because not properly separa
administrative or other provisions relating to other subjects. S
visions, so far as they remain in force, except those defining offense
able by a pecuniary penalty or forfeiture of property enforceable
action or other civil remedy, are included under other Titles an
ters of this compilation, as follows:

TITLE II—THE CONGRESS

Chapter 7—Congressional Investigations

Witness refusing to attend and testify in congressional inquiry, R.
ante, § 157.

Chapter 8—Contested Elections

Witness refusing to attend and testify in contested election case, R.
ante, § 173.

Failing to produce and deliver papers in contested election case, R.
ante, § 180.

Chapter 8A—Contributions for Purpose of Influencing Elections

Violation of act providing for publicity of contributions to influence
at which representatives in Congress are elected, Act June 25, 191
§ 11, as amended, Aug. 19, 1911, c. 33, § 2, ante, § 198.

TITLE IV—PROVISIONS APPLICABLE TO ALL THE EXECU
DEPARTMENTS

Employment in Executive Department, etc., of officer, clerk, etc.,
specific appropriation, Act Aug. 23, 1912, c. 350, § 5, ante, § 250.

Use of name of member of Congress, etc., to advertise practice befor
ments, Act April 27, 1916, c. 89, § 1, ante, § 272a.

TITLE VII—THE DEPARTMENT OF THE TREASURY

Chapter 1—The Department

Officer in Treasury Department engaging in trade, etc., R. S. § 243
377.

Clerk in Treasury Department trading in funds or debts of United
any State, etc., R. S. § 244, ante, § 378.

TITLE IX—THE POST OFFICE DEPARTMENT

Post office burglars, rewards for detection, etc., Act July 28, 1916, c.
ante, § 582a.

TITLE XII C—THE JUDICIAL CODE

Chapter 1—District Courts—Organization

District judge failing to reside in district for which he is appointed, J
§ 1, as amended, Act July 30, 1914, c. 216, ante, § 968.

Chapter 3—District Courts—Removal of Causes

Clerk of state court refusing to furnish copy of record on removal
to district court, Jud. Code, § 39, ante, § 1021.

Chapter 4—District Courts—Miscellaneous Provisions

Receiver, etc., failing to manage property according to laws of the S
Code, § 65, ante, § 1047.

Chapter 7—The Court of Claims

Member of Congress, etc., practicing in Court of Claims, Jud. Code, §
§ 1135.

Chapter 11—Provisions Common to More than One Court

Judge engaging in practice of law, Jud. Code, § 258, ante, § 1235.

Contempt of court, Act Oct. 15, 1914, c. 323, § 22, ante, § 1245b. Ac
1914, c. 323, § 25, ante, § 1245e.

TITLE XIII—THE JUDICIARY

pter 14—District Attorneys, Marshals, Clerks, and other Court Officers, and Commissioners

Clerk of court failing to make report, certificate, statement, etc., Act Feb. 22, 1875, c. 95, § 6, ante, § 1329.

pter 16—Fees and Compensation of Officers

Marshal, attorney, or other officer demanding or receiving illegal fee, or refusing to pay over fee received, Act May 28, 1896, c. 252, § 18, ante, § 1430.

TITLE XIV—THE ARMY

pter 3—Pay and Allowances

Agent or attorney demanding or accepting fee for prosecuting claims for arrears of pay, etc., for services during the Civil War, Act Dec. 22, 1911, c. 6, ante, § 2204.

pter 5—Articles of War

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lerk of court or other officer issuing false certificates or acknowledgments in naturalization proceedings, Act June 29, 1906, c. 3592, § 22, ante, § 4378.

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iding any person not entitled thereto to secure naturalization, Act June 29, 1906, c. 3592, § 23, ante, § 4379.

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Owner or officer or agent of manufacturing establishment, mine, etc., to answer or giving false answers to questions for purposes of cen July 2, 1909, c. 2, § 24, ante, § 4410.

Dealers in or manufacturers of tobacco failing to report to Director o amount of leaf tobacco on hand, Act April 30, 1912, c. 102, § 3 4423.

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Employé of Census Bureau disclosing without authority information ing cotton statistics acquired by reason of his employment, Act 1912, c. 249, § 3, ante, § 4431.

Owner or officer or agent of cotton ginnery, manufacturing establishme house, etc., refusing to furnish information or willfully giving false for cotton statistics report, Act July 22, 1912, c. 249, § 4, ante, §

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Hunting, etc., or fishing in Yellowstone Park, or other violations of act or of regulations to protect the birds and animals therein, Act May 7, 1894, c. 72, § 4, as amended, Act June 28, 1916, c. 179, ante, § 5193.

Receiving for transportation game unlawfully killed in Yellowstone Park, Act May 7, 1894, c. 72, § 4, as amended, Act June 28, 1916, c. 179, ante, § 5193.

Violations of rules and regulations relating to Mount Rainier National Park, Act June 30, 1916, c. 197, § 4, ante, § 5227d.

Hunting and fishing in Mount Rainier National Park, Act June 30, 1916, c. 197, § 4, ante, § 5227d.

Settlement or residence in Crater Lake Park or other violation of act creating the park or rules established thereunder, Act May 22, 1902, c. 820, § 3, ante, § 5230.

Hunting, etc., in Crater Lake National Park, Act Aug. 21, 1916, c. 368, § 3, ante, § 5230c.

Intrusion on Wind Cave Park, or unauthorized injury to property therein, or violation of regulations, Act Jan. 9, 1903, c. 63, § 6, ante, § 5236.

Removal, disturbance, or destruction of ruins, etc., in Mesa Verde National Park, Act June 29, 1906, c. 3607, § 4, ante, § 5241.

Trespassing upon or injuring buildings or springs in Platt Park, Act April 21, 1904, c. 1402, § 18, ante, § 5244.

Hunting in Glacier National Park, Act Aug. 22, 1914, c. 264, § 4, ante, § 5248d.

Injuring property within Hot Springs Reservation, Act April 20, 1904, c. 1400, § 3, ante, § 5263.

Taking or use of or bathing in water of springs in Hot Springs Reservation in violation of rules, Act April 20, 1904, c. 1400, § 4, ante, § 5264.

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Appropriation of or injury to objects of antiquity on lands of United States, Act June 8, 1906, c. 3060, § 1, ante, § 5278.

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Destruction, mutilation, or removal of monuments, trees, shrubs, or plants within military parks, Act March 3, 1897, c. 372, § 1, ante, § 5284.

Trespassing for hunting in military parks, hunting, etc., setting trap, etc., therein, Act March 3, 1897, c. 372, § 2, ante, § 5285.

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Importing neat cattle or hides, etc., Act Oct. 3, 1913, c. 16, § IV, H, subsec. 2, ante, § 5303.

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Customs officers owning vessels or engaging in importation, R. S. § 2638, ante, § 5379.

Collector, naval officer, or surveyor failing to keep and render accounts of expenditures, R. S. § 2639, as amended, Act July 31, 1894, c. 174, § 19, ante, § 5380.

Collector, naval officer, or surveyor failing to keep and submit accounts and records of transactions, R. S. § 2640, ante, § 5081.

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Master of vessel departing from port of arrival before making report
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Master of vessel failing to make report of arrival at port, R. S. § 277
5470.

Master of vessel failing to make special report of spirits and wines
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Master of vessel proceeding to another district failing to obtain from
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Master of vessel having on board or landing articles of sea-stores not
in entry, R. S. § 2797, as amended, Act March 3, 1897, c. 389, §
§ 5494.

Concealing dutiable articles in baggage, R. S. § 2802, ante, § 5499.

Master of vessel bringing in merchandise not included in manifest,
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Master of vessel failing to produce manifest, etc., on demand by office
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Master of vessel failing to mail copy of manifest to Auditor for Trea
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Master of vessel proceeding to other district refusing to deposit ma
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389, § 15, ante, § 5516.

Entry of goods by false invoice, declaration, or statement, etc., Act Oct
c. 16, § III, G, ante, § 5524.

Bribery of customs officers or employés, Act Oct. 3, 1913, c. 16, §
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III, BB, ante, § 5532.

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Obliteration of inspection marks from cask, etc., used to contain
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Owner, importer, etc., cited, refusing to appear or testify, or swearin
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ported liquors, with imported-liquor stamp, marks, etc., remaining
Act March 1, 1879, c. 125, § 13, as amended, May 28, 1880, c. 1
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Altering, defacing, or obliterating mark of revenue officer on package
housed merchandise, R. S. § 2985, ante, § 5678.

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transportation, R. S. § 2998, ante, § 5701.

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Person in charge of beast or vehicle refusing to allow search, R. S. § 3062, ante, § 5764.

Master of vessel obstructing, etc., officer in going on board, R. S. § 3068, ante, § 5771.

Master of vessel on which packages separate from rest of cargo are missing or have seals broken, R. S. § 3069, ante, § 5772.

Master of vessel on which inspector's locks or fastenings are broken, R. S. § 3070, ante, § 5773.

Refusal to assist officer in making search in enforcement of customs laws, R. S. § 3071, ante, § 5774.

Importing, etc., merchandise contrary to law, R. S. § 3082, ante, § 5785.

Receiving, concealing, buying, or selling goods imported contrary to law, R. S. § 3082, ante, § 5785.

Officer receiving part of informer's fee, except in smuggling cases, Act June 22, 1874, c. 391, § 7, ante, § 5801.

Officer offering to compromise claim for fine, Act June 22, 1874, c. 391, § 19, ante, § 5804.

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Master of vessel, etc., failing to deliver manifest of merchandise from contiguous country, R. S. § 3099, ante, § 5811.

Owner or master of vessel, etc., failing to proceed to port of destination named in manifest, R. S. § 3104, ante, § 5816.

Unauthorized breaking, etc., or opening, etc., of seal, lock, etc., attached to vessel, etc., or package, etc., under the law, R. S. § 3105, as amended, Act Feb. 27, 1877, c. 69, § 1, ante, § 5817.

Receiving or depositing unlawfully imported merchandise in building on boundary line, R. S. § 3108, ante, § 5820.

Master of vessel shipping sea-stores in excess of amount necessary, R. S. § 3112, ante, § 5824.

Purchaser of saloon stores on vessel failing to make report thereof, etc., R. S. § 3113, ante, § 5825.

Owner of vessel unlading at unlawful hours merchandise taken from one port to another, R. S. § 3120, as amended, Act Feb. 27, 1877, c. 69, § 1, ante, § 5832.

Masters of registered vessels touching at foreign ports failing to conform to laws concerning manifests, report, and entry, R. S. § 3126, ante, § 5838.

Master of vessel laden with products of Canada, etc., failing to comply with regulations, R. S. § 3129, ante, § 5841.

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Officer making false statement or failing to render statement of fees, R. S. § 3158, as amended, Act Feb. 18, 1875, c. 80, § 1, ante, § 5879.

Officer disclosing operations of manufacturer, amount or source of income, or income return, etc., R. S. § 3167, as amended, Act Aug. 27, 1894, c. 349, § 34, Act Oct. 3, 1913, c. 16, § II, I, and Act Sept. 8, 1916, c. 463, § 16, ante, § 5887.

Officer or agent becoming interested in manufacture, etc., of tobacco, etc., or production, etc., of distilled spirits or of fermented liquors, R. S. § 3168, as amended, Act Feb. 27, 1877, c. 69, § 1, ante, § 5888.

Extortion, etc., demanding or receiving excessive fee, etc., neglecting to perform duties enjoined, and other unlawful acts or omissions by officers, R. S. § 3169, ante, § 5889.

Collector issuing stamps before collection of tax, Act March 1, 1879, c. 125, § 1, ante, § 5891.

District attorney or marshal accepting or demanding anything for compromise of violations of internal revenue laws, R. S. § 3170, ante, § 5893.

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Owner of premises refusing to admit, etc., revenue officers, R. S. § 3177, ante, § 5900.

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Obstructing collector, deputy collector, or inspector in execution of power conferred, or rescue property, etc., seized, R. S. § 3177, ante, § 5900.

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Person in business liable to special tax failing to display special-tax stamps, R. S. § 3239, as amended, Act Feb. 27, 1877, c. 69, § 1, ante, § 5962.

Carrying on business of rectifier, liquor dealer, etc., without payment of special tax, R. S. § 3242, ante, § 5965, and Act Feb. 8, 1875, c. 36, § 16, ante, § 5966.

Carrying on business of manufacturer of or dealer in oleomargarine without payment of special tax, Act Aug. 2, 1886, c. 840, § 4, ante, § 5967.

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Carrying on business of manufacturer of or dealer in adulterated butter out payment of special tax, Act May 9, 1902, c. 784, § 4, ante, § 5968.

Carrying on business of manufacturer of or dealer in filled cheese wi payment of special tax, Act June 6, 1896, c. 337, § 4, ante, § 5969.

Carrying on business of making, packing, or repacking mixed flour wi payment of special tax, Act June 13, 1898, c. 448, § 36, ante, § 5980.

Officer collecting special tax for, rectifying, etc., on premises less tha feet from distillery, R. S. § 3244, as amended, Act Feb. 18, 1875, c. 80 and Act March 1, 1879, c. 125, §§ 4, 10, ante, § 5971.

Chapter 4—Distilled Spirits and Wines

Adding substance to distilled spirits to create fictitious proof, R. S. § ante, § 5987.

Evading tax on distilled spirits, R. S. § 3256, ante, § 5992.

Distiller defrauding or attempting to defraud United States of tax on sp R. S. § 3257, ante, § 5993.

Failing to register still, R. S. § 3258, ante, § 5994.

Failing to give notice, or giving false, etc., notice, of intention to carr business of distiller or rectifier, R. S. § 3259, ante, § 5995.

Distiller failing to give bond or giving forged or fraudulent bond, R. S. § as amended, Act May 28, 1880, c. 108, § 1, ante, § 5997.

Collector approving bond of distiller before compliance with regulations, § 3261, ante, § 5998.

Setting up still, etc., without permit, R. S. § 3265, ante, § 6003.

Distilling on prohibited premises, R. S. § 3266, ante, § 6004.

Destroying, etc., or tampering with lock or seal on distillery cistern roo building, R. S. § 3268, ante, § 6006.

Distiller failing to paint pipes as directed, R. S. § 3269, ante, § 6007.

Distillery failing to keep distillery accessible to officers, etc., R. S. § ante, § 6015.

Distiller obstructing officer's entrance into distillery, R. S. § 3276, as ame Act March 1, 1879, c. 125, § 5, ante, § 6016.

Distiller or rectifier failing to furnish facilities for examination of premise S. § 3277, ante, § 6017.

Distiller or rectifier failing to put up required sign or using false sign, § 3279, ante, § 6019.

Conveying spirits to or from distillery or rectifying establishment or house on which no sign is put up, R. S. § 3279, ante, § 6019.

Carrying grain, etc., to distillery or rectifying establishment on which no is put up, R. S. § 3279, ante, § 6019.

Carrying on business of distiller without giving bond or with intent to de the United States, R. S. § 3281, ante, § 6021.

Making or selling mash, etc., at unauthorized distillery, R. S. § 3282, as an ed, Act March 1, 1879, c. 125, § 5, ante, § 6022.

Removing from vinegar factory vinegar, etc., containing more than 2 per of proof spirits, R. S. § 3282, as amended, Act March 1, 1879, c. 125, ante, § 6022.

Carrying on process for distilling during prohibited hours, R. S. § 3283, § 6024.

Distiller, etc., using material for production of spirits or removing spiri absence of storekeeper, R. S. § 3284, ante, § 6025.

Distiller refusing to comply with requirement of officer to draw off water cleanse worm-tub, etc., R. S. § 3286, as amended, Act March 1, 1879, c. § 5, ante, § 6027.

Gauger employing distiller, etc., to use brands or perform his duties, R. 3290, ante, § 6031.

Gauger making false inspection, R. S. § 3292, ante, § 6033.

Removing or concealing spirits contrary to law, R. S. § 3296, ante, § 60

Violation of provisions of act or of regulations relating to production of brandy, or of terms of bond for removal from distillery, Act March 3, c. 114, § 11, ante, § 6049.

Removing distilled spirits from distillery warehouse to general bonded house without complying with requirements therefor, Act Aug. 27, 18 349, § 59, ante, § 6065.

Withdrawing spirits from distillery warehouse for making sorghum sug violation of provisions therefor, Act March 3, 1891, c. 544, § 1, ante, §

Re-using stamp or bottle for distilled spirits and other violations of act a ing bottling of spirits in bond, Act March 3, 1897, c. 379, § 6, an 6075.

Forging or counterfeiting stamp for distilled spirits, Act March 3, 1897, c. § 7, ante, § 6076.

Storekeeper, etc., removing cask or package, or contents thereof, from bo warehouse without order, or before being marked, etc., R. S. § 3300, a 6080.

hapter 4—Distilled Spirits and Wines—Continued

Making false entries in books of storekeeper or distiller, or omitting to keep or produce books, R. S. § 3305, ante, § 6085.

Using false weights or measures of materials for distillation, R. S. § 3306, ante, § 6086.

Using false weights or measures in ascertaining materials, or using unregistered materials, R. S. § 3306, ante, § 6086.

Carrying on distillery after notice of declaration of intention to suspend work, R. S. § 3310, as amended, Act Feb. 27, 1877, c. 69, § 1, ante, § 6092.

Breaking, etc., or tampering with lock, seal, etc., to any furnace, still, or fermenting tub, etc., or using same while cocked or sealed, R. S. § 3311, ante, § 6093.

Officer using or issuing stamps for distilled spirits in violation of law, R. S. § 3316, ante, § 6098.

Carrying on business of rectifier with intent to defraud the United States, R. S. § 3317, as amended, Act March 1, 1879, c. 125, § 5, ante, § 6099.

Purchasing, receiving, or rectifying distilled spirits removed from distillery to place other than distillery warehouse with knowledge that the tax on the spirits has not been paid, R. S. § 3317, as amended, Act March 1, 1879, c. 125, § 5, ante, § 6099.

Rectifier or wholesale liquor dealer failing to keep books required, and present transcripts thereof, etc., R. S. § 3318, as amended, Act Feb. 27, 1877, c. 69, § 1, and Act March 1, 1879, c. 125, § 5, ante, § 6100.

Rectifier or dealer purchasing, etc., more than twenty gallons of distilled spirits from person other than authorized rectifier, distiller, or dealer, R. S. § 3319, ante, § 6101.

Rectifier or dealer refusing, etc., to make return of distilled spirits received and sent out, R. S. § 3323, as amended, Act July 16, 1892, c. 196, § 1, ante, § 6104.

Failing to efface, etc., marks, stamps, etc., on emptying casks, etc., containing distilled spirits, R. S. § 3324, ante, § 6105.

Receiving or transporting empty distilled spirits cask or package having uncanceled stamps, R. S. § 3324, ante, § 6105.

Buying or selling empty casks having inspection marks, R. S. § 3325, ante, § 6106.

Changing stamps on packages containing distilled spirits or shifting spirits, R. S. § 3326, ante, § 6107.

Affixing imitation stamps on packages of distilled spirits, Act Feb. 8, 1875, c. 36, § 17, ante, § 6108.

Removing distilled spirits from distillery or rectifier's premises during prohibited hours, R. S. § 3327, ante, § 6109.

Using wine spirits or other spirits not tax-paid, otherwise than as provided, Act Oct. 1, 1890, c. 1244, § 48, ante, § 6117, and Act Sept. 8, 1916, c. 463, § 402 (f), ante, § 6114c.

Unlawful recovery of spirits from fortified wines, Act June 7, 1906, c. 3046, § 6, as amended, Act Oct. 22, 1914, c. 331, § 2, ante, § 6122.

Fraudulently claiming drawback on distilled spirits, R. S. § 3330, as amended, Act May 28, 1880, c. 108, § 11, ante, § 6125.

Re-landing, etc., distilled spirits shipped for exportation, R. S. § 3330, as amended, Act May 28, 1880, c. 108, § 11, ante, § 6125.

Removing, using, etc., alcohol withdrawn for denaturing, in violation of provisions relating thereto, Act June 7, 1906, c. 3047, § 2, ante, § 6136.

Violations of requirements for producing denatured alcohol free of tax, Act Oct. 3, 1913, c. 16, § IV, N, subsec. 2, ante, § 6137.

Chapter 5—Fermented Liquors

Owner, agent, etc., of brewery, etc., evading tax or making or procuring false entries, R. S. § 3340, as amended, Act March 1, 1879, c. 125, § 10, ante, § 6146.

Brewer failing to affix and cancel stamps required, R. S. § 3342, as amended, Act March 3, 1875, c. 154, ante, § 6148.

Brewer affixing false, etc., stamp, R. S. § 3342, as amended, Act March 3, 1875, c. 154, ante, § 6148.

Selling, removing, or buying fermented liquors in package without stamp, or false stamp, or with twice-used stamp, R. S. §§ 3343, 3345, ante, §§ 6149, 6151.

Withdrawing fermented liquor from package without proper stamp or without destroying or defacing stamp affixed, R. S. § 3344, ante, § 6150.

Making, selling, or using false stamp, etc., or die for casks of fermented liquors, R. S. § 3346, as amended, Act March 1, 1879, c. 125, § 5, ante, § 6153.

Using fraudulently stamp for fermented liquor, R. S. § 3346, as amended, Act March 1, 1879, c. 125, § 5, ante, § 6153.

Removing, etc., mark of name of manufacturer on package of fermented liquor, R. S. § 3349, ante, § 6156.

Chapter 5—Fermented Liquors—Continued

Person other than owner removing, etc., stamp, etc., on package of ferm liquor, R. S. § 3353, ante, § 6160.

Withdrawing fermented liquor from unstamped package for bottling, o lawful bottling on brewery premises, R. S. § 3354, as amended, Act Ju 1890, c. 431, and Act Sept. 8, 1916, c. 463, § 406, ante, § 6161.

Chapter 6—Tobacco and Snuff

Manufacturer of tobacco, etc., failing to procure or post certificate, R 3355, as amended, Act Feb. 27, 1877, c. 69, § 1, and Act March 1, 18 125, § 14, ante, § 6163.

Manufacturer of tobacco, etc., failing to give bond, R. S. § 3355, as am Act Feb. 27, 1877, c. 69, § 1, and Act March 1, 1879, c. 125, § 14, a 6163.

Manufacturer of tobacco, etc., failing to put up sign, R. S. § 3356, a 6164.

Manufacturer of tobacco, etc., failing to make and deliver inventory, or t accounts and deliver abstracts thereof, R. S. § 3358, ante, § 6166.

Leaf tobacco dealer failing to keep books required or deliver duplicate co S. § 3360, as amended, Act March 1, 1879, c. 125, § 14, ante, § 6168.

Selling or offering for sale tobacco and snuff not put up in prescribed ages and stamped, R. S. § 3363, as amended, Act Oct. 1, 1890, c. 1244, ante, § 6170.

Manufacturer of tobacco, etc., failing to affix label to package containi bacco made by or for him, R. S. § 3364, ante, § 6171.

Removing label affixed to package of tobacco, R. S. § 3364, ante, § 6171.

Purchasing tobacco or snuff not branded or stamped according to law, § 3366, ante, § 6173.

Retail dealer in leaf tobacco refusing to keep books or to furnish inform Act Aug. 5, 1909, c. 6, § 35, ante, § 6175.

Retail dealer in leaf tobacco making false entry or false statement, Act 5, 1909, c. 6, § 35, ante, § 6175.

Fraud on revenue in manufacture of tobacco or snuff on shares, or by one for another, R. S. § 3370, ante, § 6179.

Removing tobacco from factory, except in proper packages properly stamp S. § 3374, ante, § 6183.

Using, selling, etc., from manufactory to vessel for exportation, manufa tobacco or snuff, without proper stamps affixed and canceled, R. S. § ante, § 6183.

Affixing false stamp to tobacco and snuff, or re-using stamp, R. S. § ante, § 6184.

Failing to destroy stamps on emptied packages of tobacco or snuff, R. S. § ante, § 6185.

Selling or buying empty stamped tobacco or snuff box, etc., on which has not been destroyed, R. S. § 3376, ante, § 6185.

Importers of cigars and tobacco failing to pay tax, R. S. § 3377, as am Act March 1, 1879, c. 125, § 14, ante, § 6186.

Officer of customs permitting imported packages of tobacco or snuff t from his hands before compliance with the law, R. S. § 3377, as am Act March 1, 1879, c. 125, § 14, ante, § 6186.

Peddler of tobacco failing to exhibit certificate, R. S. § 3383, as amende March 1, 1879, c. 125, § 15, and Act Oct. 1, 1890, c. 1244, § 29, ante, §

Peddling tobacco unlawfully, R. S. § 3384, as amended, Act March 1, 1 125, § 15, ante, § 6191.

Relanding tobacco, snuff, or cigars, shipped for exportation, R. S. § 33 amended, Act June 9, 1880, c. 161, § 1, Act Aug. 8, 1882, c. 468, a Jan. 13, 1883, c. 24, ante, § 6192.

Fraudulently claiming drawback on manufactured tobacco, Act Feb. 8, 1 36, § 25, ante, § 6196.

Chapter 7—Cigars

Manufacturer of cigars failing to give bond, R. S. § 3387, as amende March 1, 1879, c. 125, § 16, and Act Oct. 1, 1890, c. 1244, § 35, ante.

Manufacturer of cigars failing to put up sign, R. S. § 3388, ante, § 6198

Cigar manufacturer failing to deliver inventory or keep accounts or abstract thereof, R. S. § 3390, ante, § 6200.

Selling, or offering for sale, or delivering, or offering to deliver, cig packed as prescribed, R. S. § 3392, as amended, Act March 1, 1879, c. 16, Act Oct. 1, 1890, c. 1244, § 32, Act Aug. 5, 1909, c. 6, § 32, and A 10, 1913, c. 34, ante, § 6202.

Manufacturer of cigars failing to affix label to cigar box, R. S. § 33 amended, Act March 1, 1879, c. 125, § 16, ante, § 6203.

Removing label affixed to cigar box, R. S. § 3393, as amended, Act M 1879, c. 125, § 16, ante, § 6203.

pter 7—Cigars—Continued

Inclosing lottery tickets, etc., in packages of manufactured tobacco, snuff, cigars, etc., R. S. § 3394, as amended, Act March 3, 1875, c. 127, § 2, Act July 24, 1897, c. 11, § 10, Act July 1, 1902, c. 1371, § 2, and Act Aug. 5, 1909, c. 6, § 33, ante, § 6204.

Removing cigars from manufactory without properly boxing and stamping, R. S. § 3397, as amended, Act March 1, 1879, c. 125, § 16, ante, § 6207.

Using counterfeit stamps or making fraudulent use of stamp on cigars, R. S. § 3397, as amended, Act March 1, 1879, c. 125, § 16, ante, § 6207.

Fraud on revenue in manufacture of cigars on shares, commission or contract, R. S. § 3399, ante, § 6209.

Officer of custom permitting imported cigars to pass out of his custody without compliance with the law, R. S. § 3402, ante, § 6211.

Selling imported cigars not packed as required by law, R. S. § 3403, ante, § 6212.

Purchasing cigars not branded or stamped according to law, R. S. § 3404, ante, § 6213.

Failing to destroy stamps on emptied cigar boxes, R. S. § 3406, ante, § 6214.

Fraudulently giving away or accepting from another, or selling, buying, or using for packing cigars, emptied cigar box on which stamp has not been destroyed, R. S. § 3406, ante, § 6214.

pter 7A—Oleomargarine, Adulterated Butter, and Process or Renovated Butter

Selling, etc., or packing oleomargarine otherwise than as prescribed, Act Aug. 2, 1886, c. 840, § 6, ante, § 6218.

Falsely branding package of oleomargarine, or affixing stamp for less amount than required, Act Aug. 2, 1886, c. 840, § 6, ante, § 6218.

Manufacturer of oleomargarine failing to affix label on package, Act Aug. 2, 1886, c. 840, § 7, ante, § 6219.

Removing label affixed to package of oleomargarine, Act Aug. 2, 1886, c. 840, § 7, ante, § 6219.

Officer of customs permitting imported oleomargarine to pass out of his custody without compliance with law, Act Aug. 2, 1886, c. 840, § 10, ante, § 6222.

Selling, etc., imported oleomargarine not put up in packages and stamped as required, Act Aug. 2, 1886, c. 840, § 10, ante, § 6222.

Purchasing, etc., oleomargarine not branded or stamped according to law, Act Aug. 2, 1886, c. 840, § 11, ante, § 6223.

Purchasing, etc., oleomargarine from manufacturer not having paid special tax, Act Aug. 2, 1886, c. 840, § 12, ante, § 6224.

Failing to cancel stamp on emptied oleomargarine package, Act Aug. 2, 1886, c. 840, § 13, ante, § 6225.

Selling or buying or using for packing emptied oleomargarine packages on which stamps are not destroyed, Act Aug. 2, 1886, c. 840, § 13, ante, § 6225.

Removing or defacing stamps or marks or brands on oleomargarine packages, Act Aug. 2, 1886, c. 840, § 15, ante, § 6227.

Manufacturer of oleomargarine, defrauding the United States, Act Aug. 2, 1886, c. 840, § 17, ante, § 6229.

Selling adulterated butter in other than prescribed packages, Act May 9, 1902, c. 784, § 4, ante, § 6235.

Manufacturer of adulterated butter failing to affix required label, Act May 9, 1902, c. 784, § 4, ante, § 6236.

Removing label affixed to package of adulterated butter, Act May 9, 1902, c. 784, § 4, ante, § 6237.

Falsely branding package of adulterated butter, or affixing stamp for less amount than required, Act May 9, 1902, c. 784, § 4, ante, § 6235.

Failing to label process or renovated butter, Act May 9, 1902, c. 784, § 5, ante, § 6239.

Wholesale dealers in oleomargarine, or in process or renovated or adulterated butter, to keep books and render returns as required, Act May 9, 1902, c. 784, § 6, ante, § 6241.

pter 7B—Filled Cheese

Manufacturer of filled cheese failing to file notice, inventory, and bond, or to keep books, Act June 6, 1896, c. 337, § 5, ante, § 6244.

Selling, etc., or packing filled cheese otherwise than as prescribed, Act June 6, 1896, c. 337, § 6, ante, § 6245.

Falsely branding package of filled cheese, or affixing stamp for less amount than required, Act June 6, 1896, c. 337, § 6, ante, § 6245.

Dealer in filled cheese failing to display sign, Act June 6, 1896, c. 337, § 7, ante, § 6246.

Manufacturer of filled cheese failing to affix label to package, Act June 6, 1896, c. 337, § 8, ante, § 6247.

Removing label affixed to package of filled cheese, Act June 6, 1896, c. 337, § 8, ante, § 6247.

Failing to destroy stamps on emptied filled cheese package, Act June 6, 1896, c. 337, § 14, ante, § 6253.

Chapter 7B—Filled Cheese—Continued

Purchasing, etc., filled cheese not branded or stamped according to la
June 6, 1896, c. 337, § 12, ante, § 6251.

Purchasing, etc., filled cheese from manufacturer not having paid spec
Act June 6, 1896, c. 337, § 13, ante, § 6252.

Chapter 7C—Mixed Flour

Failing to brand, etc., packages of mixed flour, Act June 13, 1898, c.
37, ante, § 6259.

Packing or repacking mixed flour otherwise than as prescribed, Act J
1898, c. 448, § 38, ante, § 6260.

Falsely marking or branding packages of mixed flour, Act June 13,
448, § 38, ante, § 6260.

Selling mixed flour in other than marked or branded packages, Act J
1898, c. 448, § 38, ante, § 6260.

Manufacturer of mixed flour failing to affix label, Act June 13, 1898,
§ 39, ante, § 6261.

Removing marks or brands on packages of mixed flour, Act June 1
c. 448, § 39, ante, § 6261.

Packing mixed flour otherwise than in barrels as prescribed, Act June 1
c. 448, § 40, ante, § 6262.

Purchasing or receiving for sale or repacking imported mixed flour not
ed, labeled, or stamped as required, Act June 13, 1898, c. 448, § 42,
6264.

Purchasing or receiving for sale, or for repacking and resale, mixed flou
maker, packer, or importer who has not paid tax, Act June 13, 1898,
§ 43, ante, § 6265.

Failing to destroy stamp on emptied package of mixed flour, Act J
1898, c. 448, § 45, ante, § 6267.

Punishment for second or subsequent violation of laws concerning mixe
Act June 13, 1898, c. 448, § 48, ante, § 6270.

Chapter 7D—White Phosphorous Matches

Selling, etc., unstamped white phosphorous matches, Act April 9, 1912
§ 4, ante, § 6274.

Manufacturer of matches evading tax on white phosphorous matches, A
9, 1912, c. 75, § 4, ante, § 6274.

Affixing insufficient stamp on package of white phosphorous matches, A
9, 1912, c. 75, § 5, ante, § 6275.

Removing, etc., or re-using stamp on package of white phosphorous m
Act April 9, 1912, c. 75, § 6, ante, § 6276.

Manufacturer of matches defrauding or attempting to defraud the
States of tax on white phosphorous matches, Act April 9, 1912, c.
ante, § 6277.

Counterfeiting stamp for white phosphorous matches, Act April 9, 1912
§ 8, ante, § 6278.

Exportation of white phosphorous matches, Act April 9, 1912, c. 75
ante, § 6281.

Manufacturer of matches failing to mark factory number on or to af
to package of white phosphorous matches, Act April 9, 1912, c. 75, § 1
§ 6282.

Removing label affixed to original package of white phosphorous matc
April 9, 1912, c. 75, § 12, ante, § 6282.

Manufacturer of white phosphorous matches or importer or exporter
failing to do things required or doing things forbidden, for which no
penalty is prescribed, Act April 9, 1912, c. 75, § 13, ante, § 6283.

Chapter 7E—Opium, for Smoking

Stamps not affixed to, Act Jan. 17, 1914, c. 10, § 5, ante, § 6287e.

Chapter 7F—Opium, Coca Leaves, and Compounds, Manufactures, etc., Th

Violations of act relating to sale, etc., of opium and coca leaves, Act
1914, c. 1, § 9, ante, § 6287o.

Chapter 8—Banks and Bankers

Banker failing to make return and payment required, R. S. § 3415, ante,

Chapter 8B—Excise Tax on Dealings in Cotton Futures

Violation of act relating to cotton futures, Act Aug. 18, 1914, c. 25
ante, § 6309o, Act Aug. 18, 1914, c. 255, § 16, ante, § 6309p.

Failure to pay tax, etc., on cotton futures, Act Aug. 11, 1916, c. 313,
6309o.

Chapter 9—Stamp Taxes on Specific Objects

Violations of provisions relating to stamp tax on playing cards, Act
1894, c. 349, §§ 39, 40, 43–46, ante, §§ 6311, 6312, 6315–6318.

Forging, counterfeiting, or fraudulently using or selling stamps, dies, o
Act Aug. 27, 1894, c. 349, § 42, ante, § 6314.

apter 9A—Incomes

False returns by any person or officer of any corporation to evade income tax, Act Sept. 8, 1916, c. 463, § 14, ante, § 6336n [c].

apter 11—Provisions Common to Several Objects of Taxation

Fraudulently claiming drawback, R. S. § 3443, ante, § 6337.

Removing liquors or wines under other than trade names, R. S. § 3449, ante, § 6351.

Removing or concealing goods with intent to defraud the United States of tax, R. S. § 3450, ante, § 6352.

Fraudulent execution of documents required by internal revenue laws, R. S. § 3451, ante, § 6353.

Possession of goods, etc., for purpose of sale in fraud of internal revenue laws, etc., R. S. § 3452, ante, § 6354.

Selling, purchasing, etc., empty stamped packages, R. S. § 3455, ante, § 6357.

Manufacturing boxes, barrels, etc., unlawfully stamped or marked, R. S. § 3455, ante, § 6357.

Distiller, rectifier, wholesale liquor dealer, or manufacturer of tobacco or cigars failing to do things required, or doing things forbidden, for which no specific penalty is prescribed, R. S. § 3456, as amended, Act Feb. 27, 1877, c. 69, § 1, ante, § 6358.

TITLE XL—THE PUBLIC MONEYS

Assistant treasurer accepting commissions or perquisites, R. S. § 3597, ante, § 6587.

Clerk acting as assistant treasurer, subject to same penalties for official misconduct, R. S. § 3613, ante, § 6602.

TITLE XLI—APPROPRIATIONS

Expenditures in excess of appropriations, acceptance of voluntary service, etc., or employment of unauthorized personal services, R. S. § 3679, as amended, Act March 3, 1905, c. 1484, § 4, and Act Feb. 27, 1906, c. 510, § 3, ante, § 6778.

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Counterfeiting certificates of indebtedness, Act June 13, 1898, c. 448, § 32, as amended, Act Aug. 5, 1909, c. 6, § 40, ante, § 6824.

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Officer making contract failing to make return thereof, R. S. § 3746, ante, § 6898.

Agents or employés of United States having interest in Indian contracts, Act June 22, 1874, c. 389, § 10, ante, § 6893.

TITLE XLV—PUBLIC PRINTING, ADVERTISEMENTS, AND PUBLIC DOCUMENTS

Public printer colluding, etc., to defraud the United States, Act Jan. 12, 1895, c. 23, § 33, ante, § 6989.

Public printer or employé having interest in newspaper, periodical, or contract for furnishing paper or other material for printing, Act Jan. 12, 1895, c. 23, § 34, ante, § 6990.

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Contractor for postal supplies entering into combination to prevent bids or fix prices therefor, etc., Act Aug. 24, 1912, c. 389, § 2, ante, § 7206.

apter 3—Mail-Matter

Editor or publisher of newspaper, etc., failing to mark as advertisement paid editorial or reading matter, Act Aug. 24, 1912, c. 389, § 2, ante, § 7314.

apter 4—Postage

Use on private letter, etc., of official indorsement of Census Office to avoid payment of postage, etc., Act July 2, 1909, c. 2, § 29, ante, § 7376.

apter 8—Contracts for Carrying the Mails

False swearing by surety on bond of bidder for carrying mail, Act June 8, 1872, c. 335, § 246, as amended, Act June 23, 1874, c. 456, § 12, and Act Aug. 11, 1876, c. 260, ante, § 7434.

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Penal provisions made applicable to postal savings depositories, Act June 25, 1910, c. 386, § 15, ante, § 7594.

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R. S. § 4062, ante, § 7610.
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eign country, R. S. § 4073, ante, § 7621.
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Exportation of war material, Res. April 22, 1898, No. 25, as amen
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Unlawful sale, etc., of cocaine, etc., in consular districts in China, A
3, 1915, c. 74, § 11, ante, § 7696*l*.
Fraudulent representation as member or agent of the American Nati
Cross Society to solicit or receive money or material or fraudulent d
insignia thereof, Act Jan. 5, 1905, c. 23, § 4, as amended, Act June
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Master of vessel making false oath to secure registration, R. S. § 41
§ 7722.
Master or owner of vessel failing to deliver up certificate of registry
etc., of vessel, R. S. § 4146, as amended, Act Jan. 16, 1895, c. 24,
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Act Aug. 5, 1882, c. 398, § 1, Act June 19, 1886, c. 421, § 5, Act
1895, c. 173, § 1, and Act Feb. 6, 1909, c. 82, §§ 1, 2, ante, § 7730.
Owner of vessel failing to provide prescribed space for crew, Act
1897, c. 389, § 2, as amended, Act March 4, 1915, c. 153, § 6, ante
Owner and master of vessel failing to deliver up certificate of registry
to purchaser or to agent in another district, R. S. §§ 4160, 4162,
7741, 7743.
Master of vessel failing to deliver up certificate of registry granted
of original certificate in another district, R. S. § 4168, ante, § 7749
Owner of vessel failing to register anew when required, R. S. § 416
7750.
New master of vessel failing to report change of master, R. S. § 417
7752.
Vessel not having official number marked thereon, R. S. § 4177, as
Act June 19, 1886, c. 421, § 6, ante, § 7757.
Owner of vessel not marked with name and home port, R. S. § 4178,
ed, Act Feb. 21, 1891, c. 250, § 1, and Act Jan. 20, 1897, c. 67,
§ 7758.
Collector or officer making false register, granting false certificate
try, etc., or giving false information as to description of vessel, R. S
ante, § 7773.
Officer neglecting to perform duty, R. S. § 4188, ante, § 7774.
Making, etc., or using false sea-letter, etc., or certificate of registry,
4191, ante, § 7777.

Chapter 2—Clearance and Entry

Master, etc., of vessel departing to foreign port without delivering
and obtaining clearance, R. S. § 4197, ante, § 7789.
Master of foreign vessel failing to deposit papers with consul on a
S. § 4209, ante, § 7800.
Foreign consul delivering papers to master of foreign vessel before
R. S. § 4211, ante, § 7802.
Master of vessel failing to furnish statement to collector of services
by consul, R. S. § 4213, as amended, Act June 26, 1884, c. 121,
§ 7803.

Chapter 4—Discriminating Duties and Reciprocal Privileges

Opposing officer in enforcement of act authorizing retaliatory susp
commercial privileges to foreign vessels, Act June 19, 1886, c. 421,
§ 7829.
Violation of provisions for retaliation on denial of rights to Americ
vessels, etc., in British dominions in North America, Act March 3
339, ante, § 7830.

Chapter 5—Navigation

Violations of rules to prevent collisions on inland waters, etc., or of regulations of supervising inspectors of steam vessels, Act June 7, 1897, c. 4, §§ 3, 4, ante, §§ 7907, 7908.

Violations of rules to prevent collisions on the Great Lakes, Act Feb. 8, 1895, c. 64, § 2, ante, § 7939.

Managing owner, agent, or master of vessel failing to report accident to collector of customs, Act June 20, 1874, c. 344, § 10, ante, § 7975.

Managing owner or agent of vessel failing to report probable loss of vessel, Act June 20, 1874, c. 344, § 11, ante, § 7976.

Master of vessel failing, in case of collision, to render assistance to other vessel and give information required, Act Sept. 4, 1890, c. 875, § 2, ante, § 7980.

Master of vessel failing to assist shipwrecked person, Act Aug. 1, 1912, c. 268, § 2, ante, § 7991.

Chapter 6—Transportation of Passengers and Merchandise

Master of vessel carrying emigrant, etc., passengers from foreign port, violating or permitting violation of requirements as to number of and accommodations, food, etc., for such passengers, Act Aug. 2, 1882, c. 374, §§ 1–9, as amended, Act Dec. 19, 1908, c. 6, ante, §§ 7997, 7999–8006.

Officers, seamen, etc., of vessels carrying emigrant, etc., passengers from foreign port, visiting part of vessel assigned for use of such passengers, except by direction of master, Act Aug. 2, 1882, c. 374, § 7, ante, § 8004.

Violation of regulations concerning boarding of vessels before inspection after arrival, Act March 31, 1900, c. 120, § 2, ante, § 8008.

Master or consignees of vessel carrying emigrant, etc., passengers from foreign port, refusing to pay $10 for each death of such passengers at sea, Act Aug. 2, 1882, c. 374, § 10, ante, § 8011.

Master of vessel carrying emigrant, etc., passengers from foreign port, leaving port before clearance, Act Aug. 2, 1882, c. 374, § 12, ante, § 8013.

Shipping inflammable material in vessel without notice to master, etc., R. S. § 4288, ante, § 8026.

Violations of provisions of Harter Act relating to bills of lading and obligations, etc., in connection with carriage of property, Act Feb. 13, 1893, c. 105, § 5, ante, § 8033.

Chapter 7—Log-Books

Master of vessel failing to keep log-book in manner required, R. S. § 4292, ante, § 8038.

Making entry in log-book more than 24 hours after arrival of vessel, R. S. § 4292, ante, § 8038.

TITLE XLIX—REGULATION OF VESSELS IN FOREIGN COMMERCE

Master of vessel departing for foreign country without passport, R. S. § 4307, ante, § 8053.

Master of vessel failing to deposit ship's papers with consul on arrival in foreign port, R. S. § 4310, ante, § 8056.

TITLE L—REGULATION OF VESSELS IN DOMESTIC COMMERCE

Master of vessel failing to deliver up enrollment and license granted in exchange in another district, R. S. § 4323, ante, § 8071.

Master of vessel failing to deliver up license on expiration thereof, R. S. § 4325, as amended, Act April 24, 1906, c. 1865, § 2, ante, § 8073.

Owner of licensed vessel not having name and home port painted on stern, R. S. § 4334, ante, § 8083.

New master of licensed vessel failing to report change of master, R. S. § 4335, ante, § 8084.

Master of vessel not exhibiting enrollment or license when required, R. S. § 4336, ante, § 8085.

Foreign vessel transporting passengers between ports in United States, Act June 19, 1886, c. 421, § 8, as amended, Act Feb. 17, 1898, c. 26, § 2, ante, § 8096.

Master of vessel having on board certain goods, proceeding to neighboring district, failing to deliver, etc., manifests and permits as required, R. S. §§ 4350, 4352, 4354, 4356, 4360, as amended, Act Feb. 18, 1875, c. 80, § 1, ante, §§ 8102, 8104, 8106, 8108, 8113.

Failing to deliver up permit for transportation of merchandise inland, R. S. § 4363, ante, § 8116.

Master of fishing vessel permitted to land at foreign port failing to deliver, etc., manifests, and permits as required, R. S. § 4364, ante, § 8117.

Master of vessel failing to report arrival at port other than destination, R. S. § 4366, ante, § 8119.

Master of foreign vessel bound coastwise failing to comply with requirements as to manifests, etc., R. S. § 4369, ante, § 8122.

Vessel entitled to be documented, other than as registered vessel, trading v
license, Act June 19, 1886, c. 421, § 7, ante, § 8125.
Collector or officer, etc., making record or granting certificate, etc., ill
receiving illegal fee, etc., or delivering false description of vessel, R. S.
ante, § 8128.
Officer neglecting to perform duty, R. S. § 4374, ante, § 8129.
Forging, etc., enrollment, license, certificate, etc., R. S. § 4375. ante, § 8
Assaulting, resisting, obstructing, etc., officer in execution of law relat
enrollment, registry, or license of vessels, etc., R. S. § 4376, ante, § 81

TITLE L A—UNITED STATES SHIPPING BOARD, NAVAL AUXIL AND RESERVE, AND MERCHANT MARINE

Violations of shipping act, Act Sept. 7, 1916, c. 451, § 32, ante, § 8146p

TITLE LI—REGULATION OF FISHERIES

Fisherman violating agreement for voyage, etc., on fishing vessel by
ing or absenting himself, R. S. § 4392, ante, § 8148.

TITLE LII—REGULATION OF STEAM-VESSELS

Chapter 1—Inspection

Pilot, engineer, etc., or master violating regulations as to steam-vessels
ing, R. S. § 4413, ante, § 8167.
Exercise of functions of supervising or local inspector by person not
specified qualifications, R. S. § 4416, as amended, Act March 3, 1905, c.
§ 2, ante, § 8171.
Owner of sea-going barge navigating such barge without certificate of i
tion or without equipment required, Act May 28, 1908, c. 212, § 13,
8181.
Vessel carrying passengers or gunpowder contrary to law, R. S. § 44
amended, Act March 4, 1915, c. 184, § 4, ante, § 8185.
Inspector certifying falsely touching steam vessel, R. S. § 4425, ante, § 81
Improper construction of boilers or connecting steam pipes for use on
vessels, R. S. § 4429, as amended, Act Aug. 7, 1882, c. 433, § 1, ante,
Affixing false, forged, or fraudulent stamp to boiler plate on steamboa
ers, R. S. § 4430, as amended, Act Jan. 22, 1894, c. 16, ante, § 8193.
Counterfeiting stamp prescribed for boiler iron or steel plates on stea
sels, or falsely stamping or marking such iron or steel plates, R. S. §
ante, § 8195.
Obstructing safety valve of boiler of steam-vessel, R. S. § 4437, ante, § 8
Employing, etc., as master, etc., or pilot of steam-vessel or of other
carrying passengers for hire, person not licensed by inspectors, R. S. §
as amended, Act Dec. 21, 1898, c. 29, § 1, Act Jan. 25, 1907, c. 398, a
May 28, 1908, c. 212, § 2, ante, § 8200.
False swearing by applicant for license as master, mate, pilot, or en
R. S. § 4445, as amended, Act March 23, 1900, c. 90, § 1, ante, § 8207
Alteration of certificate or license by master, mate, pilot, or engineer, R
4445, as amended, Act March 23, 1900, c. 90, § 1, ante, § 8207.
Master, mate, engineer, or pilot failing to exhibit license, R. S. § 44
amended, Act Feb. 19, 1907, c. 991, ante, § 8208.

Chapter 2—Transportation of Passengers and Merchandise

Master navigating vessel deficient in complement of officers and crew, R
4463, as amended, Act April 2, 1908, c. 123, § 1, Act March 3, 1913,
§ 1, and Act March 4, 1915, c. 153, § 14, ante, § 8225.
Violation of regulations for safety of life during regattas and marine pa
Act April 28, 1908, c. 151, § 4, ante, § 8234.
Master of passenger steamer failing to keep list of passengers, R. S. §
as amended, Act May 28, 1908, c. 212, § 4, ante, § 8238.
Packing for shipment or shipping, etc., dangerous articles, not packe
marked as required, R. S. § 4476, ante, § 8246.
Owner of steamer carrying passengers failing to furnish sufficient wat
to guard against fire or other dangers, R. S. § 4478, ante, § 8248.
Owner of river-steamer carrying passengers on main deck failing to p
proper stairways and gangways and space on deck for passengers, R
4486, ante, § 8256.
Manufacturing or selling, etc., improperly constructed, etc., life pres
R. S. § 4488, as amended, Act March 2, 1889, c. 418, § 1, Act March 3,
c. 1454, § 3, Act March 4, 1915, c. 153, § 14, and Act June 12, 1916,
ante, § 8258.
Owner of steamer navigating ocean, lake, etc., failing to provide life
life preservers, etc., R. S. § 4488, ante, § 8258.

Chapter 2—Transportation of Passengers and Merchandise—Continued

Master of ocean-going steamer carrying passengers failing to have apparatus and operators for radio communication, Act June 24, 1910, c. 379, § 3, ante, § 8264.

Master of steam-vessel carrying passengers failing to keep on board or to exhibit to passengers on request copy of provisions of this Title, R. S. § 4494, ante, § 8270.

Owner of steam-vessel not marked with name and home port, R. S. § 4495, ante, § 8271.

Collector or other officer failing to enforce provisions of this Title, R. S. § 4497, ante, § 8273.

Owner of steam-vessel navigated without complying with terms of this Title, R. S. § 4499, as amended, Act March 3, 1905, c. 1454, § 4, ante, § 8275.

Penalty for violation of provision not specifically provided for, R. S. § 4500, ante, § 8276.

Violations of provisions relating to crews of vessels, Act March 4, 1915, c. 153, § 13, ante, § 8363a.

TITLE LII A—REGULATION OF MOTOR-BOATS

Violation of provisions of act to prevent collisions and to regulate equipment of motor boats, Act June 9, 1910, c. 268, § 7, ante, § 8284.

TITLE LIII—MERCHANT SEAMEN

Chapter 1—Shipping Commissioners

Acting as shipping commissioner without authority, R. S. § 4504, ante, § 8290.

Detention of clothing of seamen when demanded, Act Aug. 19, 1890, c. 801, as amended, Act Feb. 18, 1895, c. 97, Act March 3, 1897, c. 389, § 8, and Act April 11, 1904, c. 1140, ante, § 8293.

Chapter 2—Shipment

Master of foreign-going vessel failing, before carrying apprentice to sea, to produce indenture, etc., R. S. § 4510, ante, § 8299.

Master of vessel carrying person to sea without entering into agreement as prescribed, R. S. § 4514, ante, § 8304.

Vessel having on board seaman engaged or supplied contrary to law, R. S. § 4515, ante, § 8305.

Master of vessel engaging seaman in foreign port otherwise than as prescribed, R. S. § 4518, ante, § 8308.

Master of vessel failing to post copy of shipping agreement, R. S. § 4519, ante, § 8310.

Chapter 3—Wages and Effects

Payment to seaman of advance wages, Act June 26, 1884, c. 121, § 10, as amended, Act June 19, 1886, c. 421, § 3, Act Dec. 21, 1898, c. 28, § 24, Act April 26, 1904, c. 1603, § 1, and Act March 4, 1915, c. 153, § 11, ante, § 8323.

Demanding or receiving remuneration for providing seaman with employment, Act June 26, 1884, c. 121, § 10, as amended, Act June 19, 1886, c. 421, § 3, Act Dec. 21, 1898, c. 28, § 24, Act April 26, 1904, c. 1603, § 1, and Act March 4, 1915, c. 153, § 11, ante, § 8323.

Falsely claiming to be relative of seaman making allotment of wages, Act June 26, 1884, c. 121, § 10, as amended, Act June 19, 1886, c. 421, § 3, Act Dec. 21, 1898, c. 28, § 24, Act April 26, 1904, c. 1603, § 1, and Act March 4, 1915, c. 153, § 11, ante, § 8323.

False statement of debt due from seaman making allotment of wages, Act June 26, 1884, c. 121, § 10, as amended, Act June 19, 1886, c. 421, § 3, Act Dec. 21, 1898, c. 28, § 24, Act April 26, 1904, c. 1603, § 1, and Act March 4, 1915, c. 153, § 11, ante, § 8323.

Master of vessel failing to take charge of and account for deceased seaman's money and effects, R. S. § 4540, ante, § 8329.

Shipping commissioner receiving money, wages, or effects of deceased seaman, failing to pay over and deliver same to court, R. S. § 4543, ante, § 8332.

Chapter 4—Discharge

Master of vessel discharging seaman otherwise than as provided by law, R. S. § 4549, ante, § 8338.

Master of vessel failing to deliver account of wages to discharged seaman or to shipping commissioner, R. S. § 4550, ante, § 8339.

Master of vessel failing to give discharged seaman certificate of discharge, R. S. § 4551, ante, § 8340.

Chapter 5—Protection and Relief

Owner, agent, master, etc., of vessel failing to appear or to produce books, papers, etc., when called upon by shipping commissioner, R. S. § 4555, ante, § 8344.

Chapter 5—Protection and Relief—Continued

Master of vessel failing to apply for surveyors upon complaint that ve unseaworthy, R. S. § 4556, as amended, Act Dec. 21, 1898, c. 28, § 7 § 8345.

Sending to sea American ship in unseaworthy condition for foreign or wise trade, R. S. § 4561, as amended, Act June 26, 1884, c. 121, § Act Dec. 21, 1898, c. 28, § 11, ante, § 8350.

Master of vessel refusing to pay inspection charges and wages, R. S. § ante, § 8352.

Master of vessel failing to provide suitable provisions and water afte plaint and examination, R. S. § 4565, ante, § 8354.

Master of vessel refusing to permit seaman to go ashore to make compla provisions and water, R. S. § 4567, ante, § 8356.

Master or owner of vessel failing to provide medicines, lime or lemon etc., as required, or master failing to serve out lime or lemon juice, R 4570, ante, § 8359.

Master of vessel failing to keep on board and use proper weights and me for provisions and articles served out, R. S. § 4571, ante, § 8360.

Owner or master of vessel failing to provide woolen clothing and warm for seamen in cold weather, R. S. § 4572, as amended, Act Dec. 21, 1 28, § 15, ante, § 8361.

Owner of vessel failing to provide slop-chest containing complement of cl etc., Act June 26, 1884, c. 121, § 11, ante, § 8362.

Master of vessel proceeding on foreign voyage without list of crew and of shipping articles, or failure to produce said documents when required, § 4575, as amended, Act Feb. 27, 1877, c. 69, § 1, ante, § 8366.

Master and owner of vessel on return from foreign voyage, etc., failing t duce to boarding officer persons named in list of crew, R. S. § 45 amended, Act March 3, 1897, c. 389, § 3, ante, § 8367.

Master of vessel refusing to take on board and transport indigent seaman foreign country to United States, R. S. § 4578, as amended, Act Ju 1884, c. 121, § 9, and Act June 19, 1886, c. 421, § 18, ante, § 8369.

Owner of vessel sold in foreign port, master of which fails to make paym extra wages or otherwise provide for discharged seaman, R. S. § 45 amended, Act June 26, 1884, c. 121, § 5, and Act Dec. 21, 1898, c. 28 ante, § 8373.

Chapter 6—Fees of Shipping Commissioners

Shipping commissioner or clerk, etc., in shipping office demanding or rec remuneration for hiring, etc., seamen, excepting lawful fees, R. S. § ante, § 8379.

Chapter 7—Offenses and Punishments

Various offenses by seamen, R. S. § 4596, as amended, Act Dec. 21, 18 28, § 19, and Act March 4, 1915, c. 153, § 7, ante, § 8380.

Act or omissions by master, seaman, or apprentice, by breach or neglect o or by reason of drunkenness, tending to loss or destruction of or dam vessel or to endanger person on board, etc., R. S. § 4602, ante, § 8383.

Boarding vessel before actual arrival, R. S. § 4606, ante, § 8387.

Soliciting seamen as lodgers, R. S. § 4607, as amended, Act April 13, c. 1252, § 1, ante, § 8388.

Master or other officer of vessel inflicting corporal punishment on bo vessel, R. S. § 4611, as amended, Act Dec. 21, 1898, c. 28, § 22, an March 4, 1915, c. 153, § 9, ante, § 8391.

TITLE LV—LIGHTS AND BUOYS

Maintaining lights or other aids to navigation without permission of house Board, Act June 20, 1906, c. 3447, § 3, ante, § 8439.

Failing to maintain lights required by law on bridge, etc., over or i igable waters, Act May 14, 1908, c. 168, § 5, ante, § 8441.

Obstructing or interfering with aids to navigation or anchoring vessel to obstruct or interfere with range lights, Act May 14, 1908, c. 168, § 6 § 8442.

Obstructing or interfering with aids to navigation, Act March 3, 1915, § 8, ante, § 8442a.

TITLE LV A—THE COAST GUARD

Chapter 1—General Provisions

Use of vessels in Coast Guard Service for private purposes, Act Jan. 28, c. 20, § 6, ante, § 8459½a(6).

Chapter B—The Revenue Cutter Service

Master of vessel not in service of revenue carrying pendant or ensign pr ed for vessels in service, R. S. § 2764, ante, § 8459½b(57).

TITLE LVI A—REGULATION OF COMMON CARRIERS OF INTERSTATE AND FOREIGN COMMERCE

Chapter A—Regulation of Transportation

Common carrier giving free passes or free transportation to passengers, Act Feb. 4, 1887, c. 104, § 1, as amended, Act June 29, 1906, c. 3591, § 1, Act April 13, 1908, c. 143, and Act June 18, 1910, c. 309, § 7, ante, § 8563.

Common carrier or officer, etc., violating provisions of Interstate Commerce Act where no specific penalty is otherwise provided, Act Feb. 4, 1887, c. 104, § 10, as amended, Act March 2, 1889, c. 382, § 2, and Act June 18, 1910, c. 309, § 10, ante, § 8574.

False billing, classification, etc., by common carrier or officer, etc., thereof, for transportation of property at less than regular rates, Act Feb. 4, 1887, c. 104, § 10, as amended, Act March 2, 1889, c. 382, § 2, and Act June 18, 1910, c. 309, § 10, ante, § 8574.

Obtaining or attempting to obtain transportation for property at less than regular rates by false billing, classification, etc., or false claim for damages, Act Feb. 4, 1887, c. 104, § 10, as amended Act March 2, 1889, c. 382, § 2, and Act June 18, 1910, c. 309, § 10, ante, § 8574.

Inducing or attempting to induce by payment of money, etc., common carrier or officer, etc., to discriminate in transportation of property. Act Feb. 4, 1887, c. 104, § 10, as amended, Act March 2, 1889, c. 382, § 2, and Act June 18, 1910, c. 309, § 10, ante, § 8574.

Refusing to attend and testify or produce documents before Interstate Commerce Commission, Act Feb. 11, 1893, c. 83, ante, § 8577.

Perjury in testimony before Interstate Commerce Commission, Act Feb. 11, 1893, c. 83, ante, § 8577.

Disclosure by common carrier, or officer, etc., of information concerning shipments, and soliciting, etc., such information, Act Feb. 4, 1887, c. 104, § 15, as amended, Act June 29, 1906, c. 3591, § 4, and Act June 18, 1910, c. 309, § 12, ante, § 8583.

Common carriers and owners of railroads failing to make reports, etc., required, Act Feb. 4, 1887, c. 104, § 20, as amended, Act June 29, 1906, c. 3591, § 7, Act Feb. 25, 1909, c. 193, Act June 18, 1910, c. 309, § 14, Act March 4, 1915, c. 176, § 1, and Act Aug. 9, 1916, c. 301, ante, § 8592.

Making false entries in accounts, records, etc., of carriers, or destroying, mutilating, or altering same, or failing to make entries or keep accounts and records required, Act Feb. 4, 1887, c. 104, § 20, as amended, Act June 29, 1906, c. 3591, § 7, Act Feb. 25, 1909, c. 193, Act June 18, 1910, c. 309, § 14, Act March 4, 1915, c. 176, § 1, and Act Aug. 9, 1916, c. 301, ante, § 8592.

Examiner of carrier's accounts, records, etc., divulging information acquired during examination, Act Feb. 4, 1887, c. 104, § 20, as amended, Act June 29, 1906, c. 3591, § 7, Act Feb. 25, 1909, c. 193, Act June 18, 1910, c. 309, § 14, Act March 4, 1915, c. 176, § 1, and Act Aug. 9, 1916, c. 301, ante, § 8592.

Violation by corporation common carrier, etc., of provisions of Interstate Commerce Act, Act Feb. 19, 1903, c. 708, § 1, as amended, Act June 29, 1906, c. 3591, § 2, ante, § 8597.

Common carrier failing to file and publish tariffs or rates and charges, and observe such tariffs until properly changed, Act Feb. 19, 1903, c. 708, § 1, as amended, Act June 29, 1906, c. 3591, § 2, ante, § 8597.

Offering, giving, soliciting, or receiving any rebate or discrimination in the transportation of property in interstate or foreign commerce, Act Feb. 19, 1903, c. 708, § 1, as amended, Act June 29, 1906, c. 3591, § 2, ante, § 8597.

Unlawful dealings by carriers with other corporations having common directors, officers, etc., Act Oct. 15, 1914, c. 323, § 10, ante, § 8602a.

Embezzlement by president, etc., of common carrier, Act Oct. 15, 1914, c. 323, § 9, ante, § 8602a.

Breaking seals of railroad cars containing interstate or foreign shipments of freight or express, Act Feb. 13, 1913, c. 50, § 1, ante, § 8603.

Stealing, etc., goods transported in interstate or foreign commerce, Act Feb. 13, 1913, c. 50, § 1, ante, § 8603.

Buying, receiving, etc., stolen property transported in interstate or foreign commerce, Act Feb. 13, 1913, c. 50, § 1, ante, § 8603.

Stealing, etc., baggage in interstate or foreign transit, Act Feb. 13, 1913, c. 50, § 1, ante, § 8603.

Buying, receiving, etc., baggage stolen in foreign or interstate transit, Act Feb. 13, 1913, c. 50, § 1, ante, § 8603.

Carrying or transporting into another State, etc., property stolen in foreign and interstate transit, Act Feb. 13, 1913, c. 50, § 1, ante, § 8603.

Chapter C—Safety Appliances and Equipments on Railroad Engines and Cars, and Protection of Employés and Travelers

Common carrier failing to make monthly report to Interstate Commerce Commission of all accidents, Act May 6, 1910, c. 208, § 2, ante, § 8643.

Chapter F—Arbitration between Carriers and Employés

Refusing to testify, etc., in arbitration proceedings, Act July 15, 1913, c. 6, § 5, ante, § 8670.

TITLE LVI B—REGULATION OF INTERSTATE AND FOREIGN COMMERCE AS TO PARTICULAR SUBJECTS

Chapter A—Animals, Meats, and Meat and Dairy Products

Violations of provisions for inspection, etc., of meat and meat products for use in interstate or foreign commerce, Act March 4, 1907, c. 2907, ante, § 8681.

Bribery of or gifts, etc., inspector of meats or of animals intended for slaughter, Act March 4, 1907, c. 2907, ante, § 8681.

Acceptance of money, gift, etc., by inspector of meat and meat products for interstate and foreign commerce, Act March 4, 1907, c. 2907, ante, § 8681.

Importation of diseased or infected cattle, sheep, swine, etc., Act Aug. 30, 1890, c. 839, § 6, ante, § 8684.

Violations of regulations governing exportation and transportation of live stock from infected districts, Act Feb. 2, 1903, c. 349, § 3, ante, § 8700.

Violations of regulations to prevent introduction or dissemination of contagious or infectious diseases of animals from foreign country, or from one State, etc., to another, Act Feb. 2, 1903, c. 349, § 3, ante, § 8700.

Transportation of live stock from quarantined districts, Act March 3, 1905, c. 1496, § 6, ante, § 8705.

Chapter B—Food, Drugs, and Liquors

Manufacture of adulterated or misbranded foods or drugs in Territories or District of Columbia, Act June 30, 1906, c. 3915, § 1, ante, § 8717.

Introduction or transportation in interstate or foreign commerce of adulterated or misbranded foods or drugs, Act June 30, 1906, c. 3915, § 2, ante, § 8718.

Introduction, etc., in interstate commerce of dairy or food products falsely labeled, etc., as to State, etc., in which made, produced, etc., Act July 1, 1902, c. 1357, § 2, ante, § 8730.

Chapter C—Seeds, Grains, and other Agricultural Products

Importing seeds, etc., adulterated or unfit for seeding, Act Aug. 24, 1912, c. 382, § 4, ante, § 8747.

Selling for seeding purposes grain imported for manufacture, Act Aug. 24, 1912, c. 382, § 4, ante, § 8747.

Chapter D—Grain Standards

Assaulting officer, etc., Act Aug. 11, 1916, c. 313, ante, § 8747½i.

False inspection, etc., of grain, Act Aug. 11, 1916, c. 313, ante, § 8747½h.

Chapter E—Warehouses

Forging warehouse licenses, etc., Act Aug. 11, 1916, c. 313, ante, § 8747¾o.

Chapter F—Insect Pests

Transportation in interstate or foreign commerce of certain insect pests, Act March 3, 1905, c. 1501, §§ 1, 4, ante, §§ 8748, 8751.

Sending certain specified insect pests by mail, Act March 3, 1905, c. 1501, § 2, ante, § 8749.

Violation of agricultural nursery stock act, Act Aug. 20, 1912, c. 308, § 10, ante, § 8762.

Deposit in mail of packages containing plants and plant products for inspection by state, without marking, Act March 4, 1915, c. 144, ante, § 8764b.

Chapter G—Insecticides and Fungicides

Manufacturing in Territories, or District of Columbia, adulterated or misbranded insecticide or fungicide, Act April 26, 1910, c. 191, § 1, ante, § 8765.

Introduction into interstate or foreign commerce or shipment to foreign country of adulterated or misbranded insecticide or fungicide, Act April 26, 1910, c. 191, § 1, ante, § 8765.

Chapter H—Viruses, Serums, Toxins, Antitoxins, and Analogous Products

Violation of provisions regulating sale, etc., of viruses, serums, etc., for prevention and cure of diseases of man, in District of Columbia and the Territories, and interstate traffic therein, Act July 1, 1902, c. 1378, § 7, ante, § 8784.

Violation of provisions regulating preparation, sale, etc., of viruses, serums, toxins, etc., for domestic animals, in District of Columbia or Territories, etc., and interstate traffic therein. Act March 4, 1913, c. 145, ante, § 8785.

Chapter J—Opium

Importation of opium by Chinese, Act Feb. 23, 1887, c. 210, § 1, ante, § 8797.

Importation, transportation, or trafficking in opium in China by citizens of the United States, Act Feb. 23, 1887, c. 210, § 3, ante, § 8799.

Importing or bringing into the United States contrary to law, or buying, selling or concealing opium so brought, Act Feb. 9, 1909, c. 100, § 2, as amended, Act Jan. 17, 1914, c. 9, ante, § 8801.

Unlawful exportation of opium, Act Jan. 17, 1914, c. 9, § 7, ante, § 8801e.

Chapter J—Opium—Continued

Unlawful possession of opium, etc., Act Jan. 17, 1914, c. 9, § 4, ante, § 8801b.

Vessel arriving with opium not shown on manifest, Act Jan. 17, 1914, c. 9, § 8, ante, § 8801f.

Chapter K—Falsely Stamped Gold or Silver or Goods Manufactured Therefrom

Stamping words "United States Assay," etc., on goods manufactured from gold or silver which enter into interstate commerce, Act Feb. 21, 1905, c. 720, § 2, ante, § 8803.

Violations of act forbidding importation, exportation, or carriage in interstate commerce of falsely or spuriously stamped articles of merchandise made of gold or silver or their alloys, Act June 13, 1906, c. 3289, § 5, ante. § 8809.

Chapter L—Prevention of White Slave Traffic

Transportation, etc., in interstate or foreign commerce of woman or girl for immoral purpose, Act June 25, 1910, c. 395, §§ 2–4, ante, §§ 8813–8815.

Harboring, etc., for immoral purpose alien woman or girl, Act June 25, 1910, c. 395, § 6, ante, § 8817.

TITLE LVI C—MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

Making contract or engaging in combination, etc., in restraint of trade, Act July 2, 1890, c. 647, §§ 1, 3, ante, §§ 8820, 8822.

Monopolizing, etc., trade among the several States or with foreign nations, Act July 2, 1890, c. 647, § 2, ante, § 8821.

Combination, trust, etc., in restraint of trade or competition in articles imported, etc., or manufacture thereof, Act Aug. 27, 1894, c. 349, § 73, as amended, Act Feb. 12, 1913, c. 40, ante, § 8831.

Violations of law by directors, officers and agents of corporations, Act Oct. 15, 1914, c. 323, § 14, ante, § 8835m.

TITLE LVI D—FEDERAL TRADE COMMISSION, AND PREVENTION OF UNFAIR COMPETITION

Neglect or refusal to attend and testify before federal trade commission, Act Sept. 26, 1914, c. 311, § 10, ante, § 8836j.

Commission, documentary evidence, removal, mutilation, etc., Act Sept. 26, 1914, c. 311, § 10, ante, § 8836j.

Refusal to produce documentary evidence, Act Sept. 26, 1914, c. 311, § 10, ante, § 8836j.

Reports by corporation, failure to file, Act Sept. 26, 1914, c. 311, § 10, ante, § 8836j.

Reports by corporation, false entries in, Act Sept. 26, 1914, c. 311, § 10, ante, § 8836j.

TITLE LVI E—PROTECTION OF MIGRATORY GAME AND INSECTIVOROUS BIRDS

Violations of provisions for protection of certain described migratory game, etc., birds, Act March 4, 1913, c. 145, ante, § 8837.

TITLE LVI F—PROTECTION OF FUR SEALS AND OTHER FUR-BEARING ANIMALS

Violations of provisions for protection of fur seal, etc., Act Aug. 24, 1912, c. 373, §§ 6, 11, ante, §§ 8843, 8848.

Killing of fur-bearing animals within limits of Alaska, including Bering Sea, R. S. § 1956, as amended, Act April 21, 1910, c. 183, § 4, ante, § 8850.

Landing or remaining on islands made a special reservation for government purposes for the protection of seal fisheries, R. S. § 1959, as amended, Act April 21, 1910, c. 183, § 5, ante, § 8853.

Killing of fur seals on designated islands, R. S. §§ 1960, 1961, as amended, Act April 21, 1910, c. 183, §§ 6, 7, ante, §§ 8854, 8855.

TITLE LVI G—REGULATION OF LANDING, CURING, AND SALE OF SPONGES TAKEN FROM GULF OF MEXICO AND FLORIDA

Violations of provisions regulating landing, delivery, curing, and sale of sponges, Act Aug. 15, 1914, c. 253, § 3, ante, § 8868.

TITLE LVI I—WEIGHTS AND MEASURES

Violations of regulations as to weights and measures, Act Aug. 23, 1916, c. 396, § 5, ante, § 8907j, Act Aug. 31, 1916, c. 426, § 3, ante, § 8907n.

Violations of provisions relating to standard barrels for fruits, etc., Act 4, 1915, c. 158, § 2, ante, § 8907d, Act March 4, 1915, c. 158, § 3, 8907e.

TITLE LVI J—LABOR

Chapter C—Hours of Labor

Requiring employés on government work to labor more than eight ho day, Act Aug. 1, 1892, c. 352, § 2, as amended, Act March 3, 1913. ante, § 8919.

TITLE LVII—PENSIONS

Agent or attorney, etc., contracting for, etc., or receiving unlawful fee o holding pension from pensioner, Act June 27, 1890, c. 634, § 4, ante, Act April 19, 1908, c. 147, § 3, ante, § 8985.

False swearing concerning Mexican war pensions, Act Jan. 29, 1887, § 3, ante, § 9038.

False swearing concerning pensions of widows of soldiers and sailors of 1812, Act March 9, 1878, c. 28, § 3, ante, § 9054.

False swearing concerning Indian war pensions, Act July 27, 1892, c. 2 ante, § 9060.

Agent or attorney, etc., claiming compensation for securing pension fo nurse, Act Aug. 5, 1892, c. 379, § 2, ante, § 9071.

Pledging or receiving as pledge right, etc., in pension or pension certifica R. S. § 4745, as amended, Act Feb. 28, 1883, c. 58, § 2, ante, § 9077.

Refusing to surrender pension certificate on authorized demand, R. S. as amended, Act Feb. 28, 1883, c. 58, § 2, ante, § 9077.

Agent or attorney, etc., withholding discharge papers of soldier, witho sent, Act May 21, 1872, c. 178, ante, § 9078.

Making false affidavit, declaration, certificate, or voucher concernin for pension or payment thereof, R. S. § 4746, as amended, Act July 7 c. 578, ante, § 9079.

Forging indorsement of pension check, Act Aug. 17, 1912, c. 301, § 4, 9109.

Embezzlement of pension by guardian of pensioner, R. S. § 4783, as an Act Feb. 10, 1891, c. 130, ante, § 9111.

Agent or attorney, etc., contracting for, etc., or receiving excessive f prosecuting claim for pension or bounty land, R. S. §§ 4786, 5485, a 9114, 9115.

Agent or attorney demanding, etc., or receiving unlawful fee for secur crease of pension, Act March 3, 1891, c. 548, ante, § 9118.

Pension attorney or claim agent, etc., receiving compensation for securi sion legislation, Act May 28, 1908, c. 208, ante, § 9119.

TITLE LVIII—THE PUBLIC HEALTH

Chapter B—Sanitation and Quarantine

Vessel or person entering within or departing from quarantine grounds chorages in violation of quarantine law, Act June 19, 1906, c. 3433, § 4 § 9170.

Master or owner of vessel violating rule governing inspection of ves making false statement as to sanitary condition of vessel, Act June 19 c. 3433, § 4, ante, § 9170.

Trespass on quarantine reservation, Act Aug. 1, 1888, c. 727, § 1, ante,

Vessel entering port in violation of quarantine law, Act Aug. 1, 1888, § 1, ante, § 9175.

Violations of regulations for suppressing contagious diseases, Act Ma 1890, c. 51, § 1, ante, § 9176.

Quarantine officer or person employed in service violating quarantine la March 27, 1890, c. 51, § 2, ante, § 9177.

Carrier, or officer or agent of carrier, violating quarantine law, Act Ma 1890, c. 51, § 3, ante, § 9178.

TITLE LIX—HOSPITALS, ASYLUMS, AND CEMETERIES

Chapter 3—The National Home for Disabled Volunteer Soldiers

Trespassing on or violating rules for government of Battle Mountai tarium Reserve, South Dakota, Act March 22, 1906, c. 1127, § 4, ante,

Chapter 4—The Government Hospital for the Insane

Making false affidavit in proceedings for apprehension and detention of person, Act April 27, 1904, c. 1618, § 6, ante, § 9339.

Physician making false certificate as to sanity or insanity in proceedi apprehension and detention of insane person, Act April 27, 1904, c. 16 ante, § 9339.

pter 6—National Cemeteries

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pter A—National Training School for Boys

Enticing away, etc., or harboring, etc., boy committed to training school, Act May 3, 1876, c. 90, § 11, ante, § 9405.

pter B—National Training School for Girls

Enticing away, etc., or harboring, etc., girl committed to training school, Act July 9, 1888, c. 595, § 6, ante, § 9419.

TITLE LX—PATENTS, TRADE-MARKS, AND COPYRIGHTS

pter 3—Copyrights

Infringement of rights protected under provisions for protection of foreign exhibitors at Panama-Pacific International Exposition, Act Sept. 18, 1913, c. 14, § 4, ante, § 9527.

Proprietor of copyright failing to deposit copies of copyrighted works with Register of Copyrights, Act March 4, 1909, c. 320, § 13, ante, § 9534.

Making false affidavit to obtain registration of copyright, Act March 4, 1909, c. 320, § 17, ante, § 9538.

Infringement of copyright for profit, Act March 4, 1909, c. 320, § 28, ante, § 9549.

Fraudulent notice of copyright on uncopyrighted article, Act March 4, 1909, c. 320, § 29, ante, § 9550.

Removing or altering notice of copyright on copyrighted article, Act March 4, 1909, c. 320, § 29, ante, § 9550.

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TITLE LXI—BANKRUPTCY

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Offenses against bankruptcy law, Act July 1, 1898, c. 541, § 29, ante, § 9613.

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Falsely certifying check, Act July 12, 1882, c. 290, § 13, ante, § 9771.

Embezzlement, etc., by officer or agent of national banks, R. S. § 5209, ante, § 9772.

National bank officer or agent making false entry in books, reports, or statements, with intent to defraud, R. S. § 5209, ante, § 9772.

Aiding or abetting national bank officer or employé in committing certain offenses described, R. S. § 5209, ante, § 9772.

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pter B—Improvement of Rivers and Harbors

Violations of rules for protection of reservoirs at headwaters of Mississippi River, Act Aug. 11, 1888, c. 860, § 1, ante, § 9893.

Owner, agent, master, etc., of vessel failing to furnish shipping statistics required to persons in charge of river or harbor works, Act Feb. 21, 1891, c. 252, § 2, ante, § 9901.

pter C—Preservation and Protection of Rivers and Harbors and of Improvements

Injuring river and harbor improvements. Act Aug. 14, 1876, c. 267, § 3, ante, § 9909.

Chapter C—Preservation and Protection of Rivers and Harbors and of
ments—Continued

Obstructions of navigable waters not affirmatively authorized, Act
1899, c. 425, §§ 10, 12, as amended, Act Feb. 20, 1900, c. 23, § 2,
9910, 9917.

Violations of provisions or regulations as to construction of bridges, da
or causeways over navigable waters, Act March 3, 1899, c. 425,
amended, Act Feb. 20, 1900, c. 23, § 2, ante, § 9917.

Dumping refuse in navigable waters, Act March 3, 1899, c. 425, §
ante, §§ 9918, 9921.

Taking possession, of, using, or injuring river and harbor works, A
3, 1899, c. 425, §§ 14, 16, ante, §§ 9919, 9921.

Obstructing navigable channels by vessels anchored or sunk, or floa
ber, etc., Act March 3, 1899, c. 425, §§ 15, 16, ante, §§ 9920, 9921.

Violations of regulations governing transportation and dumping into
waters of dredgings, etc., and other refuse, Act March 3, 1905, c. 1
ante, § 9926.

Violations of regulations of floating of timber or logs, etc., in navig
ters, Act May 9, 1900, c. 387, § 2, ante, § 9928.

Violations of regulations of navigation of South and Southwest Pas
sissippi River, for preventing obstructions of channels, Act March 3,
264, § 5, ante, § 9931.

Depositing refuse in New York Harbor, Act June 29, 1888, c. 496,
§ 9933.

Towing vessel, etc., loaded with prohibited refuse to place in New Y
bor, Act June 29, 1888, c. 496, § 2, ante, § 9934.

Towing scow, etc., loaded with prohibited refuse in New York Har
without permit, Act June 29, 1888, c. 496, § 3, as amended, Act
1894, c. 299, § 3, and Act May 28, 1908, c. 212, § 8, ante, § 9935.

Dumping refuse in place in New York Harbor not specified in permit,
29, 1888, c. 496, § 3, as amended, Act Aug. 18, 1894, c. 299, § 3,
May 28, 1908, c. 212, § 8, ante, § 9935.

Owner of scow, etc., transporting dredgings, earth, etc., or garbage
New York Harbor, failing to comply with regulations thereof, Act
1888, c. 496, § 3, as amended, Act Aug. 18, 1894, c. 299, § 3, and
28, 1908, c. 212, § 8, ante, § 9935.

Bribing inspector, deputy inspector, or other employé of office of s
of New York Harbor, Act June 29, 1888, c. 496, § 3, as amended,
18, 1894, c. 299, § 3, and Act May 28, 1908, c. 212, § 8, ante, § 993

Failing to return, etc., permit for dumping refuse in New York Ha
June 29, 1888, c. 496, § 3, as amended, Act Aug. 18, 1894, c. 299,
Act May 28, 1908, c. 212, § 8, ante, § 9935.

Violation of provisions as to disposition of dredgings, etc., Act June
c. 496, § 4, ante, § 9937.

Fishing or dredging for shellfish in channels or interfering with n
in New York Harbor, Act Aug. 18, 1894, c. 299, § 2, ante, § 9941.

Depositing refuse in Potomac River, Act May 19, 1896, c. 208, § 3, ant

Dumping refuse material in Lake Michigan at or near Chicago,
23, 1910, c. 359, ante, § 9946.

Chapter D—Anchorage Regulations

Violations of anchorage regulations in New York Harbor, Act May
c. 257, § 2, ante, § 9948.

Violations of regulations relating to anchorage grounds and use o
channels in port of Chicago, Act Feb. 6, 1893, c. 64, § 2, ante, § 995

Violation of anchorage regulations or refusal to obey instructions o
master in Potomac River, Act March 2, 1895, c. 172, § 2, ante, § 95

Violations of regulations governing movements and anchorage of v
St. Marys River, Act March 6, 1896, c. 49, § 3, as amended, Act
1906, c. 1874, § 2, ante, § 9956.

Chapter E—Bridges over Navigable Waters

Failing to comply with order of Secretary of War, etc., as to constr
bridge over navigable waters, under Bridge Act, Act March 23,
1130, § 5, ante, § 9965.

Failing to comply with order of Secretary of War to remove obstr
navigation by bridge, Act March 3, 1899, c. 425, § 18, ante, § 9970.

Violations of regulations governing drawbridges over navigable wa
Aug. 18, 1894, c. 299, § 5, ante, § 9973.

Chapter F—Dams and Water Power

Owner or operator of dam failing to maintain lights and signals
ways required, Act June 21, 1906, c. 3508, § 3, as amended, Act
1910, c. 360, ante, § 9978.

Failing to comply with order of Secretary of War, etc., as to constr
dam over navigable waters under Dam Act, Act June 21, 1906, c.
as amended, Act June 23, 1910, c. 360, ante, § 9980.

hapter H—California Débris Commission

Injuring works erected by California Débris Commission, Act March 1, 1893, c. 183, § 22, ante, § 10026.

Injuring navigable waters by mining by hydraulic process, Act March 1, 1893, c. 183, § 22, ante, § 10026.

hapter I—The Panama Canal and Canal Zone

Violations of regulations as to persons remaining upon or passing over Canal Zone, etc., Act Aug. 21, 1916, c. 371, § 10, ante, § 10051j.

Injuring, obstructing, etc., any part of the Panama Canal, locks, or approaches thereto. Act Aug. 24, 1912, c. 390, § 10, ante, § 10046.

TITLE LXV—TELEGRAPHS

Officer or agent of railroad or telegraph company refusing or failing to operate certain telegraph lines, or to give equal facilities in operation thereof, or to comply with orders of the Interstate Commerce Commission, Act Aug. 7, 1888, c. 772, § 5, ante, § 10084.

Willful breaking of or injury to submarine cable, Act Feb. 29, 1888, c. 17, § 1, ante, § 10087.

Negligent breaking of or injury to submarine cable, Act Feb. 29, 1888, c. 17, § 2, ante, § 10088.

Master of vessel engaged in laying or repairing submarine cable failing to observe rules or signals, Act Feb. 29, 1888, c. 17, § 4, ante, § 10090.

Master of vessel failing to keep prescribed distance from ship repairing submarine cable, or from buoys marking cable out of order or broken, Act Feb. 29, 1888, c. 17, § 4, ante, § 10090.

Master of fishing vessel failing to keep nets, etc., prescribed distance from buoys marking submarine cable being laid or out of order or broken, Act Feb. 29, 1888, c. 17, § 5, ante, § 10091.

Person having custody of papers necessary for preparation of statements provided for by convention for the protection of submarine cables, refusing to exhibit them therefor, Act Feb. 29, 1888, c. 17, § 7, ante, § 10093.

Operating radio communication apparatus without license, Act Aug. 13, 1912, c. 287, § 3, ante, § 10102.

Divulging or publishing radio message, Act Aug. 13, 1912, c. 287, § 4, ante, § 10103.

Operator of radio communication apparatus willfully interfering with other radio communication, Act Aug. 13, 1912, c. 287, § 5, ante, § 10104.

Uttering or transmitting false or fraudulent distress signal, call, or other radiogram, Act Aug. 13, 1912, c. 287, § 7, ante, § 10106.

TITLE LXVI—EXTRADITION

Obstructing, resisting, etc., in execution of duty, agent of United States to receive from foreign government person accused of crime, R. S. § 5277, ante, § 10123.

Resisting agent of State or Territory to receive person accused of crime in another State or Territory, R. S. § 5279, ante, § 10127.

TITLE LXIX—INSURRECTION

Trading in insurrectionary state without license, R. S. § 5306, ante, § 10148.

Trading in captured or abandoned property, R. S. § 5313, ante, § 10155.

TITLE LXX—CRIMES

hapter 9—Prisoners and their Treatment

Officer or other person hiring out United States convicts, Act Feb. 23, 1887, c. 213, §§ 1, 2, post, §§ 10524, 10525.

TITLE LXX

CRIMES

Nearly all the provisions of this Title of the Revised Statutes, exce
ter 9 thereof, and of subsequent acts and parts of acts defining and p
offenses against the United States, were incorporated into the Crimin
ante, Title LXIX A, and were repealed by section 341 of said Code,
10515.

The sections of chapters 1–8 of this Title of the Revised Statutes
incorporated in or repealed by the Criminal Code, because procedure i
inal Cases, and therefore not within the scope of said Code, are plac
other sections of the Revised Statutes and subsequent acts and parts
relating to such procedure, ante, under Title XIII, "The Judiciary,
"Procedure," subc. "Criminal Procedure."

Chap.

1. General provisions.....
2. Crimes against the existence of the Government.....
3. Crimes arising within the maritime and territorial jurisdiction
the United States.....
4. Crimes against justice.....
5. Crimes against the operations of the Government.....
6. Official misconduct, etc.....
7. Crimes against the elective franchise and civil rights of citizens.
8. The punishment of accessories.....
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CHAPTER ONE

General Provisions

(R. S. §§ 5323–5330. Repealed.)

This chapter of the Revised Statutes included sections 5323–5330
The provisions contained therein were, with the exception of section
corporated into the Criminal Code, chiefly in chapter 14 thereof, in secti
327, 332, 334, ante, §§ 10497–10501, 10506, 10508, and these sections
tion 5329, relating to the benefit of clergy, were repealed by section
said Code, ante, § 10515.

Act Jan. 15, 1897, c. 29, § 1, 29 Stat. 487, authorizing a qualified
in murder or rape cases, was also incorporated in said Code, in sec
thereof, ante, § 10504, and was repealed by said section 341 thereof,
10515.

CHAPTER TWO

Crimes Against the Existence of the Governm

(R. S. §§ 5331–5338. Repealed.)

This chapter of the Revised Statutes included sections 5331–5338
They were incorporated into the Criminal Code, in chapter 1 thereof,
1–7, ante, §§ 10165–10172, and were repealed by section 341 of said Co
§ 10515.

CHAPTER THREE

Crimes Arising Within the Maritime and Territorial Jurisdiction of the United States

(R. S. §§ 5339–5391. Repealed.)

This chapter of the Revised Statutes included sections 5339–5391 thereof. The provisions contained therein were incorporated into the Criminal Code, chiefly in chapters 11, 12, and 13 thereof, and were repealed by section 341 of said Code, ante, § 10515.

Acts and parts of acts subsequent to the Revised Statutes relating to the subjects thereof, which were also incorporated into said Criminal Code, and repealed by said section 341 thereof, ante, § 10515, are the following:

Act June 23, 1874, c. 464, 18 Stat. 251, protecting persons of foreign birth against involuntary servitude, incorporated in section 271 of said Code, ante, § 10444.

Act March 3, 1875, c. 151, §§ 1–3, 18 Stat. 481, punishing injury to trees and fences on lands of the United States and driving of cattle thereon, incorporated in sections 50, 56, of said Code, ante, §§ 10217, 10223.

Act March 22, 1882, c. 47, §§ 1, 3, 4, 22 Stat. 30, relating to bigamy and unlawful cohabitation, incorporated in sections 313–315 of said Code, ante, §§ 10486–10488.

Act March 3, 1887, c. 397, §§ 3–5, 9, 10, 24 Stat. 635, punishing enumerated crimes, incorporated in sections 316–319 of said Code, ante, §§ 10489–10492.

Act June 4, 1888, c. 340, amending R. S. § 5388, punishing depredation on timber lands, incorporated in section 50 of said Code, ante, § 10217.

Act Feb. 9, 1889, c. 120, 25 Stat. 658, punishing crime, incorporated in section 279 of said Code, ante, § 10452.

Act Aug. 6, 1894, c. 227, 28 Stat. 233, amending R. S. §§ 5365, 5366, incorporated in sections 300, 301, of said Code, ante, §§ 10473, 10474.

Act Feb. 7, 1896, c. 12, 29 Stat. 5, punishing prize fighting and defining pugilistic encounter, incorporated in sections 320, 321, of said Code, ante, §§ 10493, 10494.

Act March 3, 1897, § 18, 29 Stat. 691, amending R. S. § 5347, incorporated in section 291 of said Code, ante, § 10464.

Act July 7, 1898, c. 576, 30 Stat. 717, punishing injury to harbor defenses and fortifications, incorporated in sections 44, 289, of said Code, ante, §§ 10208, 10462.

Act Feb. 14, 1902, c. 18, 32 Stat. 33, preventing the sale of fire arms, etc., in islands of the Pacific, incorporated in section 308 of said Code, ante, § 10481.

Act July 1, 1902, c. 1376, 32 Stat. 727, punishing train robberies in the territories, etc., incorporated in section 322 of said Code, ante, § 10495.

Act Feb. 2, 1903, c. 351, 32 Stat. 793, relating to crimes on Indian reservations, incorporated in section 329 of said Code, ante, § 10503.

Act March 3, 1905, c. 1454, § 5, 33 Stat. 1025, amending R. S. § 5344, incorporated in section 282 of said Code, ante, § 10455.

Acts and parts of acts which were superseded by provisions of said Code are the following:

Act March 3, 1875, c. 138, 18 Stat. 473, relating to the punishment of manslaughter, was superseded by the provisions relating to the same subject in section 275 of said Code, ante, § 10448.

Act Sept. 4, 1890, c. 874, 26 Stat. 424, extending the criminal jurisdiction to the Great Lakes and their connecting waters, was superseded by the provisions relating to the same subject in sections 272, 340, of said Code, ante, §§ 10445, 10514.

CHAPTER FOUR

Crimes Against Justice

(R. S. §§ 5392–5412. Repealed, obsolete, or transferred.)

This chapter of the Revised Statutes included sections 5392–5412 thereof. The provisions of sections 5392–5395, 5398–5410, were incorporated into the Criminal Code, chiefly in chapter 6 thereof, ante, §§ 10295–10316, and were repealed by section 341 of said Code, ante, § 10515.

R. S. §§ 5396, 5397, relating to indictments for perjury and suborna perjury, not being within the scope of the Criminal Code, were not i rated in or repealed by it, and are set forth ante, §§ 1687, 1688.

R. S. § 5407, was included among the sections repealed by said secti but its provisions were not carried into the Code, apparently because the similar to those of R. S. § 5519, held unconstitutional in U. S. v. Harr U. S. 629, 1 Sup. Ct. 601, 27 L. Ed. 290.

R. S. §§ 5411, 5412, were not incorporated into or repealed by said apparently because obsolete.

CHAPTER FIVE

Crimes Against the Operations of the Governme

(R. S. §§ 5413–5480. Repealed.)

This chapter of the Revised Statutes included sections 5413–5480 They were incorporated into the Criminal Code, chiefly in chapters 4, 7, thereof, and were repealed by section 341 thereof, ante, § 10515.

Acts and parts of acts subsequent to the Revised Statutes relating subjects embodied in this chapter, which were also incorporated into said inal Code and repealed by said section 341 thereof, are the following:

Act March 3, 1875, c. 144, 18 Stat. 479, punishing the larceny of property and the receiving of stolen goods, incorporated in sections 47, said Code, ante, §§ 10214, 10215.

Act Jan. 16, 1877, c. 24, 19 Stat. 223, amending R. S. § 5457, incorpor section 163 of said Code, ante, § 10333.

Act March 3, 1879, c. 180, § 13, 20 Stat. 359, amended by Act June 18 c. 394, 25 Stat. 187, punishing the giving of false evidence of chara publication to secure second class mail rate, incorporated in section 223 Code, ante, § 10393.

Act May 17, 1879, c. 8, 21 Stat. 4, amending R. S. § 5440, incorpor section 37 of said Code, ante, § 10201.

Act April 18, 1884, c. 26, 23 Stat. 11, punishing falsely pretending United States officer, incorporated in section 32 of said Code, ante, § 10

Act May 16, 1884, c. 52, 23 Stat. 22, punishing counterfeiting of not of foreign governments, incorporated in sections 156–161 of said Code, 10326–10331.

Act Jan. 3, 1887, c. 13, § 2, 24 Stat. 355, amending R. S. § 5463, incor in section 218 of said Code, ante, § 10388.

Act June 18, 1888, c. 394, § 2, 25 Stat. 187, punishing the forgery of money orders, incorporated in section 218 of said Code, ante, § 10388.

Act March 2, 1889, c. 393, § 1, 25 Stat. 873, amending R. S. § 5480 porated in section 215 of said Code, ante, § 10385.

Act March 2, 1889, c. 393, § 2, 25 Stat. 873, punishing the fraudul sumption of fictitious address, incorporated in section 216 of said Cod § 10386.

Act Feb. 10, 1891, c. 127, §§ 1, 2, 26 Stat. 742, punishing counterfei domestic and foreign coins, incorporated in sections 169, 170, of said Cod §§ 10339, 10340.

Act Feb. 10, 1891, c. 127, § 3, 26 Stat. 742, amended by Act March 3 c. 1015, 32 Stat. 1223, prohibiting the making, importing, or having in sion tokens, etc., similar to United States or foreign coins, incorpor section 171 of said Code, ante, § 10341.

Act Feb. 10, 1891, c. 127, § 4, 26 Stat. 742, forfeiting counterfeit coi or material for counterfeiting, incorporated in section 172 of said Cod § 10342.

Act Feb. 10, 1891, c. 127, § 5, 26 Stat. 743, authorizing search warra counterfeit money, securities, etc., incorporated in section 173 of sai ante, § 10343.

Act March 3, 1897, c. 377, 29 Stat. 625, amending R. S. § 5459, incor in section 165 of said Code, ante, § 10335.

Act March 2, 1905, c. 1304, 33 Stat. 822, punishing false evidence acter of publication to secure second class mail rate, incorporated in 223 of said Code, ante, § 10393.

Act Jan. 26, 1907, c. 420, 34 Stat. 864, prohibiting corporations fro ing political contributions, incorporated in section 83 of said Code, 10251.

Act May 30, 1908, c. 235, 35 Stat. 555, amending R. S. § 5438, incor in section 35 of said Code, ante, § 10199.

CHAPTER SIX

Official Misconduct, Etc.

(R. S. §§ 5481–5505. Repealed, superseded, or transferred.)

This chapter of the Revised Statutes included sections 5481–5505 thereof. The provisions of these sections, with the exception of sections 5485, 5486, were incorporated into the Crim. Code, chiefly in chapter 5 thereof, and were repealed by section 341 of said Code, ante, § 10515.

R. S. §§ 5485, 5486, punishing the demanding or taking by pension attorneys, etc., of more than legal fees, and punishing the embezzlement of a pension by a guardian, were not incorporated in or repealed by the said Code. R. S. § 5485, is set forth ante, under Title LVII, "Pensions," § 9114. R. S. § 5486, was substantially the same as R. S. § 4783. Both those sections were amended to read in the same words, by Act Feb. 10, 1891, c. 130, 26 Stat. 746. R. S. § 4783, as so amended, is set forth ante, under Title LVII, "Pensions," § 9111, and R. S. § 5486, is omitted.

Acts subsequent to the Revised Statutes relating to the subjects of this chapter, incorporated in and repealed or superseded by said Criminal Code, are the following:

Act Feb. 3, 1879, c. 42, 20 Stat. 280, amending R. S. § 5497, incorporated in section 97 of said Code, ante, § 10265, and repealed by said section 341 thereof, ante, § 10515.

Act June 28, 1906, c. 3574, 34 Stat. 546, amending R. S. § 5481, was incorporated with that section in section 85 of said Code, ante, § 10253, and was superseded thereby, though not included among the acts repealed by said section 341, ante, § 10515.

CHAPTER SEVEN

Crimes Against the Elective Franchise and Civil Rights of Citizens

(R. S. §§ 5506–5532. Repealed and transferred.)

This chapter of the Revised Statutes included sections 5506–5532 thereof. R. S. §§ 5506, 5511–5515, 5520–5523, were repealed by Act Feb. 8, 1894, c. 25, § 1, 28 Stat. 36.

The provisions of the remaining sections, excepting sections 5507, 5517, 5519, were incorporated into the Crim. Code, chiefly in chapters 3 and 10, thereof, and were repealed by section 341 thereof, ante, § 10515.

R. S. § 5517, imposing a fine on a marshal or deputy marshal refusing to receive or execute process issued in pursuance of R. S. § 1985, not being within the scope of said Criminal Code, was not incorporated in or repealed thereby, and is placed with said R. S. § 1985, ante, under Title XXIV, "Civil Rights," § 3939.

R. S. §§ 5507 and 5519, were included among the sections repealed by said Criminal Code, but their provisions were not carried into it, apparently because section 5507 was held unconstitutional in James v. Bowman, 190 U. S. 127, 23 Sup. Ct. 678, 47 L. Ed. 979, and section 5519 was held unconstitutional in U. S. v. Harris, 106 U. S. 629, 1 Sup. Ct. 601, 27 L. Ed. 290.

CHAPTER EIGHT

The Punishment of Accessories

(R. S. §§ 5533–5535. Repealed.)

This chapter of the Revised Statutes included sections 5533–5535 thereof. The provisions contained in these sections were incorporated into the Criminal Code, in sections 333, 334, thereof, ante, §§ 10507, 10508, and were repealed by section 341 thereof, ante, § 10515.

CHAPTER NINE

Prisoners and Their Treatment

Sec.
10520. Expenses for prisoners to be paid by the United States.
10520a. Cost of care, etc., of District of Columbia convicts to be charged against the District; accounts therefor, and ascertainment of amount to be charged.
10521. Places of confinement.
10522. Marshal to make provision for safe-keeping of prisoners.
10523. United States convicts in State penitentiaries.
10524. Hiring out of United States convicts prohibited.
10525. Penalty.
10526. Selection of penitentiary where a judicial district is divided.
10527. Sentences to imprisonment for more than a year, where to be executed.
10528. Penitentiary sentences, where to be executed.
10529. Deductions from term of imprisonment for good conduct.
10530. Application of preceding section.
10531. Deductions from term of imprisonment for good conduct.
10532. United States prisoners; commutation for good conduct; computation.
10533. Restoration of forfeited commutation.
10534. Sentences affected by act.
10535. Release of prisoners on parole; conditions.
10536. Board of parole for each penitentiary or other prison; members; clerk; meetings.
10537. Application for parole; discretion of board; terms and conditions; limits of residence; approval by Attorney-General.
10538. Violation of parole; warrant for retaking prisoner.
10539. Officers authorized to execute warrant; expenses.
10540. Action by board of parole on issue of warrant; revocation of parole.
10541. Parole officer for each penitentiary; duties; salary and expenses; supervision of paroled prisoners by marshals.
10542. Gratuities, transportations, etc., to paroled prisoners.
10543. United States prisoners in State reformatories; parole under State laws; expenses of parole and supervision; approval by Attorney-General; re prisoner to home ou State.
10544. Power of President t pardon or commutat good time allowance b Congress, not impaired act.
10545. Furnishing clothing an to discharged prisoner
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10547. Designation of penitent Attorney-General; tra tion of prisoners; e change of place of i ment.
10548. Attorney-General to con subsistence, etc.
10549. Court may order senten cuted in house of corr
10550. Confinement of juvenile ers.
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10554. Selection of location of
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10556. Transportation of prison penses.
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10558. Confinement of juvenile ers; confinement of in the United States prison.
10559. Deductions from term o onment for good cond
10560. Designation of penitent Attorney-General; se of youthful prisoners.
10561. Military Prison at Fort worth, Kan., changed ed States Penitentia transferred to Depart Justice.
10562. Selection of site for pen on Fort Leavenworth Reservation; return tary prison to War ment.
10563. Management of United penitentiary at Atlan transfer of prisoners; employment.
10564. Federal jail at Fort Sm made a national prison prisoners may be adm

§ 10520. (R. S. § 5536.) Expenses for prisoners to be paid United States.

All the expenses attendant upon the transportation from to place, and upon the temporary or permanent confinement

ıs arrested or committed under the laws of the United States, as ll as upon the execution of any sentence of a court thereof re-ecting them, shall be paid out of the Treasury of the United States the manner provided by law.

Res. March 3, 1821, No. 2, 3 Stat. 646. Act March 3, 1835, c. 40, § 5, 4 Stat. 777. Act March 3, 1865, c. 86, § 3, 13 Stat. 500.

Provisions for the payment of transportation and other expenses of prisoners sentenced to the Government prisons were made by Act March 3, 1891, c. 529, § 5, post, § 10556.

Provisions for the furnishing of clothing, money, and transportation home to prisoners, on their discharge, were made by Act March 3, 1875, c. 145, § 2, and Act March 3, 1891, c. 529, § 6, post, §§ 10545, 10556.

Provisions for the payment of the cost of care and custody of District of Columbia convicts in any Federal penitentiary were made by Act March 3, 1915, c. 75, § 1, post, § 10520a.

Notes of Decisions

ails for federal prisoners.—Under solution Sept. 23, 1789, R. S. §§ 6–5538 (this compilation, §§ 10520–22), and Code Iowa 1897, §§ 5637, 6, the county jails in Iowa are jails the United States for the commitment of federal prisoners. Ex parte Shores (D. C. 1912) 195 Fed. 627.

Cited without definite application, Logan v. U. S. (1892) 12 Sup. Ct. 617, 623, 144 U. S. 263, 36 L. Ed. 429.

10520a. (Act March 3, 1915, c. 75, § 1.) Cost of care, etc., of District of Columbia convicts to be charged against the District; accounts therefor, and ascertainment of amount to be charged.

For the fiscal year nineteen hundred and sixteen and thereafter e cost of the care and custody of District of Columbia convicts in y Federal penitentiary shall be charged against the District of lumbia in quarterly accounts to be rendered by the disbursing of-er of said penitentiary; and the amount to be charged against e District of Columbia shall be ascertained by multiplying the erage daily number of District of Columbia convicts confined in e penitentiary during the quarter by the per capita cost for all isoners in such penitentiary for the same quarter but excluding penses of construction or extraordinary repair of buildings. (38 at. 869.)

These were provisions of section 1 of the sundry civil appropriation act for the fiscal year 1916, cited above.

Previous provisions for the payment of transportation and other expenses of prisoners convicted in the District of Columbia were made by R. S. § 5546, as amended, post, § 10547.

General provisions for the payment of expenses for Federal prisoners were made by R. S. § 5536, ante, § 10520.

10521. (R. S. § 5537.) Places of confinement.

In a State where the use of jails, penitentiaries, or other houses not allowed for the imprisonment of persons arrested or com-tted under the authority of the United States, any marshal in such ate, under the direction of the judge of the district, may hire, or herwise procure, within the limits of such State, a convenient place serve as a temporary jail.

Res. March 3, 1821, No. 2, 3 Stat. 646. Act March 2, 1833, c. 57, § 6, 4 Stat. 634.

Notes of Decisions

See notes under § 10520, ante.

Power of court to provide specially confinement.—District courts of e United States have power to pro-le specially for the confinement of rsons convicted by federal law, if re-sed admission into the jails of the ate. In such case the prisoner may confined in the penitentiary of the strict of Columbia. (1856) 7 Op. ty. Gen. 615.

Right of states to refuse use of prisons.—The several states may refuse to allow the use of their jails and prisons for the commitment of persons convicted in federal courts. Ex parte Shores (D. C. 1912) 195 Fed. 627.

Cited without definite application, Logan v. U. S. (1892) 12 Sup. Ct. 617, 623, 144 U. S. 263, 36 L. Ed. 429; Eaton v. Calhoun (C. C. 1880) 15 Fed. 155, 157; Erwin v. U. S. (D. C. 1889) 37 Fed. 470, 485, 2 L. R. A. 229; (1857) 8 Op. Atty. Gen. 289, 290.

§ 10522. (R. S. § 5538.) Marshal to make provision for saf ing of prisoners.

The marshal shall make such other provision as he may de pedient and necessary for the safe-keeping of the prisoners or committed under the authority of the United States, until nent provision for that purpose is made by law.

Res. March 3, 1821, No. 2, 3 Stat. 646. Act March 2, 1833, c. Stat. 634.

Provisions authorizing the establishment of Government prisons w by Act March 3, 1891, c. 529, post, §§ 10552–10560.

Notes of Decisions

See notes under § 10520, ante.

Detention of prisoner in penitentiary instead of jail.—A United States marshal, having a prisoner under a valid warrant, may detain him in the state penitentiary, and is not obliged to place him in the county jail. Clinton v. Nelson (1877) 2 Utah, 284.

Cited without definite ap Logan v. U. S. (1892) 12 Sup. 623, 144 U. S. 263, 36 L. Asher v. Cabell (1892) 50 827, 1 C. C. A. 693; Eaton v. (C. C. 1880) 15 Fed. 155, 157 8 Op. Atty. Gen. 289, 290.

§ 10523. (R. S. § 5539.) United States convicts in State p tiaries.

Whenever any criminal, convicted of any offense against the States, is imprisoned in the jail or penitentiary of any State o tory, such criminal shall in all respects be subject to the sam pline and treatment as convicts sentenced by the courts of th or Territory in which such jail or penitentiary is situated; an so confined therein shall be exclusively under the control of t cers having charge of the same, under the laws of such State ritory.

Act June 30, 1834, c. 163, 4 Stat. 739.

Authority is given by Act March 4, 1915, c. 143, § 2(2), ante, § the confinement of military prisoners convicted by courts martial military tribunals, in United States, state, territorial, or District penit provided the offense for which any such prisoner is convicted shall be under state or federal law punishable by imprisonment in a penitenti military offenders not so imprisoned shall be confined in the Unite Disciplinary Barracks, formerly known as the United States Militar Fort Leavenworth, Kansas.

Provisions for the confinement of military prisoners were made by 29, 1916, c. 418, § 3, article 42 of the Articles of War, ante, § 2308a.

Notes of Decisions

1. Effect of statute as requiring prosecutions by indictment.
2. Contract for care of prisoners.
3. Duty of jailer to receive and keep prisoners.
4. Discipline and treatment in general.
5. Cruel or unusual punishment.
6. Hard labor.
7. Taking testimony of prisoners.
8. Release by virtue of writ issued out of state court.
9. Parole of federal prisoners pursuant to state law.
10. Jailer as United States officer.

See notes under § 1694, ante, and § 10531, post.

1. Effect of statute as requiring prosecutions by indictment.—In view of R. S. §§ 5539, 5541, 5542 (this compilation, §§ 10523, 10527, 10528), it was held that prosecutions of violation of R. S. §§ 3242, 3244, ante, §§ 5965, 5971, must be by indictment or presentment of a grand jury. U. S. v. Johannesen (C. C. 1887) 35 Fed. 411.

2. Contract for care of prisoners.—Under R. S. §§ 5539, 5547 (this compilation, §§ 10523, 10548), that United States criminals i ed in the jail or penitentiar state or territory shall be u control of the officers having the same, and authorizing the general to contract with the p thorities having control of suc ers for their imprisonment, su etc.; and Rev. St. Ariz. pars. 2459, 2460, 521, 1972, defining ers and duties of county su and of sheriffs,—the supervis county are the proper pers whom the department of justi contract for the care of Unit prisoners imprisoned in a co Avery v. Pima County (190 702, 7 Ariz. 26.

3. Duty of jailer to receive prisoners.—A jailer is bound t persons committed by authori United States, and keep them charged by due course of the the United States. Johnson (1833) 31 Ky. (1 Dana) 182

. **Discipline and treatment in gener-**—Prisoners confined to state prisons, ether under sentence of federal or te courts, are subject exclusively to government of rules and regulations scribed by the several states. (1883) Op. Atty. Gen. 565.

Under R. S. §§ 5539, 5546 (this com-ation, §§ 10523, 10547), an imprison-nt, if for more than one year, may be a state penitentiary, and when so prisoned the convicted person is sub-t to the same discipline and treat-nt as those sentenced by the state rt. Fields v. U. S. (1906) 27 App. C. 433, certiorari denied (1907) 27 Ct. 543, 205 U. S. 292, 51 L. Ed. 7.

. **Cruel or unusual punishment.**—e keeper of a county jail of a state ng an officer of the federal court for purpose of properly caring for pris-ers committed to his custody by such rt, he may be punished by attach-nt for contempt for inflicting a cruel unusual punishment on such prison-. In re Birdsong (D. C. 1889) 39 d. 599, 4 L. R. A. 628.

. **Hard labor.**—One sentenced to im-isonment in a penitentiary where rd labor is a part of the usual dis-line is subject to such discipline, even ough the statute defining the punish-nt does not specifically authorize prisonment at hard labor. U. S. v. idgeon (1894) 14 Sup. Ct. 746, 750, 3 U. S. 48, 38 L. Ed. 631.

Where it was competent for a court sentence one convicted of crime to prisonment in a penitentiary where rd labor was a part of the usual dis-line, the prisoner became subject to rd labor under this section. Id.

The district court may direct impris-ment in the state penitentiary in ich prisoners are put to hard labor, ough hard labor is not imposed by terms of the sentence. Act June , 1834. Ex parte Geary (C. C. 1871) d. Cas. No. 5,293.

The convict cannot object that there no state legislation authorizing such prisonment where federal convicts ve been received in such prison for ny years. Id.

. **Taking testimony of prisoners.**—e president has no power, in the ab-nce of a treaty provision, to extend a foreign government the privilege taking the testimony of prisoners, cepting when they are confined in isons of such of the territories as not invested with authority to reg-ate the prisons within their limit, and the prisons of the District of Colum-a; and then only, as to the former isons, with the concurrence of the torney General, and as to the latter prisons, with the concurrence of the supreme court of the District. (1883) 17 Op. Atty. Gen. 565.

8. **Release by virtue of writ issued out of state court.**—When a prisoner confined under sentence of a federal court is released by virtue of a writ issued out of a state court, he may be rearrested on order of the federal court, since the state court had no authority to release him. In re Johnson (C. C. 1891) 46 Fed. 477.

9. **Parole of federal prisoners pursuant to state law.**—Under R. S. §§ 5539, 5544 (this compilation, §§ 10523, 10530), which provide that persons convicted of offenses against the United States and who are imprisoned in the jail or penitentiary of any state or territory shall be exclusively under the control of the officers having charge of the same, in all respects subject to the same discipline and treatment as convicts sentenced by the courts of the state or territory and entitled to the same rule of credit for good behavior as other prisoners, a federal prisoner sentenced to imprisonment in a workhouse in Ohio may be paroled by the prison authorities, as authorized by Rev. St. Ohio 1892, § 2102. In re Naples (D. C. 1905) 142 Fed. 781.

10. **Jailer as United States officer.**—The jailer of a state jail, in which prisoners, under sentence or awaiting trial by the federal courts, are confined, is not an officer of the United States; and a United States commissioner has no power to call upon him to perform any service. Saunders v. U. S. (C. C. 1896) 73 Fed. 782.

For the purpose of safely keeping and properly caring for prisoners committed to his custody by a court of the United States, a keeper of a county jail of a state, who receives such prisoners, and is paid for their maintenance, is an officer of the United States court. In re Birdsong (D. C. 1889) 39 Fed. 599, 4 L. R. A. 628.

Cited without definite application, Ex parte Karstendick (1876) 93 U. S. 396, 399, 23 L. Ed. 889; Mackin v. U. S. (1886) 6 Sup. Ct. 777, 779, 117 U. S. 348, 29 L. Ed. 909; Jackson v. U. S. (1900) 102 Fed. 473, 489, 42 C. C. A. 452; Cochran v. U. S. (1906) 147 Fed. 206, 77 C. C. A. 432; U. S. v. Coppersmith (C. C. 1880) 4 Fed. 198, 204, 205; U. S. v. Tod (C. C. 1885) 25 Fed. 815, 816; In re Walters (C. C. 1904) 128 Fed. 791; Erwin v. U. S. (D. C. 1889) 37 Fed. 470, 485, 2 L. R. A. 229; U. S. v. Wilson (D. C. 1894) 60 Fed. 890, 899; In re Raymond (D. C. 1901) 110 Fed. 155; (1857) 8 Op. Atty. Gen. 289, 290.

10524. (Act Feb. 23, 1887, c. 213, § 1.) Hiring out of United States convicts prohibited.

It shall not be lawful for any officer, agent, or servant of the overnment of the United States to contract with any person or

corporation, or permit any warden, agent, or official of an prison, penitentiary, jail, or house of correction where crim the United States may be incarcerated to hire or contract labor of said criminals, or any part of them, who may here confined in any prison, jail, or other place of incarceration fo tion of any laws of the Government of the United States of ica. (24 Stat. 411.)

This section and the section next following were part of an titled "An act to prohibit any officer, agent, or servant of the Go of the United States of America to hire or contract out the labor of incarcerated for violating the laws of the Government of the United America."

Section 3 of the act repealed all acts or parts of acts inconsisten and declared that the act should take effect and be in force from its passage.

Provisions for the employment of prisoners confined in Governmen were made by Act March 3, 1891, c. 529, § 2, Act March 2, 1895, c. and Act March 3, 1901, c. 853, § 1, post, §§ 10553, 10561, 10563.

Provisions for commission to investigate and report not later than Monday in December, 1916, as to advisability of equipping penitenti the manufacture of various articles were made by Act Sept. 8, 191 § 1, 39 Stat. 819.

§ 10525. (Act Feb. 23, 1887, c. 213, § 2.) Penalty.

Any person who shall offend against the provisions of shall be deemed guilty of a misdemeanor, and, on convictio of, shall be imprisoned for a term not less than one year n than three years, at the discretion of the court, or shall not less than five hundred dollars nor more than one thousa lars for each offense. (24 Stat. 411.)

See note to preceding section.

§ 10526. (R. S. § 5540.) Selection of penitentiary where a district is divided.

Where a judicial district has been or may hereafter be the [circuit and] district courts of the United States shall hav to sentence any one convicted of an offense punishable by onment at hard labor to the penitentiary within the State, it be out of the judicial district in which the conviction is ha

Act March 28, 1856, c. 9, § 1, 11 Stat. 2.

The words "circuit and," inclosed in brackets in this section, were ed by the abolition of the circuit courts and the transfer of their ju to the district courts, by Jud. Code, §§ 289–291, ante, §§ 1266–1268.

Cited without definite application, U. S. v. McMahon (1896) 17 Sup. Ct. 28, 29, 164 U. S. 81, 41 L. Ed. 357; U. S. v. Smith (C. C. 1889) 40 758; In re Greenwald (C. C. Fed. 590, 593.

§ 10527. (R. S. § 5541.) Sentences to imprisonment for m a year, where to be executed.

In every case where any person convicted of any offense the United States is sentenced to imprisonment for a period than one year, the court by which the sentence is passed ma the same to be executed in any State jail or penitentiary wi district or State where such court is held, the use of which penitentiary is allowed by the legislature of the State for that

Act March 3, 1865, c. 86, § 3, 13 Stat. 500.

Notes of Decisions

1. Effect of statute as to nature of offense as felony or misdemeanor determining number of challenges.
2. Effect of statute as requiring prosecution by indictment.
3. Prison allowed for use by state legislature.
4. "State jail" and "state prison" synonymous.
5. Reformatory for women a tiary.
6. Sentence in violation of stat
7. Discretion of court.
8. Designation of prison in a prisoner.
9. Jurisdiction of police court.
10. Dividing term between jail tentiary.

entence for a year or less in general.
mprisonment limited by statute to one year.
'alidity of sentence on conviction on two counts.
'unishment of common-law offenses.
entences for terms exceeding one year in case of two different convictions.
Sentence to jail in a certain place.
Sentence to penitentiary outside of state.
Removal of prisoner from state prison to jail.
Sentence for grand larceny in District of Columbia.

e note under Const. Amend. 5.

Effect of statute as to nature of offe as felony or misdemeanor determing number of challenges.—The offe of receiving smuggled goods, deed in R. S. § 3082, ante, § 5785, is to be classed as a felony, so as to tle defendant, under R. S. § 819, , § 1264, to ten peremptory challes, although it is punishable by fine two years' imprisonment, which risonment may, under R. S. § 5541 bodied herein), be inflicted in a e penitentiary; for the offense is ordinate to that of smuggling itself, ch is expressly declared by R. S. 865, ante, § 5548, to be a misdenor, though the penalty is substany the same as for receiving smug- goods. Reagan v. U. S. (1895) 15 . Ct. 610, 157 U. S. 301, 39 L. Ed.

Effect of statute as requiring prosion by indictment.—In view of R. § 5539, 5541, 5542 (this compilation, 10523, 10527, 10528), it was held t prosecution of violations of R. S. 3242, 3244, ante, §§ 5965, 5971, must by indictment or presentment of a nd jury. U. S. v. Johannesen (C. 1887) 35 Fed. 411.

n view of this statute, an offense ishable by imprisonment for more n one year is an infamous crime, and not be prosecuted by information. S. v. Cobb (D. C. 1890) 43 Fed. 570.

. Prison allowed for use by state islature.—The state prison at Cond having been designated by statute a prison in which offenders sentenced the United States courts for terms more than a year might be imprised, and the removal of the prison m Concord to Charlestown having en place under St. Mass. 1884, c. 5. § 7, of that act, making the laws ating to the Concord state prison apable to the Charlestown prison, aurizes the judges of the United States urts to sentence offenders to imprisnent in the Charlestown prison as a son allowed in the terms of R. S. §§ 41. 5542 (this compilation, §§ 10527, 528), by the state legislature, for use the confinement of persons senced for periods of over one year. Ex rte Brooks (C. C. 1886) 29 Fed. 83.

. "State jail" and "state prison" synymous.—The words "state jail," in this section, and "state prison," in the original act, are synonymous. In re Mills (1890) 10 Sup. Ct. 762, 764, 135 U. S. 263, 34 L. Ed. 107.

5. Reformatory for women as penitentiary.—Under this and the following section, a reformatory prison for women, which is the state prison for the reformation and punishment of female offenders sentenced to hard labor by the courts of the state and of the United States, is a state penitentiary. In re Johnson (C. C. 1891) 46 Fed. 477, 481.

6. Sentence in violation of statute void.—A sentence to imprisonment in a state penitentiary in violation of this section is void, and the defendant is entitled to a release upon habeas corpus. In re Bonner (1894) 14 Sup. Ct. 323, 324, 151 U. S. 242, 38 L. Ed. 149.

7. Discretion of court.—The statute authorizes imprisonment in a penitentiary at the discretion of the court in all cases where the sentence is for a longer term than one year. Ex parte Karstendick (1876) 93 U. S. 396, 399, 23 L. Ed. 889.

The provisions of R. S. §§ 5541, 5542, 5546 (this compilation, §§ 10527, 10528, 10547), are construed to widen the range of punishment in all cases where any person may be sentenced to imprisonment for a longer term than one year, and to authorize the court at its discretion to order execution of its sentence at any place where labor is exacted as a part of the discipline and treatment of prisoners held in the institution; but where the statute under which a prisoner is sentenced provides for imprisonment, but not at hard labor, the words "at hard labor" should not be inserted in the sentence, even if such labor is a part of the discipline of the prison at which the sentence is to be served. Gardes v. U. S. (1898) 87 Fed. 172, 30 C. C. A. 596, writ of certiorari denied (1898) 19 Sup. Ct. 884, 171 U. S. 689, 43 L. Ed. 1179.

Where the law provides for imprisonment alone, and the person convicted is sentenced thereunder to imprisonment for more than one year, it is within the power of the court in its discretion to order the execution of its sentence in the penitentiary, where labor is exacted as part of the discipline and treatment of the institution. It is not essential, in cases where imprisonment is for a longer period than one year, that the law defining the offense and providing for the punishment should include a provision for hard labor. In re Welty (D. C. 1903) 123 Fed. 122, 123.

8. Designation of prison in absence of prisoner.—A woman duly convicted in the district court was sentenced to the state prison at Auburn, but the warden refused to admit her, because he was not permitted by the laws of the state to receive female prisoners. The court thereupon, during the same session, but

in the absence of the convict, made an order modifying the sentence by substituting the Erie county penitentiary as the place of confinement. Held, on habeas corpus, that the criminal jurisdiction of the district courts being purely statutory, and it being apparent from the provisions of R. S. §§ 5541, 5542, 5546, 5548 (this compilation, §§ 10527, 10528, 10547, 10549), that the designation of the place of imprisonment is no part of the judgment, such an order could be made in absentem. Ex parte Waterman (D. C. 1887) 33 Fed. 29.

9. Jurisdiction of police court.—R. S. § 5541 (embodied herein), and Act July 12, 1876, c. 183, authorizing the attorney general to designate the jails and penitentiaries to which persons may be sentenced by the courts of the United States, and to change the place of imprisonment, do not affect the jurisdiction of the police court, which includes merely misdemeanors not punishable by imprisonment in the penitentiary, on the theory that the effect of such statutes is to require that all sentences to imprisonment for more than one year must be to confinement in the penitentiary, and not a jail. U. S. v. Marshall (D. C. 1887) 6 Mackey, 34.

10. Dividing term between jail and penitentiary.—The district court does not exceed its power in fixing a part of the term of imprisonment in the county jail, and the remainder in the penitentiary. Ex parte Geary (C. C. 1871) Fed. Cas. No. 5,293.

11. Sentence for a year or less in general.—A federal court has no jurisdiction to sentence a convict to imprisonment in a state penitentiary, except when the imprisonment is to be for more than a year or at hard labor. In re Mills (1890) 10 Sup. Ct. 762, 135 U. S. 263, 34 L. Ed. 107; In re Bonner (1894) 14 Sup. Ct. 323, 151 U. S. 242, 38 L. Ed. 149; Haynes v. U. S. (1900) 101 Fed. 817, 42 C. C. A. 34; In re Bonner (C. C. 1893) 57 Fed. 184.

Act March 1, 1889, establishing a United States court in the Indian Territory, and giving it exclusive jurisdiction of offenses "not punishable by death or by imprisonment at hard labor," did not give it jurisdiction of the offense of retailing liquors without a license, made punishable, under R. S. §§ 2139, 3242, ante, §§ 4136a, 5965, by imprisonment for "not less than six months nor more than two years," since under R. S. § 5541 (embodied herein), a punishment which a statute prescribes shall be by imprisonment merely, may, if it be for more than one year, be executed in a state prison, the rules of which prescribe hard labor. In re Mills (1890) 10 Sup. Ct. 762, 763, 135 U. S. 263, 34 L. Ed. 107; In re Bonner (C. C. 1893) 57 Fed. 184.

Since dumping injurious deposits within the harbor and adjacent waters of New York City, in violati June 29, 1888, c. 496, 25 Sta not punishable by imprisonm term of over one year or at bor, a person convicted there be sentenced to imprisonment itentiary. Ansbro v. U. S. Sup. Ct. 187, 188, 159 U. S. Ed. 310.

Where accused was sentenc year only on one of the cou indictment for conspiracy, had no power to direct that tence be served in a per Francis v. U. S. (1907) 152 81 C. C. A. 407, modifying U. S. v. Francis (D. C. 1906) 520, and writ of certiorar (1907) 27 Sup. Ct. 797, 206 51 L. Ed. 1191.

A sentence to imprisonme year at Blackwell's Island do rect imprisonment in any state prison or penitentiary (A 3, 1863, § 3), but the prisone erly delivered to the custod keeper of the Blackwell's Is itentiary. In re De Puy (D. Fed. Cas. No. 3,814.

This section applies to cas the punishment is imprisonm while the following section cases where the punishment onment at hard labor, and wh son is convicted of an offens the United States, punishabl prisonment at hard labor, the may be executed in a state tiary, though it is not "for longer than one year." Ex p day (D. C. 1890) 43 Fed. 916 ing In re Mills (1890) 135 U 10 Sup. Ct. 762, 34 L. Ed. 107

Under this section it was a sentence of imprisonment year" in a state penitentiary i but, if objectionable at all, is regular, in that imprisonment penitentiary for a period no than one year" is imposed. Friday (D. C. 1890) 43 Fed.

Where the penalty fixed by or may be one year's impr without stating whether it penitentiary or the county where the imprisonment in th tiary adds forfeiture of civil rights or offices, and makes th a felony, the court will give ed the benefit of the doubt, a term of imprisonment in th jail. U. S. v. Powers & (1901) 1 Alaska, 180.

12. Imprisonment limited to one year.—The imprisonme ed for by R. S. § 5356, ante, being limited to one year, enforced in a state penitenti R. S. § 5541 (embodied herei Bonner (1894) 14 Sup. Ct. 151 U. S. 242, 38 L. Ed. 149.

Under this section, when prescribes a punishment by

t not exceeding one year, the con- cannot be confined in any state on or penitentiary. U. S. v. Cobb C. 1890) 43 Fed. 570, 571.

. Validity of sentence on conviction two counts.—A sentence of a fed- circuit court of two years' impris- ent in a state prison will not be void on habeas corpus, on the the- that, as the convict was found guilty two counts of the indictment, the risonment was directed for a period exceeding one year on each count, re there is nothing in the record to w that there was a separate sen- e of one year's imprisonment upon h count. Dimmick v. Tompkins 04) 24 Sup. Ct. 780, 783, 194 U. 540, 48 L. Ed. 1110.

here accused was convicted on two nts of violating the White Slave ffic Act, and was sentenced to a r's imprisonment on the first count to six months on the second count, run successively, the court properly ered the sentence to be served in a te penitentiary, under R. S. § 5541 bodied herein), authorizing such im- sonment in cases of sentence for a ger term than one year. Thompson J. S. (1913) 204 Fed. 973, 123 C. C. 295, affirming judgment U. S. v. ompson (D. C. 1912) 202 Fed. 346.

he district court may designate any ce within its jurisdiction as the ce of punishment. Ex parte Geary C. 1871) Fed. Cas. No. 5,293.

4. Punishment of common-law of- ses.—Since this section does not af- t the punishment of common-law of- ses, which are punishable by fine and risonment in the jail only, said stat- does not deprive the police court jurisdiction of the common-law of- se of keeping a bawdy house, because punishment for such offense may imprisonment for more than one r. U. S. v. Marshall (D. C. 1887) 6 ckey, 34.

5. Sentences for terms exceeding year in case of two different con- tions.—Under this section the cir- t court of the United States sitting New York, in which relator was con- ted on two different occasions and tenced to terms exceeding one year, authorized to direct that his ear- sentence should be executed at the e County Penitentiary, and his later tence at Sing Sing prison. In re lters (C. C. 1904) 128 Fed. 791.

6. Sentence to jail in a certain place. sentence to a jail in a certain ce will authorize the holding of the oner by the keeper of that jail at another place, to which the jail has been removed by authority of the state legislature. In re Hartwell (C. C. 1871) Fed. Cas. No. 6,173.

17. Sentence to penitentiary outside of state.—In sentencing a prisoner to confinement in a penitentiary outside the limits of the state in which he was tried, it is not necessary that the record of his conviction should show that there was no penitentiary within that state suitable for the confinement of prisoners from the federal courts, or that the attorney general had designated the penitentiary in question for such purpose. In re Wilson (D. C. 1883) 18 Fed. 33, writ of habeas corpus granted (1885) 5 Sup. Ct. 935, 114 U. S. 417, 29 L. Ed. 89.

18. Removal of prisoner from state prison to jail.—Under this section, held, that the court has no power after the expiration of the term in which the sentence is imposed, to order the removal of the prisoner from a state prison to a county jail. U. S. v. Greenwald (D. C. 1894) 64 Fed. 6.

19. Sentence for grand larceny in District of Columbia.—Rev. St. D. C. § 1144, provides that a person convicted, among other offenses, of larceny, shall be imprisoned "in the penitentiary" for a certain period. Section 1158 provides that a person convicted of grand larceny "shall be sentenced to suffer imprisonment and labor" for a period not less than one year. Held that, where a person is convicted of grand larceny, sentence can be executed only in a penitentiary. Ex parte Friday (D. C. 1890) 43 Fed. 916.

Cited without definite application, Mackin v. U. S. (1886) 6 Sup. Ct. 777, 779, 117 U. S. 348, 29 L. Ed. 909; U. S. v. De Walt (1888) 9 Sup. Ct. 111, 128 U. S. 393, 32 L. Ed. 485; U. S. v. McMahon (1896) 17 Sup. Ct. 28, 30, 164 U. S. 81, 41 L. Ed. 357; Stokes v. U. S. (1894) 60 Fed. 597, 599, 9 C. C. A. 152; Cochran v. U. S. (1906) 147 Fed. 206, 77 C. C. A. 432; Thomas v. U. S. (1907) 156 Fed. 897, 901, 84 C. C. A. 477, 17 L. R. A. (N. S.) 720; Low v. U. S. (1909) 169 Fed. 86, 94 C. C. A. 1; U. S. v. Tod (C. C. 1885) 25 Fed. 815, 816; Ex parte McClusky (C. C. 1889) 40 Fed. 71, 73; U. S. v. Smith (C. C. 1889) 40 Fed. 755, 760; In re Christian (C. C. 1897) 82 Fed. 199, 201; Woodward v. Bridges (D. C. 1906) 144 Fed. 156; Ex parte Peeke (D. C. 1906) 144 Fed. 1016 (affirmed [1907] 153 Fed. 166, 82 C. C. A. 340, 12 L. R. A. [N. S.] 314); (1857) 8 Op. Atty. Gen. 289.

.0528. (R. S. § 5542.) Penitentiary sentences, where to be executed.

In every case where any criminal convicted of any offense against United States is sentenced to imprisonment and confinement to

hard labor, it shall be lawful for the court by which the sent
passed to order the same to be executed in any State jail or p
tiary within the district or State where such court is held, t
of which jail or penitentiary is allowed by the legislature of th
for that purpose.

Act March 3, 1825, c. 65, § 15, 4 Stat. 118.

Notes of Decisions

See notes under § 10529, ante.

Effect of statute as requiring prosecutions by indictment.—In view of R. S. §§ 5539, 5541, 5542 (this compilation, §§ 10523, 10527, 10528), it was held that prosecutions of violations of R. S. §§ 3242, 3244, ante, §§ 5965, 5971, must be by indictment or presentment of a grand jury. U. S. v. Johannesen (C. C. 1887) 35 Fed. 411.

Incarceration of prisoners in general.—A federal prisoner may be incarcerated in any of the jails of the district. Johnson v. Crawford & Yothers (C. C. 1907) 154 Fed. 761.

Reformatory for women as penitentiary.—Under this and the preceding section, a reformatory prison for women, which is the state prison for the reformation and punishment of female offenders sentenced to hard labor by the courts of the state and of the United States, is a state penitentiary. In re Johnson (C. C. 1891) 46 Fed. 477, 481.

Right of state to refuse to allow use of prisoners.—The several states may refuse to allow the use of their jails and prisons for the commitment of persons convicted in federal courts. Ex parte Shores (D. C. 1912) 195 Fed. 627.

Sentence in violation of statute as void.—A sentence to imprisonment in state penitentiary in violation of this section is void, and the defendant is entitled to a release upon habeas corpus. In re Bonner (1894) 14 Sup. Ct. 323, 324, 151 U. S. 242, 38 L. Ed. 149.

Imprisonment at hard labor.—Where the law makes hard labor a part of the punishment, the court must include that in its sentence; but where the law requires imprisonment alone, the court may, in its discretion, order execution of its sentence at a place where labor is exacted. Ex parte Karstendick (1876) 93 U. S. 396, 399, 23 L. Ed. 889.

R. S. §§ 5541, 5542, 5546 (th
pilation, §§ 10527, 10528, 105
construed to widen the range of
ment in all cases where any
may be sentenced to imprisonn
a longer term than one year, an
thorize the court at its discr
order execution of its sentence
place where labor is exacted a
of the discipline and treatment
oners held in the institution; bu
the statute under which a pri
sentenced provides for impris
but not at hard labor, the wo
hard labor" should not be ins
the sentence, even if such lab
part of the discipline of the p
which the sentence is to be
Gardes v. U. S. (1898) 87 Fed.
C. C. A. 596, writ of certiorar
(1898) 19 Sup. Ct. 884, 171 U.
43 L. Ed. 1179.

Whenever the law defining the
of which a person is convict
scribes imprisonment at hard
is lawful for court by which t
tence is passed to order the sa
cuted in the penitentiary. In r
(D. C. 1903) 123 Fed. 122, 123

Commitment to county jails
—Under Resolution Sept. 23.
S. §§ 5536–5538, ante, §§ 10526
and Code Iowa 1897, §§ 5637, 5
county jails in Iowa are jails
United States for the commit
federal prisoners. Ex parte Sh
C. 1912) 195 Fed. 627.

Cited without definite app
Ex parte Wilson (1885) 5 Sup.
940, 114 U. S. 417, 29 L.
Mackin v. U. S. (1886) 6 Sup.
779, 117 U. S. 348, 29 L. Ed.
S. v. McMahon (1896) 17 Sup.
30, 164 U. S. 81, 41 L. Ed. 357
ran v. U. S. (1906) 147 Fed.
C. C. A. 432; Thomas v. U. S
156 Fed. 897, 901, 84 C. C.
17 L. R. A. (N. S.) 720; In r
tian (C. C. 1897) 82 Fed. 199,

§ 10529. (R. S. § 5543.) Deductions from term of imprisc for good conduct.

All prisoners who have been, or may be, convicted of any
against the laws of the United States, and confined in any St
or penitentiary in execution of the judgment upon such con
who so conduct themselves that no charge for misconduct is su
against them, shall have a deduction of one month in each yea
from the term of their sentence, and shall be entitled to th
charge so much the sooner, upon the certificate of the war

eper of such jail or penitentiary, with the approval of the Attorney-neral.

Act March 2, 1867, c. 146, 14 Stat. 424. Act March 5, 1872, c. 30, § 1, 17 Stat. 35.

This section was superseded in part by Act March 3, 1875, c. 145, § 1, and Act June 21, 1902, c. 1140, post, §§ 10531–10533.

Notes of Decisions

nconditional allowance for good be-ior.—A federal convict in a New k penitentiary is not entitled to an onditional allowance for good behav- under this section, but to the same e of credits applicable by the law the state to other prisoners in the e penitentiary, under the follow- section. In re Willis (C. C. 1897) Fed. 148.

onfinement in jail under sentence fixing place.—A prisoner confined in New York jail under a sentence ch did not fix the place of confine-t is not entitled to the deduction of days during every month, under Act rch 3, 1875, but to the deduction al-ed by R. S. § 5543 (embodied here- U. S. v. Schroeder (C. C. 1877) l. Cas. No. 16,233.

onfinement in jail excepted from e commutation law.—R. S. § 5543 bodied herein), is confined in its application to jails and penitentiaries where no credits for good behavior are allowed; and R. S. § 5544, post, 10530, provides that, where such credits are allowed the state prisoners, United States prisoners shall be entitled to the same, and hence, a United States prisoner in a county jail in California is entitled to the commutation fixed by R. S. § 5543; for, under the California law, commutation is allowed only to prisoners in the state prison. In re Deering (D. C. 1894) 60 Fed. 265.

Cited without definite application, Thomas v. U. S. (1907) 156 Fed. 897, 901, 84 C. C. A. 477, 17 L. R. A. (N. S.) 720; In re Corcoran (C. C. 1889) 47 Fed. 211; In re Walters (C. C. 1904) 128 Fed. 791; Ex parte Jackson (C. C. 1905) 140 Fed. 266 (reversed [1906] 143 Fed. 783, 75 C. C. A. 41); In re Raymond (D. C. 1901) 110 Fed. 155; Woodward v. Bridges (D. C. 1906) 144 Fed. 156.

0530. (R. S. § 5544.) Application of preceding section.

The preceding section, however, shall apply to such prisoners only are confined in jails or penitentiaries where no credits for good avior are allowed; but, in other cases, all prisoners now or here-er confined in the jails or penitentiaries of any State for offenses inst the United States, shall be entitled to the same rule of credits good behavior applicable to other prisoners in the same jail or itentiary.

Act June 14, 1870, c. 128, 16 Stat. 151.

This section was superseded in part by Act March 3, 1875, c. 145, § 1, and Act June 21, 1902, c. 1140, post, §§ 10531–10533.

Notes of Decisions

ee notes under §§ 10523, 10529, ante.

onditional discharge on expiration of tence by reason of credits.—Where, the time of relator's sentence for a eral offense, to be served in a New k penitentiary, he was subject to vs N. Y. 1886, c. 21, providing a eme of credits for good behavior for prisoners so confined, and he was charged a year and ten months be-e the expiration of his sentence by son of credits earned under such such discharge was conditional on nonconviction of a felony before the ire period of his sentence had ex-ed, as provided by section 14 there- and on his being so convicted, and in sentenced to imprisonment in a w York prison, the authorities in rge thereof were authorized to de-n him for a period equal to the ount of good time so previously ned, in addition to his subsequent tence. In re Walters (C. C. 1904) Fed. 791.

Act Pa. 1901 (P. L. 166), allowing a specified commutation, but making such allowance conditional on the act of the Governor of the state, approved by the board of inspectors or managers of Pennsylvania penitentiaries, did not prescribe a "rule of credits," but rather a commutation of sentence to be exercised at the discretion of state officers, and was therefore not applicable to federal prisoners. U. S. v. Byers (D. C. 1904) 127 Fed. 993.

Unconditional allowance for good behavior.—A federal convict in a New York penitentiary is not entitled to an unconditional allowance for good behavior, under the preceding section, but to the same rule of credits applicable by the law of the state to other prisoners in the same penitentiary, under this section. In re Willis (C. C. 1897) 83 Fed. 148.

Deduction for good time in case of cumulative sentences.—Where petition-

er was sentenced on four indictments to cumulative sentences of 18 months on three of them and 6 months on the last, and claimed that such 6 months' sentence was illegal, the deduction for good time to which he was entitled, as provided by Rev. Laws Mass. c. 225, § 113, should be allowed from the aggregate of the three lawful sentences, and not from the aggregate of all four. Woodward v. Bridges (D. C. 1906) 144 Fed. 156.

Commutation in absence of report on good conduct.—On the assumption that the Pennsylvania act of May 11, 1901, entitled "An act providing for the commutation of sentences, for good behavior of convicts in prisons, penitentiaries, workhouses and county jails of this state, and regulations governing the same," is by congressional legislation applicable to United States prisoners confined in the Eastern Penitentiary of that state at the time of its enactment, a United States prisoner so confined has no right to commutation for good conduct, in the absence of a report on that subject by the board of prison officials to the governor and action thereon by the latter, with the approval of the designated state officers. In re Raymond (D. C. 1901) 110 Fed. 155.

Jail prisoners to whom state commutation law does not apply.—A prisoner undergoing imprisonment for contempt is not entitled to the credit under the provision that "in other cases all prisoners now or hereafter confined in the jails or penitentiaries of any state, for offenses against the United States, shall be entitled to the same rule of credits for good behavior applicable to other prisoners in the same jail or penitentiary," as the California commutation act of March 14, 1881, relates only to state prisons, and has no applicatio prisoners in county jails. In re T (C. C. 1889) 37 Fed. 649.

Even if the California act of 1880 amended March 14, 1881, applied prisoners in county jails, one impris ed for the term of six months w not be entitled to a credit, as it p vides that one entitled to credit "s be allowed from his term, instead in lieu of the credits heretofore all ed by law, a deduction of two mo in each of the first two years," and contains no credits for months fractions of a year. Id.

Under this and the following sect it was held that, as Act Cal. March 1881, provides for commutation such prisoners only as are confine the state prisons for terms of one and over, a United States prisoner to the county jail for six months is titled to no credits for good beha U. S. v. Goujon (D. C. 1889) 39 773.

Conviction of felony between dat discharge and expiration of original tence.—If the sentence of a fed prisoner be commuted, and between date of his discharge and the dat expiration of his full original term is convicted of any felony, even th not for an offense against the Un States, he must, under R. S. § (embodied herein), incorporating, reference, Laws N. Y. 1886, c. 21, s in the place where confined for the felony the unexpired term of his inal sentence. In re Willis (C. C. 1 83 Fed. 148.

Cited without definite applica Ex parte Jackson (C. C. 1905) 140 266 (reversed [1906] 143 Fed. 78 C. C. A. 41); Woodward v. Bridges C. 1906) 144 Fed. 156.

§ 10531. (Act March 3, 1875, c. 145, § 1.) Deductions from te of imprisonment for good conduct.

All prisoners who have been, or shall hereafter be, convicted any offence against the laws of the United States, and confin in execution of the judgment or sentence upon such conviction any prison or penitentiary of any State or Territory which has system of commutation for its own prisoners, shall have a ded tion from their several terms of sentence of five days in each every calendar month during which no charge of misconduct s have been sustained against each severally, who shall be dischar at the expiration of his term of sentence less the time so deduct and a certificate of the warden or keeper of such prison penitenti of such deduction shall be entered on the warrant of commitme Provided, That, if during the term of imprisonment the priso shall commit any offence for which he shall be convicted by a ju all remissions theretofore made shall be thereby annulled. (18 S 479.)

This was the first section of an act entitled "An act to provide for deduct from the terms of sentence of United States prisoners."

Section 2 of the act is set forth post, § 10545.

This section superseded in part R. S. §§ 5543, 5544, ante, §§ 10529, 10 and was in part superseded by Act June 21, 1902, c. 1140, §§ 1, 2, pos 10532, 10533.

Notes of Decisions

Prisoner sentenced for contempt.—One undergoing imprisonment for contempt is not "a prisoner convicte an offense against the laws of the U

d States," within the meaning of this ection. In re Terry (C. C. 1889) 37 'ed. 649.

Prisoners in county jails or places of emporary confinement.—This section oes not apply to persons confined in ounty jails or other places of tempoary confinement. In re Corcoran (C. . 1891) 47 Fed. 211; In re Deering D. C. 1894) 60 Fed. 265.

Prisoners to whom state law does not pply.—This section is not applicable o one confined in a county jail in California, which has a system of comutation for its own prisoners, though hat system does not allow deductions or prisoners confined in jail. In re 'erry (C. C. 1889) 37 Fed. 649.

Under this and the preceding section, eld, that as Act Cal. March 14, 1881, rovides for commutation for such prisners only as are confined in the state risons for terms of one year and over, United States prisoner sent to the ounty jail for six months is entitled to o credits for good behavior. U. S. v. Goujon (D. C. 1889) 39 Fed. 773.

Confinement in jail under sentence not fixing place.—A prisoner confined in a New York jail under a sentence which did not fix the place of confinement is not entitled to the deduction of five days during every month, under this section, but to the deduction allowed by R. S. § 5543, ante, § 10529. U. S. v. Schroeder (C. C. 1877) Fed. Cas. No. 16,-233.

Statute as rendering sentence uncertain.—A sentence of imprisonment to commence upon the expiration of a preceding sentence is not uncertain because by this section convicts who are chargeable with no misconduct are entitled to a good time credit on their sentences. Howard v. U. S. (1896) 75 Fed. 986, 21 C. C. A. 586, 34 L. R. A. 509.

Violation of conditions of commutation.—A state court cannot grant relief to one held as a prisoner in a state penitentiary for violation of the condition of a commutation of a sentence by a federal court. People v. Sage (1896) 42 N. Y. S. 251, 11 App. Div. 4.

Cited without definite application, In re Raymond (D. C. 1901) 110 Fed. 155.

§ 10532. (Act June 21, 1902, c. 1140, § 1.) United States prisoners; commutation for good conduct; computation.

Each prisoner who has been or shall hereafter be convicted of ny offense against the laws of the United States, and is confined, n execution of the judgment or sentence upon any such convicion, in any United States penitentiary or jail, or in any penitenary, prison, or jail of any State or Territory, for a definite term, ther than for life, whose record of conduct shows that he has aithfully observed all the rules and has not been subjected to punishnent, shall be entitled to a deduction from the term of his sentence o be estimated as follows, commencing on the first day of his arrival t the penitentiary, prison, or jail: Upon a sentence of not less than ix months nor more than one year, five days for each month; upon sentence of more than one year and less than three years, six days or each month; upon a sentence of not less than three years and ess than five years, seven days for each month; upon a sentence of ot less than five years and less than ten years, eight days for each nonth; upon a sentence of ten years or more, ten days for each nonth. When a prisoner has two or more sentences, the aggregate f his several sentences shall be the basis upon which his deduction hall be estimated. (32 Stat. 397.)

This section and the two sections next following were an act entitled "An act to regulate commutation for good conduct for United States prisoners."

This act superseded in part R. S. §§ 5543, 5544, ante, §§ 10529, 10530, and also superseded in part Act March 3, 1875, c. 145, § 1, ante, § 10531, and Act March 3, 1891, c. 529, § 8, post, § 10559.

Provisions for release on parole of prisoners who have served a part of the term of sentence were made by Act June 25, 1910, c. 387, post, §§ 10535–10544.

Notes of Decisions

Right to deduction for good conduct n general.—The right of a federal risoner under Act June 21, 1902 (32 Stat. 397), and Act April 27, 1906 post, § 10534), to a deduction from is term of imprisonment for good onduct, is dependent upon his comlying with the conditions therein named. If he faithfully observes all the rules, and has not been subjected to punishment, he is entitled to the credit specified; if not, he is entitled to no reduction whatever. (1909) 28 Op. Atty. Gen. 109.

A prisoner, who has violated the conditions named, must serve his en-

tire term unless the attorney general shall, in his discretion, restore to him all or a part of the time thus lost. Id.

The record of conduct essential to entitle the prisoner to credit is not his record for any particular month or year, but for the entire term. (1909) 28 Op. Atty. Gen. 109.

Computation of term.—Where an execution of sentence has not been stayed by an appeal, the term of imprisonment given by such sentence should be computed from the date of the sentence, and it must be presumed in favor of the prisoner that he would have earned his allowance of time for good behavior given by this section, and it is not material that during a portion of the time during which the prisoner has been confined, he was held ostensibly for an offense other than that for which he was originally convicted, since in the eye of the law he has all the time been serving out the sentence that was imposed upon him. In re Jennings (C. C. 1902) 118 Fed. 479, 482.

Prisoners convicted, or convicted and sentenced, before enactment.—The language of this section was very probably intended to make the statute applicable to cases of prisoners convicted before it became operative, but not sentenced until afterward; but, in any event, section 10534, post, being the later and also the more specific, must govern, and the statute does not apply to prisoners sentenced before it took effect. U. S. v. Farrar (1905) 139 Fed. 260, 71 C. C. A. 38 versing order In re Farrar [1904] 133 Fed. 254); U. S. v. J (1906) 143 Fed. 783, 75 C. C. (reversing judgment Ex parte J [C. C. 1905] 140 Fed. 266).

Since Laws N. Y. 1886, c. 21 vides a full scheme for giving to prisoners confined in its stat ons, for good behavior, and is fore made applicable to federa oners confined therein by R. S. ante, § 10530, this section do apply to such prisoners confined state prisons of New York wh sentenced before its enactment. Walters (C. C. 1904) 128 Fed.

This section should be constr apply to prisoners sentenced as well as after its passage, n standing the direct conflict b the provisions thereof and of 10534, post, in that respect, in the purpose for which the statu enacted, as shown by the reco Congress, which was to reme inequalities then existing by rea the diversity of the laws of the states and which then applied t eral prisoners confined in their p Ex parte Jackson (C. C. 190 Fed. 266, judgment reversed U. Jackson (1906) 143 Fed. 783, 75 A. 41.

The statute does not apply to oner who was convicted and sen on March 24, 1902. Woodward v. es (D. C. 1906) 144 Fed. 156.

Cited without definite appli Halligan v. Marcil (1913) 208 403, 125 C. C. A. 619.

§ 10533. (Act June 21, 1902, c. 1140, § 2.) Restoration of forf commutation.

In the case of convicts in any United States penitentiary Attorney-General shall have the power to restore to any such vict who has heretofore or may hereafter forfeit any good by violating any existing law or prison regulation such po of lost good time as may be proper, in his judgment, upon recom dations and evidence submitted to him by the warden in charge. toration, in the case of United States convicts confined in Stat Territorial institutions, shall be regulated in accordance with the governing such institutions, respectively. (32 Stat. 397.)

See notes to preceding section.

Cited without definite application, U. S. v. Farrar (1905) 139 Fed. 260, 71 C. C. A. 386; Halligan v. Marcil (1913) 208 Fed. 403, 125 C. C. A

See notes under § 10532, ant

§ 10534. (Act June 21, 1902, c. 1140, § 3, as amended, Act Apr 1906, c. 1997.) Sentences affected by act.

This Act shall apply to all sentences imposed subsequent to twenty-first, nineteen hundred and two, and to the sentence posed prior thereto the commutation upon which is less than provided in this Act. (32 Stat. 398. 34 Stat. 149.)

See notes to section 1 of this act, ante, § 10532.

This section, as originally enacted, was as follows:

"That this Act shall take effect and be in force from and after thirty day the date of its approval, and shall apply only to sentences imposed by subsequent to the time that this Act takes effect, as hereinbefore pr

Prisoners serving under any sentence imposed prior to such time shall be entitled and receive the commutation heretofore allowed under existing laws. Such existing laws are hereby repealed as to all sentences imposed subsequent to the time when this Act takes effect."

It was amended by Act April 27, 1906, c. 1997, cited above, to read as set forth here.

Notes of Decisions

Loss of commutation for good behavior.—Under Act June 25, 1910, § 6 (post, § 10540), providing that where a prisoner breaks his parole he shall serve the remainder of the sentence originally imposed upon him, a prisoner is not entitled to a commutation of good behavior under this act, as amended April 27, 1906, during his confinement after being returned to prison for the breach of his parole. Ex parte Marcil (D. C. 1914) 213 Fed. 990.

Cited without definite application, Halligan v. Marcil (1913) 208 Fed. 403, 125 C. C. A. 619.

10535. (Act June 25, 1910, c. 387, § 1, as amended, Act Jan. 23, 1913, c. 9.) Release of prisoners on parole; conditions.

Every prisoner who has been or may hereafter be convicted of any offense against the United States and is confined in execution of the judgment of such conviction in any United States penitentiary or prison, for a definite term or terms of over one year, or for the term of his natural life, whose record of conduct shows that he has observed the rules of such institution, and who, if sentenced for a definite term, has served one-third of the total of such term or terms for which he was sentenced, or, if sentenced for the term of his natural life, has served not less than fifteen years, may be released on parole as hereinafter provided. (36 Stat. 819. 37 Stat. 990.)

This section and the nine sections next following were an act entitled "An Act to parole United States prisoners, and for other purposes."

This section, as originally enacted, was as follows:

"Every prisoner who has been or may hereafter be convicted of any offense against the United States, and is confined in execution of the judgment of such conviction in any United States penitentiary or prison, for a definite term or terms of over one year, whose record of conduct shows he has observed the rules of such institution, and who has served one-third of the total of the term or terms for which he was sentenced, may be released on parole as hereinafter provided."

It was amended by Act Jan. 23, 1913, c. 9, cited above, to read as set forth here.

Provisions for deductions from term of imprisonment for good conduct were made by R. S. §§ 5543, 5544, Act March 3, 1875, c. 145, § 1, and Act June 21, 1902, c. 1140, § 1, ante, §§ 10529–10532.

Notes of Decisions

Parole as commutation.—A "parole" is tantamount to a commutation. Duehay v. Thompson (1915) 223 Fed. 305, 138 C. C. A. 547, affirming judgment Thompson v. Duehay (D. C. 1914) 217 Fed. 484.

Prisoner eligible for parole.—Under this section a prisoner who had served one-third of sentence as commuted by president held eligible for parole. Duehay v. Thompson (1915) 223 Fed. 305, 138 C. C. A. 547, affirming judgment Thompson v. Duehay (D. C. 1914) 217 Fed. 484.

10536. (Act June 25, 1910, c. 387, § 2.) Board of parole for each penitentiary or other prison; members; clerk; meetings.

The superintendent of prisons of the Department of Justice, and the warden and physician of each United States penitentiary shall constitute a board of parole for such prison, which shall establish rules and regulations for its procedure subject to the approval of the Attorney-General. The chief clerk of such prison shall be clerk of said board of parole, and meetings shall be held at each prison as often as the regulations of such board shall provide: Provided, That in every case where a prison other than a United States penitentiary is used for the confinement of such prisoners it shall be the duty of the Attorney-General to designate the officers of said

prison who, together with the superintendent of prisons shall
tute such board for said prison. (36 Stat. 819.)

See notes to preceding section.

**§ 10537. (Act June 25, 1910, c. 387, § 3.) Application for
discretion of board; terms and conditions; limits of res
approval by Attorney-General.**

If it shall appear to said board of parole from a report
proper officers of such prison or upon application by a priso
release on parole, that there is a reasonable probability th
applicant will live and remain at liberty without violating th
and if in the opinion of the board such release is not incom
with the welfare of society, then said board of parole may
discretion authorize the release of such applicant on parole,
shall be allowed to go on parole outside of said prison, and,
discretion of the board, to return to his home, upon such ter
conditions, including personal reports from such paroled per
said board of parole shall prescribe, and to remain, while on
in the legal custody and under the control of the warden o
prison from which paroled, and until the expiration of the t
terms specified in his sentence, less such good time allowanc
or may hereafter be provided for by Act of Congress; and t
board shall, in every parole, fix the limits of the residence of t
son paroled, which limits may thereafter be changed in the dis
of the board: Provided, That no release on parole shall becom
ative until the findings of the board of parole under the terms
shall have been approved by the Attorney-General of the
States. (36 Stat. 819.)

See notes to section 1 of this act, ante, § 1053.

**§ 10538. (Act June 25, 1910, c. 387, § 4.) Violation of parol
rant for retaking prisoner.**

If the warden of the prison or penitentiary from which sai
oner was paroled or said board of parole or any member
shall have reliable information that the prisoner has viola
parole, then said warden, at any time within the term or te
the prisoner's sentence, may issue his warrant to any officer
after authorized to execute the same, for the retaking of suc
oner. (36 Stat. 820.)

See notes to section 1 of this act, ante, § 10535.

**§ 10539. (Act June 25, 1910, c. 387, § 5.) Officers author
execute warrant; expenses.**

Any officer of said prison or any federal officer authori
serve criminal process within the United States, to whor
warrant shall be delivered, is authorized and required to execu
warrant by taking such prisoner and returning him to said
within the time specified in said warrant therefor. All necess
penses incurred in the administration of this Act shall be paid
the appropriation for the prison in connection with which su
pense was incurred, and such appropriation is hereby made a
therefor. (36 Stat. 820.)

See notes to section 1 of this act, ante, § 10535.

**§ 10540. (Act June 25, 1910, c. 387, § 6.) Action by board of
on issue of warrant; revocation of parole.**

At the next meeting of the board of parole held at such
after the issuing of a warrant for the retaking of any p
prisoner, said board of parole shall be notified thereof, and
prisoner shall have been returned to said prison, he shall be
an opportunity to appear before said board of parole, and t
board may then or at any time in its discretion revoke the ord

rminate such parole or modify the terms and conditions thereof. f such order of parole shall be revoked and the parole so terminated, e said prisoner shall serve the remainder of the sentence originally nposed; and the time the prisoner was out on parole shall not be ken into account to diminish the time for which he was sentenced. 36 Stat. 820.)

See notes to section 1 of this act, ante, § 10535.

Notes of Decisions

Loss of good time by breach of parole.—Under this section a prisoner, on ing reincarcerated, loses the good me that he earned while in prison bere his parole. Halligan v. Marcil (1903) 208 Fed. 403, 125 C. C. A. 619, reversing judgment Ex parte Marcil (D. C. 1913) 207 Fed. 809. See, also, Ex parte Marcil (D. C. 1914) 213 Fed. 990.

10541. (Act June 25, 1910, c. 387, § 7.) Parole officer for each penitentiary; duties; salary and expenses; supervision of paroled prisoners by marshals.

Each board of parole shall appoint a parole officer for the penientiary over which it has jurisdiction. Subject to the direction nd control of such board, it shall be the duty of such officer to id paroled prisoners in securing employment and to visit and exerise supervision over them while on parole, and such officer shall have ich authority and perform such other duties as the board of parole ay direct. The salary of each parole officer shall be fixed by the oard of parole, but shall not exceed one thousand five hundred dolrs per annum, which, together with his actual and necessary travelng expenses, when approved by such board, shall be paid out of the ppropriation for the maintenance of the penitentiary to which he is ssigned, which appropriation is hereby made available for the purose. In addition to such parole officers the supervision of paroled risoners may also be devolved upon the United States marshals when e board of parole may deem it necessary. (36 Stat. 820.)

See notes to section 1 of this act, ante, § 10535.

A general limitation on subsistence allowances, or money in lieu thereof, as to officers and employés of the United States, was made by §§ 3236a, 3236b, ante.

10542. (Act June 25, 1910, c. 387, § 8.) Gratuities, transportation, etc., to paroled prisoners.

It shall be the duty of the warden of the prison to furnish to any nd all paroled prisoners the usual gratuities, consisting of clothing, ransportation, and five dollars in money; the transportation furished shall be to the place to which the paroled prisoner has lected to go, with the approval of the board of parole. The warden f the prison who furnishes these gratuities is hereby authorized o charge the actual cost of the same in his accounts against the Jnited States: Provided, however, That when any such paroled risoner shall have received his final discharge, while he is away from uch prison, he shall be entitled to no further gratuities provided for ischarged prisoners under existing law. (36 Stat. 820.)

See notes to section 1 of this act, ante, § 10535.

Previous provisions authorizing the furnishing of transportation home, clothing and money to convicts discharged from state prisons or jails were made by Act March 3, 1875, c. 145, § 2, post, § 10545.

Previous provisions authorizing the furnishing of transportation home, clothing and money to convicts discharged from United States prisons were made by Act March 3, 1891, c. 529, § 6, post, § 10557.

10543. (Act June 25, 1910, c. 387, § 9.) United States prisoners in State reformatories; parole under State laws; expenses of parole and supervision; approval by Attorney-General; return of prisoner to home outside of State.

Whenever any person has been convicted of any offense against he United States which is punishable by imprisonment, and has

been sentenced to imprisonment and is confined therefor, reformatory institution of any State in accordance with fifty-five hundred and forty-eight of the Revised Statutes, c laws of the United States, then if such State has laws for th of prisoners committed to such institutions by the courts of th such person convicted of any offense against the United Stat be eligible to parole on the same terms and conditions and same authority and subject to recommittal for violation of suc in the same manner, as persons committed to such institution courts of said State, and the laws of said State relating to th of prisoners and the supervision thereof in such institutions are adopted and made to apply to persons committed to such inst for offenses against the United States. The necessary cost o and supervision of such prisoners, to the State where such tion is located shall be paid by the United States out of the priation for the support of prisoners confined in state inst which appropriation is hereby made available for the purpo such prisoner shall be entitled to go on parole until the A General shall have approved the order therefor: Provide when a prisoner is committed to such institution outside of t where he lives he may be permitted by his parole to retur home, and in such case the supervision of such prisoner o shall devolve upon the marshal of the district where said lives, and in case such prisoner should violate his parole a for his recommitment shall be delivered to and executed by sa shal. (36 Stat. 821.)

See notes to section 1 of this act, ante, § 10535.

R. S. § 5548, mentioned in this section, is set forth post, § 10549.

Notes of Decisions

See notes under § 10523, ante.

§ 10544. (Act June 25, 1910, c. 387, § 10.) Power of Presi grant pardon or commutation, or good time allowance b Congress, not impaired by this act.

That nothing herein contained shall be construed to im power of the President of the United States to grant a pa commutation in any case, or in any way impair or revo good time allowance as is or may hereafter be provided by Congress. (36 Stat. 821.)

See notes to section 1 of this act, ante, § 10535.

Notes of Decisions

See § 10501, and notes thereunder.

§ 10545. (Act March 3, 1875, c. 145, § 2.) Furnishing c and money to discharged prisoners.

On the discharge from any prison of any person convic der the laws of the United States on indictment, he or s be provided by the warden or keeper of said prison with o suit of clothes and five dollars in money, for which charg be made and allowed in the accounts of said prison with th ed States: Provided, That this section shall not apply to sentenced for a term of imprisonment of less than six month Stat. 480.)

Provisions authorizing the furnishing of transportation home, clot money to convicts discharged from Government prisons were made March 3, 1891, c. 529, § 6, post, § 10557.

Provisions authorizing the furnishing of transportation home, clot money to convicts paroled were made by Act June 25, 1910, c. 387, § § 10542.

§ 10546. (R. S. § 5545.) Actual reasonable cost of subsisting prisoners to be paid.

Hereafter there shall be allowed and paid by the Attorney-General, for the subsistence of prisoners in the custody of any marshal of the United States and the warden of the jail in the District of Columbia, such sum only as it reasonably and actually cost to subsist them. And it shall be the duty of the Attorney-General to prescribe such regulations for the government of the marshals and the warden of the jail in the District of Columbia, in relation to their duties under this chapter, as will enable him to determine the actual and reasonable expenses incurred.

Act May 12, 1864, c. 85, § 3, 13 Stat. 75. Act March 5, 1872, c. 30, § 1, 17 Stat. 35.

Provisions for the payment of expenses for the transportation and subsistence of prisoners confined in a United States penitentiary were made by Act March 3, 1891, c. 529, § 5, post, § 10556.

Notes of Decisions

Former law as to compensation of marshal for keeping and subsisting prisoners.—The marshal of the District of Columbia is entitled, under Act March 3, 1807, c. 23, to a daily allowance of 21 cents and a slight fraction for keeping and subsisting prisoners confined in the jail of the District on criminal charges. (1862) 10 Op. Atty. Gen. 210.

Under the order of the Secretary of the Interior, requiring the marshal of the District of Columbia to state and settle his accounts for fees and expenses of courts, in accordance with Act Feb. 26, 1853, c. 80, the marshal is entitled to receive for the maintenance of the prisoners confined in jail for criminal offenses such allowance as that act authorizes. (1863) 10 Op. Atty. Gen. 463.

§ 10547. (R. S. § 5546, as amended, Act July 12, 1876, c. 183, and Act March 3, 1901, c. 873.) Designation of penitentiary by Attorney General; transportation of prisoners; expenses; change of place of imprisonment.

All persons who have been, or who may hereafter be, convicted of crime by any court of the United States, including consular courts, whose punishment is imprisonment in a District or Territory or country where, at the time of conviction or at any time during the term of imprisonment, there may be no penitentiary or jail suitable for the confinement of convicts, or available therefor, shall be confined during the term for which they have been or may be sentenced, or during the residue of said term, in some suitable jail or penitentiary in a convenient State or Territory, to be designated by the Attorney-General, and shall be transported and delivered to the warden or keeper of such jail or penitentiary by the marshal of the District or Territory where the conviction has occurred; and in case of convictions by a consular court the transportation shall be by some properly qualified agent or agents designated by the Department of State, the reasonable actual expense of transportation, necessary subsistence, and hire and transportation of guards and agent or agents to be defrayed from the appropriation for bringing home criminals; and if the conviction be had in the District of Columbia, the transportation and delivery shall be by the warden of the jail of that District, the reasonable actual expense of transportation, necessary subsistence, and hire and transportation of guards and the marshal, or the warden of the jail in the District of Columbia only, to be paid by the Attorney-General out of the judiciary fund. But if, in the opinion of the Attorney-General, the expense of transportation from any State, Territory, or the District of Columbia in which there is no penitentiary will exceed the cost of maintaining them in jail in the State, Territory, or the District of Columbia during the period of their sentence, then it shall be lawful so to confine them therein for the period designated in their respective sentences. And the place of imprisonment may be changed in any case when, in the opinion of the Attorney-General,

it is necessary for the preservation of the health of the prisoner, or when, in his opinion, the place of confinement is not sufficient to secure the custody of the prisoner, or because of cruel and improper treatment: Provided, however, That no change shall be made in the case of any prisoner on the ground of the unhealthiness of the prisoner or because of his treatment, after his conviction and during his term of imprisonment, unless such change shall be applied for by such prisoner, or some one in his behalf.

Act May 12, 1864, c. 85, § 1, 13 Stat. 74. Act March 5, 1872, c. 30, § 1, 17 Stat. 35. Act July 12, 1876, c. 183, 19 Stat. 88. Act March 3, 1901, c. 873, 31 Stat. 1450.

This section, as enacted in the Revised Statutes, was as follows:

"All persons who have been, or who may hereafter be, convicted of crime, by any court of the United States, whose punishment is imprisonment, in a district or Territory where, at the time of conviction, there may be no penitentiary or jail suitable for the confinement of convicts, or available therefor, shall be confined during the term for which they have been or may be sentenced in some suitable jail or penitentiary in a convenient State or Territory, to be designated by the Attorney-General, and shall be transported and delivered to the warden or keeper of such jail or penitentiary by the marshal of the district or Territory where the conviction has occurred; and if the conviction be had in the District of Columbia, in such case the transportation and delivery shall be by the warden of the jail of that district; the reasonable actual expense of transportation, necessary subsistence and hire, and transportation of guards and the marshal, or the warden of the jail in the District of Columbia, only, to be paid by the Attorney-General, out of the judiciary fund. But if, in the opinion of the Attorney-General, the expense of transportation from any State, Territory, or the District of Columbia, in which there is no penitentiary, will exceed the cost of maintaining them in jail in the State, Territory, or the District of Columbia during the period of their sentence, then it shall be lawful so to confine them therein for the period designated in their respective sentences."

It was amended by Act July 12, 1876, c. 183, cited above, to read as follows:

"All persons who have been, or who may hereafter be, convicted of crime by any court of the United States whose punishment is imprisonment in a District or Territory where, at the time of conviction, or at any time during the term of imprisonment, there may be no penitentiary or jail suitable for the confinement of convicts or available therefor, shall be confined during the term for which they have been or may be sentenced, or during the residue of said term, in some suitable jail or penitentiary in a convenient State or Territory, to be designated by the Attorney-General, and shall be transported and delivered to the warden or keeper of such jail or penitentiary by the marshal of the District or Territory where the conviction has occurred; and if the conviction be had in the District of Columbia, the transportation and delivery shall be by the warden of the jail of that District; the reasonable actual expense of transportation, necessary subsistence, and hire and transportation of guards and the marshal, or the warden of the jail in the District of Columbia, only, to be paid by the Attorney-General, out of the judiciary fund. But if, in the opinion of the Attorney-General, the expense of transportation from any State, Territory or the District of Columbia, in which there is no penitentiary, will exceed the cost of maintaining them in jail in the State, Territory, or the District of Columbia during the period of their sentence, then it shall be lawful so to confine them therein for the period designated in their respective sentences. And the place of imprisonment may be changed in any case, when, in the opinion of the Attorney-General, it is necessary for the preservation of the health of the prisoner, or when, in his opinion, the place of confinement is not sufficient to secure the custody of the prisoner, or because of cruel or improper treatment: Provided, however, That no change shall be made in the case of any prisoner on the ground of the unhealthiness of the prisoner, or because of his treatment, after his conviction and during his term of imprisonment, unless such change shall be applied for by such prisoner, or some one in his behalf."

It was further amended by Act March 3, 1901, c. 873, last cited above, to read as set forth here.

Notes of Decisions

1. Effect as to preceding sections and construction therewith.
2. Designations by attorney general.
3. Effect as to jurisdiction of police court.
4. Special process of commitment.
5. Right of convict to object that state had not consented to use of penitentiary.
6. Consideration of home or domicile of prisoner in providing for confinement.
7. Confinement in another district.
8. Power to change place of imprisonment.
9. Proceedings for change.
10. Imprisonment for more than a year.
11. Record of conviction.
12. Review by habeas corpus of court's dedetermination.

See notes under § 10527, ante.

1. Effect as to preceding sections and construction therewith.—R. S. §§ 5540–5542 (ante, §§ 10526–10528), were not repealed by the amendment of R. S. § 5546, by Act July 12, 1876, c. 183, 19 Stat. 188 (embodied herein), which re-enacted the original section, with provisions for changing the place of confinement. The several provisions are to be read together, and the restriction of the marshal to his expenses of transportation applies only where the attorney general has found that there is no available penitentiary within the district, and has designated a prison in another district for that purpose. U. S. v. McMahon (1896) 17 Sup. Ct. 28, 30, 164 U. S. 81, 41 L. Ed. 357.

R. S. §§ 5541, 5542, 5546 (this compilation, §§ 10527, 10528, 10547), are construed to widen the range of punishment in all cases where any person may be sentenced to imprisonment for a longer term than one year and to authorize the court at its discretion to order execution of its sentence at any place where labor is exacted as a part of the discipline and treatment of prisoners held in the institution; but where the statute under which a prisoner is sentenced provides for imprisonment, but not at hard labor, the words "at hard labor" should not be inserted in the sentence, even if such labor is a part of the discipline of the prison at which the sentence is to be served. Gardes v. U. S. (1898) 87 Fed. 172, 30 C. C. A. 596 (writ of certiorari denied [1898] 19 Sup. Ct. 884, 171 U. S. 689, 43 L. Ed. 1179).

The object of this section is to define the duties of the attorney general when there is no jail or penitentiary in the district or state where the person is convicted in which such person may be confined, and does not by implication repeal, modify, or change R. S. § 5541, ante, § 10527. U. S. v. Cobb (D. C. 1890) 43 Fed. 570, 572.

2. Designations by attorney general.—Attorney general's designations held sufficient. Ex parte Karstendick (1876) 93 U. S. 396, 401, 23 L. Ed. 889.

3. Effect as to jurisdiction of police court.—R. S. § 5541, ante, § 10527, providing that, where any person convicted of an offense against the United States is sentenced for a period longer than one year, the court may order the sentence to be executed in any state jail or penitentiary within the district or state where such court is held, the use of which is allowed by the legislature of the state, and Act July 12, 1876, c. 183, authorizing the attorney general to designate the jails and penitentiaries to which persons may be sentenced by the courts of the United States, and to change the place of imprisonment, do not affect the jurisdiction of the police court, which includes merely misdemeanors not punishable by imprisonment in the penitentiary, on the theory that the effect of such statutes is to require that all sentences to imprisonment for more than one year must be to confinement in the penitentiary, and not a jail. U. S. v. Marshall (D. C. 1887) 6 Mackey, 34.

4. Special process of commitment.—In cases of imprisonment under Act May 12, 1864, § 1, no special process of commitment is necessary. In re Osterhaus (C. C. 1864) Fed. Cas. No. 10,609.

5. Right of convict to object that state had not consented to use of penitentiary.—Convict held not entitled to make the objection that the state had not given its consent to the use of its penitentiary. Ex parte Karstendick (1876) 93 U. S. 396, 400, 23 L. Ed. 889.

6. Consideration of home or domicile of prisoner in providing for confinement.—There is no warrant of law for confining in a Philippine prison a Filipino sailor convicted in the United States consular court at Shanghai, China, of the murder of a Chinaman on the United States army transport Listrom, and sentenced to fifteen years' imprisonment. (1902) 24 Op. Atty. Gen. 549.

R. S. § 5546, as amended by the act of March 3, 1901 (embodied herein), or without the amendment, contains nothing to indicate that congress considered the home or domicile of a convict in providing for his confinement, or that in speaking of a "convenient state or territory" the Philippine Islands were in contemplation. Id.

7. Confinement in another district.—One sentenced for a term not exceeding one year, without hard labor, cannot be confined in a state penitentiary of another district, under R. S. § 5546 (embodied herein), providing that any one sentenced to imprisonment in a district in which there is no suitable jail or penitentiary shall be confined in a convenient state or territory to be designated by the attorney general. U. S. v. Cobb (D. C. 1890) 43 Fed. 570.

8. Power to change place of imprisonment.—R. S. § 5546 (embodied herein), provides that the place of imprisonment may be changed in any case when, "in the opinion of the attorney general," it is necessary to the prisoner's health, or when, "in his opinion," the place of confinement is not secure, or the treatment is cruel or improper. Held, that the power of removal in such cases is in the hands of the attorney general, and not in the courts. U. S. v. Greenwald (D. C. 1894) 64 Fed. 6.

9. Proceedings for change.—Government held not authorized to move for modification of sentence with respect to place of imprisonment, in the absence of any contingency contemplated by R.

S. § 5546 (embodied herein). U. S. v. Lane (D. C. 1914) 221 Fed. 299.

When the statutory contingencies have not been met, the sentence of a court in a criminal case should not be changed, without notice to the prisoner, or unless he consents or has been heard upon it. Id.

10. Imprisonment for more than a year.—Under R. S. §§ 5539, 5546 (this compilation, §§ 10523, 10547), an imprisonment, if for more than one year, may be in a state penitentiary, and when so imprisoned the convicted person is subject to the same discipline and treatment as those sentenced by the state court. Fields v. U. S. (1906) 27 App. D. C. 433, certiorari denied (1907) 27 S. Ct. 543, 205 U. S. 292, 51 L. Ed. 807.

11. Record of conviction.—In sentencing a prisoner to confinement in a penitentiary outside the limits of the state in which he was tried, it is not necessary that the record of his conviction should show that there was no penitentiary within that state suitable for the confinement of prisoners from the federal courts, or that the attorney general had designated the tentiary in question for such pu In re Wilson (D. C. 1883) 18 F writ of habeas corpus granted 5 Sup. Ct. 935, 114 U. S. 417, Ed. 89.

12. Review by habeas corp court's determination.—The cour termination as to the suitability local penitentiary cannot be revie habeas corpus. Ex parte Karst (1876) 93 U. S. 396, 401, 23 889.

Cited without definite appli In re Mills (1890) 10 Sup. C 764, 135 U. S. 263, 34 L. Ed Dimmick v. Tompkins (1904) 2 Ct. 780, 783, 194 U. S. 540, 48 1110; U. S. v. McMahon (18 Sup. Ct. 28, 30, 164 U. S. 81, Ed. 357; Cochran v. U. S. (190 Fed. 206, 77 C. C. A. 432; Ex McClusky (C. C. 1889) 40 Fed. U. S. v. Smith (C. C. 1889) 4 755, 760; In re Christian (C. C 82 Fed. 199, 201; Ex parte Pee C. 1906) 144 Fed. 1016 (affirmed 153 Fed. 166, 82 C. C. A. 340, R. A. [N. S.] 314).

§ 10548. (R. S. § 5547.) Attorney-General to contract for sistence, etc.

The Attorney-General shall contract with the managers or p authorities having control of such prisoners, for the imprison subsistence, and proper employment of them, and shall give the having jurisdiction of such offenses notice of the jail or penite where such prisoners will be confined.

Act May 12, 1864, c. 85, § 2, 13 Stat. 75. Act March 5, 1872, c. 30, Stat. 35.

Provisions for the employment of prisoners confined in United States p tiaries were made by Act March 3, 1891, c. 529, § 2, Act March 2, 1895, § 1, and Act March 3, 1901, c. 853, § 1, post, §§ 10553, 10561, 10563.

Provisions for a commission to investigate and report not later than t Monday in December, 1916, as to advisability of equipping penitentiar the manufacture of various articles were made by Act Sept. 8, 1916, § 1, 39 Stat. 819.

Notes of Decisions

Construction of statute as to terms for use of jails.—The Montana statute provides that persons may be committed under authority of the United States to any jail in the state "upon payment of the expenses of supporting such prisoners, ten dollars per month to the county, for the use of the jail, and all legal fees to the jailer." Held, that this means $10 per month for all the prisoners so confined, and not $10 per month for each one of them. County of Lewis and Clarke v. U. S. (D. C. 1896) 77 Fed. 732.

A state statute authorizing the use of county jails for the confinement of United States prisoners on certain terms as to charges and fees is not binding on the United States, as by this section, the keeping and subsistence of such prisoners is made a matter of contract, under the control of the attorney general. Id.

State statute as binding on States—County supervisors as with whom contract should be Under R. S. §§ 5539, 5547 (thi pilation, §§ 10523, 10548), pr that United States criminals im ed in the jail or penitentiary state or territory shall be und control of the officers having ch the same, and authorizing the a general to contract with the authorities having control of suc oners for their imprisonment, s ence, etc.; and Rev. St. Ariz 397, 398, 2459, 2460, 521, 1972 ing the powers and duties of supervisors and of sheriffs,—t pervisors of a county are the persons with whom the departm justice should contract for th of United States prisoners imp in a county jail. Avery v. Pimaa ty (1900) 60 P. 702, 7 Ariz. 26.

Compensation of state deriving returns from labor of federal convict.—The United States not possessing any places of imprisonment within the states, federal convicts are admitted by each state into its prisons on conditions agreed for the indemnification of the state; and although the state to employ a federal convict as to derive returns from his labor, still it may demand compensation for entertaining him in its penitentiary, to be paid by the United States. (1857) 8 Op. Atty. Gen. 289.

The compensation in such case is not to the state as such, but is payable to any lawfully appointed agent of the state. Id.

Contempt in refusing to receive prisoner on tender of per diem fixed by county supervisors.—By Pen. Code Cal. § 1601, 1602, the sheriff is required to receive and keep in the county jail any prisoner committed by authority of the United States, "provision being made by the United States for the support of such prisoner." Held, that the amount per diem fixed by the supervisors of the county for the support of state prisoners must be presumed a reasonable compensation; and a sheriff who refuses to receive a United States prisoner, on being tendered such amount, is liable for contempt. In re Kays (D. C. 1888) 35 Fed. 288.

Cited without definite application, In re Mills (1890) 10 Sup. Ct. 762, 764, 135 U. S. 263, 34 L. Ed. 107; Dimmick v. Tompkins (1904) 24 Sup. Ct. 780, 783, 194 U. S. 540, 48 L. Ed. 1110; Ex parte Peeke (D. C. 1906) 144 Fed. 1016 (affirmed [1907] 153 Fed. 166, 82 C. C. A. 340, 12 L. R. A. [N. S.] 314).

§ 10549. (R. S. § 5548.) Court may order sentences executed in house of correction.

Whenever any person is convicted of any offense against the United States which is punishable by fine and imprisonment, or by either, the court by which the sentence is passed may order the sentence to be executed in any house of correction or house of reformation for juvenile delinquents within the State or district where such court is held, the use of which is authorized by the legislature of the State for such purpose.

Act March 3, 1835, c. 40, § 5, 4 Stat. 777.

Provisions for release on parole of prisoners confined in State reformatory institutions were made by Act June 25, 1910, c. 387, § 9, ante, § 10543.

Notes of Decisions

See notes under § 10527, ante.

§ 10550. (R. S. § 5549.) Confinement of juvenile offenders.

Juvenile offenders against the laws of the United States, being under the age of sixteen years, and who may hereafter be convicted of crime, the punishment whereof is imprisonment, shall be confined during the term of sentence in some house of refuge to be designated by the Attorney-General, and shall be transported and delivered to the warden or keeper of such house of refuge by the marshal of the district where such conviction has occurred; or if such conviction be had in the District of Columbia, then the transportation and delivery shall be by the warden of the jail of that district, and the reasonable actual expense of the transportation, necessary subsistence, and hire, and transportation of assistants and the marshal or warden, only, shall be paid by the Attorney-General, out of the judiciary fund.

Act March 3, 1865, c. 121, § 1, 13 Stat. 538. Act March 5, 1872, c. 30, § 1, 17 Stat. 35.

Provisions authorizing the commitment of minors to reformatories, and providing for the separation of youthful prisoners, were made by Act March 3, 1891, c. 529, § 7, post, § 10558.

Provisions for national training school for boys were made by various acts set forth ante, Title LIX B, chapter A.

Provisions for national training school for girls were made by various acts, set forth ante, Title LIX B, chapter B.

§ 10551. (R. S. § 5550.) Attorney-General to contract for their subsistence, etc.

The Attorney-General shall contract with the managers or persons having control of such houses of refuge for the imprisonment, subsistence, and proper employment of all such juvenile offenders, and

shall give the several courts of the United States and of the Dist
Columbia notice of the places so provided for the confinement o
offenders; and they shall be sentenced to confinement in the ho
refuge nearest the place of conviction so designated by the Att
General.

Act March 3, 1865, c. 121, § 2, 13 Stat. 538. Act March 5, 1872, c. 3
17 Stat. 35.

Cited without definite application, Ex parte Peeke (D. C. 1906) 144 Fed. 1016 (affirmed [1907] 153 Fed. 166, 82 C. C. A. 340, 12 L. R. A. 914).

§ 10552. (Act March 3, 1891, c. 529, § 1.) Location and erect Government prisons.

That the Attorney General and Secretary of the Interior b are hereby, authorized and directed to purchase three sites of which shall be located as follows: one north, the other of the thirty-ninth degree of north latitude and east of the Mountains, the third site to be located west of the Rocky tains, and the same to be located geographically as to be easy of access to the different portions of the country, and ca be erected thereon suitable buildings for the confinement of a sons convicted of any crime whose term of imprisonment i year or more at hard labor by any court of the United Sta any State, Territory, or District under the jurisdiction of the D ment of Justice of the United States, and the plans, specifica and estimates of such sites and buildings shall be previously and approved according to law, and shall not exceed the s five hundred thousand dollars each. (26 Stat. 839.)

This section and the eight sections next following were an act entitl act for the erection of United States prisons, and for the imprisonment o ed States prisoners, and for other purposes."

Notes of Decisions

See notes under § 10523, ante.

Sentence to hard labor.—Act March 3, 1891, c. 529, § 1, 26 Stat. 839 and R. S. §§ 5541, 5542, ante, §§ 10527, 10528, construed with respect to the authority conferred on a federal court to sentence a person convicted of crime to imprisonment in a penitent hard labor. Mitchell v. U. S. 196 Fed. 874, 116 C. C. A. 436.

Cited without definite appl In re Welty (D. C. 1903) 12 122, 124.

§ 10553. (Act March 3, 1891, c. 529, § 2.) Employment o victs.

That the convicts be employed exclusively in the manufact such supplies for the Government as can be manufactured w the use of machinery, and the prisoners shall not be worked o the prison enclosure. (26 Stat. 839.)

See note to preceding section.

The first part of this section, which made an appropriation for fit workshops for the employment of prisoners, is omitted.

Provisions for the employment of prisoners were also made by Act M 1895, c. 189, § 1, and Act March 3, 1901, c. 853, § 1, post, §§ 10561, 1056

Provisions for a commission to investigate and report not later than t Monday in December, 1916, as to advisability of equipping penitentia the manufacture of various articles were made by Act Sept. 8, 1916, § 1, 39 Stat. 819.

§ 10554. (Act March 3, 1891, c. 529, § 3.) Selection of locat prisons.

That the Attorney General and the Secretary of the Interi and are hereby, authorized to select the State, District, or tory in which to locate and erect the prisons: Provided, Th consent of the authorities of such State, District, or Territo first obtained. (26 Stat. 839.)

§ 10555. (Act March 3, 1891, c. 529, § 4.) Prison officers; rules.

That the control and management of said prisons be vested in the Attorney-General, who shall have power to appoint a superintendent, assistant superintendent, warden, keeper, and all other officers necessary for the safe-keeping, care, protection, and discipline of such United States prisoners. He shall also have authority to promulgate such rules for the government of the officials of said prisons and prisoners as he may deem proper and necessary. (26 Stat. 839.)

Cited without definite application,
Ex parte Marcil (D. C. 1913) 207 Fed. 809, 811; (1895) 21 Op. Atty. Gen. 204.

§ 10556. (Act March 3, 1891, c. 529, § 5.) Transportation of prisoners; expenses.

That the transportation of all United States prisoners convicted of crimes against the laws of the United States in any State, District or Territory, and sentenced to terms of imprisonment in a penitentiary, and their delivery to the superintendent, warden, or keeper of such United States prisons, shall be by the marshal of the District or Territory where such conviction may occur, after the erection and completion of said prisons. That the actual expenses of such marshal, including transportation and subsistence, hire, transportation and subsistence of guards, and the transportation and subsistence of the convict or convicts, be paid, on the approval of the Attorney General out of the judiciary fund. (26 Stat. 839.)

Notes of Decisions

Delivery of prisoner sentenced by court-martial.—A prisoner sentenced by a court-martial to confinement in a penitentiary of the United States should not be turned over to a marshal, but should be conducted to the prison by the proper officer of the department of war. (1895) 21 Op. Atty. Gen. 204.

The provision of section 10561, post, that prisoners sentenced by courts-martial may be confined in the United States penitentiary merely puts such prisoners in charge of the civil authorities on their delivery at the prison which must be made by the proper officer of the department to which the sentencing tribunal belongs. Id.

§ 10557. (Act March 3, 1891, c. 529, § 6.) Transportation home, etc., of discharged prisoners.

Every prisoner when discharged from the jail and prison shall be furnished with transportation to the place of his residence within the United States at the time of his commitment under sentence of the court, and if the term of his imprisonment shall have been for one year or more, he shall also be furnished with suitable clothing, the cost not to exceed twelve dollars, and five dollars in money.

Act March 3, 1891, c. 529, § 6, 26 Stat. 840.

Provisions authorizing the furnishing of clothing and money to prisoners on their discharge from State institutions were made by Act March 3, 1875, c. 145, § 2, ante, § 10545.

Provisions authorizing the furnishing of clothing and money to paroled prisoners were made by Act June 25, 1910, c. 378, § 8, ante, § 10542.

Cited without definite application,
(1895) 21 Op. Atty. Gen. 204.

§ 10558. (Act March 3, 1891, c. 529, § 7.) Confinement of juvenile offenders; confinement of prisoners in the United States Military prison.

This act shall not apply to minors, who, in the judgment of the judges presiding over United States courts, should be committed to reformatory institutions. And provided, That nothing in this act shall be construed as prohibiting the courts of the United States from sentencing to or confining prisoners, either civil or

military, in the United States military prison at Fort Leaven
Kansas. (26 Stat. 840.)

Provisions for the confinement, support, and employment of juvenile
ers were made by R. S. §§ 5549, 5550, ante, §§ 10550, 10551.

The Military Prison at Fort Leavenworth was transferred from t
Department to the Department of Justice, and was designated as the
States Penitentiary, by Act March 2, 1895, c. 189, § 1, post, § 10561.

Provisions for the erection of a United States penitentiary on the For
enworth Military Reservation, and for the return of the military prison
completion of such penitentiary, to the War Department, were made
June 10, 1896, c. 400, post, § 10562.

Cited without definite application,
(1895) 21 Op. Atty. Gen. 204.

**§ 10559. (Act March 3, 1891, c. 529, § 8.) Deductions fron
of imprisonment for good conduct.**

The said Attorney General, in formulating rules and regu
for the conduct of said prisons, is hereby authorized to es
rules for commutation for good behavior of said convict
not for a longer time than two months for the first year's im
ment, and two months for each succeeding year. (26 Stat. 8

This section was superseded by Act June 21, 1902, c. 1140, ante, §§
10534, as to sentences imposed subsequent to July 21, 1902, and sente
posed prior thereto the commutation upon which is less than that pr
by that act.

Cited without definite application,
(1895) 21 Op. Atty. Gen. 204.

**§ 10560. (Act March 3, 1891, c. 529, § 9.) Designation of p
tiary by Attorney-General; separation of youthful pri**

The Attorney-General shall be authorized to designate to
of said prisons persons convicted in such States or Ter
shall be carried for confinement: Provided, That in the co
tion of the prison buildings provided for in this act there s
such arrangement of cells and yard space as that prisone
der twenty years of age shall not be in any way associate
prisoners above that age, and the management of the class
twenty years of age shall be as far as possible reformatory
Stat. 840.)

Cited without definite application,
(1895) 21 Op. Atty. Gen. 204.

**§ 10561. (Act March 2, 1895, c. 189, § 1.) Military Prison a
Leavenworth, Kan., changed to United States Penite
and transferred to Department of Justice.**

The Military Prison at Fort Leavenworth, Kansas, includ
the buildings, grounds, and other property connected therew
hereby transferred from the Department of War to the Depa
of Justice, to be known as the United States Penitentiary, an
used for the confinement of persons convicted in the United
courts of crimes against the United States and sentenced to im
ment in a penitentiary, or convicted by courts-martial of offens
punishable by confinement in a penitentiary and sentenced to
of imprisonment of more than one year; and the Attorney-(
is hereby directed to transfer to the said United States Penit
such persons now undergoing sentences of confinement, in
by the United States courts, in State prisons and penitentiar
can be conveniently accommodated at the same penitentiary
vided, That the said United States Penitentiary shall be carr
in accordance with the provisions of sections four, five, six,
eight, and nine of the Act approved March third, eighteen h
and ninety-one: Provided further, That the Secretary of W
hereby authorized, upon the request of the Attorney-Gene
detail an officer of the Army to act temporarily as warden

d penitentiary, and to continue the military guard on duty thereat · such length of time, not exceeding ninety days, after the close the current fiscal year, as may be deemed necessary to enable the isoners and property to be transferred to the care and custody the officers designated by the Attorney-General to receive and re for the same: And provided further, That convicts in said nited States Penitentiary shall be employed only in the manufac-re of articles and the production of supplies for said penitentiary, d in the manufacture of supplies for the Government, and said nvicts shall not be worked outside of Fort Leavenworth Military eservation. * * Provided, That for the fiscal year eighteen ndred and ninety-seven, and annually thereafter, the Attorney-eneral shall submit estimates in detail for all expenses of main-ning said penitentiary, including salaries of all necessary officers d employees therefor. (28 Stat. 957.)

These were provisions following an appropriation for the expenses of the United States courts, etc., in the sundry civil appropriation act for the fiscal year 1896, cited above.

Provisions for the erection of a United States penitentiary on the Fort Leavenworth Military Reservation, and for the return to the War Department of the buildings and grounds transferred to the Department of Justice by this provision, were made by Act June 10, 1896, c. 400, § 1, post, § 10562.

Act March 3, 1891, c. 529, §§ 4–9, ante, §§ 10556–10560, mentioned in this section, provided for the management of United States prisons, the transportation of prisoners, etc., but section 8 thereof, authorizing the Attorney-General to establish rules, was in part superseded by Act June 25, 1910, c. 387, ante, §§ 10535–10544.

Notes of Decisions

See, also, notes under §§ 10523, 556, ante.

Sentence to penitentiary without ntion of hard labor.—A person con-ted in a United States court of a me punishable by imprisonment in a nitentiary may lawfully be sentenced confinement in the Ft. Leavenworth penitentiary, although the sentence does not mention hard labor. O'Brien v. McClaughry (1913) 209 Fed. 816, 126 C. C. A. 540.

Cited without definite application, In re Welty (D. C. 1903) 123 Fed. 122, 124.

10562. (Act June 10, 1896, c. 400, § 1.) Selection of site for penitentiary on Fort Leavenworth Military Reservation; return of military prison to War Department.

The Attorney-General is hereby authorized and directed to se-ct on the military reservation at Leavenworth, Kansas, within nits hereinafter described, a site for the erection of a peniten-ıry and other buildings, wall, and workshops for the employ-ent of United States prisoners, with such improvements as he ay direct in connection with the completion of the several buildings; id penitentiary to be of a capacity to accommodate at least one thou-nd two hundred convicts, and to be situated on said grounds and thin the following boundary lines: Beginning at a point at the rthwestern intersection of Grant and Logan avenues, thence north venty-two degrees west more or less, forty-five hundred feet more less to a stone in the field north of the Government farm barn, ence due west fifteen hundred feet more or less to the north side Logan Avenue; thence along said avenue and its prolongation the western boundary of the Military Reservation; thence south ong said line to the southwest corner of said reservation, thence st along the south line of said reservation to the pike leading north om the city of Leavenworth to the post of Fort Leavenworth; ence north along said pike to the point of beginning; and that these ounds thus described shall be, and hereby are, set apart from the ntiguous military reservation for United States penitentiary pur-ses, and assigned to and placed under the care and control of the ttorney-General as a United States penitentiary reservation: Pro-

vided, That when the United States Penitentiary shall be
and applied to the purposes contemplated by this Act, the
and grounds within the said Military Reservation of Fort
worth that were transferred from the Department of War to
partment of Justice, in accordance with the provisions of th
Congress approved March second, eighteen hundred and nin
shall be restored to the control of the said Department of Wa
provided further, That this prison reservation shall be open
tary tactical purposes, when such purposes do not interfere
discipline of said prison. (29 Stat. 380.)

This was the first section of an act entitled "An act to establish
the erection of a penitentiary on the Military Reservation at For
worth, Kansas, and for other purposes."

Sections 2, 3, and 4, of the act, providing for the employment of an
to prepare plans for the erection of the penitentiary and for the en
of convicts in construction of buildings, and limiting the cost th
omitted, as temporary merely, and executed.

Act March 2, 1895, c. 189, § 1, mentioned in this section autho
transfer of the Military Prison from the War Department to the Deps
Justice, is set forth ante, § 10561.

Notes of Decisions

See notes under § 10523, ante.

Cited without definite application, O'Brien v. McClaughry (1913) 209 Fed. 816, 819, 126 C. C. A. 540; I ty (D. C. 1903) 123 Fed. 122

§ 10563. (Act March 3, 1901, c. 853, § 1.) Management o States penitentiary at Atlanta, Ga.; transfer of pr limit of employment.

The United States penitentiary at Atlanta, Georgia, shall
ried on in accordance with sections four, five, eight, and nin
Act approved March third, eighteen hundred and ninety-
titled "An Act for the erection of United States prisons and
imprisonment of United States prisoners, and for other pu
Provided further, That the Attorney-General is authorized t
fer, in his discretion, to said United States penitentiary at
Georgia, such persons now undergoing sentences of confinem
posed by the United States courts, in other institutions, as
veniently be accommodated therein: Provided further, That
in said United States penitentiary at Atlanta, Georgia, may
ployed in the manufacture of articles and the production of
for said penitentiary; in the manufacture of supplies for the
ment that can be manufactured without the use of machin
the construction, extension, and repairs of buildings and in
of the prison, and in making necessary materials therefor; an
cultivation and care of the prison grounds and farm. (
1185.)

This was a provision following an appropriation for the expenses of
ed States courts, etc., in the sundry civil appropriation act for the
1902, cited above.

Act March 3, 1891, c. 529, §§ 4, 5, 8, 9, providing for the mana
United States prisons, the transportation of prisoners, etc., are set f
§§ 10555, 10556, 10559, 10560.

Notes of Decisions

See notes under § 10523, ante.

§ 10564. (Act May 17, 1898, c. 340.) Federal jail at For Ark., made a national prison; what prisoners may b ted.

The Federal jail at the city of Fort Smith, Arkansas, in
to the purposes for which it is now used, is hereby declar
a national prison, * * And said jail may also be used

re and confinement of United States prisoners in the Texarkana vision of the western district of Arkansas. (30 Stat. 417.)

This was an act entitled "An act declaring the federal jail at the city of Fort Smith, Arkansas, a national prison for certain purposes."

The part of the act omitted provided for the confinement in the jail of persons convicted of crimes in the United States courts and commissioners' courts in the Indian Territory. It was superseded by Act June 16, 1906, c. 3335, 34 Stat. 267, providing for the admission into the Union of Oklahoma Territory and the Indian Territory as the state of Oklahoma.

Notes of Decisions

See notes under § 10523, ante.

TITLE LXXI

THE SLAVE-TRADE

(R. S. §§ 5551-5569. Repealed or obsolete.)

This Title of the Revised Statutes included sections 5551–5569, thereof. The provisions contained in those sections, except sections 5562, 5565, 5566, 5568, 5569, were incorporated into the Criminal Code, in chapter 10 thereof, ante, §§ 10419–10444, and were repealed by section 341 thereof, ante, § 10515.

R. S. §§ 5562, 5565, 5566, providing for a bounty distribution of forfeitures incurred, and contracts for reception in Africa of persons delivered from seized vessels, were not included among the sections repealed by said section 341, ante, § 10515, but their provisions were not carried into said Code, apparently because obsolete.

R. S. §§ 5568, 5569, providing for contracts for reception in West Indies of persons delivered from seized vessels, were not incorporated in or repealed by said Criminal Code, apparently because obsolete.

Notes of Decisions

See Title 69A, Chapter 10, and notes thereunder.

TITLE LXXII

GUANO ISLANDS

(R. S. §§ 5570-5578. Transferred.)

This Title of the Revised Statutes included sections 5570–5578 thereof. Those sections are placed, with provisions relating to other insular possessions, ante, under Title XXIII, "The Territories and Insular Possessions," as chapter 3 E of that Title, "Guano Islands," §§ 3916–3924.

TITLE LXXIII

THE SMITHSONIAN INSTITUTION

Sec.
10565. Incorporation of the institution.
10566. Regents.
10567. Appointment of regents.
10568. Organization of board.
10569. Acting Secretary.
10570. Duties of Secretary.
10571. Statement of expenditures of institution.
10572. Report of director of National Museum.
10573. Salary and removal of Secretary, etc.
10574. Special meetings of members.
10575. Reception and arrangement of specimens and objects of art.
10576. Collections of the Coast and Interior Survey, the Geological Survey, etc.
10577. Archives, etc., relating to Indians, collected by Geographical and Geological Survey.
10577a. Instruments of Coast and Geodetic Survey; transfer authorized.
10578. Distribution of specimens to colleges, etc.
10579. Library.
10580. Evidence of title to buildings.
10581. Protection of property.
10582. Appropriation of intere
10583. Acceptance of other su
10584. Disposal of unapp money.
10585. Disbursements.
10585a. Exchange of typewrit ing machines, etc., payment for like ar
10586. Annual report of salari ficers and employees.
10587. Right of repeal.
10588. National Zoological Pa ministration by reg Smithsonian Instituti
10589. Heads of departments acquisition of collect
10590. Report of expenses of Zoological Park.
10591. Plans, etc., for buildi bridges in National Z Park.

§ 10565. (R. S. § 5579, as amended, Act Feb. 27, 1877, c. and Act March 12, 1894, c. 36.) Incorporation of the tion.

The President, the Vice-President, the Chief Justice, a heads of Executive Departments are hereby constituted an es ment by the name of the Smithsonian Institution for the incre diffusion of knowledge among men, and by that name shall be and have perpetual succession with the powers, limitations, strictions hereinafter contained, and no other.

Act Aug. 10, 1846, c. 178, § 1, 9 Stat. 102. Act March 20, 1871, Stat. 1. Act Feb. 27, 1877, c. 69, 19 Stat. 253. Act March 12, 189 28 Stat. 41.

A preamble to this Title of the Revised Statutes was as follows:

"James Smithson, esquire, of London, in the kingdom of Great Brit ing by his last will and testament given the whole of his property to th States of America, to found, at Washington, under the name of the sonian Institution,' an establishment for the increase and diffusion o edge among men; and the United States having, by an act of Con ceived said property and accepted said trust; therefore, for the faith cution of said trust, according to the will of the liberal and enlightene

This section, as originally enacted, constituted the President, the V ident, the Secretaries of State, the Treasury, War, and the Navy, the ter-General, the Attorney-General, the Chief Justice, the Commission Patent Office, and the Governor of the District of Columbia, and such as they might elect honorary members, an establishment by the nam "Smithsonian Institution," for the purposes and with the powers sp the section as set forth here.

It was amended by Act Feb. 27, 1877, c. 69, § 1, cited above, by the words "Patent Office" to the word "Patents," and was further by Act March 12, 1894, c. 36, last cited above, by altering the section read as set forth here; omitting therefrom the Commissioner of Pat the Governor of the District of Columbia, the latter office having been a and omitting also the provision for honorary members.

The President is authorized to appoint as a member of the Advisory Committee for Aeronautics a representative of the Smithsonian Institution, by a provision in Act March 3, 1915, c. 83, ante, § 3115i.

Notes of Decisions

Nature of institution.—The Smithnian Institution is independent of y of the executive departments mentioned in R. S. § 158, ante, § 232. (1907) 26 Op. Atty. Gen. 209.

10566. (R. S. § 5580, as amended, Act March 12, 1894, c. 36.) Regents.

The business of the institution shall be conducted at the city of ashington by a Board of Regents, named the Regents of the Smithnian Institution, to be composed of the Vice-President, the Chief stice of the United States, and three members of the Senate and ree members of the House of Representatives; together with six her persons, other than members of Congress, two of whom shall resident in the city of Washington; and the other four shall be habitants of some State, but no two of them of the same State.

Act Aug. 10, 1846, c. 178, § 3, 9 Stat. 103. Act Jan. 10, 1865, c. 11, 13 Stat. 420. Act March 20, 1871, c. 1, 17 Stat. 1. Act March 12, 1894, c. 36, 28 Stat. 41.

This section was amended by Act March 12, 1894, c. 36, cited above, by striking out, after the words "the Chief Justice of the United States," the words "The Governor of the District of Columbia," the latter office having been abolished, making the section read as set forth here.

The National Zoological Park, established by Act March 2, 1889, c. 370, § 4, 25 Stat. 808, was placed under the direction of the regents of the Smithsonian Institution by Act April 30, 1890, c. 173, § 2, post, § 10588.

Notes of Decisions

Advice to regents.—The Attorney neral is by designation of person a ember of the Smithsonian Institun; but it is not his duty individually, and as Attorney General, to give advice to the regents of that institution. (1853) 6 Op. Atty. Gen. 24.

10567. (R. S. § 5581.) Appointment of regents.

The regents to be selected shall be appointed as follows: The memrs of the Senate by the President thereof; the members of the ouse by the Speaker thereof; and the six other persons by joint solution of the Senate and House of Representatives. The memrs of the House so appointed shall serve for the term of two years; d on every alternate fourth Wednesday of December a like number all be appointed in the same manner, to serve until the fourth ednesday in December, in the second year succeeding their apintment. The Senators so appointed shall serve during the term r which they shall hold, without re-election, their office as Senators. acancies, occasioned by death, resignation, or otherwise, shall be led as vacancies in committees are filled. The regular term of rvice for the other six members shall be six years; and new elecns thereof shall be made by joint resolutions of Congress. Vacanes occasioned by death, resignation, or otherwise may be filled in e manner by joint resolution of Congress.

Act Aug. 10, 1846, c. 178, § 3, 9 Stat. 103.

10568. (R. S. § 5582.) Organization of board.

The regents shall meet in the city of Washington and elect one their number as chancellor, who shall be the presiding officer of e Board of Regents, and called the chancellor of the Smithsonian stitution, and a suitable person as Secretary of the institution, who all also be the secretary of the Board of Regents. The board shall so elect three of their own body as an executive committee, and e regents shall fix on the time for the regular meetings of the board; d, on application of any three of the regents to the Secretary of e institution, it shall be his duty to appoint a special meeting of the oard of Regents, of which he shall give notice, by letter, to each

of the members; and, at any meeting of the board, five shall co
a quorum to do business. Each member of the board shall
his necessary traveling and other actual expenses, in attendin
ings of the board, which shall be audited by the executive cor
and recorded by the Secretary of the board; but his service a
shall be gratuitous.

Act Aug. 10, 1846, c. 178, § 3, 9 Stat. 103.

§ 10569. (Act May 13, 1884, c. 44.) Acting Secretary.

The Chancellor of the Smithsonian Institution may, by
strument in writing filed in the office of the Secretary
designate and appoint a suitable person to act as Secre
the Institution when there shall be a vacancy in said off
whenever the Secretary shall be unable from illness, abs
other cause to perform the duties of his office; and in such
person so appointed may perform all the duties imposed on t
retary by law until the vacancy shall be filled or such inabili
cease. The said Chancellor may change such designation
pointment from time to time as the interests of the Instituti
in his judgment require. (23 Stat. 21.)

This was an act entitled "An act to provide for the appointme
Acting Secretary of the Smithsonian Institution."

This act was a repetition, in substance, of Act Jan. 24, 1879, c. 21
264.

§ 10570. (R. S. § 5583.) Duties of Secretary.

The Secretary of the Board of Regents shall take charge
building and property of the institution, and shall, under the
tion, make a fair and accurate record of all their proceeding
preserved in the institution; and shall also discharge the d
librarian and of keeper of the museum, and may, with the
of the Board of Regents, employ assistants.

Act Aug. 10, 1846, c. 178, § 7, 9 Stat. 105.

**§ 10571. (Act Oct. 2, 1888, c. 1069, § 1.) Statement of e
tures of institution.**

The Secretary of the Smithsonian Institution shall su
Congress at its next session a detailed statement of the expe
of the fiscal year eighteen hundred and eighty-eight, under ap
tions for "International Exchanges," "North American Ethn
and the "National Museum," and annually thereafter a detaile
ment of expenditures under said appropriations shall be su
to Congress at the beginning of each regular session there
Stat. 529.)

Provisions requiring the Director of the National Museum to repo
gress annually the progress of the museum, were made by Act July
c. 332, § 1, post, § 10572.

This was a provision of section 1 of the sundry civil appropriatio
the fiscal year 1889, cited above.

An annual report to Congress of the salaries and employés paid fr
priations under the Smithsonian Institution was required by Act Marc
c. 424, § 1, post, § 10586.

The printing and distribution of the reports of the Smithsonian I
were provided for by the Printing and Binding Act of Jan. 12, 1895, c
par. 33, ante, § 7081.

**§ 10572. (Act July 7, 1884, c. 332, § 1.) Report of dir
National Museum.**

The Director of the National Museum is hereby directe
port annually to Congress the progress of the museum du
year and its present condition.

Act July 7, 1884, c. 332, § 1, 23 Stat. 214.

This was a provision of section 1 of the sundry civil appropriatio
the fiscal year 1885, cited above.

10573. (R. S. § 5584.) Salary and removal of Secretary, etc.

The Secretary and his assistants shall, respectively, receive for their ervices such sum as may be allowed by the Board of Regents, to be aid semi-annually on the first day of January and July; and shall e removable by the Board of Regents whenever, in their judgment, ie interests of the institution require such removal.

Act Aug. 10, 1846, c. 178, § 7, 9 Stat. 105.

10574. (R. S. § 5585.) Special meetings of members.

The members and honorary members of the institution may hold ated and special meetings, for the supervision of the affairs of the stitution and the advice and instruction of the Board of Regents, be called in the manner provided for in the by-laws of the institu-on, at which the President, and in his absence the Vice-President, iall preside.

Act Aug. 10, 1846, c. 178, § 8, 9 Stat. 105.

10575. (R. S. § 5586.) Reception and arrangement of specimens and objects of art.

Whenever suitable arrangements can be made from time to time or their reception, all objects of art and of foreign and curious re-earch, and all objects of natural history, plants, and geological and ineralogical specimens belonging to the United States, which may e in the city of Washington, in whosesoever custody they may be, iall be delivered to such persons as may be authorized by the Board f Regents to receive them, and shall be so arranged and classified the building erected for the institution as best to facilitate the ex-mination and study of them; and whenever new specimens in natural istory, geology, or mineralogy are obtained for the museum of the stitution, by exchanges of duplicate specimens, which the regents iay in their discretion make, or by donation, which they may receive, r otherwise, the regents shall cause such new specimens to be appro-riately classed and arranged. The minerals, books, manuscripts, nd other property of James Smithson, which have been received by ie Government of the United States, shall be preserved separate nd apart from other property of the Institution.

Act Aug. 10, 1846, c. 178, § 6, 9 Stat. 105.

Provisions for the turning over to the Smithsonian Institution of archives, etc., relating to the Indians of North America, collected by the Geographical and Geological Survey, were made by Act March 3, 1879, c. 182, § 1, post, § 10576.

The distribution of duplicate specimens of the National Museum and Fish Commission to colleges, etc., was authorized by a provision of Act March 3, 1883, c. 143, § 1, post, § 10578.

The Quartermaster-General and his officers were required to receive and transport property for the National Museum by a provision of Act July 5, 1884, c. 217, ante, § 1787.

The National Museum was not created by any express statute for that purpose. It was first mentioned in an appropriation for "the National Museum in the Smithsonian Institution" in Act June 20, 1874, c. 328, § 1, 18 Stat. 103.

Provisions for the transfer to the Smithsonian Institution of instruments of the Coast and Geodetic Survey were made by Act Aug. 1, 1914, c. 223, § 1, post, § 10577a.

Notes of Decisions

Objects to be placed in institution.— he objects of natural history belong-g to the government are to be placed in the Smithsonian Institution. (1857) 9 Op. Atty. Gen. 46.

10576. (Act March 3, 1879, c. 182, § 1.) Collections of the Coast and Interior Survey, the Geological Survey, etc.

All collections of rocks, minerals, soils, fossils, and objects of iatural history, Archaeology, and ethnology, made by the Coast nd Interior Survey, the Geological Survey, or by any other parties or the Government of the United States, when no longer needed for

investigations in progress shall be deposited in the National M
(20 Stat. 394.)

This was a provision of section 1 of the sundry civil appropriatio
the fiscal year 1880, cited above.

**§ 10577. (Act March 3, 1879, c. 182, § 1.) Archives, etc., r
to Indians, collected by Geographical and Geological**

All the archives, records and materials relating to the Ind
North America, collected by the Geographical and Ge
Survey of the Rocky Mountain Region, shall be turned
the Smithsonian Institution, that the work may be comple
prepared for publication under its direction; Provided That
meet the approval of the Secretary of the Interior and of the S
of the Smithsonian Institution. (20 Stat. 397.)

This was a provision of section 1 of the sundry civil appropriatio
the fiscal year 1880, cited above.

**§ 10577a. (Act Aug. 1, 1914, c. 223, § 1.) Instruments of Co
Geodetic Survey; transfer authorized.**

The Secretary of Commerce is authorized to transfer
Smithsonian Institution such instruments of the Coast an
detic Survey as in his judgment are of historic value but of
ther use in the survey's work. (38 Stat. 661.)

This was a provision of section 1 of the sundry civil appropriatio
the fiscal year 1915, cited above.

General provisions for the Coast and Geodetic Survey are set fo
Title LVI.

**§ 10578. (Act March 3, 1883, c. 143, § 1.) Distribution o
mens to colleges, etc.**

The distribution of duplicate specimens of the National M
and Fish Commission may be made to colleges, academi
other institutions of learning upon the payment by the re
of the cost of preparation for transportation and the transp
thereof. (22 Stat. 629.)

This was a provision following an appropriation for the preservati
lections of the National Museum in the sundry civil appropriation a
fiscal year ending 1884, cited above.

A similar provision was made in the similar appropriation act for th
ing fiscal year, Act Aug. 7, 1882, c. 433, § 1, 22 Stat. 332.

The National Museum was not created by any express statutory
for that purpose. It was first mentioned in an appropriation for p
"the National Museum in the Smithsonian Institution," contained in
20, 1874, c. 328, § 1, 18 Stat. 103. An appropriation for a buildin
use of the National Museum was made by Act March 3, 1879, c. 18
Stat. 397, and annual appropriations have continuously been made fo
of heating, etc., such building.

The appointment of a Commissioner of Fish and Fisheries was aut
R. S. § 4395, ante, § 901.

§ 10579. (R. S. § 5587.) Library.

The regents shall make, from the interest of the fund, a
priation, not exceeding an average of twenty-five thousand
annually, for the gradual formation of a library composed of
works pertaining to all departments of human knowledge.

Act Aug. 10, 1846, c. 178, § 8, 9 Stat. 105.

Provisions subjecting the library of the Smithsonian Institution r
the Library of Congress to the same regulations as the Library of
except as otherwise provided, and giving the public access to it for
tion on week days, were made by R. S. §§ 99, 100, ante, §§ 152, 153

Provisions regulating the Library of Congress and its use contain
tions 80–95, and subsequent provisions, ante, §§ 118–144.

Provisions permitting the use of the Library of Congress by the P
the Smithsonian Institution were made by R. S. § 94, ante, § 139.

§ 10580. (R. S. § 5588.) Evidence of title to site and buil

The site and lands selected for buildings for the Smithsoni
tution shall be deemed appropriated to the institution, and th

: the description of such site and lands, or a copy thereof, certified y the chancellor and Secretary of the Board of Regents, shall be ceived as evidence in all courts of the extent and boundaries of the nds appropriated to the institution.

Act Aug. 10, 1846, c. 178, § 4, 9 Stat. 104.

10581. (R. S. § 5589.) Protection of property.

All laws for the protection of public property in the city of Washgton shall apply to, and be in force for, the protection of the lands, iildings, and other property of the Smithsonian Institution. All oneys recovered by or accruing to, the institution shall be paid into ie Treasury of the United States, to the credit of the Smithsonian equest, and separately accounted for.

Act Aug. 10, 1846, c. 178, § 5, 9 Stat. 104.

10582. (R. S. § 5590.) Appropriation of interest.

So much of the property of James Smithson as has been received money, and paid into the Treasury of the United States, being the ım of five hundred and forty-one thousand three hundred and sevıty-nine dollars and sixty-three cents, shall be lent to the United tates Treasury, at six per centum per annum interest; and six per entum interest on the trust-fund and residuary legacy received into ie United States Treasury, payable in half-yearly payments, on the rst of January and July in each year, is hereby appropriated for the erpetual maintenance and support of the Smithsonian Institution; ıd all expenditures and appropriations to be made, from time to time, the purposes of the institution shall be exclusively from the accrug interest, and not from the principal of the fund. All the moneys ıd stocks which have been, or may hereafter be, received into the reasury of the United States, on account of the fund bequeathed by ımes Smithson, are hereby pledged to refund to the Treasury of the nited States the sums hereby appropriated.

Act Aug. 10, 1846, c. 178, § 2, 9 Stat. 102. Act Feb. 5, 1867, c. 34, § 2, 14 Stat. 391.

A permanent appropriation to pay for the erection of buildings and expenses of the Smithsonian Institution, being six per centum on the fund derived from the bequest of James Smithson, was made by R. S. § 3689, ante, § 6799(49).

10583. (R. S. § 5591, as amended, Act March 12, 1894, c. 36.) Acceptance of other sums.

The Secretary of the Treasury is authorized and directed to reive into the Treasury, on the same terms as the original bequest f James Smithson, such sums as the regents may, from time to time, e fit to deposit, not exceeding, with the original bequest, the sum f one million dollars. Provided, That this shall not operate as a mitation on the power of the Smithsonian Institution to receive ıoney or other property by gift, bequest, or devise, and to hold and ispose of the same in promotion of the purposes thereof.

Act Feb. 5, 1867, c. 34, § 1, 14 Stat. 391. Act March 12, 1894, c. 36, 28 Stat. 41.

This section, as enacted in the Revised Statutes, did not contain the proviso annexed thereto as set forth here. Said proviso was added by amendment by Act March 12, 1894, c. 36, last cited above.

10584. (R. S. § 5592.) Disposal of unappropriated money.

The regents are authorized to make such disposal of any other ıoneys which have accrued, or shall hereafter accrue, as interest upon ie Smithsonian fund, not herein appropriated, or not required for ie purposes herein provided, as they shall deem best suited for the romotion of the purpose of the testator.

Act Aug. 10, 1846, c. 178, § 9, 9 Stat. 105.

10585. (R. S. § 5593.) Disbursements.

Whenever money is required for the payment of the debts or perormance of the contracts of the institution, incurred or entered into

in conformity with the provisions of this Title, or for maki
purchases and executing the objects authorized by this Ti
Board of Regents, or the executive committee thereof, may
to the chancellor and Secretary of the board that such sum of
is required, whereupon they shall examine the same, and, if th
approve thereof, shall certify the same to the proper officer
Treasury for payment. The board shall submit to Congress,
session thereof, a report of the operations, expenditures, and
tion of the institution.

Act Aug. 10, 1846, c. 178, § 3, 9 Stat. 103.

**§ 10585a. (Act March 3, 1915, c. 75, § 1.) Exchange o
writers, adding machines, etc., in part payment for like a**

Hereafter the Government branches under the direction
Smithsonian Institution may exchange typewriters, addi
chines, and other labor-saving devices in part payment for
ticles. (38 Stat. 839.)

This was a provision of section 1 of the sundry civil appropriatio
the fiscal year 1916, cited above.

**§ 10586. (Act March 3, 1899, c. 424, § 1.) Annual report
ries of officers and employees.**

For the fiscal year nineteen hundred and one, and annuall
after, a report in detail, shall be made to Congress of the sal
all officers and employees paid from appropriations under the
sonian Institution. (30 Stat. 1085.)

This was a provision of the sundry civil appropriation act for the fi
1900, cited above.

Annual reports by the Secretary of the Smithsonian Institution an
Director of the National Museum were required by Act Oct. 2, 1888,
§ 1, and Act July 7, 1884, c. 332, § 1, ante, §§ 10571, 10572.

§ 10587. (R. S. § 5594.) Right of repeal.

Congress may alter, amend, add to, or repeal any of the pr
of this Title; but no contract or individual right made or a
under such provisions shall be thereby divested or impaired.

Act Aug. 10, 1846, c. 178, § 11, 9 Stat. 106.

**§ 10588. (Act April 30, 1890, c. 173, § 2.) National Zo
Park; administration by regents of Smithsonian Inst**

The National Zoological Park is hereby placed under th
tion of the regents of the Smithsonian Institution, who
thorized to transfer to it any living specimens, whether of
or plants, now or hereafter in their charge, to accept gifts for t
at their discretion, in the name of the United States, to m
changes of specimens, and to administer the said Zoological P
the advancement of science and the instruction and recreatio
people. (26 Stat. 78.)

This section and the section next following were part of an act ent
act for the organization, improvement, and maintenance of the Nati
logical Park."

Section 1 of the act appropriated various sums of money, one-half
Treasury and one-half from the revenues of the District of Columbi
organization, improvement, and maintenance of the National Zoologi
to be expended under the direction of the regents of the Smithsonia
tion. It is omitted, as temporary merely, and executed.

The National Zoological Park was established under provisions of
trict of Columbia appropriation act for the fiscal year 1890, Act Marc
c. 370, § 4, 25 Stat. 808, which constituted a commission to select fr
tain district along Rock Creek a tract of land, including a section of
suitable for a zoological park, and to purchase the land so selected
proceedings for the condemnation thereof, the United States to have t
land on payment therefor to the owners.

A report to Congress of the expense on account of the park was requ
provision of Act Aug. 18, 1894, c. 301, § 1, post, § 10590.

The Rock Creek Park was established by Act Sept. 27, 1890, c. 1
§§ 3359, 3360.

The Potomac Park was established by Act March 3, 1897, c. 375, ante, § 3361. Provisions for a parkway connecting Potomac Park with Zoological Park and Rock Creek Park were made by Act March 4, 1913, c. 147, § 27, ante, § 3362.

Notes of Decisions

Liabilities of superintendent.—Under s title and this section, the superinndent of the zoölogical park, whose y it is to receive and care for such mals as are sent there by his suriors in office, and who has no discretion in the premises, is not liable for injuries inflicted by animals so sent to him, which afterwards escaped, in the absence of negligence on his part. Jackson v. Baker (1904) 24 App. D. C. 100.

10589. (Act April 30, 1890, c. 173, § 3.) Heads of departments to aid in acquisition of collections.

The heads of executive departments of the Government are here- authorized and directed to cause to be rendered all necessary d practicable aid to the said regents in the acquisition of collecons for the Zoological Park. (26 Stat. 78.)

See notes to preceding section.

10590. (Act Aug. 18, 1894, c. 301.) Report of expenses of National Zoological Park.

Hereafter a report in detail of the expenses on account of the ational Zoological Park shall be made to Congress at the beginng of each regular session. (28 Stat. 384.)

This was a provision accompanying an appropriation for the construction and other expenses of the park in the sundry civil appropriation act for the fiscal year 1895, cited above.

A like provision, without the word "hereafter," was contained in similar appropriation acts for the two preceding years.

10591. (Act Aug. 24, 1912, c. 355, § 1.) Plans, etc., for buildings and bridges in National Zoological Park.

Hereafter all plans and specifications for the construction of uildings in the National Zoological Park shall be prepared under e supervision of the municipal architect of the District of Columa, and all plans and specifications for bridges in said park shall e prepared under the supervision of the engineer of bridges of e District of Columbia. (37 Stat. 437.)

This was a provision accompanying an appropriation for the park in the sundry civil appropriation act for the fiscal year 1913, cited above.

TITLE LXXIV

REPEAL PROVISIONS

Sec.
10592. What Revised Statutes embrace.
10593. Repeal of acts embraced in revision.
10594. Accrued rights reserved.
10595. Prosecutions and punishments.
10596. Acts of limitation.
10597. Arrangement and classification of sections.
10598. Acts passed since December 1, 1873, not affected.

§ 10592. (R. S. § 5595.) What Revised Statutes embrace.

The foregoing seventy-three titles embrace the statutes of the United States general and permanent in their nature, in force on the 1st day of December one thousand eight hundred and seventy-three, as revised and consolidated by commissioners appointed under an act of Congress, and the same shall be designated and cited, as The Revised Statutes of the United States.

Notes of Decisions

Nature, construction, and effect of Revised Statutes—In general.—The revision must be treated as the legislative declaration of the statute law on the subjects embraced therein on December 1, 1873. When the meaning is plain, the courts cannot look to the statutes revised to see if congress erred in the revision, but they may do so, if necessary to construe doubtful language. U. S. v. Bowen (1879) 100 U. S. 508, 513, 25 L. Ed. 631; The Conqueror (1897) 17 Sup. Ct. 510, 515, 166 U. S. 110, 41 L. Ed. 937; U. S. v. North American Commercial Co. (C. C. 1896) 74 Fed. 145 (judgment reversed North American Commercial Co. v. U. S. [1898] 18 Sup. Ct. 817, 171 U. S. 110, 43 L. Ed. 98); Bowen v. U. S. (1878) 14 Ct. Cl. 162; Wright v. U. S. (1879) 15 Ct. Cl. 80; Magaw v. U. S. (1880) 16 Ct. Cl. 3.

The enactment of the Revised Statutes was not original legislation, but merely a more convenient expression of the law existing on December 1, 1873. U. S. v. Moore (C. C. 1878) Fed. Cas. No. 15,804.

In the construction of the Revised Statutes no change of meaning will be imputed to a change of phraseology in the re-enacted statute unless the language used indicates an intended departure therefrom. U. S. v. Tilden (D. C. 1878) Fed. Cas. No. 16,520.

The incorporation of a particular statutory provision into the Revised Statutes, adopted in 1874, was a legislative declaration that the law on that subject was as therein provided; and, in the absence of any obscurity in the meaning, the court cannot look to the pre-existing statutes to see whether or not they were correctly incorporated. U. S. v. North American Commercial Co. (C. C. 1896) 74 Fed. 145, judgment reversed North American Commercial Co. v. U. S. (1898) 18 S. Ct. 817, 171 U. S. 110, 43 L. Ed. 98.

The Revised Statutes are an act of Congress. The enactment was approved and became the law June 22, 1874. Wright v. U. S. (1879) 15 Ct. Cl. 80. The object of the Revised Statutes was to simplify and bring together all statutes and parts of statutes which, from similarity of subject, ought to be brought together, to expunge redundant and obsolete enactments, and to make such alterations as might be necessary to reconcile contradictions and amend imperfections in the original text of the pre-existing statutes, and all those statutes were abrogated by this section. Dwight v. Merritt (1891) 11 Sup. Ct. 768, 769, 140 U. S. 213, 35 L. Ed. 450; Bowen v. U. S. (1878) 14 Ct. Cl. 162. It would defeat their object if courts were to disregard their language and administer previous enactments as if the Revised Statutes did not exist. Bowen v. U. S. (1878) 14 Ct. Cl. 162.

The Revised Statutes did not make a new state of the law, such as would authorize the head of an executive department to re-examine legal questions determined by his predecessors. State v. Illinois v. U. S. (1885) 20 Ct. Cl. 342.

Semble that the original dates of the provisions of the Revised Statutes must be considered in determining their effect upon each other, and that a previous decision of a court or a department based upon the circumstance that one such provision is an earlier, and the other a later, expression of the will of congress, binds as much as ever. (1875) 15 Op. Atty. Gen. 493.

—— **Marginal notes.**—Marginal notes in the Revised Statutes may be refer-

red to on questions of construction, as indicating the intention of congress not to alter by revision the substantial provisions of previous acts. Mackey v. Miller (1903) 126 Fed. 161, 62 C. C. A. 139.

The marginal notes annexed to the sections of the Revised Statutes formed a part of the Revised Statutes when adopted by congress, and are to be taken and read as a part thereof. U. S. v. Green (D. C. 1905) 136 Fed. 618, 624, affirmed (1905) 26 Sup. Ct. 748, 199 U. S. 601, 50 L. Ed. 328.

—— **First edition.**—The first edition of the Revised Statutes is a transcript of the original in the state department. It is prima facie evidence of the law, but the original is the only conclusive evidence of the exact text of the law. Wright v. U. S. (1879) 15 Ct. Cl. 80.

—— **Second edition.**— The publication of the second edition of the Revised Statutes under Act March 2, 1877, did not affect any statute passed subsequent to December 1, 1873. McLean v. St. Paul & C. Ry. Co. (C. C. 1879) Fed. Cas. No. 8,893.

The act of March 3, 1875, providing for removal of causes from state courts was not repealed by the marginal reference to the same in section 639 of the second edition of the Revised Statutes. Norris v. Mineral Point Tunnel (C. C. 1881) 7 Fed. 272.

The second edition of the Revised Statutes is neither a new revision nor a new enactment. It is only a new publication—a compilation containing the original law with certain specific alterations and amendments, made by subsequent legislation, incorporated therein, according to the judgment of the editor, who had no discretion to correct errors or supply omissions. Wright v. U. S. (1879) 15 Ct. Cl. 80.

Construction of Act Feb. 18, 1875, c. 80.—Act Feb. 18, 1875, c. 80, 18 Stat. 316, entitled "An act to correct errors and to supply omissions in the Revised Statutes of the United States," amends the Revised Statutes by adding to them certain provisions of existing statutes; but these amendments were not in the nature of new enactments, and are to be construed as though the Revised Statutes were originally adopted with these alterations incorporated therein. Ludington v. U. S. (1879) 15 Ct. Cl. 453.

Construction of Act Feb. 27, 1877.—Act Feb. 27, 1877, entitled "An act to perfect the revision of the statutes of the United States," etc., must be deemed to take effect only from its date; there being nothing in its language which expressly, or by necessary implication, gives to it a retrospective operation. (1877) 15 Op. Atty. Gen. 222.

Cited without definite application, Kurtz v. Moffitt (1885) 6 Sup. Ct. 148, 154, 115 U. S. 487, 29 L. Ed. 458; U. S. v. Auffmordt (1887) 7 Sup. Ct. 1182, 1186, 122 U. S. 197, 30 L. Ed. 1182; Heinze v. Miller (1892) 12 Sup. Ct. 604, 606, 144 U. S. 28, 36 L. Ed. 333; Caha v. U. S. (1894) 14 Sup. Ct. 513, 514, 152 U. S. 211, 38 L. Ed. 415; Bale Refrigerating Co. v. Sulzberger (1895) 15 Sup. Ct. 508, 519, 157 U. S. 1, 39 L. Ed. 601; Campbell v. James (C. C. 1880) 3 Fed. 513, 515; U. S. v. Auffmordt (D. C. 1884) 19 Fed. 893, 896, (affirmed [1887] 7 Sup. Ct. 1182, 122 U. S. 197, 30 L. Ed. 1182); In re Schefer (C. C. 1892) 49 Fed. 216, 218; Rosenbach v. Dreyfuss (D. C. 1880) 1 Fed. 391, 394; U. S. v. Bridleman (D. C. 1881) 7 Fed. 894, 903; In re Long Island North Shore Passenger & Freight Transp. Co. (D. C. 1881) 5 Fed. 599, 626; U. S. v. Tucker (D. C. 1903) 122 Fed. 518; U. S. v. Raisch (D. C. 1906) 144 Fed. 486; U. S. v. Nelson (D. C. 1912) 199 Fed. 464; Pope v. U. S. (1884) 19 Ct. Cl. 693.

§ 10593. (R. S. § 5596.) Repeal of acts embraced in revision.

All acts of Congress passed prior to said first day of December one thousand eight hundred and seventy-three, any portion of which is embraced in any section of said revision, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof; all parts of such acts not contained in such revision, having been repealed or superseded by subsequent acts, or not being general and permanent in their nature: Provided, That the incorporation into said revision of any general and permanent provision, taken from an act making appropriations, or from an act containing other provisions of a private, local, or temporary character, shall not repeal, or in any way affect any appropriation, or any provision of a private, local or temporary character, contained in any of said acts, but the same shall remain in force; and all acts of Congress passed prior to said last-named day no part of which are embraced in said revision, shall not be affected or changed by its enactment.

Notes of Decisions

See, also, notes under § 10598, post.

Effect of section.—By the express language of this section, an act is no longer in force, where the revision embraces such act and all others on the subject. U. S. v. Bowen (1879) 100 U. S. 508, 513, 25 L. Ed. 631.

Where a cause of action falling within

the terms of Act 1823, § 2, arose after the passage of Act July 18, 1866, and before the passage of the Revised Statutes, no suit can be maintained thereon after the passage of the Revised Statutes. U. S. v. Claflin (C. C. 1876) Fed. Cas. No. 14,799.

Act June 30, 1834, § 1, defining the "Indian country" as "all that part of the United States west of the Mississippi," etc., was repealed by R. S. § 5596 (embodied herein). Palcher v. U. S. (C. C. 1882) 11 Fed. 47, rehearing denied Forty-Three Cases Cognac Brandy (C. C. 1882) 14 Fed. 539.

Since the repeal of section 1 of the Indian intercourse act of 1834 (4 Stat. 129) by section 5596, R. S. (embodied herein), the only Indian country in the United States is the tracts of country set apart as Indian reservations; and the Umatilla reservation is such Indian country. U. S. v. Martin (D. C. 1883) 14 Fed. 817.

The proviso to section 1 of the act of 1851, that nothing therein contained should prevent parties contracting as they pleased as to extending or limiting shipowners' liability as carriers, was not re-enacted in the Revised Statutes, and, as a portion of the section is embraced in a section of the revision, the said proviso was repealed under this section. The Montana (C. C. 1884) 22 Fed. 715.

Act March 3, 1857, § 5, declaring that the making of a false affidavit in public land proceedings shall constitute perjury, being included, in part, in R. S. § 5392, ante, § 10295, was within the repealing provision of R. S. § 5596 (embodied herein). U. S. v. Nelson (D. C. 1912) 199 Fed. 464.

Certain provisions in Act March 3, 1849 (9 Stat. 414), which, it has been thought, gave exclusive jurisdiction to the third auditor of claims for horses lost in battle, are repealed by R. S. § 5596 (embodied herein). Thomas v. U. S. (1880) 16 Ct. Cl. 522.

The commission of the General Land office being authorized to receive proofs of the swampy character of lands disposed of by the government between March 2, 1855, and March 3, 1857, with a view to allowing the states indemnity provided by Act March 3, 1857, c. 117, notwithstanding omission in R. S. § 2484, ante, § 4963, of that part of the act which granted the indemnity, the right to indemnity, under that act, for swamp lands thus disposed of, is a right that "accrued" to those states in which such lands are situated prior to the adoption of the Revised Statutes, and is saved by R. S. § 5597, post, § 10594, from being affected by the repeal of the omitted indemnity provision under the operation of R. S. § 5596 (embodied herein). (1877) 15 Op. Atty. Gen. 340.

The appointment of the assistant collector at the port of New York (who was formerly employed by the collector with the approval of the Secretary of the Treasury) should now, by virtue of the effect of section 5596, Revised Statutes, be made by the President with the advice and consent of the Senate. (1885) 18 Op. Atty. Gen. 98.

Act March 2, 1867, amendatory of the act of July 27, 1866, "for the removal of causes in certain cases from state courts" (14 Stat. 558), was repealed by the Revised Statutes. Baltimore, P. & C. Ry. Co. v. New Albany & S. R. Co. (1876) 53 Ind. 597.

Use of repealed acts in construing existing provisions.—Act June 30, 1834, § 1, defining "Indian country," though not re-enacted in the Revised Statutes of the United States, and therefore repealed by section 5596 thereof (embodied herein), may be referred to for the purpose of ascertaining the meaning of the term "Indian country," found in other sections of the Revised Statutes, which were re-enactments of Act June 30, 1834. U. S. v. Le Bris (1887) 7 Sup. Ct. 894, 121 U. S. 278, 30 L. Ed. 946, following Ex parte Kan-gi-shun-ca (1883) 3 Sup. Ct. 396, 109 U. S. 556, 27 L. Ed. 1030.

It is a settled rule that, in the construction of the Revised Statutes of the United States, a mere change in the phraseology of a prior statute will not be regarded as altering the law, unless it is clear that such was the intent; and it is another canon of construction that, in determining the meaning of an ambiguous provision in the revision, the courts may refer to the original statute from which the section was taken, to ascertain from its language and context to what class of cases the provision was intended to apply. Schmidt v. U. S. (1904) 133 Fed. 257, 66 C. C. A. 389.

A section in a revision will not be given a construction in opposition to its positive provisions, in order to conform it to the pre-existing statute. Dodge v. Arthur (C. C. 1876) Fed. Cas. No. 3,950.

Only when doubtful language is used in the Revised Statutes can resort be had to pre-existing laws to ascertain its meaning. U. S. v. Sixty-Five Terra Cotta Vases (C. C. 1883) 18 Fed. 508.

Acts of Congress enacted before 1873, parts of which were incorporated in the Revised Statutes, and which were thereby repealed, may be referred to in construing the provisions taken therefrom. People's United States Bank v. Goodwin (C. C. 1908) 162 Fed. 937.

Where the meaning of the Revised Statutes is obscure or ambiguous, reference may be had to the original acts to assist in determining the revision; but when the meaning is clear and free from doubt, no such reference is necessary or permissible. (1893) 20 Op. Atty. Gen. 634.

Where there is doubt as to the construction of a revised statute, reference

ay always be had to the original act. 1895) 21 Op. Atty. Gen. 190.

Cited without definite application, . S. v. Claflin (1878) 97 U. S. 546, 548, 4 L. Ed. 1082; Bechtel v. U. S. (1879) 01 U. S. 597, 598, 25 L. Ed. 1019; effeback v. Hawke (1885) 6 Sup. Ct. 5, 99, 115 U. S. 392, 29 L. Ed. 423; urtz v. Moffitt (1885) 6 Sup. Ct. 148, 54, 115 U. S. 487, 29 L. Ed. 458; . S. v. Le Bris (1887) 7 Sup. Ct. 894, 95, 121 U. S. 278, 30 L. Ed. 946; Caha . U. S. (1894) 14 Sup. Ct. 513, 514, 152 . S. 211, 38 L. Ed. 415; U. S. v. Cestine (1909) 30 Sup. Ct. 93, 94, 215 . S. 278, 54 L. Ed. 195; Industrial & lining Guaranty Co. v. Electrical Supply Co. (1893) 58 Fed. 732, 737, 7 C. . A. 471; Berkowitz v. U. S. (1899) 3 Fed. 452, 456, 35 C. C. A. 379; United States Fidelity & Guaranty Co. v. . S. (1907) 150 Fed. 550, 80 C. C. A. 46; Le Marchal v. Tegarden (1909) 75 Fed. 682, 99 C. C. A. 236; Dodge v. Arthur (C. C. 1876) Fed. Cas. No. 3,950; Kensett v. Stivers (C. C. 1880) 10 Fed. 517, 528; May v. Buchanan (C. C. 1886) 29 Fed. 469, 470; Johnson v. Wells, Fargo & Co. (C. C. 1899) 98 Fed. 3, 7; People's United States Bank v. Goodwin (C. C. 1908) 162 Fed. 937; In re Lind (C. C. 1911) 192 Fed. 209; U. S. v. Winslow (D. C. 1875) Fed. Cas. No. 16,742; Rosenbach v. Dreyfuss (D. C. 1880) 1 Fed. 391, 392; In re Long Island North Shore Passenger & Freight Transp. Co. (D. C. 1881) 5 Fed. 599, 626; The Marine City (D. C. 1881) 6 Fed. 413, 414; U. S. v. Bridleman (D. C. 1881) 7 Fed. 894, 903; U. S. v. Bedgood (D. C. 1891) 49 Fed. 54, 57; U. S. v. Garcelon (D. C. 1897) 82 Fed. 611, 612; U. S. v. Tucker (D. C. 1903) 122 Fed. 518; U. S. v. Michael (D. C. 1907) 153 Fed. 609; Pope v. U. S. (1884) 19 Ct. Cl. 693; (1877) 15 Op. Atty. Gen. 260; (1882) 17 Op. Atty. Gen. 461.

§ 10594. (R. S. § 5597.) Accrued rights reserved.

The repeal of the several acts embraced in said revision, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal had not been made; nor shall said repeal, in any manner affect the right to any office, or change the term or tenure thereof.

Notes of Decisions

See, also, notes under § 10593, ante.

Remedies saved.—The right to an injunction against the collection of an illegal internal revenue tax is not continued under this section; congress having the right to take away a mere remedy. Kensett v. Stivers (C. C. 1880) 10 Fed. 517, 528.

This section does not apply to the salary of an office, nor to the pay of a retired naval officer. Magaw v. U. S. (1880) 16 Ct. Cl. 3.

Cited without definite application, Bechtel v. U. S. (1879) 101 U. S. 597, 598, 25 L. Ed. 1019; In re Long Island North Shore Passenger & Freight Transp. Co. (D. C. 1881) 5 Fed. 599, 626; U. S. v. Bridleman (D. C. 1881) 7 Fed. 894, 903.

§ 10595. (R. S. § 5598.) Prosecutions and punishments.

All offenses committed, and all penalties or forfeitures incurred under any statute embraced in said revision prior to said repeal, may be prosecuted and punished in the same manner and with the same effect, as if said repeal had not been made.

Cited without definite application, . S. v. Reisinger (1888) 9 Sup. Ct. 99, 101, 128 U. S. 398, 32 L. Ed. 480; In re Long Island North Shore Passenger & Freight Transp. Co. (D. C. 1881) 5 Fed. 599, 626; U. S. v. Bridleman (D. C. 1881) 7 Fed. 894, 903; Crowell v. U. S. (1887) 22 Ct. Cl. 69.

§ 10596. (R. S. § 5599.) Acts of limitation.

All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, embraced in said revision and covered by said repeal, shall not be affected thereby, but all suits, proceedings or prosecutions, whether civil or criminal, for causes arising, or acts done or committed prior to said repeal, may be commenced and prosecuted within the same time as if said repeal had not been made.

Notes of Decisions

Suits for infringement of patents.—Although Act July 8, 1870, § 55, providing that all causes of action shall be brought within the term for which letters patent shall be granted or extended, or within six years thereafter,

was repealed July 22, 1874, by omission from the Revised Statutes, yet all existing causes of action, so far as limitations were concerned, were reserved by R. S. § 5599 (embodied herein), and all infringements committed prior to June 22, 1874, are therefore governed by the federal law, and may be sued upon, although old enough otherwise to have been barred by a state statute of limitations, requiring the action to be brought within six years after the infringement. Hayden v. Oriental Mills (C. C. 1884) 22 Fed. 103.

A patent was granted May 24, 1864, and infringement was begun in 1865, and continued until the expiration of the patent. Suit was begun November 24, 1877. At the time the patent was granted, therefore, there was no federal statute of limitations applicable to infringements, and the state statute would govern. The state statute was displaced by section 55 of the patent act of 1870, which required suits to be brought during the term of the patent or within six years after its expiration. This provision was repealed by R. S. § 5599 (embodied herein), but existing causes of action were saved. Held, that no part of the claim for infringement was barred. Campbell v. City of New York (C. C. 1897) 81 Fed. 182.

Cited without definite application, May v. Buchanan (C. C. 1886) 29 Fed. 469, 470; In re Long Island North Shore Passenger & Freight Transp. Co. (D. C. 1881) 5 Fed. 599, 626; U. S. v. Bridleman (D. C. 1881) 7 Fed. 894, 903.

§ 10597. (R. S. § 5600.) Arrangement and classification of sections.

The arrangement and classification of the several sections of the revision have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the Title, under which any particular section is placed.

Notes of Decisions

Effect in general.—This section makes it proper to look to the original act to ascertain the legislative intent in cases of doubt. Doyle v. Wisconsin (1876) 94 U. S. 50, 24 L. Ed. 64.

Any ambiguity in R. S. § 5395, ante, 10248, may be removed by the language of the act from which it is taken, as authorized by R. S. § 5600 (embodied herein). Schmidt v. U. S. (1904) 133 Fed. 257, 66 C. C. A. 389.

Rearrangement in general.—The mere collocation or rearrangement of previous statutes in new revisions adopted on the same date will not operate to change the law and thereby defeat the will of congress. Page v. Burnstine (1880) 102 U. S. 664, 669, 26 L. Ed. 268.

Construing R. S. § 2322, ante, § 4618, and R. S. § 2336, ante, § 4644, together, it was held that, as to the apparent conflict between them, the last in order should prevail, notwithstanding R. S. § 5600 (embodied herein), since both sections were contained in Act May 10, 1872, c. 152, where they appeared in the same order, constituting sections 3 and 14 of the mining laws. Branagan v. Dulaney (1885) 8 Colo. 408, 8 P. 669; Lee v. Stahl (1886) 9 Colo. 208, 11 P. 77: Morgenson v. Middlesex Mining & Milling Co. (1887) 11 Colo. 176, 17 P. 513; Lee v. Stahl (1889) 13 Colo. 174, 22 Pac. 436, overruled Calhoun Gold Min. Co. v. Ajax Gold Min. Co. (1899) 27 Colo. 1, 59 P. 607, 50 L. R. A. 209, 83 Am. St. Rep. 17.

Classification under chapters in title.—The rule forbidding inferences from the classification of a subject under a title in the Revised Statutes does not apply to its classification under a chapter in a title. Reid v. U. S. (1883) 18 Ct. Cl. 625.

Separation of parts of section.—Intention to alter scope of existing law cannot be imputed to Congress because in the Revised Statutes it placed in two separate sections portions of what was a single section of the original act. Anderson v. Pacific Coast S. S. Co. (1912) 32 Sup. Ct. 626, 225 U. S. 187, 56 L. Ed. 1047.

The separation in the Revised Statutes of the United States of the several parts of a section of an existing statute according to an arrangement adopted for purposes of convenience only did not work any change in their purpose or meaning, in the absence of some substantial change in phraseology. Buck Stove & Range Co. v. Vickers (1912) 33 Sup. Ct. 41, 226 U. S. 205, 57 L. Ed. 189.

Separation of parts of act.—The separation of the provisions of an act into different sections of the Revised Statutes in no way affects their construction. Taylor v. U. S. (C. C. 1891) 45 Fed. 531, 539 reversed (1893) 13 Sup. Ct. 479, 147 U. S. 695, 37 L. Ed. 335.

Under this section, the exemption by R. S. § 4400, ante, § 8152, of foreign vessels from the requirements of the act of which it was a part, was held applicable to R. S. § 4234 (now repealed), which was a part of the same act, though they were contained in separate titles of the Revised Statutes. The A. M. Hathaway (D. C. 1885) 25 Fed. 926, 927.

Changes in phraseology.—This section has a very narrow effect, and clearly does not extend to cases of change of phraseology, as it is expressly limited to matters of arrangement and classification. King v. McLean Asylum of the Massachusetts General Hospital (1894) 64 Fed. 331, 344, 12 C. C. A. 145.

In the construction of the Revised Statutes, an intention to change the existing laws, which the revision purports to re-enact or codify, is not to be presumed from trifling changes of phraseology. In re Long Island N. S. P. & F. Transp. Co. (D. C. 1881) 5 Fed. 599, 626.

Cited without definite application, Hyde v. U. S. (1912) 32 Sup. Ct. 793, 799, 225 U. S. 347, 56 L. Ed. 1114; U. S. v. Marsh (1901) 106 Fed. 474, 482, 45 C. C. A. 436; Campbell v. James (C. C. 1880) 3 Fed. 513, 515; In re Long Island North Shore Passenger & Freight Transp. Co. (D. C. 1881) 5 Fed. 599, 626; Ex parte Houghton (D. C. 1881) 7 Fed. 657, 662; U. S. v. Sanche (C. C. 1881) 7 Fed. 715, 718; U. S. v. Bridleman (D. C. 1881) 7 Fed. 894, 903; Ex parte Houghton (D. C. 1881) 8 Fed. 897, 901; U. S. v. Claypool (D. C. 1882) 14 Fed. 127; U. S. v. Jessup (D. C. 1883) 15 Fed. 790, 792; U. S. v. Thomas (D. C. 1906) 145 Fed. 74.

§ 10598. (R. S. § 5601.) Acts passed since Dec. 1, 1873, not affected.

The enactment of the said revision is not to affect or repeal any act of Congress passed since the 1st day of December one thousand eight hundred and seventy-three, and all acts passed since that date are to have full effect as if passed after the enactment of this revision, and so far as such acts vary from, or conflict with any provision contained in said revision, they are to have effect as subsequent statutes, and as repealing any portion of the revision inconsistent therewith.

Notes of Decisions

See, also, notes under §§ 10592, 10593, ante.

Acts passed since December 1, 1873.—Act June 22, 1874, § 12, providing for forfeiture of merchandise fraudulently entered at the custom house, etc., was a subsequent statute to the Revised Statutes, and repealed any portion thereof inconsistent therewith. U. S. v. Auffmordt (1887) 7 Sup. Ct. 1182, 1186, 122 U. S. 197, 30 L. Ed. 1182.

The Revised Statutes, though adopted after the passage of Act of June 9, 1874, relating to the appointing of shipping commissioners, did not repeal the provisions of that act. U. S. v. Mason (C. C. 1888) 34 Fed. 129, 130.

The Revised Statutes did not affect statutes passed between December 1, 1873, and June 22, 1874. Ludington v. U. S. (1879) 15 Ct. Cl. 453.

An act approved on the same day with the Revised Statutes, June 22, 1874, is to be construed, pursuant to the true intent of this section, as if passed subsequently. Thomas v. U. S. (1880) 16 Ct. Cl. 522.

Act June 9, 1874 (18 Stat. c. 260), provides that none of the provisions of the act of June 7, 1872 (17 Stat. c. 322), shall apply to vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts, or in the lake-going trade, touching at foreign ports or otherwise, etc. Held, that this act repeals so much of R. S. tit. 53, including 4596, as is composed of the provisions of Act June 7, 1872, so far as it applies to vessels on the Great Lakes. U. S. v. Bain (D. C. 1889) 40 Fed. 455.

Statutes in force December 1, 1873.—The Revised Statutes must be regarded as passed on December 1, 1873, and all other acts of the same session of congress passed that date are to be treated as subsequent acts repealing the Revised Statutes, so far as they are inconsistent therewith. In re Oregon Bulletin Printing & Publishing Co. (C. C. 1876) Fed. Cas. No. 10,561.

The Revised Statutes as enacted June 22, 1874, did not alter statutory provisions in force December 1, 1873. The L. W. Eaton (D. C. 1878) Fed. Cas. No. 8,612.

Cited without definite application, U. S. v. The Grace Lothrop (1877) 95 U. S. 527, 529, 24 L. Ed. 514; U. S. v. Bain (C. C. 1880) 5 Fed. 192, 195; Brown v. Jefferson County Nat. Bank (C. C. 1881) 9 Fed. 258, 261; U. S. v. North American Commercial Co. (C. C. 1896) 74 Fed. 145, 149 (reversed [1898] 18 Sup. Ct. 817, 171 U. S. 110, 43 L. Ed. 98); U. S. v. Bridleman (D. C. 1881) 7 Fed. 894, 903; In re Long Island North Shore Passenger & Freight Transp. Co. (D. C. 1881) 5 Fed. 599, 626.

THE ORGANIC LAWS

OF THE

UNITED STATES OF AMERICA

THE DECLARATION OF INDEPENDENCE—1776 *

IN CONGRESS, JULY 4, 1776.

The unanimous Declaration of the thirteen united States of America

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the gov-

*The delegates of the United Colonies of New Hampshire; Massachusetts Bay; Rhode Island and Providence Plantations; Connecticut; New York; New Jersey; Pennsylvania; New Castle, Kent, and Sussex, in Delaware; Maryland; Virginia; North Carolina, and South Carolina, In Congress assembled at Philadelphia, Resolved on the 10th of May, 1776, to recommend to the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigencies of their affairs had been established, to adopt such a government as should, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and of America in general. A preamble to this resolution, agreed to on the 15th of May, stated the intention to be totally to suppress the exercise of every kind of authority under the British crown. On the 7th of June, certain resolutions respecting independency were moved and seconded. On the 10th of June it was resolved, that a committee should be appointed to prepare a declaration to the following effect: "That the United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown; and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved." On the preceding day it was determined that the committee for preparing the declaration should consist of five, and they were chosen accordingly, in the following order: Mr. Jefferson, Mr. J. Adams, Mr. Franklin, Mr. Sherman, Mr. R. R. Livingston. On the 11th of June a resolution was passed to appoint a committee to prepare and digest the form of a confederation to be entered into between the colonies, and another committee to prepare a plan of treaties to be proposed to foreign powers. On the 12th of June, it was resolved, that a committee of Congress should be appointed by the name of a board of war and ordnance, to consist of five members. On the 25th of June, a declaration of the deputies of Pennsylvania, met in provincial conference, expressing their willingness to concur in a vote declaring the United Colonies free and independent States, was laid before Congress and read. On the 28th of June, the committee appointed to prepare a declaration of independence brought in a draught, which was read,

erned, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

and ordered to lie on the table. On the 1st of July, a resolution of the convention of Maryland, passed the 28th of June, authorizing the deputies of that colony to concur in declaring the United Colonies free and independent States, was laid before Congress and read. On the same day Congress resolved itself into a committee of the whole, to take into consideration the resolution respecting independency. On the 2d of July, a resolution declaring the colonies free and independent States, was adopted. A declaration to that effect was, on the same and the following days, taken into further consideration. Finally, on the 4th of July, the Declaration of Independence was agreed to, engrossed on paper, signed by John Hancock as president, and directed to be sent to the several assemblies, conventions, and committees, or councils of safety, and to the several commanding officers of the continental troops, and to be proclaimed in each of the United States, and at the head of the Army. It was also ordered to be entered upon the Journals of Congress, and on the 2d of August, a copy engrossed on parchment was signed by all but one of the fifty-six signers whose names are appended to it. That one was Matthew Thornton, of New Hampshire, who on taking his seat in November asked and obtained the privilege of signing it. Several who signed it on the 2d of August were absent when it was adopted on the 4th of July, but, approving of it, they thus signified their approbation.

NOTE.—The proof of this document, as published above, was read by Mr. Ferdinand Jefferson, the Keeper of the Rolls at the Department of State, at Washington, who compared it with the fac-simile of the original in his custody. He says: "In the fac-simile, as in the original, the whole instrument runs on without a break, but dashes are mostly inserted. I have, in this copy, followed the arrangement of paragraphs adopted in the publication of the Declaration in the newspaper of John Dunlap, and as printed by him for the Congress, which printed copy is inserted in the original Journal of the old Congress. The same paragraphs are also made by the author, in the original draught preserved in the Department of State."

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Government:

For suspending our own Legislature, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in attention to our Brittish brethren.

We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

JOHN HANCOCK.

New Hampshire

JOSIAH BARTLETT,
WM. WHIPPLE,
MATTHEW THORNTON.

Massachusetts Bay

SAML. ADAMS,
JOHN ADAMS,
ROBT. TREAT PAINE,
ELBRIDGE GERRY.

Rhode Island

STEP. HOPKINS,
WILLIAM ELLERY.

Connecticut

ROGER SHERMAN,
SAM'EL HUNTINGTON,
WM. WILLIAMS,
OLIVER WOLCOTT.

New York

WM. FLOYD,
PHIL. LIVINGSTON,
FRANS. LEWIS,
LEWIS MORRIS.

New Jersey

RICHD. STOCKTON,
JNO. WITHERSPOON.
FRAS. HOPKINSON,
JOHN HART,
ABRA. CLARK.

Pennsylvania

ROBT. MORRIS,
BENJAMIN RUSH,
BENJA. FRANKLIN,
JOHN MORTON,
GEO. CLYMER,
JAS. SMITH,
GEO. TAYLOR
JAMES WILSON.
GEO. ROSS.

Delaware

CÆSAR RODNEY,
GEO. READ,
THO. M'KEAN.

Maryland

SAMUEL CHASE,
WM. PACA,
THOS. STONE,
CHARLES CARROLL of Carrollton.

Virginia

GEORGE WYTHE,
RICHARD HENRY LEE,
TH. JEFFERSON,
BENJA. HARRISON,
THOS. NELSON, jr.,
FRANCIS LIGHTFOOT LEE,
CARTER BRAXTON.

North Carolina

WM. HOOPER,
JOSEPH HEWES,
JOHN PENN.

South Carolina

EDWARD RUTLEDGE,
THOS. HEYWARD, Junr.,
THOMAS LYNCH, Junr.,
ARTHUR MIDDLETON.

Georgia

BUTTON GWINNETT,
LYMAN HALL,
GEO. WALTON.

NOTE.—Mr. Ferdinand Jefferson, Keeper of the Rolls in the Department of State, at Washington, says: "The names of the signers are spelt above as in the fac-simile of the original, but the punctuation of them is not always the same; neither do the names of the States appear in the fac-simile of the original. The names of the signers of each State are grouped together in the fac-simile of the original, except the name of Matthew Thornton, which follows that of Oliver Wolcott."

Notes of Decisions

Persons who became aliens on the Declaration.—All nonresident British subjects and those born in this country before the Revolution who adhered to the British became aliens on the Declaration of Independence. Blight's Lessee v. Rochester (1822) 20 U. S. (7 Wheat.) 544, 5 L. Ed. 516; Inglis v. Trustees of Sailors' Snug Harbor (1830) 28 U. S. (3 Pet.) 99, 7 L. Ed. 617; Den v. Phillis (1802) 3 N. C. (2 Hayw.) 158; Clifton v. Haig (S. C. 1812) 4 Desaus. Eq. 330; Ex parte Dupont (S. C. 1824) 1 Harp. Eq. 5; Read v. Read (Va. 1804) 5 Call, 160; Commonwealth v. Bristow (Va. 1806) 6 Call, 60.

A subject of Great Britain who emigrated to this country after the Declaration of Independence was an alien. Jackson v. Wright (N. Y. 1809) 4 Johns. 75. But a British subject, who acquired lands in Connecticut, before the revolution, was not an alien. Apthorp v. Backus (Conn. 1788) Kirby, 407, 1 Am. Dec. 26.

ARTICLES OF CONFEDERATION—1777*

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting

Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the Year of our Lord One Thousand Seven Hundred and Seventyseven, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia in the Words following, viz.

"*Articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia*

Notes of Decisions

Effect of adoption of constitution.—See Van Brocklin v. Tennessee (1886) 117 U. S. 151, 159, 6 Sup. Ct. 670, 29 L. Ed. 845.

That ordinance was enacted before the constitution of the United States, with a view to existing circumstances, and was intended to operate between the confederacy and the territory, as the articles of confederation did between the states. In construing it, the articles of confederation, and not the federal constitution, must be looked at. La Plaisance Bay Harbor Co. v. Council of City of Monroe (Mich. 1843) Walk. Ch. 155.

Article I. The stile of this confederacy shall be "The United States of America."

Article II. Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

Article III. The said States hereby severally enter into a firm

*Congress Resolved, on the 11th of June, 1776, that a committee should be appointed to prepare and digest the form of a confederation to be entered into between the Colonies; and on the day following, after it had been determined that the committee should consist of a member from each Colony, the following persons were appointed to perform that duty, to wit: Mr. Bartlett, Mr. S. Adams, Mr. Hopkins, Mr. Sherman, Mr. R. R. Livingston, Mr. Dickinson, Mr. M'Kean, Mr. Stone, Mr. Nelson, Mr. Hewes, Mr. E. Rutledge, and Mr. Gwinnett. Upon the report of this committee, the subject was, from time to time, debated, until the 15th of November, 1777, when a copy of the confederation being made out, and sundry amendments made in the diction, without altering the sense, the same was finally agreed to. Congress, at the same time, directed that the articles should be proposed to the legislatures of all the United States, to be considered, and if approved of by them, they were advised to authorize their delegates to ratify the same in the Congress of the United States; which being done, the same should become conclusive. Three hundred copies of the Articles of Confederation were ordered to be printed for the use of Congress; and on the 17th of November, the form of a circular letter to accompany them was brought in by a committee appointed to prepare it, and being agreed to, thirteen copies of it were ordered to be made out, to be signed by the president and forwarded to the several States, with copies of the confederation. On the 29th of November ensuing, a committee of three was appointed, to procure a translation of the articles to be made into the French language, and to report an address to the inhabitants of Canada, &c. On the 26th of June, 1778, the form of a ratification of the Articles of Confederation was adopted, and, it having been engrossed on parchment, it was signed on the 9th of July on the part and in behalf of their respective States, by the delegates of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations,

league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Article IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of, or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall upon demand of the Governor or Executive power, of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State.

Article V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any

Connecticut, New York, Pennsylvania, Virginia, and South Carolina, agreeably to the powers vested in them. The delegates of North Carolina signed on the 21st of July, those of Georgia on the 24th of July, and those of New Jersey on the 26th of November following. On the 5th of May, 1779, Mr. Dickinson and Mr. Van Dyke signed in behalf of the State of Delaware, Mr. M'Kean having previously signed in February, at which time he produced a power to that effect. Maryland did not ratify until the year 1781. She had instructed her delegates, on the 15th of December, 1778, not to agree to the confederation until matters respecting the western lands should be settled on principles of equity and sound policy; but, on the 30th of January, 1781, finding that the enemies of the country took advantage of the circumstance to disseminate opinions of an ultimate dissolution of the Union, the legislature of the State passed an act to empower their delegates to subscribe and ratify the articles, which was accordingly done by Mr. Hanson and Mr. Carroll, on the 1st of March of that year, which completed the ratifications of the act; and Congress assembled on the 2d of March under the new powers.

NOTE.—The proof of this document, as published above, was read by Mr. Ferdinand Jefferson, the Keeper of the Rolls of the Department of State, at Washington, who compared it with the original in his custody. He says: "The initial letters of many of the words in the original of this instrument are capitals, but as no system appears to have been observed, the same words sometimes beginning with a capital and sometimes with a small letter, I have thought it best not to undertake to follow the original in this particular. Moreover, there are three forms of the letter s: the capital S, the small s, and the long f, the last being used indiscriminately to words that should begin with a capital and those that should begin with a small s."

office under the United States, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

Article VI. No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any king prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

Notes of Decisions

Compact between Maryland and Virginia as treaty.—The compact of 1785 between Maryland and Virginia in relation to the waters of Chesapeake bay and the Potomac and Pocomoke rivers was not a "treaty, confederation, or alliance," within the meaning of the prohibition of the Articles of Confederation. Wharton v. Wise (1894) 14 Sup. Ct. 783, 788, 153 U. S. 155, 38 L. Ed. 669.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defence of such State, or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted: nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and

kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

Article VII. When land-forces are raised by any State for the common defence, all officers of or under the rank of colonel, shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

Article VIII. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States within the time agreed upon by the United States in Congress assembled.

Article IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect

to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdiction as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States.—fixing the standard of weights and measures throughout the United States.—regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated—establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces, in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "a Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted,—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which

requisition shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expense of the United States; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secresy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the Legislatures of the several States.

Article X. The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States in the Congress of the United States assembled is requisite.

Article XI. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

Article XII. All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United

States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

Article XIII. Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

And whereas it has pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the States we re[s]pectively represent, and that the Union shall be perpetual.

In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.*

On the part & behalf of the State of New Hampshire

JOSIAH BARTLETT,
JOHN WENTWORTH, Junr., August 8th, 1778.

On the part and behalf of the State of Massachusetts Bay

JOHN HANCOCK,
SAMUEL ADAMS,
ELDBRIDGE GERRY,
FRANCIS DANA,
JAMES LOVELL,
SAMUEL HOLTEN.

On the part and behalf of the State of Rhode Island and Providence Plantations

WILLIAM ELLERY,
HENRY MARCHANT,
JOHN COLLINS.

On the part and behalf of the State of Connecticut

ROGER SHERMAN,
SAMUEL HUNTINGTON,
OLIVER WOLCOTT,
TITUS HOSMER,
ANDREW ADAMS.

On the part and behalf of the State of New York

JAS. DUANE,
FRA. LEWIS,
WM. DUER,
GOUV. MORRIS.

*From the circumstance of delegates from the same State having signed the Articles of Confederation at different times, as appears by the dates, it is probable they affixed their names as they happened to be present in Congress, after they had been authorized by their constituents.

On the part and in behalf of the State of New Jersey, Novr. 26, 1778

JNO. WITHERSPOON,
NATHL. SCUDDER.

On the part and behalf of the State of Pennsylvania

ROBT. MORRIS,
DANIEL ROBERDEAU,
JONA. BAYARD SMITH,
WILLIAM CLINGAN,
JOSEPH REED,
22d July, 1778.

On the part & behalf of the State of Delaware

THO. M'KEAN, Feby. 12, 1779.
JOHN DICKINSON, May 5th, 1779.
NICHOLAS VAN DYKE.

On the part and behalf of the State of Maryland

JOHN HANSON,
March 1, 1781.
DANIEL CARROLL,
Mar. 1, 1781.

On the part and behalf of the State of Virginia

RICHARD HENRY LEE,
JOHN BANISTER,
THOMAS ADAMS,
JNO. HARVIE,
FRANCIS LIGHTFOOT LEE.

On the part and behalf of the State of No. Carolina

JOHN PENN, July 21st, 1778.
CORNS. HARNETT,
JNO. WILLIAMS.

On the part & behalf of the State of South Carolina

HENRY LAURENS,
WILLIAM HENRY DRAYTON,
JNO. MATHEWS,
RICHD. HUTSON,
THOS. HEYWARD, Junr.

On the part & behalf of the State of Georgia

JNO. WALTON, 24th July, 1778.
EDWD. TELFAIR,
EDWD. LANGWORTHY.

THE
NORTHWEST TERRITORIAL GOVERNMENT—1787

[THE CONFEDERATE CONGRESS, JULY 13, 1787]

An Ordinance for the government of the territory of the United States northwest of the river Ohio

Section 1. Be it ordained by the United States in Congress assembled, That the said territory, for the purpose of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Sec. 2. Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among, their children and the descendants of a deceased child in equal parts, the descendants of a deceased child or grandchild to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers, shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Notes of Decisions

Shifting inheritances.—Under the ordinance, the rule of the common law known as the rule of shifting inheritances does not prevail in Illinois. Bates v. Brown (1866) 5 Wall. 710, 717, 18 L. Ed. 535.

Sec. 3. Be it ordained by the authority aforesaid, That there shall be appointed, from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

Sec. 4. There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a free-

hold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings every six months to the Secretary of Congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common-law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

Sec. 5. The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to Congress from time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

Sec. 6. The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Sec. 7. Previous to the organization of the general assembly the governor shall appoint such magistrates, and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

Sec. 8. For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

Sec. 9. So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: Provided, That for every five hundred free male inhabitants there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature: Provided, That no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee-simple, two hundred acres of land within the same: Provided also, That a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

Sec. 10. The representatives thus elected shall serve for the term of two years; and in case of the death of a representative, or removal

from office, the governor shall issue a writ to the county or township, for which he was a member, to elect another in his stead, to serve for the residue of the term.

Sec. 11. The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum; and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected the governor shall appoint a time and place for them to meet together, and when met they shall nominate ten persons, resident in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress, five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress, one of whom Congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of the council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives shall have authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly when, in his opinion, it shall be expedient.

Sec. 12. The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office, the governor before the President of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress with a right of debating, but not of voting, during this temporary government.

Sec. 13. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of States, and permanent government therein, and for their admission to a share in the Federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

Sec. 14. It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact, between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent, to wit:

ARTICLE I

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territories.

ARTICLE II

The inhabitants of the said territory shall always be entitled to the benefits of the writs of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts, or engagements, bona fide, and without fraud previously formed.

Notes of Decisions

Trial by jury.—The state of Indiana having been admitted into the Union "on an equal footing with the original states in all respects, whatsoever," no right of trial by jury on an indictment in felony cases is guarantied in the courts of that state by the ordinance. Williams v. Hert (C. C. 1901) 110 Fed. 166.

Judicial proceedings according to the course of the common law.—The phrase, "judicial proceedings according to the course of the common law" means that the right of a person to his life, liberty, or property shall not be devested except by judicial determination, after due notice in pursuance of a general law. Mason v. Messenger (1864) 17 Iowa, 261.

Act Iowa, Jan. 4, 1839, providing that in actions for partition service of notice may be made by publication, is not in violation of the provision that the inhabitants of the Northwest Territory shall be entitled to the benefit of judicial proceedings according to the course of the common law. Id.

Such act, in authorizing a decree of partition upon constructive notice to certain of the parties interested, is not in conflict with such provision of the ordinance. Id.

Eminent domain.—Power of eminent domain possessed by state of Ohio was not restricted, after admission to the Union, by this article. Cincinnati v. Louisville & N. R. Co. (1912) 32 Sup. Ct. 267, 269, 223 U. S. 390, 56 L. Ed. 481, affirming judgment (1910) 92 N. E. 1111, 82 Ohio St. 466.

Limitation on the power of eminent domain, and not a grant of the power itself, held intended by provisions of this article. Rev. St. p. 15. Id.

Obligations of contract by which a river front strip at Cincinnati was dedicated to public use held not impaired by condemnation, conformably to Rev. St. Ohio, § 3283a, as added by Act May 9, 1908 (99 Ohio Laws, p. 590), of a right of way for an elevated road across such strip, though the then existing law of eminent domain, including provisions of this article for the government of the Northwest Territory, is to be read into the contract. Id.

Deprivation of property without due process of law.—Act Wis. T. Jan. 16, 1838, as supplemented by Act June 22, 1838, appoints commissioners to investigate and report on titles to the "half-breed lands," with a view to partition and sale of the same. Act Iowa, Jan. 25, 1839, repeals said act, but provides that said commissioners may commence actions for their several accounts which the legislature presupposes to be due them for services rendered under the repealed act, against the owners of said lands, on notice by publication, and requires the court before whom such suits are tried, if said accounts are deemed correct, to order judgment therefor against said owners, which shall be a lien upon said lands, and declares that the words "owners of the half-breed lands lying in L. county" shall be a sufficient designation of the names of the defendants in said suits. Held, that the repealing act is in violation of the constitution and of the ordinance of 1787, as depriving persons of their property without due process of law. Reed v. Wright (Iowa, 1849) 2 G. Greene, 15.

Act Wis. T. Jan. 16, 1838, as supplemented by Act June 22, 1838, is based solely on the assumption of the legislature that it is expedient to the settlement of the "half-breed lands" that titles be investigated, and partition and sales made. Commissioners are appointed to examine and report upon the titles, with power to take testimony, issue process, etc. Upon their report in favor of a claimant, the district court is required to enter judgment accordingly, under which the commissioners are to make sales, and execute to the

purchasers thereof deeds vesting absolute title in fee simple, clear of all claims whatsoever. All persons owning an interest in said lands are required to file notice of their claims.—else be forever barred from asserting the same. And it is provided that no other proceeding in any court whatever, at law or in equity, shall be maintainable under the general law for the purpose of effecting the partition or sale of said lands. Held, that the act is unconstitutional, and in violation of ordinance of 1787, as depriving persons of their property without due process of law. Id.

ARTICLE III

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

Notes of Decisions

Rights of Indians.—No treaty having ever been made with the Alaska Indians, or tribal independence recognized, they are not within the operation of the policy of the government arising out of the ordinance, whereby the Indian tribes of the United States have been treated as free and independent within their respective territories, governed by their tribal laws and customs in matters pertaining to their internal affairs. In re Sah Quah (D. C. 1886) 31 Fed. 327.

This article provided that the utmost good faith should always be observed towards Indians, and that their lands should never be taken from them without their consent. Act April, 1816, authorized the territory of Indiana to form a constitution, and be admitted into the Union provided that its constitution should not be repugnant to such ordinance. Held that, by virtue of Act Ind. Ter. June 10, 1816, accepting the conditions proposed by congress for its admission, such ordinance of 1787 is now in force in the state of Indiana. Board of Com'rs of Allen County v. Simons (1891) 129 Ind. 193, 28 N. E. 420, 13 L. R. A. 512.

ARTICLE IV

The said territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the Federal debts, contracted, or to be contracted, and a proportional part of the expenses of government to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district, or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the bona-fide purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and Saint Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as

to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

Notes of Decisions

Status of territories.—A territory under the ordinance passed its own laws, subject to the approval of Congress, and its inhabitants were subject to the Constitution and acts of Congress. U. S., Use of Mackey, v. Coxe (1855) 18 How. 100, 103, 15 L. Ed. 299.

Disposition of soil and taxation of lands of government.—Where a purchaser of land from the United States had paid for it, and received a final certificate, taxation thereof before a patent issued was not a violation of the ordinance as an "interference with the primary disposition of the soil by Congress," or "a tax on the lands of the United States." Carrol v. Safford (1845) 44 U. S. (3 How.) 441, 11 L. Ed. 671.

Navigable waters.—See, also, Northwestern Union Packet Co. v. St. Louis (1879) 100 U. S. 423, 424, 25 L. Ed. 688.

No question under the provisions of the ordinance, or of subsequent congressional legislation, which merely defines rights dependent upon navigability remains to support the appellate jurisdiction of the federal Supreme Court over the state court which has decided against the fact of navigability. People of State of Illinois ex rel. Dunne v. Economy Light & Power Co. (1914) 34 Sup. Ct. 973, 234 U. S. 497, 58 L. Ed. 1429, dismissing writ of error (1909) 89 N. E. 760, 241 Ill. 290.

Bayous and sloughs of the Mississippi, not required by the interests of commerce to be preserved for purposes of navigation, are not covered by the ordinance of 1787, declaring the waters therein referred to public highways, but the same are subject to the control of the state or municipal authorities. Therefore it was competent for the city of Dubuque to authorize a slough of the river at that place, formerly used in connection with navigation, to be filled, and railroad tracks to be built over or along the same. Ingraham v. Chicago, D. & M. R. Co. (1872) 34 Iowa, 249.

—— **State legislation affecting.**—Pub. Acts Mich. 1907, No. 153, licensing and regulating commercial fishing in the waters of the state from sail and power boats, was a regulation of fishing and was not invalid as a regulation of boats contrary to the provision that the navigable waters leading into the Mississippi and St. Lawrence shall be free without any tax imposts or duty therefor. People v. Setunsky (Mich. 1910) 126 N. W. 844, 17 Detroit Leg. N. 393.

The clause declaring the navigable rivers therein "common highways," etc., "without any tax, impost, or duty therefor," does not prohibit the states formed within that territory from legislating in respect to those rivers, or affecting their navigation, when their regulations subject equally their own citizens and the citizens of other states to the inconvenience resulting from such legislation. Hutchinson v. Thompson (1839) 9 Ohio (9 Ham.) 52.

—— **Right to use.**—The article in the ordinance respecting the navigableness of certain waters, and the carrying places between them, remains without modification. Spooner v. McConnell (C. C. 1838) Fed. Cas. No. 13,245.

The only object of the clause relating to navigable waters was to secure to citizens of the confederated states such rights, in relation to those waters within the territory northwest of the Ohio, as were already possessed by the inhabitants of that territory, and to prevent any tax or duty on persons navigating them. La Plaisance Bay Harbor Co. v. City of Monroe (Mich. 1843) Walk. Ch. 155.

The provision "that the navigable waters leading into the Mississippi and St. Lawrence shall be common highways, and forever free," supersedes the common-law doctrine of the necessity of usage or custom to establish a public right, even if that rule would otherwise prevail in the region over which this ordinance was designed to extend. Moore v. Sanborne (1853) 2 Mich. 519, 59 Am. Dec. 209.

The ordinance in declaring the navigable waters of the Northwest Territory forever free, meant to secure the same rights to nonresidents as to residents. Manistee River Imp. Co. v. Sands (1884) 19 N. W. 199, 53 Mich. 593.

—— **Riparian rights.**—The right of navigation in the Ohio river, declared to be a common highway, does not include the right to use the banks for landing without the consent of the owner, except in cases of peril, or where the place has become a public landing place. Clarke v. Evansville Boat Club (Ind. App. 1909) 88 N. E. 100.

The rights of riparian owners are nowhere mentioned in the ordinance, or in the acts admitting Michigan into the Union; the same being left to be settled according to state law. Webber v. Pere Marquette Boom Co. (1886) 30 N. W. 469, 62 Mich. 626.

—— **Obstruction.**—The Ohio legislature has a right to charter a canal company, which may obstruct the navigation of the Maumee river by a dam, though the ordinance declared that the navigable waters of the Northwest Territory should be "common highways,

and forever free." Spooner v. McConnell (C. C. 1838) Fed. Cas. No. 13,-245.

The states composed from the Northwest Territory cannot obstruct their navigable rivers, they being by the ordinance declared to be forever public highways. U. S. v. New Bedford Bridge (C. C. 1847) Fed. Cas. No. 15,867.

By the ordinance it was provided that the St. Joseph river, where it is a navigable stream should forever remain a public highway, and neither the United States nor this state have the constitutional power to authorize the building of a dam across such a stream and thus cause a total obstruction of navigation, but a state has power to regulate the use of public roads within its jurisdiction, and to authorize the construction of bridges and such other improvements as are not incompatible with the use of the stream as a public highway. Williams v. Beardsley (1851) 2 Ind. (2 Cart.) 591.

Though the provision in the ordinance of 1787 that the navigable waters leading into the Mississippi river shall be free, etc., was superseded by the adoption of the federal constitution, yet congress has, by subsequent acts, so far recognized and adopted that provision as to give it the force of an existing law, so that a state cannot authorize an obstruction of streams which are channels of interstate trade. Depew v. Board of Trustees of Wabash & E. Canal (1854) 5 Ind. 8.

The provisions of this article, declaring that navigable waters leading into the Mississippi river shall not be obstructed by state authority, must be construed as applying only to those streams which are channels of commerce between the states, such as are navigable in fact for vessels of commerce coming out of, and returning into, by continuous voyages, the navigable waters of other states. Neaderhouser v. State (1867) 28 Ind. 257.

The freedom of navigation stipulated for by the ordinance, partially extended over the territory of Orleans by Act March 2, 1805, is not inconsistent with ferry laws. State v. New Orleans Nav. Co. (La. 1822) 11 Mart. (O. S.) 309.

The state legislature has full power to authorize the construction of a bridge over a navigable stream; and, when such bridge is built as required by the act, no one has a right to complain of it on the ground of mere inconvenience, and the exercise of this power cannot be questioned except by a paramount law of Congress. The ordinance of 1787 does not affect the question. Highways Com'rs of Manlius v. Chaffee (1870) 1 Mich. N. P. 147.

The provision as to navigable waters was incorporated in the acts of congress enabling the states of Wisconsin and Minnesota to organize (Gen. St. Minn. 1878, p. 15; Rev. St. 1878, p. 1154), and in the constitutions of said states (Const. Wis. art. 9, § 1; Const. Minn. art. 2, § 2). The intention of this provision was not to prevent obstructions to navigation, but to prohibit a tax on it; and congress not having assumed police control over the St. Croix river, a small branch of the Mississippi, in said states, partially navigable at some seasons for small boats, but mainly used for the floatage of logs, the legislature of Minnesota had power to grant a charter to a company to construct booms in the navigable portion to facilitate running logs, though the direct effect was to materially, but not permanently, obstruct navigation for steamboats. J. S. Keator Lumber Co. v. St. Croix Boom Corp. (1888) 72 Wis. 62, 38 N. W. 529, 7 Am. St. Rep. 837.

—— Improvements and tolls for using the same.—The ordinance cannot control or limit the authority of a state after its admission; and this article, declaring that the navigable waters leading into the Mississippi and the carrying places between the same shall be common highways, and forever free, does not incapacitate the state of Illinois to levy tonnage duties for a canal and dam it has constructed in improving the Illinois river. Huse v. Glover (1886) 119 U. S. 543, 7 Sup. Ct. 313, 30 L. Ed. 487, affirming decree (C. C. 1883) 15 Fed. 292.

Such a toll is not in violation of the clause in the constitution prohibiting the imposing of tonnage duty by a state without the consent of congress, since it is in no sense a hindrance or impediment to free commerce. Id.

That a surplus not used in keeping the locks in repair, or in collecting tolls, goes into the state treasury, does not alter the character of the toll as a compensation and not a tax. Id.

It is no violation of the ordinance for a state to exact tolls for using improvements, such as dams and locks, because the freedom from tax refers to the stream in its natural state. The ordinance did not contemplate improvements by artificial means; and for outlays caused by such works the state may exact a reasonable toll. A charge for services rendered is in no sense a tax or duty. Id.

A statute of Michigan authorized the improvement of a river wholly within that state, and the exaction of tolls for the use of the river so improved. Held, that the statute did not impair the contract contained in the ordinance giving to the people the right to use the waters leading into the St. Lawrence, free of duty, tax, or impost. Sands v. Manistee River Imp. Co. (1887) 8 Sup. Ct. 113, 123 U. S. 288, 31 L. Ed. 149. Ruggles v. Same (1887) 8 Sup. Ct. 117, 123 U. S. 297, 31 L. Ed. 152, affirming Manistee River Imp. Co. v. Sands (1884) 53 Mich. 593, 19 N. W. 199.

The provision that certain navigable waters "shall be common highways, and

forever free," etc., does not prevent the improvement of the navigation by a state, and the charge of a reasonable toll for increased facilities. Palmer v. Cuyahoga County (C. C. 1843) Fed. Cas. No. 10,688; Spooner v. McConnell (C. C. 1838) Id. 13,245.

The ordinance declaring navigable streams of the Northwest Territory public highways, cannot be construed as prohibiting the making of such improvements as might be demanded by the public interest or convenience of the people of the states through which they flow, even though some inconvenience might arise to those who were in the habit of using them in a particular manner before such improvements were authorized. Williams v. Beardsley (1851) 2 Ind. (2 Cart.) 591.

There is nothing in the ordinance prohibiting the state from improving its navigable waters. La Plaisance Bay Harbor Co. v. City of Monroe (Mich. 1843) Walk. Ch. 155.

The state may lawfully authorize corporations to make improvements of navigable rivers and to charge tolls for the use of the same, notwithstanding the provision that navigable waters shall be common highways, and forever free, etc. Nelson v. Cheboygan Nav. Co. (1880) 5 N. W. 998, 44 Mich. 7, 38 Am. Rep. 222.

The ordinance provides that the navigable waters leading to the Mississippi and St. Lawrence and the carrying places between the same shall be common highways and forever free to the inhabitants of the territory and citizens of the United States. Held, that Act Mich. April 5, 1869 (Comp. Laws, c. 85), authorizing the formation of corporations for improving the navigation of rivers, and permitting the charging of tolls for the use of the improved stream, does not violate the ordinance. Benjamin v. Manistee River Improvement Co. (1880) 4 N. W. 483, 42 Mich. 628.

The ordinance which declares that certain waters "shall be common highways, and forever free, * * * without any tax, impost, or duty therefor," and Const. Mich. art. 18, § 4, which provides that no law "shall prejudice the rights of individuals to the free navigation of such streams," does not prohibit the state from authorizing a company to improve one of such streams, and to charge tolls for the right to navigate the same. Attorney General v. Manistee River Imp. Co. (1880) 42 Mich. 628, 4 N. W. 483.

Under the ordinance, and the provisions of the Constitution declaring navigable waters common highways, and requiring them to be free, the states may improve such highways and intersecting highways, even though the result be that the use is thereby to some extent impeded. Benjamin v. Manistee River Improvement Co. (1880) 4 N. W. 483, 42 Mich. 628.

ARTICLE V

There shall be formed in the said territory not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The western State, in the said territory, shall be bounded by the Mississippi, the Ohio, and the Wabash Rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern State shall be bounded by the last-mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: Provided, however, And it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever; and shall be at liberty to form a permanent constitution and State government: Provided, The constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these arti-

cles, and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

Notes of Decisions

Formation of state government.—Article 5 of the articles of compact, contained in the ordinance of 1787, secured, absolutely and inviolably, to the people of the territory of Michigan, as established by the act of January 11, 1805, the right to form a perfect constitution and state government whenever said territory should contain 60,000 free inhabitants; and that right could be in no way modified or abridged, or its exercise controlled and restrained, by the general government. The formation of the constitution and government of the state of Michigan must of necessity have preceded her admission into the Union by congress. Scott v. Detroit Young Men's Society's Lessee (Mich. 1843) 1 Doug. 119.

ARTICLE VI

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: Provided always, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid, That the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby, repealed, and declared null and void.

Done by the United States, in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the twelfth.

Notes of Decisions

Slavery or involuntary servitude.—The act of 1807 of the territory of Indiana, provided for the indenturing and registering of negroes and mulattoes, violates the ordinance of 1787, providing that there shall be neither slavery nor involuntary servitude in the territory northwest of the Ohio, otherwise than for the punishment for crime whereof the party shall have been duly convicted. Choisser v. Hargrave (1836) 2 Ill. (1 Scam.) 317.

DECISIONS RELATING TO SUBJECT IN GENERAL

Connecticut Reserve as subject to ordinance.—The Connecticut Reserve, ceded to the United States after the adoption of the ordinance, is subject thereto equally as other parts of the territory northwest of the Ohio river. Palmer v. Cuyahoga County (C. C. 1843) Fed. Cas. No. 10,688.

Force and effect of ordinance in general.—As to the force and effect generally of provisions of the ordinance for the government of the Northwest Territory, see Spooner v. McConnell (C. C. 1838) Fed. Cas. No. 13,245.

Constitution as annulling and superseding provisions.—The provisions of the ordinance, which were subsequently guaranteed by the federal constitution, were practically annulled and superseded thereby. Spooner v. McConnell (C. C. 1838) Fed. Cas. No. 13,245.

The provisions contained in the six articles, which were to remain unalterable, except by common consent of the parties, are still in force, excepting those which are superseded by the guaranties of the federal constitution. and those which have been annulled by the provisions of the state constitutions, which were sanctioned by the congress. Id.

Entry of states into Union.—See, also, notes under § 14, arts. II, III, IV.

The ordinance is not in force in the states formed from such territory, being superseded by the constitutions of the states. Escanaba & L. M. Transp. Co. v. City of Chicago (1883) 107 U. S. 678, 2 Sup. Ct. 185, 27 L. Ed. 442; Huse v. Glover (1886) 119 U. S. 544, 7 Sup. Ct. 313, 30 L. Ed. 487; Sands v. Manistee River Imp. Co. (1887) 123 U. S. 288, 8 Sup. Ct. 113, 31 L. Ed. 149; Woodman v. Kilbourn Mfg. Co. (C. C. 1867) Fed. Cas. No. 17,978; Phœbe v. Jay (1828) 1 Ill. (Breese) 268; People v. Thompson (1895) 155 Ill. 451, 40 N. E. 307; Depew v. Wabash & E. Canal Trustees (1854) 5 Ind. 8; La Plaisance Bay Harbor Co. v. City of Monroe (Mich. 1843) Walk. Ch. 155; Connecticut Mut. Life Ins. Co. v. Cross (1864) 18 Wis. 109.

The ordinance had no force or effect

in Louisiana after its admission as a state, notwithstanding the extension of its benefits to the Orleans Territory by a prior act of Congress. Permoli v. Municipality No. 1 of New Orleans (1845) 3 How. 589, 610, 11 L. Ed. 739.

The ordinance, like all acts of Congress for the government of the territories, had no force in any state after its admission. Van Brocklin v. Anderson (1886) 6 Sup. Ct. 670, 675, 117 U. S. 151, 159, 29 L. Ed. 845.

The ordinance cannot control or limit the authority of a state after its admission. Huse v. Glover (1886) 7 Sup. Ct. 313, 119 U. S. 543, 30 L. Ed. 487, affirming decree (C. C. 1883) 15 Fed. 292; Duluth Lumber Co. v. St. Louis Boom & Improvement Co. (C. C. 1883) 17 Fed. 419.

To give effect, after a change from a territorial government to that of a state, to the provision of the compact contained in the ordinance of 1787 and comprised in the six articles of agreement between the original states and the people and states of the Northwest Territory, which were to remain unalterable except by common consent, that the navigable rivers therein should be free to the inhabitants and citizens of the United States, is not an abridgment of the sovereign power of the state. Spooner v. McConnell (C. C. 1838) Fed. Cas. No. 13,245.

Indiana, by coming into the Union, consented to such provisions of the federal constitution as were repugnant to the compact in the ordinance of 1787 for the government of the Northwest Territory. Vaughan v. Williams (C. C. 1845) Fed. Cas. No. 16,903.

Where a state of the Northwest Territory comes into the Union, the constitution of the United States becomes its fundamental law, and a provision in the compact of 1787, if repugnant to the constitution, is necessarily repealed by it; the common consent required by the compact to annul such provision of the ordinance being found in the formation of a constitution, and consent to come into the Union by the people of the new state, and the acceptance of the constitution and recognition of the state by congress. Id.

The original ordinance concerning the Northwest Territory ceased to be of any force when congress, and a state organized out of such territory, chose to organize and admit such state into the Union. Duluth Lumber Co. v. St. Louis Boom & Improvement Co. (C. C. 1883) 17 Fed. 419.

By the "permanent constitution and state government," mentioned in the ordinance of 1787, and which each of the states to be carved out of the Northwest Territory was to be allowed to form, is to be understood the establishment of a new government, as a substitute for the territorial one, and a constitution instead of the ordinance; and this substitution was to be not for part, but for the whole, of each. La Plaisance Bay Harbor Co. v. Council of City of Monroe (Mich. 1843) Walk. Ch. 155.

When a territory is admitted into the Union, which before admission was governed under the ordinance of 1787, such admission constitutes the common consent required by the ordinance to annul it in part or wholly. Vaughan v. Williams (1845) 1 Ohio Dec. 160.

When Indiana came into the Union she consented to be governed by the provision of the United States constitution, and the other party to the ordinance of 1787 consents thereto by receiving the state into the Union. Id.

—— **Abrogation of provisions by state constitutions.**—Any provisions of the ordinance which are repugnant to the Ohio constitution, sanctioned by congress, are abrogated by its provisions. Spooner v. McConnell (C. C. 1838) Fed. Cas. No. 13,245.

The territory of Indiana, by coming into the Union, consents to such constitutional provisions as are repugnant to the compact in the ordinance. Vaughan v. Williams (C. C. 1845) Fed. Cas. No. 16,903.

CONSTITUTION OF THE UNITED STATES—1787*

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

Notes of Decisions.—See p. 13117, post.

ARTICLE I

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Notes of Decisions.—See p. 13118, post.

Section. 2. [1]The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Notes of Decisions.—See p. 13128, post.

[2]No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Notes of Decisions.—See p. 13129, post.

[3][Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, accord-

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*In May, 1785, a committee of Congress made a report recommending an alteration in the Articles of Confederation, but no action was taken on it, and it was left to the State Legislatures to proceed in the matter. In January, 1786, the Legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other States of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as, when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other States were represented, viz: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report, (drawn by Mr. Hamilton, of New York,) expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the States by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them and afterwards confirmed by the Legislatures of every State, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the Legislatures of those States which had not already done so

ing to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

The clause of this paragraph inclosed in brackets was amended, as to the mode of apportionment of representatives among the several states, by the fourteenth amendment, § 2, post, and as to taxes on incomes without apportionment, by the sixteenth amendment, post.

Notes of Decisions.—See p. 13130, post.

[4] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

Notes of Decisions.—See p. 13132, post.

[5] The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Notes of Decisions.—See p. 13132, post.

Section. 3. [1] [The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.]

This paragraph and the clause of paragraph 2 of this section next following, inclosed in brackets, were superseded by the seventeenth amendment, post.

Notes of Decisions.—See p. 13132, post.

[2] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated

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(with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven States having convened, George Washington, of Virginia, was unanimously elected President, and the consideration of the proposed constitution was commenced. On the 17th of September, 1787, the Constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry, of Massachusetts, and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to Congress, with a resolution stating how the proposed Federal Government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the Constitution so framed, with the resolutions and letter concerning the same, to "be transmitted to the several Legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the convention."

On the 4th of March, 1789, the day which had been fixed for commencing the operations of government under the new Constitution, it had been ratified by the conventions chosen in each State to consider it, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; and New York, July 26, 1788.

The President informed Congress, on the 28th of January, 1790, that North Carolina had ratified the Constitution November 21, 1789; and he informed Congress on the 1st of June, 1790, that Rhode Island had ratified the Constitution May 29, 1789. Vermont, in convention, ratified the Constitution January 10, 1789, and was, by an act of Congress approved February 19, 1791, "received and admitted into this Union as a new and entire member of the United States."

at the Expiration of the second year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]

See note to preceding paragraph of this section.

Notes of Decisions.—See p. 13133, post.

[3] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

Notes of Decisions.—See p. 13133, post.

[4] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

[5] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

[6] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Notes of Decisions.—See p. 13133, post.

[7] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. [1] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Notes of Decisions.—See p. 13134, post.

[2] The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Notes of Decisions.—See p. 13135, post.

Section. 5. [1] Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Notes of Decisions.—See p. 13135, post.

[2] Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Notes of Decisions.—See p. 13136, post.

[3] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.

Notes of Decisions.—See p. 13137, post.

[4] Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Notes of Decisions.—See p. 13138, post.

Section. 6. [1] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

Notes of Decisions.—See p. 13138, post.

[2] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Notes of Decisions.—See p. 13139, post.

Section. 7. [1] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Notes of Decisions.—See p. 13140, post.

[2] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Notes of Decisions.—See p. 13141, post.

[3] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Notes of Decisions.—See p. 13142, post.

Section. 8. [1] The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Notes of Decisions.—See p. 13142, post.

[2] To borrow Money on the credit of the United States;

Notes of Decisions.—See p. 13153, post.

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Notes of Decisions.—See p. 13155, post.

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

Notes of Decisions.—See p. 13474, post.

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Notes of Decisions.—See p. 13482, post.

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

Notes of Decisions.—See p. 13483, post.

[7] To establish Post Offices and post Roads;

Notes of Decisions.—See p. 13485, post.

[8] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Notes of Decisions.—See p. 13489, post.

[9] To constitute Tribunals inferior to the supreme Court;

Notes of Decisions.—See p. 13496, post.

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

Notes of Decisions.—See p. 13496, post.

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

Notes of Decisions.—See p. 13497, post.

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Notes of Decisions.—See p. 13501, post.

[13] To provide and maintain a Navy;

Notes of Decisions.—See p. 13503, post.

[14] To make Rules for the Government and Regulation of the land and naval Forces;

Notes of Decisions.—See p. 13504, post.

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Notes of Decisions.—See p. 13505, post.

[16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

Notes of Decisions.—See p. 13508, post.

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

Notes of Decisions.—See p. 13509, post.

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested

by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Notes of Decisions.—See p. 13525, post.

Section. 9. [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Notes of Decisions.—See p. 13531, post.

[2] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Notes of Decisions.—See p. 13531, post.

[3] No Bill of Attainder or expost facto Law shall be passed.

Notes of Decisions.—See p. 13534, post.

[4] No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

Notes of Decisions.—See p. 13539, post.

[5] No Tax or Duty shall be laid on Articles exported from any State.

Notes of Decisions.—See p. 13541, post.

[6] No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

Notes of Decisions.—See p. 13543, post.

[7] No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Notes of Decisions.—See p. 13544, post.

[8] No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Notes of Decisions.—See p. 13546, post.

Section. 10. [1] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Notes of Decisions.—See vol. 11, p. 13549.

[2] No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

Notes of Decisions.—See vol. 11, p. 13847.

[3] No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign

Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Notes of Decisions.—See vol. 11, p. 13856.

ARTICLE II

Section. 1. [1] The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Notes of Decisions.—See vol. 11, p. 13862.

[2] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

Notes of Decisions.—See vol. 11, p. 13867.

[The electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.]

This paragraph, inclosed in brackets, was superseded by the twelfth amendment, post.

Notes of Decisions.—See vol. 11, p. 13868.

[3] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

Notes of Decisions.—See vol. 11, p. 13869.

[4] No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

Notes of Decisions.—See vol. 11, p. 13869.

[5] In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

Notes of Decisions.—See vol. 11, p. 13869.

[6] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Notes of Decisions.—See vol. 11, p. 13869.

[7] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Notes of Decisions.—See vol. 11, p. 13869.

Section. 2. [1] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

Notes of Decisions.—See vol. 11, p. 13870.

[2] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Notes of Decisions.—See vol. 11, p. 13882.

[3] The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Notes of Decisions.—See vol. 11, p. 13897.

Section. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Notes of Decisions.—See vol. 11, p. 13901.

Section. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Notes of Decisions.—See vol. 11, p. 13906.

ARTICLE III

Section. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Notes of Decisions.—See vol. 11, p. 13906.

Section. 2. [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between citizens of different States;—between citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Notes of Decisions.—See vol. 11, p. 14015.

[2] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Notes of Decisions.—See vol. 11, p. 14111.

[3] The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Notes of Decisions.—See vol. 11, p. 14116.

Section. 3. [1] Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

Notes of Decisions.—See vol. 11, p. 14120.

[2] The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Notes of Decisions.—See vol. 11, p. 14121.

ARTICLE IV

Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Notes of Decisions.—See vol. 11, p. 14121.

Section. 2. [1] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Notes of Decisions.—See vol. 11, p. 14208.

[2] A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

Notes of Decisions.—See vol. 11, p. 14228.

[3] No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Notes of Decisions.—See vol. 11, p. 14244.

Section. 3. [1] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

Notes of Decisions.—See vol. 11, p. 14246.

[2] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Notes of Decisions.—See vol. 11, p. 14252.

Section. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Notes of Decisions.—See vol. 11, p. 14272.

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand

eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Notes of Decisions.—See vol. 11, p. 14275.

ARTICLE VI

[1] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

Notes of Decisions.—See vol. 11, p. 14276.

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Notes of Decisions.—See vol. 11, p. 14276.

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Notes of Decisions.—See vol. 11, p. 14302.

ARTICLE VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven, and of the Independance of the United States of America the Twelfth IN WITNESS whereof We have hereunto subscribed our Names,

G°: WASHINGTON—
Presidt. and Deputy from Virginia

New Hampshire

JOHN LANGDON — NICHOLAS GILMAN

Massachusetts

NATHANIEL GORHAM — RUFUS KING

Connecticut

WM. SAML. JOHNSON — ROGER SHERMAN

New York

ALEXANDER HAMILTON

New Jersey

WIL: LIVINGSTON — WM. PATERSON
DAVID BREARLEY — JONA: DAYTON

Pennsylvania

B. FRANKLIN — THOS. FITZSIMONS
THOMAS MIFFLIN — JARED INGERSOLL
ROBT. MORRIS — JAMES WILSON
GEO. CLYMER — GOUV MORRIS

Delaware

GEO: READ
GUNNING BEDFORD Jun
JOHN DICKINSON
RICHARD BASSETT
JACO: BROOM

Maryland

JAMES McHENRY
DAN OF ST THOS JENIFER
DANL. CARROLL

Virginia

JOHN BLAIR—
JAMES MADISON Jr.

North Carolina

WM. BLOUNT
RICHD. DOBBS SPAIGHT
HU WILLIAMSON.

South Carolina

J. RUTLEDGE,
CHARLES COTESWORTH PINCKNEY
CHARLES PINCKNEY
PIERCE BUTLER.

Georgia

WILLIAM FEW
ABR BALDWIN

Attest WILLIAM JACKSON· Secretary

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION

[ARTICLE I]*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Notes of Decisions.—See vol. 11, p. 14304.

[ARTICLE II]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Notes of Decisions.—See vol. 11, p. 14309.

[ARTICLE III]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Notes of Decisions.—See vol. 11, p. 14310.

*The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September, 1789. They were ratified by the following States, and the notifications of ratification by the governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791, and Virginia, December 15, 1791. There is no evidence on the journals of Congress that the legislatures of Connecticut, Georgia, and Massachusetts ratified them.

[ARTICLE IV]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Notes of Decisions.—See vol. 11, p. 14311.

[ARTICLE V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Notes of Decisions.—See vol. 11, p. 14320.

[ARTICLE VI]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Notes of Decisions.—See vol. 11, p. 14388.

[ARTICLE VII]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Notes of Decisions.—See vol. 11, p. 14401.

[ARTICLE VIII]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Notes of Decisions.—See vol. 11, p. 14413.

[ARTICLE IX]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Notes of Decisions.—See vol. 11, p. 14416.

[ARTICLE X]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Notes of Decisions.—See vol. 11, p. 14417.

[ARTICLE XI]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The eleventh amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Third Congress, on the 5th September, 1794, and was declared in a message from the President to Congress, dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the States.

Notes of Decisions.—See vol. 11, p. 14422.

[ARTICLE XII]

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; —The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

The twelfth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Eighth Congress, on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article, and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States.

Notes of Decisions.—See vol. 11, p. 14435.

[ARTICLE XIII]

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted,

shall exist within the United States, or any place subject to their jurisdiction.

Notes of Decisions.—See vol. 11, p. 14435.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Notes of Decisions.—See vol. 11, p. 14439.

The thirteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-eighth Congress, on the 1st of February, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States, viz: Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia.

[ARTICLE XIV]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Notes of Decisions.—See vol. 11, p. 14441.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Notes of Decisions.—See vol. 11, p. 14974.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

The disability created by this section was removed by Act June 6, 1898, c. 389, 30 Stat. 432, ante, § 3219.

Notes of Decisions.—See vol. 11, p. 14975.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emanci-

pation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Notes of Decisions.—See vol. 11, p. 14976.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Notes of Decisions.—See vol. 11, p. 14976.

The fourteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 16th of June, 1866. On the 21st of July, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution, declaring that "the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, New Hampshire, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the Thirty-ninth Congress: Therefore, Resolved, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated the 28th of July 1868, declaring that the proposed fourteenth amendment had been ratified, in the manner hereafter mentioned, by the legislatures of thirty of the thirty-six States, viz: Connecticut, June 30, 1866; New Hampshire, July 7, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866, (and the legislature of the same State passed a resolution in April, 1868, to withdraw its consent to it;) Oregon, September 19, 1866; Vermont, November 9, 1866; Georgia rejected it November 13, 1866, and ratified it July 21, 1868; North Carolina rejected it December 4, 1866, and ratified it July 4, 1868; South Carolina rejected it December 20, 1866, and ratified it July 9, 1868; New York ratified it January 10, 1867; Ohio ratified it January 11, 1867, (and the legislature of the same State passed a resolution in January, 1868, to withdraw its consent to it;) Illinois ratified it January 15, 1867; West Virginia, January 16, 1867; Kansas, January 18, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Missouri, January 26, 1867; Indiana, January 29, 1867; Minnesota, February 1, 1867; Rhode Island, February 7, 1867; Wisconsin, February 13, 1867; Pennsylvania, February 13, 1867; Michigan, February 15, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, April 3, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; Louisiana, July 9, 1868; and Alabama, July 13, 1868. Georgia again ratified the amendment February 2, 1870. Texas rejected it November 1, 1866, and ratified it February 18, 1870. Virginia rejected it January 19, 1867, and ratified October 8, 1869. The amendment was rejected by Kentucky January 10, 1867; by Delaware February 8, 1867; by Maryland March 23, 1867, and was not afterward ratified by either State.

[ARTICLE XV]

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Notes of Decisions.—See vol. 11, p. 14977.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Notes of Decisions.—See vol. 11, p. 14983.

The fifteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Fortieth Congress, on the 27th of February, 1869, and was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven States. The dates of these ratifications (arranged in the order of their reception at the Department of State) were: from North Carolina, March 5, 1869; West Virginia, March 3, 1869; Massachusetts, March 9–12, 1869; Wisconsin, March 9, 1869; Maine, March 12, 1869; Louisiana, March 5, 1869; Michigan, March 8, 1869; South Carolina, March 16, 1869; Pennsylvania, March 26, 1869; Arkansas, March 30, 1869; Connecticut, May 19, 1869; Florida, June 15, 1869; Illinois, March 5, 1869; Indiana, May 13–14, 1869; New York, March 17–April 14, 1869, (and the legislature of the same State passed a resolution January 5, 1870, to withdraw

its consent to it;) New Hampshire, July 7, 1869; Nevada, March 1, 1869; Vermont, October 21, 1869; Virginia, October 8, 1869; Missouri, January 10, 1870; Mississippi, January 15–17, 1870; Ohio, January 27, 1870; Iowa, February 3, 1870; Kansas, January 18–19, 1870; Minnesota, February 19, 1870; Rhode Island, January 18, 1870; Nebraska, February 17, 1870; Texas, February 18, 1870. The State of Georgia also ratified the amendment February 2, 1870.

[ARTICLE XVI]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

The sixteenth amendment to the Constitution of the United States was proposed to the legislatures of the several states by the Sixty-First Congress, on the 31st of July, 1909, and was declared, in a proclamation by the Secretary of State, dated the 25th of February, 1913, to have been ratified by the legislatures of the states of Alabama, Kentucky, South Carolina, Illinois, Mississippi, Oklahoma, Maryland, Georgia, Texas, Ohio, Idaho, Oregon, Washington, California, Montana, Indiana, Nevada, North Carolina, Nebraska, Kansas, Colorado, North Dakota, Michigan, Iowa, Missouri, Maine, Tennessee, Arkansas, Wisconsin, New York, South Dakota, Arizona, Minnesota, Louisiana, Delaware, and Wyoming, in all thirty-six, said states constituting three-fourths of the whole number of states. The legislatures of New Jersey and New Mexico also passed resolutions ratifying the said proposed amendment.

Notes of Decisions.—See vol. 11, p. 14983.

[ARTICLE XVII]

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

The seventeenth amendment to the Constitution of the United States was proposed to the legislatures of the several states by the Sixty-Second Congress, on the 15th of May, 1912, in lieu of the original first paragraph of section 3 of article I, and in lieu of so much of paragraph 2 of the same section as related to the filling of vacancies, and was declared, in a proclamation by the Secretary of State, dated the 31st of May, 1913, to have been ratified by the legislatures of the states of Massachusetts, Arizona, Minnesota, New York, Kansas, Oregon, North Carolina, California, Michigan, Idaho, West Virginia, Nebraska, Iowa, Montana, Texas, Washington, Wyoming, Colorado, Illinois, North Dakota, Nevada, Vermont, Maine, New Hampshire, Oklahoma, Ohio, South Dakota, Indiana, Missouri, New Mexico, New Jersey, Tennessee, Arkansas, Connecticut, Pennsylvania, and Wisconsin, said states constituting three-fourths of the whole number of states.

Notes of Decisions.—See vol. 11, p. 14984.

ANALYTICAL INDEX*

TO THE TEXT OF

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If no person have a majority of the electoral votes for President and Vice-President, the House of Representatives shall immediately choose the President by. [Amendments]	12	—	—
BANKRUPTCIES. Congress shall have power to pass uniform laws on the subject of	1	8	4
BASIS of representation among the several States. Provisions relating to the. [Amendments]	14	2	—
BEAR ARMS shall not be infringed. A well-regulated militia being necessary to the security of a free State, the right of the people to keep and. [Amendments]	2	—	—
BEHAVIOR. The judges of the Supreme and inferior courts shall hold their offices during good	3	1	—
BILL of attainder or ex post facto law shall be passed. No	1	9	3
BILL of attainder, ex post facto law, or law impairing the obligation of contracts. No State shall pass any	1	10	1
BILLS of credit. No State shall emit	1	10	1
BILLS for raising revenue shall originate in the House of Representatives. All	1	7	1
BILLS which shall have passed the Senate and House of Representatives shall, before they become laws, be presented to the President	1	7	2
If he approve, he shall sign them; if he disapprove, he shall return them, with his objections, to that House in which they originated	1	7	2
Upon the reconsideration of a bill returned by the President with his objections, if two-thirds of each House agree to pass the same, it shall become a law	1	7	2
Upon the reconsideration of a bill returned by the President, the question shall be taken by yeas and nays	1	7	2
Not returned by the President within ten days (Sundays excepted), shall, unless Congress adjourn, become laws	1	7	2
BORROW money on the credit of the United States. Congress shall have power to	1	8	2

	Art.	Sec.	Cl.
BOUNTIES and pensions, shall not be questioned. The validity of the public debt incurred in suppressing insurrection and rebellion against the United States, including the debt for. [Amendments]	14	4	—
BREACH of the peace, shall be privileged from arrest while attending the session, and in going to and returning from the same. Senators and Representatives, except for treason, felony, and..	1	6	1
BRIBERY, or other high crimes and misdemeanors. The President, Vice-President, and all civil officers shall be removed on impeachment for and conviction of treason	2	4	—
CAPITAL or otherwise infamous crime, unless on indictment of a grand jury, except in certain specified cases. No person shall be held to answer for a. [Amendments]	5	—	—
CAPITATION or other direct tax shall be laid unless in proportion to the census or enumeration. No. [Amended by 16th amendment]	1	9	4
CAPTURES on land and water. Congress shall make rules concerning	1	8	11
CASTING VOTE. The Vice-President shall have no vote unless the Senate be equally divided	1	3	4
CENSUS or enumeration of the inhabitants shall be made within three years after the first meeting of Congress, and within every subsequent term of ten years thereafter	1	2	3
CENSUS or enumeration. No capitation or other direct tax shall be laid except in proportion to the. [Amended by 16th amendment]	1	9	4
CHIEF JUSTICE shall preside when the President of the United States is tried upon impeachment. The	1	3	6
CHOOSING the electors and the day on which they shall give their votes, which shall be the same throughout the United States. Congress may determine the time of	2	1	3
CITIZEN of the United States at the adoption of the Constitution shall be eligible to the office of President. No person not a natural-born	2	1	4
CITIZEN of the United States. No person shall be a Senator who shall not have attained the age of thirty years, and been nine years a	1	3	3
No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a	1	2	1
CITIZENSHIP. Citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States	4	2	1
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. [Amendments]	14	1	—
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. [Amendments]	14	1	—
Nor shall any State deprive any person of life, liberty, or property without due process of law. [Amendments]	14	1	—
Nor deny to any person within its jurisdiction the equal protection of the laws. [Amendments]	14	1	—
CITIZENS OR SUBJECTS of a foreign state. The judicial power of the United States shall not extend to suits in law or equity brought against one of the States by the citizens of another State, or by. [Amendments]	11	—	—
CIVIL OFFICERS of the United States shall, on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors, be removed. All	2	4	—
CLAIMS of the United States or any particular State in the territory or public property. Nothing in this Constitution shall be construed to prejudice	4	3	2
CLASSIFICATION OF SENATORS. Immediately after they shall be assembled after the first election, they shall be divided as equally as may be into three classes	1	3	2
The seats of the Senators of the first class shall be vacated at the expiration of the second year	1	3	2
The seats of the Senators of the second class at the expiration of the fourth year	1	3	2
The seats of the Senators of the third class at the expiration of the sixth year	1	3	2

	Art.	Sec.	Cl.
COIN a tender in payment of debts. No State shall make anything but gold and silver	1	10	1
COIN money and regulate the value thereof and of foreign coin. Congress shall have power to	1	8	5
COIN of the United States. Congress shall provide for punishing the counterfeiting the securities and current	1	8	6
COLOR, or previous condition of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race. [Amendments]	15	1	—
COMFORT. Treason against the United States shall consist in levying war against them, and giving their enemies aid and	3	3	1
COMMANDER-IN-CHIEF of the Army and Navy, and of the militia when in actual service. The President shall be	2	2	1
COMMERCE with foreign nations, among the States, and with Indian tribes. Congress shall have power to regulate	1	8	3
COMMERCE OR REVENUE. No preference shall be given to the ports of one State over those of another by any regulation of	1	9	6
Vessels clearing from the ports of one State shall not pay duties in those of another	1	9	6
COMMISSIONS to expire at the end of the next session. The President may fill vacancies that happen in the recess of the Senate by granting	2	2	3
COMMON DEFENSE, promote the general welfare, &c. To insure the. [Preamble]	—	—	—
COMMON DEFENSE and general welfare. Congress shall have power to provide for the	1	8	1
COMMON LAW, where the amount involved exceeds twenty dollars, shall be tried by jury. Suits at. [Amendments]	7	—	—
No fact tried by a jury shall be otherwise reëxamined in any court of the United States than according to the rules of the. [Amendments]	7	—	—
COMPACT with another State. No State shall, without the consent of Congress, enter into any agreement or	1	10	3
COMPACT with a foreign power. No State shall, without the consent of Congress, enter into any agreement or	1	10	3
COMPENSATION of Senators and Representatives to be ascertained by law	1	6	1
COMPENSATION of the President shall not be increased nor diminished during the period for which he shall be elected	2	1	6
COMPENSATION of the judges of the Supreme and inferior courts shall not be diminished during their continuance in office	3	1	—
COMPENSATION. Private property shall not be taken for public use without just. [Amendments]	5	—	—
COMPULSORY PROCESS for obtaining witnesses in his favor. In criminal prosecutions the accused shall have. [Amendments]	6	—	—
CONFEDERATION. No State shall enter into any treaty, alliance, or	1	10	1
CONFEDERATION. All debts contracted and engagements entered into before the adoption of this Constitution shall be valid against the United States under it, as under the	6	—	1
CONFESSION in open court. Conviction of treason shall be on the testimony of two persons to the overt act, or upon	3	3	1
CONGRESS of the United States. All legislative powers shall be vested in a	1	1	—
Shall consist of a Senate and House of Representatives	1	1	—
Shall assemble at least once in every year, which shall be on the first Monday of December, unless they by law appoint a different day	1	4	2
May at any time alter regulations for elections of Senators and Representatives, except as to the places of choosing Senators	1	4	1
Each House shall be the judge of the elections, returns, and qualifications of its own members	1	5	1
A majority of each House shall constitute a quorum to do business	1	5	1
A smaller number may adjourn from day to day and compel the attendance of absent members	1	5	1

	Art.	Sec.	Cl.
CONGRESS of the United States—Continued.			
Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member	1	5	2
Each House shall keep a journal of its proceedings	1	5	3
Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days	1	5	4
Senators and Representatives shall receive a compensation to be ascertained by law	1	6	1
They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during attendance at their respective Houses, and in going to and returning from the same	1	6	1
No Senator or Representative shall, during his term, be appointed to any civil office which shall have been created, or of which the emoluments shall have been increased, during such term	1	6	2
No person holding any office under the United States, shall, while in office, be a member of either House of Congress	1	6	2
All bills for raising revenue shall originate in the House of Representatives	1	7	1
Proceedings in cases of bills returned by the President with his objections	1	7	2
Shall have power to lay and collect duties, imposts, and excises, pay the debts, and provide for the common defense and general welfare	1	8	1
Shall have power to borrow money on the credit of the United States	1	8	2
To regulate foreign and domestic commerce, and with the Indian tribes	1	8	3
To establish uniform rule of naturalization and uniform laws on the subject of bankruptcies	1	8	4
To coin money, regulate its value and the value of foreign coin, and to fix the standard of weights and measures	1	8	5
To punish the counterfeiting the securities and current coin of the United States	1	8	6
To establish post-offices and post-roads	1	8	7
To promote the progress of science and the useful arts	1	8	8
To constitute tribunals inferior to the Supreme Court	1	8	9
To define and punish piracies and felonies on the high seas and to punish offenses against the law of nations	1	8	10
To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water	1	8	11
To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years	1	8	12
To provide and maintain a Navy	1	8	13
To make rules for the government of the Army and Navy	1	8	14
To call out the militia to execute the laws, suppress insurrections, and repel invasions	1	8	15
To provide for organizing, arming, and equipping the militia	1	8	16
To exercise exclusive legislation over the District fixed for the seat of government, and over forts, magazines, arsenals, and dockyards	1	8	17
To make all laws necessary and proper to carry into execution all powers vested by the Constitution in the Government of the United States	1	8	18
No person holding any office under the United States shall accept of any present, emolument, office, or title of any kind from any foreign state, without the consent of	1	9	8
May determine the time of choosing the electors for President and Vice-President and the day on which they shall give their votes	2	1	3
The President may, on extraordinary occasions, convene either House of	2	3	—
The manner in which the acts, records, and judicial proceedings of the States shall be prescribed by	4	1	—
New States may be admitted by Congress into this Union	4	3	1
Shall have power to make all needful rules and regulations respecting the territory or other property belonging to the United States	4	3	2
Amendments to the Constitution shall be proposed whenever it shall be deemed necessary by two-thirds of both Houses of	5	—	—
Persons engaged in insurrection or rebellion against the United States disqualified for Senators or Representatives in. [Amendments]	14	3	—

	Art.	Sec.	Cl.
CONGRESS of the United States—Continued.			
But such disqualification may be removed by a vote of two-thirds of both Houses of. [Amendments]	14	3	—
Shall have power to enforce, by appropriate legislation, the thirteenth amendment. [Amendments]	13	2	—
Shall have power to enforce, by appropriate legislation, the fourteenth amendment. [Amendments]	14	5	—
Shall have power to enforce, by appropriate legislation, the fifteenth amendment. [Amendments]	15	2	—
Shall have power to lay and collect taxes on incomes, from whatever source derived. [Amendments]	16	—	—
CONSENT. No State shall be deprived of its equal suffrage in the Senate without its	5	—	—
CONSENT OF CONGRESS. No person holding any office of profit or trust under the United States shall accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign potentate, without the	1	9	8
No State shall lay any imposts, or duties on imports, except what may be absolutely necessary for executing its inspection laws, without the	1	10	2
No State shall lay any duty of tonnage, keep troops or ships of war in time of peace without the	1	10	3
No State shall enter into any agreement or compact with another State, or with a foreign power, without the	1	10	3
No State shall engage in war unless actually invaded, or in such imminent danger as will not admit of delay, without the	1	10	3
No new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures thereof, as well as the	4	3	1
CONSENT of the legislature of the State in which the same may be. Congress shall exercise exclusive authority over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other needful buildings by the	1	8	17
CONSENT of the legislatures of the States and of Congress. No States shall be formed by the junction of two or more States or parts of States without the	4	3	1
CONSENT OF THE OTHER. Neither House, during the session of Congress, shall adjourn for more than three days, nor to any other place than that in which they shall be sitting, without the	1	5	4
CONSENT OF THE OWNER. No soldier shall be quartered in time of peace in any house without the. [Amendments]	3	—	—
CONSENT OF THE SENATE. The President shall have power to make treaties, by and with the advice and	2	2	2
The President shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers created by law and not otherwise herein provided for, by and with the advice and	2	2	2
CONSTITUTION, in the Government of the United States, or in any department or officer thereof. Congress shall have power to pass all laws necessary to the execution of the powers vested by the	1	8	18
CONSTITUTION, shall be eligible to the office of President. No person except a natural-born citizen, or a citizen at the time of the adoption of the	2	1	4
CONSTITUTION. The President, before he enters upon the execution of his office, shall take an oath to preserve, protect, and defend the	2	1	7
CONSTITUTION, laws, and treaties of the United States. The judicial power shall extend to all cases arising under the	3	2	1
CONSTITUTION shall be so construed as to prejudice any claims of the United States, or of any State (in respect to territory or other property of the United States). Nothing in the	4	3	2
CONSTITUTION. The manner in which amendments may be proposed and ratified	5	—	—
CONSTITUTION as under the Confederation shall be valid. All debts and engagements contracted before the adoption of the	6	—	1
CONSTITUTION and the laws made in pursuance thereof, and all treaties made, or which shall be made, by the United States, shall be the supreme law of the land. The	6	—	2

	Art.	Sec.	Cl.
CONSTITUTION—Continued.			
The judges in every State, anything in the constitution or laws of a State to the contrary notwithstanding, shall be bound thereby	6	—	2
CONSTITUTION. All officers, legislative, executive, and judicial, of the United States, and of the several States, shall be bound by an oath to support the	6	—	3
But no religious test shall ever be required as a qualification for any office or public trust	6	—	3
CONSTITUTION between the States so ratifying the same. The ratification of the conventions of nine States shall be sufficient for the establishment of the	7	—	—
CONSTITUTION, of certain rights, shall not be construed to deny or disparage others retained by the people. The enumeration in the. [Amendments]	9	—	—
CONSTITUTION, nor prohibited by it to the States, are reserved to the State respectively or to the people. Powers not delegated to the United States by the. [Amendments]	10	—	—
CONSTITUTION, and then engaged in rebellion against the United States. Disqualification for office imposed upon certain class of persons who took an oath to support the. [Amendments]	14	3	—
CONSTITUTION. Done in convention by the unanimous consent of the States present, September 17, 1787	7	—	2
CONTRACTS. No State shall pass any ex post facto law, or law impairing the obligation of	1	10	1
CONTROVERSIES to which the United States shall be a party: between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; between a State or its citizens and foreign states, citizens, or subjects. The judicial power shall extend to	3	2	1
CONVENE CONGRESS or either House, on extraordinary occasions. The President may	2	3	—
CONVENTION for proposing amendments to the Constitution. Congress, on the application of two-thirds of the legislatures of the States, may call a	5	—	—
CONVENTION, by the unanimous consent of the States present on the 17th of September, 1787. Adoption of the Constitution in	7	—	2
CONVENTIONS of nine States shall be sufficient for the establishment of the Constitution. The ratification of the	7	—	—
CONVICTION in cases of impeachment shall not be had without the concurrence of two-thirds of the members present	1	3	7
COPYRIGHTS to authors for limited times. Congress shall have power to provide for	1	8	8
CORRUPTION OF BLOOD. Attainder of treason shall not work	3	3	2
COUNSEL for his defense. In all criminal prosecutions the accused shall have the assistance of. [Amendments]	6	—	—
COUNTERFEITING the securities and current coin of the United States. Congress shall provide for the punishment of	1	8	6
COURTS. Congress shall have power to constitute tribunals inferior to the Supreme Court	1	8	9
COURTS OF LAW. Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the heads of departments, or in the	2	2	2
COURTS as Congress may establish. The judicial power of the United States shall be vested in one Supreme Court and such inferior	3	1	—
COURTS. The judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	—
Their compensation shall not be diminished during their continuance in office	3	1	—
CREDIT. No State shall emit bills of	1	10	1
CREDIT of the United States. Congress shall have power to borrow money on the	1	8	2
CREDIT shall be given in every other State to the public acts, records, and judicial proceedings of each State. Full faith and	4	1	—

	Art.	Sec.	Cl.
CRIME, unless on a presentment of a grand jury. No person shall be held to answer for a capital or otherwise infamous. [Amendments]	5	—	—
Except in cases in the military and naval forces, or in the militia when in actual service. [Amendments]	5	—	—
CRIMES AND MISDEMEANORS. The President, Vice-President, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other	2	4	—
CRIMES, except in cases of impeachment, shall be tried by jury. All	3	2	3
They shall be tried in the State within which they may be committed	3	2	3
When not committed in a State, they shall be tried at the places which Congress may by law have provided	3	2	3
CRIMINAL PROSECUTIONS, the accused shall have a speedy and public trial by jury in the State and district where the crime was committed. In all. [Amendments]	6	—	—
He shall be informed of the nature and cause of the accusation. [Amendments]	6	—	—
He shall be confronted with the witnesses against him. [Amendments]	6	—	—
He shall have compulsory process for obtaining witnesses in his favor. [Amendments]	6	—	—
He shall have the assistance of counsel in his defense. [Amendments]	6	—	—
CRIMINATE HIMSELF. No person as a witness shall be compelled to. [Amendments]	5	—	—
CRUEL AND UNUSUAL PUNISHMENTS inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor. [Amendments]	8	—	—
DANGER as will not admit of delay. No state shall, without the consent of Congress, engage in war, unless actually invaded, or in such imminent	1	10	3
DAY on which they shall vote for President and Vice-President, which shall be the same throughout the United States. Congress may determine the time of choosing the electors, and the	2	1	3
DAY TO DAY, and may be authorized to compel the attendance of absent members. A smaller number than a quorum of each House may adjourn from	1	5	1
DEATH, resignation, or inability of the President, the powers and duties of his office shall devolve on the Vice-President. In case of the	2	1	5
DEATH, resignation, or inability of the President. Congress may provide by law for the case of the removal	2	1	5
DEBT of the United States, including debts for pensions and bounties incurred in suppressing insurrection or rebellion, shall not be questioned. The validity of the public. [Amendments]	14	4	—
DEBTS. No State shall make anything but gold and silver coin a tender in payment of	1	10	1
DEBTS and provide for the common defense and general welfare of the United States. Congress shall have power to pay the	1	8	1
DEBTS and engagements contracted before the adoption of this Constitution shall be as valid against the United States, under it, as under the Confederation	6	—	1
DEBTS or obligations incurred in aid of insurrection or rebellion against the United States, or claims for the loss or emancipation of any slave. Neither the United States nor any State shall assume or pay any. [Amendments]	14	4	—
DECLARE WAR, grant letters of marque and reprisal, and make rules concerning captures on land and water. Congress shall have power to	1	8	11
DEFENSE, promote the general welfare, &c. To insure the common. [Preamble]	—	—	—
DEFENSE and general welfare throughout the United States. Congress shall have power to pay the debts and provide for the common	1	8	1
DEFENSE. In all criminal prosecutions the accused shall have the assistance of counsel for his. [Amendments]	6	—	—
DELAWARE entitled to one Representative in the first Congress	1	2	3

	Art.	Sec.	Cl.
DELAY. No State shall, without the consent of Congress, engage in war unless actually invaded, or in such imminent danger as will not admit of	1	10	3
DELEGATED to the United States, nor prohibited to the States, are reserved to the States or to the people. The powers not. [Amendments]	10	—	—
DENY OR DISPARAGE others retained by the people. The enumeration in the Constitution of certain rights shall not be construed to. [Amendments]	9	—	—
DEPARTMENTS upon any subject relating to their duties. The President may require the written opinion of the principal officers in each of the executive	2	2	1
DEPARTMENTS. Congress may by law vest the appointment of inferior officers in the heads of	2	2	2
DIRECT TAX shall be laid unless in proportion to the census or enumeration. No capitation or other. [Amended by 16th amendment]	1	9	4
DIRECT TAXES and Representatives, how apportioned among the several States. [Amended by 14th amendment, section 2, and by 16th amendment]	1	2	3
DISABILITY of the President and Vice-President. Provisions in case of the	2	1	5
DISABILITY. No person shall be a Senator or Representative in Congress, or presidential elector, or hold any office, civil or military, under the United States, or any State, who having previously taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, to support the Constitution, afterward engaged in insurrection or rebellion against the United States. [Amendments]	14	3	—
But Congress may, by a vote of two-thirds of each House, remove such. [Amendments]	14	3	—
DISAGREEMENT between the two Houses as to the time of adjournment, the President may adjourn them to such time as he may think proper. In case of	2	3	—
DISORDERLY BEHAVIOR. Each House may punish its members for	1	5	2
And with the concurrence of two-thirds expel a member	1	5	2
DISPARAGE others retained by the people. The enumeration in the Constitution of certain rights shall not be construed to deny or. [Amendments]	9	—	—
DISQUALIFICATION. No Senator or Representative shall, during the time for which he was elected, be appointed to any office under the United States which shall have been created or its emoluments increased during such term	1	6	2
No person holding any office under the United States shall be a member of either House during his continuance in office	1	6	2
No person shall be a member of either House, presidential elector, or hold any office under the United States, or any State, who, having previously sworn to support the Constitution, afterward engaged in insurrection or rebellion. [Amendments]	14	3	—
But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments]	14	3	—
DISTRICT OF COLUMBIA. Congress shall exercise exclusive legislation in all cases over the	1	8	17
DOCKYARDS. Congress shall have exclusive authority over all places purchased for the erection of	1	8	17
DOMESTIC TRANQUILLITY, provide for the common defense, &c. To insure. [Preamble]	—	—	—
DOMESTIC VIOLENCE. The United States shall protect each State against invasion and	4	4	—
DUE PROCESS OF LAW. No person shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property without. [Amendments]	5	—	—
No State shall deprive any person of life, liberty, or property without. [Amendments]	14	1	—
DUTIES AND POWERS of the office of President, in case of his death, removal, or inability to act, shall devolve on the Vice-President	2	1	5
In case of the disability of the President and Vice-President, Congress shall declare what officer shall act	2	1	5

	Art.	Sec.	Cl.
DUTIES, imposts, and excises. Congress shall have power to lay and collect taxes	1	8	1
Shall be uniform throughout the United States	1	8	1
DUTIES shall be laid on articles exported from any State. No tax or	1	9	5
DUTIES in another State. Vessels clearing in the ports of one State shall not be obliged to pay	1	9	6
On imports and exports, without the consent of Congress, except where necessary for executing its inspection laws. No State shall lay any	1	10	2
The net produce of all such duties shall be for the use of the Treasury of the United States	1	10	2
All laws laying such duties shall be subject to the revision and control of Congress	1	10	2
DUTY OF TONNAGE without the consent of Congress. No State shall lay any	1	10	3
ELECTION of President and Vice-President. Congress may determine the day for the	2	1	3
Shall be the same throughout the United States. The day of the	2	1	3
ELECTIONS for Senators and Representatives. The legislatures of the States shall prescribe the times, places, and manner of holding	1	4	1
But Congress may, at any time, alter such regulations, except as to the places of choosing Senators	1	4	1
Returns and qualifications of its own members. Each House shall be the judge of the	1	5	1
ELECTORS for members of the House of Representatives. Qualifications of	1	2	1
ELECTORS for President and Vice-President. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress	2	1	2
But no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector	2	1	2
Congress may determine the time of choosing the electors and the day on which they shall give their votes	2	1	3
Which day shall be the same throughout the United States	2	1	3
The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves. [Amendments]	12	—	—
They shall name, in their ballots, the person voted for as President; and in distinct ballots the person voted for as Vice-President. [Amendments]	12	—	—
They shall make distinct lists of the persons voted for as President and of persons voted for as Vice-President, which they shall sign and certify, and transmit sealed to the seat of government, directed to the President of the Senate. [Amendments]	12	—	—
No person having taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, and afterwards engaged in insurrection or rebellion against the United States, shall be an elector	14	3	—
But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments]	14	3	—
ELECTORS for Senators. Qualifications of. [Amendments]	17	—	—
EMANCIPATION of any slave shall be held to be illegal and void. Claims for the loss or. [Amendments]	14	4	—
EMIT BILLS OF CREDIT. No State shall	1	10	1
EMOLUMENT of any kind from any king, prince, or foreign state, without the consent of Congress. No person holding any office under the United States shall accept any	1	9	8
ENEMIES. Treason shall consist in levying war against the United States, in adhering to, or giving aid and comfort to their	3	3	1
ENGAGEMENTS contracted before the adoption of this Constitution shall be valid. All debts and	6	—	1

	Art.	Sec.	Cl.
ENUMERATION of the inhabitants shall be made within three years after the first meeting of Congress, and within every subsequent term of ten years thereafter	1	2	3
Ratio of representation not to exceed one for every 30,000 until the first enumeration shall be made	1	2	3
ENUMERATION in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. The. [Amendments]	9	—	—
EQUAL PROTECTION of the laws. No State shall deny to any person within its jurisdiction the. [Amendments]	14	1	—
EQUAL SUFFRAGE in the Senate. No State shall be deprived without its consent, of its	5	—	—
ESTABLISHMENT of this Constitution between the States ratifying the same. The ratification of nine States shall be sufficient for the	7	—	—
EXCESSIVE BAIL shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. [Amendments]	8	—	—
EXCISES. Congress shall have power to lay and collect taxes, duties, imposts, and	1	8	1
Shall be uniform throughout the United States. All duties, imposts, and	1	8	1
EXCLUSIVE LEGISLATION, in all cases, over such district as may become the seat of government. Congress shall exercise	1	8	17
Over all places purchased for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. Congress shall exercise	1	8	17
EXECUTIVE OF A STATE. The United States shall protect each State against invasion and domestic violence, on the application of the legislature or the	4	4	—
EXECUTIVE AND JUDICIAL OFFICERS of the United States and of the several States shall be bound by an oath to support the Constitution	6	—	3
EXECUTIVE DEPARTMENTS. On subjects relating to their duties the President may require the written opinions of the principal officers in each of the	2	2	1
Congress may by law vest the appointment of inferior officers in the heads of	2	2	2
EXECUTIVE POWER shall be vested in a President of the United States of America. The	2	1	1
EXPEL A MEMBER. Each House, with the concurrence of two-thirds, may	1	5	2
EXPENDITURES of public money shall be published from time to time. A regular statement of the receipts and	1	9	7
EXPORTATIONS from any State. No tax or duty shall be laid on	1	9	5
EXPORTS OR IMPORTS, except upon certain conditions. No State shall, without the consent of Congress, lay any duties on	1	10	2
Laid by any State, shall be for the use of the Treasury. The net produce of all duties on	1	10	2
Shall be subject to the revision and control of Congress. All laws of the States laying duties on	1	10	2
EX POST FACTO LAW shall be passed. No bill of attainder or	1	9	3
EX POST FACTO LAW, or law impairing the obligation of contracts. No State shall pass any bill of attainder	1	10	1
EXTRAORDINARY OCCASIONS. The President may convene both houses, or either House of Congress, on	2	3	—
FAITH and credit in each State shall be given to the acts, records, and judicial proceedings of another State. Full	4	1	—
FELONY, and breach of the peace. Members of Congress shall not be privileged from arrest for treason	1	6	1
FELONIES committed on the high seas. Congress shall have power to define and punish piracies and	1	8	10
FINES. Excessive fines shall not be imposed. [Amendments]	8	—	—
FOREIGN COIN. Congress shall have power to coin money, fix the standard of weights and measures, and to regulate the value of	1	8	5

	Art.	Sec.	Cl.
FOREIGN NATIONS, among the States, and with the Indian tribes. Congress shall have power to regulate commerce with	1	8	3
FOREIGN POWER. No State shall, without the consent of Congress, enter into any compact or agreement with any	1	10	3
FORFEITURE, except during the life of the person attainted. Attainder of treason shall not work	3	3	2
FORMATION of new States. Provisions relating to the	4	3	1
FORM OF GOVERNMENT. The United States shall guarantee to every State in this Union a republican	4	4	—
And shall protect each of them against invasion; and on application of the legislature or of the executive (when the legislature cannot be convened), against domestic violence	4	4	—
FORTS, magazines, arsenals, dock-yards, and other needful buildings. Congress shall exercise exclusive authority over all places purchased for the erection of	1	8	17
FREEDOM of speech or the press. Congress shall make no law abridging the. [Amendments]	1	—	—
FREE STATE, the right of the people to keep and bear arms shall not be infringed. A well-regulated militia being necessary to the security of a. [Amendments]	2	—	—
FUGITIVES from crime found in another State shall, on demand, be delivered up to the authorities of the State from which they may flee	4	2	2
FUGITIVES from service or labor in one State, escaping into another State, shall be delivered up to the party to whom such service or labor may be due	4	2	3
GENERAL WELFARE and secure the blessings of liberty, &c. To promote the. [Preamble]	—	—	—
GENERAL WELFARE. Congress shall have power to provide for the common defense and	1	8	1
GEORGIA shall be entitled to three Representatives in the first Congress	1	2	3
GOLD AND SILVER coin a tender in payment of debts. No State shall make anything but	1	10	1
GOOD BEHAVIOR. The judges of the Supreme and inferior courts shall hold their offices during	3	1	—
GOVERNMENT. The United States shall guarantee to every State in this Union a republican form of	4	4	—
And shall protect each of them against invasion, and on application of the legislature or of the executive (when the legislature cannot be convened), against domestic violence	4	4	—
GRAND JURY. No person shall be held to answer for a capital or otherwise infamous crime, unless on the presentment of a. [Amendments]	5	—	—
Except in cases arising in the land and naval forces, and in the militia when in actual service. [Amendments]	5	—	—
GUARANTEE to every State in this Union a republican form of government. The United States shall	4	4	—
And shall protect each of them against invasion; and on application of the legislature or of the executive (when the legislature cannot be convened), against domestic violence	4	4	—
HABEAS CORPUS shall not be suspended unless in cases of rebellion or invasion. The writ of	1	9	2
HEADS OF DEPARTMENTS. Congress may, by law, vest the appointment of inferior officers in the	2	2	2
On any subject relating to their duties, the President may require the written opinion of the principal officers in each of the executive departments	2	2	1
HIGH CRIMES AND MISDEMEANORS. The President, Vice-President, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other	2	4	—
HOUSE OF REPRESENTATIVES. Congress shall consist of a Senate and	1	1	—
Shall be composed of members chosen every second year	1	2	1
Qualifications of electors for members of the	1	2	1
No person shall be a member who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States	1	2	2

	Art.	Sec.	Cl.
HOUSE OF REPRESENTATIVES—Continued.			
The executives of the several States shall issue writs of election to fill vacancies in the	1	2	4
Shall choose their Speaker and other officers	1	2	5
Shall have the sole power of impeachment	1	2	5
Shall be the judge of the elections, returns, and qualifications of its own members	1	5	1
A majority shall constitute a quorum to do business	1	5	1
Less than a majority may adjourn from day to day, and compel the attendance of absent members	1	5	1
May determine its own rules of proceedings	1	5	2
May punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member	1	5	2
Shall keep a journal of its proceedings	1	5	3
Shall not adjourn for more than three days during the session of Congress without the consent of the Senate	1	5	4
Members shall not be questioned for any speech or debate in either House or in any other place	1	6	1
No person holding any office under the United States shall, while holding such office, be a member of the	1	6	2
No person, while a member of either House, shall be appointed to an office which shall have been created or the emoluments increased during his membership	1	6	2
All bills for raising revenue shall originate in the	1	7	1
The votes for President and Vice-President shall be counted in the presence of the Senate and. [Amendments]	12	—	—
If no person have a majority of electoral votes, then from the three highest on the list the House of Representatives shall immediately, by ballot, choose a President. [Amendments]	12	—	—
They shall vote by States, each State counting one vote. [Amendments]	12	—	—
A quorum shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to the choice of a President. [Amendments]	12	—	—
No person having as a legislative, executive, or judicial officer of the United States, or of any State, taken an oath to support the Constitution, and afterwards engaged in insurrection or rebellion against the United States, shall be a member of the. [Amendments]	14	3	—
But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments]	14	3	—
IMMINENT DANGER as will not admit of delay. No State shall, without the consent of Congress, engage in war, unless actually invaded or in such	1	10	3
IMMUNITIES. Members of Congress shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going and returning from the same	1	6	1
No soldier shall be quartered in any house without the consent of the owner in time of peace. [Amendments]	3	—	—
No person shall be twice put in jeopardy of life and limb for the same offence. [Amendments]	5	—	—
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. [Amendments]	14	1	—
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. [Amendments]	14	1	—
Nor shall any State deprive any person of life, liberty, or property without due process of law. [Amendments]	14	1	—
Nor deny to any person within its jurisdiction the equal protection of the law. [Amendments]	14	1	—
IMPEACHMENT. The President may grant reprieves and pardons except in cases of	2	2	1
The House of Representatives shall have the sole power of	1	2	5
IMPEACHMENT for and conviction of treason, bribery, and other high crimes and misdemeanors. The President, Vice-President, and all civil officers shall be removed upon	2	4	—
IMPEACHMENTS. The Senate shall have the sole power to try all	1	3	6
The Senate shall be on oath, or affirmation, when sitting for the trial of	1	3	6

	Art.	Sec.	Cl.
IMPEACHMENTS—Continued.			
When the President of the United States is tried the Chief Justice shall preside	1	3	6
No person shall be convicted without the concurrence of two-thirds of the members present	1	3	6
Judgment shall not extend beyond removal from office and disqualification to hold office	1	3	7
But the party convicted shall be liable to indictment and punishment according to law	1	3	7
IMPORTATION of slaves prior to 1808 shall not be prohibited by the Congress	1	9	1
But a tax or duty of ten dollars for each person may be imposed on such	1	9	1
IMPORTS OR EXPORTS except what may be absolutely necessary for executing its inspection laws. No State shall, without the consent of Congress, lay any imposts or duties on	1	10	2
IMPORTS OR EXPORTS laid by any State shall be for the use of the Treasury. The net produce of all duties on	1	10	2
IMPORTS OR EXPORTS shall be subject to the revision and control of Congress. All laws of States laying duties on	1	10	2
IMPOSTS AND EXCISES. Congress shall have power to lay and collect taxes, duties	1	8	1
Shall be uniform throughout the United States. All taxes, duties	1	8	1
INABILITY of the President, the powers and duties of his office shall devolve on the Vice-President. In case of the death, resignation, or	2	1	5
INABILITY of the President or Vice-President. Congress may provide by law for the case of the removal, death, resignation, or	2	1	5
INCOMES. Congress shall have power to lay and collect taxes on. [Amendments]	16	—	—
INDIAN TRIBES. Congress shall have power to regulate commerce with the	1	8	3
INDICTMENT or presentment of a grand jury. No person shall be held to answer for a capital or infamous crime unless on. [Amendments]	5	—	—
Except in cases arising in the land and naval forces, and in the militia when in actual service. [Amendments]	5	—	—
INDICTMENT, trial, judgment, and punishment, according to law. The party convicted in case of impeachment shall nevertheless be liable and subject to	1	3	7
INFAMOUS CRIME unless on presentment or indictment of a grand jury. No person shall be held to answer for a capital or. [Amendments]	5	—	—
INFERIOR COURTS. Congress shall have power to constitute tribunals inferior to the Supreme Court	1	8	9
INFERIOR COURTS as Congress may establish. The judicial power of the United States shall be vested in one Supreme Court and such	3	1	—
The judges of both the Supreme and inferior courts shall hold their offices during good behavior	3	1	—
Their compensation shall not be diminished during their continuance in office	3	1	—
INFERIOR OFFICERS in the courts of law, in the President alone, or in the heads of Departments. Congress, if they think proper, may by law vest the appointment of	2	2	2
INHABITANT OF THE STATE for which he shall be chosen. No person shall be a Senator who shall not have attained the age of thirty years, been nine years a citizen of the United States, and who shall not, when elected, be an	1	3	3
INSURRECTION OR REBELLION against the United States. No person shall be a Senator or Representative in Congress, or presidential elector, or hold any office, civil or military, under the United States, or any State, who, having taken an oath as a legislative, executive, or judicial officer of the United States, or of a State, afterwards engaged in. [Amendments]	14	3	—
But Congress may, by a vote of two-thirds of each House, remove such disabilities. [Amendments]	14	3	—
INSURRECTION OR REBELLION against the United States. Debts declared illegal and void which were contracted in aid of. [Amendments]	14	4	—

	Art.	Sec.	Cl.
INSURRECTIONS and repel invasions. Congress shall provide for calling forth the militia to suppress	1	8	15
INVASION. No State shall, without the consent of Congress, engage in war unless actually invaded, or in such imminent danger as will not admit of delay	1	10	3
INVASION. The writ of habeas corpus shall not be suspended unless in case of rebellion or	1	9	1
INVASION and domestic violence. The United States shall protect each State against	4	4	—
INVASIONS. Congress shall provide for calling forth the militia to suppress insurrections and repel	1	8	15
INVENTORS AND AUTHORS in their inventions and writings. Congress may pass laws to secure for limited times exclusive rights to	1	8	8
INVOLUNTARY SERVITUDE, except as a punishment for crime, abolished in the United States. Slavery and. [Amendments]	13	1	—
JEOPARDY of life and limb for the same offense. No person shall be twice put in. [Amendments]	5	—	—
JOURNAL of its proceedings. Each House shall keep a	1	5	3
JUDGES in every State shall be bound by the Constitution, the laws and treaties of the United States, which shall be the supreme law of the land	6	—	2
JUDGES of the Supreme and inferior courts shall hold their offices during good behavior	3	1	—
Their compensation shall not be diminished during their continuance in office	3	1	—
JUDGMENT in cases of impeachment shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit under the United States	1	3	7
But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law	1	3	7
JUDICIAL POWER OF THE UNITED STATES. Congress shall have power to constitute tribunals inferior to the Supreme Court	1	8	9
The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish	3	1	—
The judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	—
Their compensation shall not be diminished during their continuance in office	3	1	—
It shall extend to all cases in law and equity arising under the Constitution, laws, and treaties of the United States	3	2	1
To all cases affecting ambassadors, other public ministers, and consuls	3	2	1
To all cases of admiralty and maritime jurisdiction	3	2	1
To controversies to which the United States shall be a party	3	2	1
To controversies between two or more States	3	2	1
To controversies between a State and citizens of another State	3	2	1
To controversies between citizens of different States	3	2	1
To citizens of the same State claiming lands under grants of different States	3	2	1
To controversies between a State or its citizens and foreign states, citizens, or subjects	3	2	1
In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction	3	2	2
In all other cases before mentioned, it shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make	3	2	2
The trial of all crimes, except in cases of impeachment, shall be by jury	3	2	3
The trial shall be held in the State where the crimes shall have been committed	3	2	3
But when not committed in a State, the trial shall be at such place or places as Congress may by law have directed	3	2	3
The judicial power of the United States shall not be held to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State. [Amendments]	11	—	—

	Art.	Sec.	Cl.
JUDICIAL PROCEEDINGS of every other State. Full faith and credit shall be given in each State to the acts, records, and....	4	1	—
Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	—
JUDICIAL and executive officers of the United States and of the several States shall be bound by an oath to support the Constitution	6	—	3
JUDICIARY. The Supreme Court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a State may be a party	3	2	2
The Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and regulations as Congress may make	3	2	2
JUNCTION of two or more States or parts of States without the consent of the legislatures and of Congress. No State shall be formed by the	4	3	1
JURISDICTION of another State. No new State shall, without the consent of Congress, be formed or erected within the	4	3	1
JURISDICTION, both as to law and fact, with such exceptions and under such regulations as Congress may make. The Supreme Court shall have appellate	3	2	2
JURISDICTION. In all cases affecting ambassadors and other public ministers and consuls, and in cases where a State is a party, the Supreme Court shall have original	3	2	2
JURY. The trial of all crimes, except in cases of impeachment, shall be by	3	2	3
In all criminal prosecutions the accused shall have a speedy and public trial by. [Amendments]	6	—	—
All suits at common law, where the value exceeds twenty dollars, shall be tried by. [Amendments]	7	—	—
Where a fact has been tried by a jury it shall not be re-examined except by the rules of the common law. [Amendments]	7	—	—
JUST COMPENSATION. Private property shall not be taken for public use without. [Amendments]	5	—	—
JUSTICE, insure domestic tranquillity, &c. To establish. [Preamble]	—	—	—
LABOR, in one State escaping into another State shall be delivered up to the party to whom such service or labor may be due. Fugitives from service or	4	2	3
LAND and naval forces. Congress shall make rules for the government and regulation of the	1	8	14
LAW and fact, with exceptions and under regulations to be made by Congress. The Supreme Court shall have appellate jurisdiction as to	3	2	2
LAW of the land. The Constitution, the laws made in pursuance thereof, and treaties of the United States, shall be the supreme..	6	—	2
The judges in every State shall be bound thereby	6	—	2
LAW of nations. Congress shall provide for punishing offenses against the	1	8	10
LAWS. Congress shall provide for calling forth the militia to suppress insurrection, repel invasion, and to execute the	1	8	15
LAWS AND TREATIES of the United States. The judicial power shall extend to all cases in law and equity arising under the Constitution, or the	3	2	1
LAWS necessary to carry into execution the powers vested in the government, or in any department or officer of the United States. Congress shall make all	1	8	18
LEGAL TENDER in payment of debts. No State shall make anything but gold and silver coin a	1	10	1
LEGISLATION in all cases over such district as may become the seat of government. Congress shall exercise exclusive	1	8	17
Over all places purchased for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. Congress shall exercise exclusive	1	8	17
LEGISLATION. Congress shall have power to make all laws necessary and proper for carrying into execution all the powers vested by the Constitution in the Government of the United States, or in any department or officer thereof	1	8	18

	Art.	Sec.	Cl.
LEGISLATION. Congress shall have power to enforce article xiii, prohibiting slavery, by appropriate. [Amendments]	13	2	—
Congress shall have power to enforce the fourteenth amendment by appropriate. [Amendments]	14	5	—
Congress shall have power to enforce the fifteenth amendment by appropriate. [Amendments]	15	2	—
LEGISLATIVE powers herein granted shall be vested in Congress. All	1	1	—
LEGISLATURE, OR THE EXECUTIVE (when the legislature cannot be convened). The United States shall protect each State against invasion and domestic violence, on the application of the	4	4	—
LEGISLATURES of two-thirds of the States, Congress shall call a convention for proposing amendments to the Constitution. On the application of the	5	—	—
LETTERS of marque and reprisal. Congress shall have power to grant	1	8	11
No State shall grant	1	10	1
LIBERTY to ourselves and our posterity, &c. To secure the blessings of. [Preamble]	—	—	—
LIFE, LIBERTY, AND PROPERTY without due process of law. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of. [Amendments]	5	—	—
No State shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of. [Amendments]	14	1	—
LIFE or limb for the same offense. No person shall be twice put in jeopardy of. [Amendments]	5	—	—
LOSS or emancipation of any slave shall be held illegal and void. Claims for the. [Amendments]	14	4	—
MAGAZINES, arsenals, dock-yards, and other needful buildings. Congress shall have exclusive authority over all places purchased for the erection of	1	8	17
MAJORITY of each House shall constitute a quorum to do business. A	1	5	1
But a smaller number may adjourn from day to day and may be authorized to compel the attendance of absent members	1	5	1
MAJORITY of all the States shall be necessary to a choice. When the choice of a President shall devolve on the House of Representatives, a quorum shall consist of a member or members from two-thirds of the States; but a. [Amendments]	12	—	—
When the choice of a Vice-President shall devolve on the Senate, a quorum shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. [Amendments]	12	—	—
MARITIME JURISDICTION. The judicial power shall extend to all cases of admiralty and	3	2	1
MARQUE and reprisal. Congress shall have power to grant letters of	1	8	11
No State shall grant any letters of	1	10	1
MARYLAND entitled to six Representatives in the first Congress	1	2	3
MASSACHUSETTS entitled to eight Representatives in the first Congress	1	2	3
MEASURES. Congress shall fix the standard of weights and	1	8	5
MEETING OF CONGRESS. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day	1	4	2
MEMBERS of Congress and of State legislatures shall be bound by oath or affirmation to support the Constitution	6	—	3
MILITIA to execute the laws, suppress insurrections, and repel invasions. Congress shall provide for calling forth the	1	8	15
Congress shall provide for organizing, arming, and disciplining the	1	8	16
To execute the laws, suppress insurrections, and repel invasions. Congress shall provide for governing such part of them as may be employed by the United States	1	8	16
Reserving to the States the appointment of the officers and the right to train the militia according to the discipline prescribed by Congress	1	8	16
A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. [Amendments]	2	—	—

	Art.	Sec.	Cl.
MISDEMEANORS. The President, Vice-President, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other high crimes and	2	4	—
MONEY on the credit of the United States. Congress shall have power to borrow	1	8	2
Regulate the value thereof and of foreign coin. Congress shall have power to coin	1	8	5
Shall be drawn from the Treasury but in consequence of appropriations made by law. No	1	9	7
Shall be published from time to time. A regular statement and account of receipts and expenditures of public	1	9	7
For raising and supporting armies. No appropriation of money shall be for a longer term than two years	1	8	12
NATIONS. Congress shall have power to regulate commerce with foreign	1	8	3
Congress shall provide for punishing offences against the law of	1	8	10
NATURAL-BORN CITIZENS, or a citizen at the adoption of the Constitution, shall be eligible to the office of President. No person except a	2	1	4
NATURALIZATION. Congress shall have power to establish a uniform rule of	1	8	4
NATURALIZED in the United States, and subject to their jurisdiction, shall be citizens of the United States and of the States in which they reside. All persons born, or. [Amendments]	14	1	—
NAVAL FORCES. Congress shall make rules and regulations for the government and regulation of the land and	1	8	14
NAVY. Congress shall have power to provide and maintain a	1	8	13
NEW HAMPSHIRE entitled to three Representatives in the first Congress	1	2	3
NEW JERSEY entitled to four Representatives in the first Congress	1	2	3
NEW STATES may be admitted by Congress into this Union	4	3	1
But no new State shall be formed within the jurisdiction of another State without the consent of Congress	4	3	1
Nor shall any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures and of Congress	4	3	1
NEW YORK entitled to six Representatives in the first Congress	1	2	3
NOBILITY shall be granted by the United States. No title of	1	9	8
No State shall grant any title of	1	10	1
NOMINATIONS FOR OFFICE by the President. The President shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors and other public officers	2	2	2
He may grant commissions to fill vacancies that happen in the recess of the Senate, which shall expire at the end of their next session	2	2	3
NORTH CAROLINA entitled to five Representatives in the first Congress	1	2	3
NUMBER OF ELECTORS for President and Vice-President in each State shall be equal to the number of Senators and Representatives to which such State may be entitled in Congress	2	1	2
OATH OF OFFICE of the President of the United States. Form of the	2	1	7
OATH OR AFFIRMATION. No warrants shall be issued but upon probable cause supported by. [Amendments]	4	—	—
OATH OR AFFIRMATION to support the Constitution. Senators and Representatives, members of State legislatures, executive and judicial officers of the United States and of the several States, shall be bound by	6	—	3
But no religious test shall ever be required as a qualification for office	6	—	3
The Senators when sitting to try impeachment shall be on	1	3	6
OBJECTIONS. If he shall not approve it, the President shall return the bill to the House in which it originated with his	1	7	2
OBLIGATION OF CONTRACTS. No State shall pass any ex post facto law, or law impairing the	1	10	1
OBLIGATIONS incurred in aid of insurrection or rebellion against the United States to be held illegal and void. All debts or. [Amendments]	14	4	—

	Art.	Sec.	Cl.
OFFENSE. No person shall be twice put in jeopardy of life or limb for the same. [Amendments]	5	—	—
OFFENSES against the law of nations. Congress shall provide for punishing	1	8	10
Against the United States, except in cases of impeachment. The President may grant reprieves or pardons for	2	2	1
OFFICE under the United States. No person shall be a member of either House while holding any civil	1	6	2
No Senator or Representative shall be appointed to any office under the United States which shall have been created, or its emoluments increased, during the term for which he is elected	1	6	2
Or title of any kind from any king, prince, or foreign State, without the consent of Congress. No person holding any office under the United States shall accept of any present, emolument	1	9	8
Of President, in case of his removal, death, resignation, or inability, shall devolve on the Vice-President. The powers and duties of the	2	1	5
During the term of four years. The President and Vice-President shall hold	2	1	1
Of trust or profit under the United States shall be an elector for President and Vice-President. No person holding an	2	1	2
Civil or military under the United States, or any State, who had taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, and afterward engaged in insurrection or rebellion. No person shall be a Senator, Representative, or Presidential elector, or hold any. [Amendments]	14	3	—
OFFICERS in the President alone, in the courts of law, or in the heads of Departments. Congress may vest the appointment of inferior	2	2	2
Of the United States shall be removed on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. The President, Vice-President, and all civil	2	4	—
The House of Representatives shall choose their Speaker and other	1	2	5
The Senate, in the absence of the Vice-President, shall choose a President pro tempore, and also their other	1	3	5
OFFICES becoming vacant in the recess of the Senate may be filled by the President, the commissions to expire at the end of the next session	2	2	3
ONE-FIFTH of the members present, be entered on the journal of each House. The yeas and nays shall, at the desire of	1	5	3
OPINION of the principal officers in each of the Executive Departments on any subject relating to their duties. The President may require the written	2	2	1
ORDER, resolution, or vote (except on a question of adjournment) requiring the concurrence of the two Houses, shall be presented to the President. Every	1	7	3
ORIGINAL JURISDICTION, in all cases affecting ambassadors, other public ministers, and consuls, and in which a State may be a party. The Supreme Court shall have	3	2	2
OVERT ACT, or on confession in open court. Conviction of treason shall be on the testimony of two witnesses to the	3	3	1
PARDONS, except in cases of impeachment. The President may grant reprieves and	2	2	1
PATENT RIGHTS to inventors. Congress may pass laws for securing	1	8	8
PEACE. Members of Congress shall not be privileged from arrest for treason, felony, and breach of the	1	6	1
No State shall, without the consent of Congress, keep troops or ships of war in time of	1	10	3
No soldier shall be quartered in any house without the consent of the owner in time of. [Amendments]	3	—	—
PENSIONS AND BOUNTIES shall not be questioned. The validity of the public debt incurred in suppressing insurrection and rebellion against the United States, including the debt for. [Amendments]	14	4	—
PENNSYLVANIA entitled to eight Representatives in the first Congress	1	2	3
PEOPLE, peaceably to assemble and petition for redress of grievances, shall not be abridged by Congress. The right of the. [Amendments]	1	—	—

	Art.	Sec.	Cl.
PEOPLE—Continued.			
To keep and bear arms shall not be infringed. A well-regulated militia being necessary to the security of a free State, the right of the. [Amendments]	2	—	—
To be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated. The right of the. [Amendments]	4	—	—
PEOPLE. The enumeration of certain rights in the Constitution shall not be held to deny or disparage others retained by the. [Amendments]	9	—	—
PEOPLE. Powers not delegated to the United States, nor prohibited to the States, are reserved to the States or to the. [Amendments]	10	—	—
PERFECT UNION, &c. To establish a more. [Preamble]	—	—	—
PERSONS, houses, papers, and effects against unreasonable searches and seizures. The people shall be secured in their. [Amendments]	4	—	—
PERSONS, as any State may think proper to admit, shall not be prohibited prior to 1808. The migration or importation of such	1	9	1
But a tax or duty of ten dollars shall be imposed on the importation of each of such	1	9	1
PETITION for the redress of grievances. Congress shall make no law abridging the right of the people peaceably to assemble and to. [Amendments]	1	—	—
PIRACIES AND FELONIES committed on the high seas. Congress shall define and punish	1	8	10
PLACE than that in which the two Houses shall be sitting. Neither House during the session shall, without the consent of the other, adjourn for more than three days, nor to any other	1	5	4
PLACES OF CHOOSING SENATORS. Congress may by law make or alter regulations for the election of Senators and Representatives, except as to the	1	4	1
PORTS of one State over those of another. Preference shall not be given by any regulation of commerce or revenue to the	1	9	6
Vessels clearing from the ports of one State shall not pay duties in another	1	9	6
POST OFFICES AND POST ROADS. Congress shall establish	1	8	7
POWERS herein granted shall be vested in Congress. All legislative	1	1	—
POWERS vested by the Constitution in the Government or in any Department or officer of the United States. Congress shall make all laws necessary to carry into execution the	1	8	18
POWERS and duties of the office shall devolve on the Vice-President, on the removal, death, resignation, or inability of the President. The	2	1	5
Not delegated to the United States nor prohibited to the States are reserved to the States and to the people. [Amendments]	10	—	—
The enumeration of certain rights in this Constitution shall not be held to deny or disparage others retained by the people. [Amendments]	9	—	—
PREFERENCE, by any regulation of commerce or revenue, shall not be given to the ports of one State over those of another	1	9	6
PREJUDICE any claims of the United States or of any particular State in the territory or property of the United States. Nothing in this Constitution shall	4	3	2
PRESENT, emolument, office, or title of any kind whatever from any king, prince, or foreign State. No person holding any office under the United States shall, without the consent of Congress, accept any	1	9	8
PRESENTMENT or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service. No person shall be held to answer for a capital or otherwise infamous crime unless on a. [Amendments]	5	—	—
PRESIDENT OF THE UNITED STATES. The Senate shall choose a President pro tempore when the Vice-President shall exercise the office of	1	3	5
The Chief Justice shall preside upon the trial of the	1	3	6
Shall approve and sign all bills passed by Congress before they shall become laws	1	7	2
Shall return to the House in which it originated, with his objections, any bill which he shall not approve	1	7	2

	Art.	Sec.	Cl.
PRESIDENT OF THE UNITED STATES—Continued.			
If not returned within ten days (Sundays excepted), it shall become a law, unless Congress shall adjourn before the expiration of that time	1	7	2
Every order, resolution, or vote which requires the concurrence of both Houses, except on a question of adjournment, shall be presented to the	1	7	3
If disapproved by him, shall be returned and proceeded on as in the case of a bill	1	7	3
The executive power shall be vested in a	2	1	1
He shall hold his office during the term of four years	2	1	1
In case of the removal of the President from office, or of his death, resignation, or inability to discharge the duties of his office, the Vice-President shall perform the duties of	2	1	5
Congress may declare, by law, in the case of the removal, death, resignation, or inability of the President, what officer shall act as	2	1	5
The President shall receive a compensation which shall not be increased nor diminished during his term, nor shall he receive any other emolument from the United States	2	1	6
Before he enters upon the execution of his office he shall take an oath of office	2	1	7
Shall be commander-in-chief of the Army and Navy and of the militia of the States when called into actual service	2	2	1
He may require the opinion, in writing, of the principal officer in each of the Executive Departments	2	2	1
He may grant reprieves or pardons for offenses, except in cases of impeachment	2	2	1
He may make treaties by and with the advice and consent of the Senate, two-thirds of the Senators present concurring	2	2	2
He may appoint, by and with the advice and consent of the Senate, ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers whose appointments may be authorized by law and not herein provided for	2	2	2
Congress may vest the appointment of inferior officers in the	2	2	2
He may fill up all vacancies that may happen in the recess of the Senate by commissions which shall expire at the end of their next session	2	2	3
He shall give information to Congress of the state of the Union, and recommend measures	2	3	—
On extraordinary occasions he may convene both Houses or either House of Congress	2	3	—
In case of disagreement between the two Houses as to the time of adjournment, he may adjourn them to such time as he may think proper	2	3	—
He shall receive ambassadors and other public ministers	2	3	—
He shall take care that the laws be faithfully executed	2	3	—
He shall commission all the officers of the United States	2	3	—
On impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors, shall be removed from office. The	2	4	—
No person except a natural-born citizen, or a citizen of the United States at the adoption of the Constitution, shall be eligible to the office of	2	1	4
No person who shall not have attained the age of thirty-five years and been fourteen years a citizen of the United States shall be eligible to the office of	2	1	4
PRESIDENT AND VICE-PRESIDENT. MANNER OF CHOOSING. Each State, by its legislature, shall appoint a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress	2	1	2
No Senator or Representative or person holding an office of trust or profit under the United States shall be an elector	2	1	2
Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States	2	1	3
The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves. [Amendments]	12	—	—
They shall name in distinct ballots the person voted for as President and the person voted for as Vice-President. [Amendments]	12	—	—
They shall make distinct lists of the persons voted for as President, and as Vice-President, which they shall sign and certify and transmit sealed to the President of the Senate at the seat of government. [Amendments]	12	—	—

	Art.	Sec.	Cl.
PRESIDENT AND VICE-PRESIDENT—Continued.			
The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. [Amendments]	12	—	—
The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed. [Amendments]	12	—	—
If no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. [Amendments]	12	—	—
In choosing the President, the votes shall be taken by States, the representation from each State having one vote. [Amendments]	12	—	—
A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. [Amendments]	12	—	—
But if no choice shall be made before the 4th of March next following, then the Vice-President shall act as President, as in the case of the death or disability of the President. [Amendments]	12	—	—
PRESIDENT OF THE SENATE, but shall have no vote unless the Senate be equally divided. The Vice-President shall be	1	3	4
PRESIDENT PRO TEMPORE. In the absence of the Vice-President the Senate shall choose a	1	3	5
When the Vice-President shall exercise the office of President of the United States, the Senate shall choose a	1	3	5
PRESS. Congress shall pass no law abridging the freedom of speech or of the. [Amendments]	1	—	—
PREVIOUS CONDITION of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or. [Amendments]	15	1	—
PRIVATE PROPERTY shall not be taken for public use without just compensation. [Amendments]	5	—	—
PRIVILEGE. Senators and Representatives shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same	1	6	1
They shall not be questioned for any speech or debate in either House in any other place	1	6	1
PRIVILEGES AND IMMUNITIES OF CITIZENS OF THE UNITED STATES. The citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States	4	2	1
No soldier shall be quartered in any house without the consent of the owner in time of peace. [Amendments]	3	—	—
No person shall be twice put in jeopardy of life and limb for the same offense. [Amendments]	5	—	—
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. [Amendments]	14	1	—
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. [Amendments]	14	1	—
No State shall deprive any person of life, liberty, or property without due process of law. [Amendments]	14	1	—
Nor deny to any person within its jurisdiction the equal protection of its laws. [Amendments]	14	1	—
PRIZES captured on land or water. Congress shall make rules concerning	1	8	11
PROBABLE CAUSE. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. And no warrant shall issue for such but upon. [Amendments]	4	—	—
PROCESS OF LAW. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due. [Amendments]	5	—	—
No State shall deprive any person of life, liberty, or property, without due. [Amendments]	14	1	—
PROCESS for obtaining witnesses in his favor. In all criminal prosecutions the accused shall have. [Amendments]	6	—	—

	Art.	Sec.	Cl.
PROGRESS of science and useful arts. Congress shall have power to promote the	1	8	8
PROPERTY of the United States. Congress may dispose of and make all needful rules and regulations respecting the territory or	4	3	2
PROPERTY, without due process of law. No person shall be compelled in any criminal case to be a witness against himself; nor shall he be deprived of his life, liberty, or. [Amendments]	5	—	—
No State shall abridge the privileges or immunities of citizens of the United States; nor deprive any person of his life, liberty, or. [Amendments]	14	1	—
PROSECUTIONS. The accused shall have a speedy and public trial in all criminal. [Amendments]	6	—	—
He shall be tried by a jury in the State or district where the crime was committed. [Amendments]	6	—	—
He shall be informed of the nature and cause of the accusation. [Amendments]	6	—	—
He shall be confronted with the witnesses against him. [Amendments]	6	—	—
He shall have compulsory process for obtaining witnesses. [Amendments]	6	—	—
He shall have counsel for his defense. [Amendments]	6	—	—
PROTECTION of the laws. No State shall deny to any person within its jurisdiction the equal. [Amendments]	14	1	—
PUBLIC DEBT of the United States incurred in suppressing insurrection or rebellion shall not be questioned. The validity of the. [Amendments]	14	4	—
PUBLIC SAFETY may require it. The writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the	1	9	2
PUBLIC TRIAL by jury. In all criminal prosecutions the accused shall have a speedy and. [Amendments]	6	—	—
PUBLIC USE. Private property shall not be taken for, without just compensation. [Amendments]	5	—	—
PUNISHMENT according to law. Judgment in cases of impeachment shall not extend further than to removal from, and disqualification for, office; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and	1	3	7
PUNISHMENTS inflicted. Excessive bail shall not be required nor excessive fines imposed nor cruel and unusual. [Amendments]	8	—	—
QUALIFICATION FOR OFFICE. No religious test shall ever be required as a	6	—	3
QUALIFICATIONS of electors of members of the House of Representatives shall be the same as electors for the most numerous branch of the State legislature	1	2	1
QUALIFICATIONS of electors of Senators shall be the same as electors for the most numerous branch of the State legislature. [Amendments]	17	—	—
QUALIFICATIONS of members of the House of Representatives. They shall be twenty-five years of age, seven years a citizen of the United States, and an inhabitant of the State in which chosen	1	2	2
Of Senators. They shall be thirty years of age, nine years a citizen of the United States, and an inhabitant of the State in which chosen	1	3	3
Of its own members. Each House shall be the judge of the election, returns, and	1	5	1
Of the President. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of President	2	1	4
Neither shall any person be eligible to the office of President who shall not have attained the age of thirty-five years and been fourteen years a resident within the United States	2	1	4
Of the Vice-President. No person constitutionally ineligible to the office of President shall be eligible to that of Vice-President. [Amendments]	12	—	—
QUARTERED in any house without the consent of the owner in time of peace. No soldier shall be. [Amendments]	3	—	—

	Art.	Sec.	Cl.
QUORUM to do business. A majority of each House shall constitute a	1	5	1
But a smaller number than a quorum may adjourn from day to day and may be authorized to compel the attendance of absent members	1	5	1
Of the House of Representatives for choosing a President shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. [Amendments]	12	—	—
QUORUM to elect a Vice-President by the Senate. Two-thirds of the whole number of Senators shall be a. [Amendments]	12	—	—
A majority of the whole number shall be necessary to a choice. [Amendments]	12	—	—
RACE, color, or previous condition of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of. [Amendments]	15	1	—
RATIFICATION of amendments to the Constitution shall be by the legislatures of three-fourths of the several States or by conventions in three-fourths of the States, accordingly as Congress may propose	5	—	—
RATIFICATION of the conventions of nine States shall be sufficient to establish the Constitution between the States so ratifying the same	7	—	—
RATIO of representation until the first enumeration under the Constitution shall be made not to exceed one for every thirty thousand	1	2	3
RATIO of representation shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. [Amendments]	14	2	—
But when the right to vote for Presidential electors or members of Congress, or the legislative, executive, and judicial officers of the State, except for engaging in rebellion or other crime, shall be denied or abridged by a State, the basis of representation shall be reduced therein in the proportion of such denial or abridgment of the right to vote. [Amendments]	14	2	—
REBELLION against the United States. Persons who, while holding certain Federal and State offices, took an oath to support the Constitution, afterward engaged in insurrection or rebellion, disabled from holding office under the United States. [Amendments]	14	3	—
But Congress may by a vote of two-thirds of each House remove such disability. [Amendments]	14	3	—
Debts incurred for pensions and bounties for services in suppressing the rebellion shall not be questioned. [Amendments]	14	4	—
All debts and obligations incurred in aid of the rebellion, and all claims for the loss or emancipation of slaves, declared and held to be illegal and void. [Amendments]	14	4	—
REBELLION or invasion. The writ of habeas corpus shall not be suspended except when the public safety may require it in cases of	1	9	2
RECEIPTS and expenditures of all public money shall be published from time to time. A regular statement of	1	9	7
RECESS OF THE SENATE. The President may grant commissions, which shall expire at the end of the next session, to fill vacancies that may happen during the	2	2	3
RECONSIDERATION of a bill returned by the President with his objections. Proceedings to be had upon the	1	7	2
RECORDS, and judicial proceedings of every other State. Full faith and credit shall be given in each State to the acts	4	1	—
Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	—
REDRESS OF GRIEVANCES. Congress shall make no law abridging the right of the people peaceably to assemble and to petition for the. [Amendments]	1	—	—
REGULATIONS, except as to the places of choosing Senators. The time, places, and manner of holding elections for Senators and Representatives shall be prescribed by the legislatures of the States, but Congress may at any time by law, make or alter such	1	4	1

	Art.	Sec.	Cl.
REGULATIONS of commerce or revenue. Preference to the ports of one State over those of another shall not be given by any...	1	9	6
RELIGION or prohibiting the free exercise thereof. Congress shall make no law respecting the establishment of. [Amendments]..	1	—	—
RELIGIOUS test shall ever be required as a qualification for any office or public trust under the United States. No.....	6	—	3
REMOVAL of the President from office, the same shall devolve on the Vice-President. In case of the.....	2	1	5
REPRESENTATION. No State, without its consent, shall be deprived of its equal suffrage in the Senate.....	5	—	—
REPRESENTATION and direct taxation, how apportioned among the several States. [Amended by 14th amendment, section 2, and by 16th amendment].....	1	2	3
REPRESENTATION until the first enumeration under the Constitution not to exceed one for every thirty thousand. The ratio of..	1	2	3
REPRESENTATION in any State. The executive thereof shall issue writs of election to fill vacancies in the.....	1	2	4
REPRESENTATION among the several States shall be according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. The ratio of. [Amendments]	14	2	—
But where the right to vote in certain Federal and State elections is abridged for any cause other than rebellion or other crime, the basis of representation shall be reduced. [Amendments]....	14	2	—
REPRESENTATIVES. Congress shall consist of a Senate and House of	1	1	—
Qualifications of electors of members of the House of.....	1	2	1
No person shall be a Representative who shall not have attained the age of twenty-five years, been seven years a citizen of the United States, and an inhabitant of the State in which he shall be chosen.....	1	2	2
And direct taxes, how apportioned among the several States. [Amended by 14th amendment, section 2, and by 16th amendment]	1	2	3
Shall choose their Speaker and other officers. The House of.....	1	2	5
Shall have the sole power of impeachment. The House of.....	1	2	5
Executives of the States shall issue writs of election to fill vacancies in the House of.....	1	2	4
The times, places, and manner of choosing Representatives shall be prescribed by the legislatures of the States.....	1	4	1
But Congress may at any time by law make or alter such regulations except as to the places of choosing Senators.....	1	4	1
And Senators shall receive a compensation, to be ascertained by law	1	6	1
Shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during attendance at the session of the House, and in going to and returning from the same.....	1	6	1
Shall not be questioned in any other place for any speech or debate. Members of the House of.....	1	6	1
No member shall be appointed during his term to any civil office which shall have been created, or the emoluments of which shall have been increased, during such term.....	1	6	2
No person holding any office under the United States shall, while holding such office, be a member of the House of.....	1	6	2
All bills for raising revenue shall originate in the House of.....	1	7	1
No Senator or Representative shall be an elector for President or Vice-President	2	1	2
REPRESENTATIVES shall be bound by an oath or affirmation to support the Constitution of the United States. The Senators and	6	—	3
REPRESENTATIVES among the several States. Provisions relative to the apportionment of. [Amendments].....	14	2	—
REPRESENTATIVES AND SENATORS. Prescribing certain disqualifications for office as. [Amendments].....	14	3	—
But Congress may, by a vote of two-thirds of each House, remove such disqualification. [Amendments]	14	3	—
REPRIEVES and pardons except in cases of impeachment. The President may grant.....	2	2	1
REPRISAL. Congress shall have power to grant letters of marque and	1	8	11
No State shall grant any letters of marque and.....	1	10	1

	Art.	Sec.	Cl.
REPUBLICAN form of government. The United States shall guarantee to every State in this Union a	4	4	—
And shall protect each of them against invasion; and on the application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence	4	4	—
RESERVED RIGHTS of the States and the people. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. [Amendments]	9	—	—
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. [Amendments]	10	—	—
RESIGNATION, or inability of the President, the duties and powers of his office shall devolve on the Vice-President. In case of the death	2	1	5
RESIGNATION, or inability of the President. Congress may by law provide for the case of the removal, death	2	1	5
RESOLUTION, or vote (except on a question of adjournment) requiring the concurrence of the two Houses shall, before it becomes a law, be presented to the President. Every order	1	7	3
REVENUE shall originate in the House of Representatives. All bills for raising	1	7	1
REVENUE. Preference shall not be given to the ports of one State over those of another by any regulations of commerce or	1	9	6
RHODE ISLAND entitled to one Representative in the first Congress	1	2	3
RIGHT OF PETITION. Congress shall make no law abridging the right of the people peaceably to assemble and to petition for the redress of grievances. [Amendments]	1	—	—
RIGHT TO KEEP AND BEAR ARMS. A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. [Amendments]	2	—	—
RIGHTS in the Constitution shall not be construed to deny or disparage others retained by the people. The enumeration of certain. [Amendments]	9	—	—
RIGHTS not delegated to the United States nor prohibited to the States are reserved to the States or to the people. [Amendments]	10	—	—
RULES of its proceedings. Each House may determine the	1	5	2
RULES AND REGULATIONS respecting the territory or other property of the United States. Congress shall dispose of and make all needful	4	3	2
RULES OF THE COMMON LAW. All suits involving over twenty dollars shall be tried by jury according to the. [Amendments]	7	—	—
No fact tried by a jury shall be re-examined except according to the. [Amendments]	7	—	—
SCIENCE AND THE USEFUL ARTS by securing to authors and inventors the exclusive right to their writings and discoveries. Congress shall have power to promote the progress of	1	8	8
SEARCHES AND SEIZURES shall not be violated. The right of the people to be secure against unreasonable. [Amendments]	4	—	—
And no warrants shall be issued but upon probable cause, on oath or affirmation, describing the place to be searched and the persons or things to be seized. [Amendments]	4	—	—
SEAT OF GOVERNMENT. Congress shall exercise exclusive legislation in all cases over such district as may become the	1	8	17
SECURITIES and current coin of the United States. Congress shall provide for punishing the counterfeiting of the	1	8	6
SECURITY OF A FREE STATE, the right of the people to keep and bear arms shall not be infringed. A well-regulated militia being necessary to the. [Amendments]	2	—	—
SENATE AND HOUSE OF REPRESENTATIVES. The Congress of the United States shall consist of a	1	1	—
SENATE OF THE UNITED STATES. The Senate shall be composed of two Senators from each State, chosen by the legislature for six years. [Amended by 17th amendment]	1	3	1

	Art.	Sec.	Cl.
SENATE OF THE UNITED STATES—Continued.			
The Senate shall be composed of two Senators from each State, elected by the people thereof, for six years. [Amendments]....	17	—	—
If vacancies happen during the recess of the legislature of a State, the executive thereof may make temporary appointments until the next meeting of the legislature. [Amended by 17th amendment].....	1	3	2
When vacancies happen in the representation of any State in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies. [Amendments].....	17	—	—
Legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancy. [Amendments]	17	—	—
The Vice-President shall be President of the Senate, but shall have no vote unless the Senate be equally divided.....	1	3	4
The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice-President or when he shall exercise the office of President.....	1	3	5
The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation	1	3	6
When the President of the United States is tried the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.....	1	3	6
It shall be the judge of the elections, returns, and qualifications of its own members.....	1	5	1
A majority shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members.....	1	5	1
It may determine the rules of its proceedings, punish a member for disorderly behavior, and with the concurrence of two-thirds expel a member.....	1	5	2
It shall keep a journal of its proceedings and from time to time publish the same, except such parts as may in their judgment require secrecy	1	5	3
It shall not adjourn for more than three days during a session without the consent of the other House.....	1	5	4
It may propose amendments to bills for raising revenue, but such bills shall originate in the House of Representatives.....	1	7	1
The Senate shall advise and consent to the ratification of all treaties, provided two-thirds of the members present concur....	2	2	2
It shall advise and consent to the appointment of ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers not herein otherwise provided for.....	2	2	2
It may be convened by the President on extraordinary occasions..	2	3	1
No State, without its consent, shall be deprived of its equal suffrage in the Senate.....	5	—	—
SENATORS. Qualifications of electors of. [Amendments].....	17	—	—
They shall, immediately after assembling, under their first election be divided into three classes, so that the seats of one-third shall become vacant at the expiration of every second year....	1	3	2
No person shall be a Senator who shall not be thirty years of age, nine years a citizen of the United States, and an inhabitant when elected of the State for which he shall be chosen.....	1	3	3
The times, places, and manner of choosing Senators may be fixed by the legislature of a State, but Congress may by law make or alter such regulations, except as to the places of choosing....	1	4	1
If vacancies happen during the recess of the legislature of a State, the executive thereof may make temporary appointments until the next meeting of the legislature. [Amended by 17th amendment]	1	3	2
Executives of the States shall issue writs of election to fill vacancies in the representation of any State in the Senate. [Amendments]	17	—	—
Legislature of any State may empower executive thereof to make temporary appointment until the people fill the vacancy by election. [Amendments].....	17	—	—
They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of the Senate and in going to and returning from the same.....	1	6	1

	Art.	Sec.	Cl.
SENATORS—Continued.			
Senators and Representatives shall receive a compensation to be ascertained by law	1	6	1
Senators and Representatives shall not be questioned for any speech or debate in either House in any other place	1	6	1
No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the United States which shall have been created, or of which the emoluments shall have been increased, during such term	1	6	2
No person holding any office under the United States shall be a member of either House during his continuance in office	1	6	2
No Senator or Representative or person holding an office of trust or profit under the United States shall be an elector for President and Vice-President	2	1	2
Senators and Representatives shall be bound by an oath or affirmation to support the Constitution	6	—	3
No person shall be a Senator or Representative who, having, as a Federal or State officer, taken an oath to support the Constitution, afterward engaged in rebellion against the United States. [Amendments]	14	3	—
But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments]	14	3	—
SERVICE OR LABOR in one State, escaping into another State, shall be delivered up to the party to whom such service or labor may be due. Fugitives from	4	2	3
SERVITUDE, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist in the United States or any place subject to their jurisdiction. Neither slavery nor involuntary [Amendments]	13	1	—
SERVITUDE. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State, on account of race, color, or previous condition of [Amendments]	15	1	—
SHIPS OF WAR in time of peace, without the consent of Congress. No State shall keep troops or	1	10	3
SILVER COIN a tender in payment of debts. No State shall make anything but gold and	1	10	1
SLAVE. Neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion, or any claim for the loss or emancipation of any [Amendments]	14	4	—
SLAVERY nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist in the United States, or any places subject to their jurisdiction. Neither [Amendments]	13	1	—
SOLDIERS shall not be quartered, in time of peace, in any house without the consent of the owner. [Amendments]	3	—	—
SOUTH CAROLINA entitled to five Representatives in the first Congress	1	2	3
SPEAKER and other officers. The House of Representatives shall choose their	1	2	5
SPEECH OR OF THE PRESS. Congress shall make no law abridging the freedom of [Amendments]	1	—	—
SPEEDY AND PUBLIC trial by a jury. In all criminal prosecutions the accused shall have a [Amendments]	6	—	—
STANDARD OF WEIGHTS and measures. Congress shall fix the	1	8	5
STATE OF THE UNION. The President shall, from time to time, give Congress information of the	2	3	—
STATE LEGISLATURES, and all executive and judicial officers of the United States, shall take an oath to support the Constitution. All members of the several	6	—	3
STATES. When vacancies happen in the representation from any State, the executive authority shall issue writs of election to fill such vacancies	1	2	4
When vacancies happen in the representation of any State in the Senate, the executive authority shall issue writs of election to fill such vacancies. [Amendments]	17	—	—

	Art.	Sec.	Cl.
STATES.—Continued.			
Legislature of any State may empower executive thereof to make temporary appointment until the people fill the vacancy by election. [Amendments]	17	—	—
Congress shall have power to regulate commerce among the several	1	8	3
No State shall enter into any treaty, alliance, or confederation	1	10	1
Shall not grant letters of marque and reprisal	1	10	1
Shall not coin money	1	10	1
Shall not emit bills of credit	1	10	1
Shall not make anything but gold and silver coin a tender in payment of debts	1	10	1
Shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts	1	10	1
Shall not grant any title of nobility	1	10	1
Shall not, without the consent of Congress, lay any duties on imports or exports, except what may be absolutely necessary for executing its inspection laws	1	10	2
Shall not, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war unless actually invaded or in such imminent danger as will not admit of delay	1	10	3
Full faith and credit in every other State shall be given to the public acts, records, and judicial proceedings of each State	4	1	—
Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	—
Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States	4	2	1
New States may be admitted by Congress into this Union	4	3	1
But no new State shall be formed or erected within the jurisdiction of another State	4	3	1
Nor any State formed by the junction of two or more States or parts of States, without the consent of the legislatures as well as of Congress	4	3	1
No State shall be deprived, without its consent, of its equal suffrage in the Senate	5	—	—
Three-fourths of the legislatures of the States, or conventions of three-fourths of the States, as Congress shall prescribe, may ratify amendments to the Constitution	5	—	—
The United States shall guarantee a republican form of government to every State in the Union	4	4	—
They shall protect each State against invasion	4	4	—
And on application of the legislature, or the executive, (when the legislature cannot be convened,) against domestic violence	4	4	—
The ratification by nine States shall be sufficient to establish the Constitution between the States so ratifying the same	7	—	—
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But in choosing the President the vote shall be taken by States, the representation from each State having one vote. [Amendments]	12	—	—
A quorum for choice of President shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. [Amendments]	12	—	—
STATES or the people. Powers not delegated to the United States, nor prohibited to the States, are reserved to the. [Amendments]	10	—	—
SUFFRAGE in the Senate. No State shall be deprived without its consent of its equal	5	—	—
SUITS at common law, where the value in controversy shall exceed $20, shall be tried by jury. [Amendments]	7	—	—
In law or equity against one of the States, by citizens of another State, or by citizens of a foreign State. The judicial power of the United States shall not extend to [Amendments]	11	—	—
SUPREME COURT. Congress shall have power to constitute tribunals inferior to the	1	8	9
SUPREME COURT, and such inferior courts as Congress may establish. The judicial power of the United States shall be vested in one	3	1	—

	Art.	Sec.	Cl.
SUPREME COURT. The judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	—
The compensation of the judges shall not be diminished during their continuance in office	3	1	—
Shall have original jurisdiction. In all cases affecting ambassadors, other public ministers and consuls, and in which a State may be a party, the	3	2	2
Shall have appellate jurisdiction, both as to law and the fact, with such exceptions and regulations as Congress may make. The	3	2	2
SUPREME LAW of the land. This Constitution, the laws made in pursuance thereof, and the treaties of the United States, shall be the	6	—	2
The judges in every State shall be bound thereby	6	—	2
SUPPRESS insurrections and repel invasions. Congress shall provide for calling forth the militia to execute the laws	1	8	15
SUPPRESSION of insurrection or rebellion shall not be questioned. The public debt, including the debt for pensions and bounties, incurred in the. [Amendments]	14	4	—
TAX shall be laid unless in proportion to the census or enumeration. No capitation or other direct. [Amended by 16th amendment]	1	9	4
TAX or duty shall be laid on articles exported from any State. No	1	9	5
TAXES (direct) and Representatives, how apportioned among the several States. [Amended by 14th amendment, section 2, and 16th amendment]	1	2	3
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They shall be uniform throughout the United States	1	8	1
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TEMPORARY APPOINTMENTS until the next meeting of the legislature. If vacancies happen in the Senate in the recess of the legislature of a State, the executive of the State shall make. [Amended by 17th amendment]	1	3	2
TEMPORARY APPOINTMENTS until the people fill the vacancy by election. When vacancies happen in the Senate, the legislature of any State may empower the executive of the State to make. [Amendments]	17	—	—
TENDER in payment of debts. No State shall make anything but gold and silver coin a	1	10	1
TERM OF FOUR YEARS. The President and Vice-President shall hold their offices for the	2	1	1
TERM for which he is elected. No Senator or Representative shall be appointed to any office under the United States which shall have been created or its emoluments increased during the	1	6	2
TERRITORY or other property of the United States. Congress shall dispose of and make all needful rules and regulations respecting the	4	3	2
TEST as a qualification for any office or public trust shall ever be required. No religious	6	—	3
TESTIMONY of two witnesses to the same overt act, or on confession in open court. No person shall be convicted of treason except on the	3	3	1
THREE-FOURTHS OF THE LEGISLATURES of the States, or conventions in three-fourths of the States, as Congress shall prescribe, may ratify amendments to the Constitution	5	—	—
TIE. The Vice-President shall have no vote unless the Senate be equally divided	1	3	4
TIMES, PLACES, AND MANNER of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof	1	4	1
But Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators	1	4	1
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No State shall grant any	1	10	1
TITLE of any kind, from any king, prince, or foreign state, without the consent of Congress. No person holding any office under the United States shall accept of any	1	9	8

	Art.	Sec.	Cl.
TONNAGE without the consent of Congress. No State shall lay any duty of	1	10	3
TRANQUILLITY, provide for the common defense, &c. To insure domestic. [Preamble]	—	—	—
TREASON shall consist only in levying war against the United States, or in adhering to their enemies, giving them aid and comfort	3	3	1
No person shall, unless on the testimony of two witnesses to the same overt act, or on confession in open court, be convicted of	3	3	1
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Shall not work corruption of blood. Attainder of	3	3	2
Shall not work forfeiture, except during the life of the person attainted. Attainder of	3	3	2
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The judicial power shall extend to all cases arising under the Constitution, laws, and	3	2	1
They shall be the supreme law of the land, and the judges in every State shall be bound thereby	6	—	2
TREATY, alliance, or confederation. No State shall enter into any	1	10	1
TRIAL, judgment, and punishment according to law. Judgment in cases of impeachment shall not extend further than to removal from, and disqualification for, office; but the party convicted shall nevertheless be liable and subject to indictment	1	3	7
TRIAL BY JURY. All crimes, except in cases of impeachment, shall be tried by jury	3	2	3
Such trial shall be held in the State within which the crime shall have been committed	3	2	3
But when not committed within a State, the trial shall be at such a place as Congress may by law have directed	3	2	3
In all criminal prosecutions the accused shall have a speedy and public. [Amendments]	6	—	—
Suits at common law, when the amount exceeds $20, shall be by [Amendments]	7	—	—
TRIBUNALS inferior to the Supreme Court. Congress shall have power to constitute	1	8	9
TROOPS or ships of war in time of peace without the consent of Congress. No State shall keep	1	10	3
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TWO-THIRDS, may expel a member. Each House, with the concurrence of	1	5	2
TWO-THIRDS. A bill returned by the President with his objections, may be repassed by each House by a vote of	1	7	2
TWO-THIRDS of the Senators present concur. The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided	2	2	2
TWO-THIRDS of the legislatures of the several States. Congress shall call a convention for proposing amendments to the Constitution on the application of	5	—	—
TWO-THIRDS of both Houses shall deem it necessary. Congress shall propose amendments to the Constitution whenever	5	—	—
TWO-THIRDS of the States. When the choice of a President shall devolve on the House of Representatives, a quorum shall consist of a member or members from [Amendments]	12	—	—

	Art.	Sec.	Cl.
TWO-THIRDS of the whole number of Senators. A quorum of the Senate, when choosing a Vice-President, shall consist of [Amendments]	12	—	—
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New States may be admitted by Congress into this	4	3	1
But no new State shall be formed or erected within the jurisdiction of another	4	3	1
UNREASONABLE searches and seizures. The people shall be secured in their persons, houses, papers, and effects against [Amendments]	4	—	—
And no warrants shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [Amendments]	4	—	—
UNUSUAL punishments inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and [Amendments]	8	—	—
USE without just compensation. Private property shall not be taken for public [Amendments]	5	—	—
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VACANCIES happening in the representation of a State. The executive thereof shall issue writs of election to fill	1	2	4
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He shall be chosen for the term of four years	2	1	1
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In case of the removal, death, resignation, or inability of the President, the powers and duties of his office shall devolve on the	2	1	5
Congress may provide by law for the case of the removal, death, resignation, or inability both of the President and	2	1	5
On impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors, shall be removed from office. The	2	4	—
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The electors shall name, in distinct ballots, the person voted for as Vice-President. [Amendments]	12	—	—

	Art.	Sec.	Cl.
VICE-PRESIDENT. MANNER OF CHOOSING THE—Continued.			
They shall make distinct lists of the persons voted for as Vice-President, which lists they shall sign and certify, and send sealed to the seat of Government, directed to the President of the Senate. [Amendments]	12	—	—
The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall be then counted. [Amendments]	12	—	—
The person having the greatest number of votes shall be Vice-President, if such number be a majority of the whole number of electors. [Amendments]	12	—	—
If no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President. [Amendments]	12	—	—
A quorum for this purpose shall consist of two-thirds of the whole number of Senators; and a majority of the whole number shall be necessary to a choice. [Amendments]	12	—	—
But if the House shall make no choice of a President before the 4th of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. [Amendments]	12	—	—
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VIRGINIA entitled to ten Representatives in the first Congress	1	2	3
VOTE. Each Senator shall have one	1	3	1
The Vice-President, unless the Senate be equally divided, shall have no	1	3	4
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VOTE, shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The right of citizens of the United States to. [Amendments]	15	1	—
VOTE OF TWO-THIRDS. Each House may expel a member by a	1	5	2
A bill vetoed by the President may be repassed in each House by a	1	7	2
No person shall be convicted on an impeachment except by a	1	3	6
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WAR against the United States, adhering to their enemies, and giving them aid and comfort. Treason shall consist only in levying	3	3	1
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	Art.	Sec.	Cl.
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CONSTITUTION OF THE UNITED STATES—1787

(ANNOTATED)

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WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

Notes of Decisions

Purpose and effect of preamble and constitution in general.—The Constitution is a compact made by the people of the United States, to govern themselves as to general objects, in a certain manner. Chisholm v. Georgia (1793) 2 Dall. 419, 472, 1 L. Ed. 440.

The Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states. The powers they conferred on the government were to be exercised by itself, and the limitations on power, if expressed in general terms, are naturally and necessarily applicable to the government created by the instrument. Barron, Use of Tiernan, v. Baltimore (1833) 7 Pet. 243, 248, 8 L. Ed. 672.

The spirit of the federal constitution or its preamble cannot be invoked, apart from the words of that instrument, to invalidate a state statute. Jacobson v. Commonwealth of Massachusetts (1905) 25 Sup. Ct. 358, 197 U. S. 11, 49 L. Ed. 643, 3 Ann. Cas. 765, affirming judgment Commonwealth v. Pear (1903) 66 N. E. 719, 183 Mass. 242, 67 L. R. A. 935.

The constitution was not framed for the special protection of those who violate statutes, but for the good of the entire citizenship, and should be construed in view of changes in social conditions. State v. Missouri Pac. Ry. Co. (Kan. 1915) 152 P. 777.

The preamble is merely a generic statement of the aims of the national government, and is not a grant or delegation of power to be considered in determining the validity of a state statute. Hockett v. State Liquor Licensing Board (Ohio, 1915) 110 N. E. 485.

See, also, Dred Scott v. Sandford (1856) 19 How. 293, 15 L. Ed. 691; Lane County v. Oregon (1868) 7 Wall. 71, 19 L. Ed. 101; Texas v. White et al. (1868) 7 Wall. 700, 19 L. Ed. 227; Claflin v. Houseman, assignee (1876) 93 U. S. 130, 23 L. Ed. 833; Williams v. Bruffy (1877) 96 U. S. 176, 24 L. Ed. 716; Tennessee v. Davis (1879) 100 U. S. 257, 25 L. Ed. 648; Langford v. U. S. (1879) 101 U. S. 341, 25 L. Ed. 1010; U. S. v. Jones (1883) 109 U. S. 513, 3 Sup. Ct. 346, 27 L. Ed. 1015; Ft. Leavenworth Railroad Co. v. Lowe (1885) 114 U. S. 525, 5 Sup. Ct. 995, 29 L. Ed. 264; The Chinese Exclusion Case (1889) 130 U. S. 581, 9 Sup. Ct. 623, 32 L. Ed. 1068; Geofroy v. Riggs (1890) 133 U. S. 258, 10 Sup. Ct. 295, 33 L. Ed. 642; In re Neagle (1890) 135 U. S. 1, 10 Sup. Ct. 658, 34 L. Ed. 55; In re Ross (1891) 140 U. S. 453, 11 Sup. Ct. 897, 35 L. Ed. 581; Logan v. U. S. (1892) 144 U. S. 263, 12 Sup. Ct. 617, 36 L. Ed. 429; Lascelles v. Georgia (1893) 148 U. S. 537, 13 Sup. Ct. 687, 37 L. Ed. 549; In re Tyler (1893) 149 U. S. 164, 13 Sup. Ct. 785, 37 L. Ed. 689; Fong Yue Ting v. U. S. (1893) 149 U. S. 698, 13 Sup. Ct. 1016, 37 L. Ed. 905; U. S. v. E. C. Knight Co. (1895) 156 U. S. 1, 15 Sup. Ct. 249, 39 L. Ed. 325; Mattox v. U. S. (1895) 156 U. S. 237, 15 Sup. Ct. 337, 39 L. Ed. 409; In re Quarles and Butler (1895) 158 U. S. 532, 15 Sup. Ct. 959, 32 L. Ed. 1080; In re Debs, Petitioner (1895) 158 U. S. 564, 15 Sup. Ct. 900, 39 L. Ed. 1092; Ward v. Race Horse (1896) 163 U. S. 504, 16 Sup. Ct. 1076, 41 L. Ed. 244; De Lima v. Bidwell (1901) 182 U. S. 1, 21 Sup. Ct. 743, 45 L. Ed. 1041; Prout v. Starr (1903) 188 U. S. 537, 23 Sup. Ct. 398, 47 L. Ed. 584; South Carolina v. U. S. (1905) 199 U. S. 437, 26 Sup. Ct. 110, 50 L. Ed. 261, 4 Ann. Cas. 737; Ellis v. U. S. (1907) 206 U. S. 246, 27 Sup. Ct. 600, 51 L. Ed. 1047, 11 Ann. Cas. 589; Dick v. U. S. (1908) 208 U. S. 340, 28 Sup. Ct. 399, 52 L. Ed. 520; Muller v. Oregon (1908) 208 U. S. 412, 28 Sup. Ct. 324, 52 L. Ed. 551, 13 Ann. Cas. 957.

General welfare—Protection of migratory birds.—See notes under art. 4, § 3, cl. 2, post.

—— Home rule as to intoxicating liquors.—The home rule amendment, Const. Ohio, art. 15, § 9a, relating to home rule on the subject of intoxicating liquors, held not violative of the general welfare clause. Hockett v. State Liquor Licensing Board (Ohio, 1915) 110 N. E. 485.

—— Levy of taxes.—See art. 1, § 8, cl. 1, post, and notes thereunder.

Cited without definite application, McCulloch v. Maryland (1819) 4 Wheat. 316, 403, 4 L. Ed. 579; U. S. v. Olsson (D. C. 1912) 196 Fed. 562.

ARTICLE I

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Notes of Decisions

1. Construction of section in general.
2. Meaning of congress referred to in joint resolution.
3. Division of governmental powers.
4. Powers of houses of congress acting separately.
5. Power of investigation.
6. Imposing restrictions in United States senators.
7. Power to punish for contempt.
8. Delegation of legislative power—To judiciary in general.
9. —— Anti-trust laws.
10. —— To executive or administrative officer in general.
11. —— Violation of department rule as offense.
12. —— Suspension of laws.
13. —— Recognition of local laws in bankruptcy act.
14. —— Regulation of commerce in general.
15. —— Transportation and sale of intoxicating liquors.
16. —— Transportation of live stock.
17. —— Pure food laws.
18. —— Enforcement of immigration laws.
19. —— Tariff laws and regulations.
20. —— Construction or removal of bridges.
21. —— Organization of militia.
22. —— Government of Philippine Islands.
23. —— Government of city of Washington and the District of Columbia.
24. —— Postal regulations.
25. —— Civil service legislation.
26. —— Regulation of canals and harbors.
27. —— Disposition of public lands.
28. —— Regulation of forest reserves.
29. —— Reclamation of arid lands.
30. —— Location of mining claims.
31. Encroachment by executive on legislative power.
32. Encroachment by judiciary on legislative power.
33. —— Encroachment on executive power.

1. Construction of section in general.—The provision in this section that "all legislative powers herein granted shall be vested in a congress of the United States" means that Congress—keeping within the limits of its powers and observing the restrictions imposed by the Constitution—may, in its discretion, enact any statute appropriate to accomplish the objects for which the national government was established. Burton v. U. S. (1906) 26 Sup. Ct. 688, 693, 202 U. S. 344, 50 L. Ed. 1057, 6 Ann. Cas. 392.

2. Meaning of congress referred to in joint resolution.—Where a joint resolution passed by the fortieth congress, suspended the execution of an act "until the further order of congress," it was held that the intention was not only to suspend the execution during the existence of that congress, and until that congress should further order, but until the further order of the legislative body called in this section "a congress of the United States." U. S. v. Stockslager (1889) 9 Sup. Ct. 382, 129 U. S. 470, 32 L. Ed. 785.

3. Division of governmental powers.—Wherever the legislative power of a government is undefined, it includes the judicial and executive attributes. Cooper v. Telfair (1800) 4 U. S. (4 Dall.) 14, 1 L. Ed. 721.

The definition of officers, the classification of officers, and the prescription of the penalties are legislative and not executive functions. U. S. v. Eleven Thousand One Hundred and Fifty Pounds of Butter (1912) 195 Fed. 657, 115 C. C. A. 463, affirming judgment (D. C. 1911) 188 Fed. 157.

Under this section, and article 2, § 1, cl. 1, and article 3, § 1, the powers of the federal government are divided into three departments, each separate from the others. Oregon R. & Navigation Co. v. Campbell (C. C. 1909) 173 Fed. 957, affirmed (1913) 33 Sup. Ct. 1026, 230 U. S. 525, 57 L. Ed. 1604.

The theory is that, in so far as these powers are derived from the constitution, the departments may be regarded as independent of each other, but beyond that all are subject to regulations by law touching the discharge of duties to be performed. Kendall v. U. S. (1838) 12 Pet. 524, 610, 9 L. Ed. 1181.

In general, and except at certain points where they necessarily touch each other, the three great departments of the government move apart, each in its orbit. (1854) 6 Op. Atty. Gen. 326, 344, citing Martin v. Hunter (1816) 1 Wheat. 304, 329, 4 L. Ed. 97.

4. Powers of houses of congress acting separately.—Neither branch of congress, when acting separately, can lawfully exercise more power than is conferred by the constitution on the whole body, except in the few instances where authority is conferred on either house separately, as in the case of impeachments. Kilbourn v. Thompson (1880) 103 U. S. 168, 182, 26 L. Ed. 377.

A Senate resolution, not concurred in by the House of Representatives, nor approved by the President, directing the Interstate Commerce Commission to make investigation of certain railroads, held not a law of the United States, and did not enlarge the authority or jurisdiction of the Commission to inspect defendant's records and correspondence, conferred by the Interstate Commerce Act, Comp. St. § 8592(5).

U. S. v. Nashville, C. & St. L. Ry. (D. C. 1914) 217 Fed. 254.

5. **Power of investigation.**—See, also, notes under art. 1, § 8, cl. 18, post.

An investigation by a committee of congress, under a resolution reciting that a certain firm, who were debtors of the United States, were interested in a so-called real-estate pool in the District of Columbia, the history and character of which the committee was to examine, on the assumption that a settlement had been made in bankruptcy proceedings against said debtor to the disadvantage of the United States, was judicial in its nature, and therefore not a legitimate subject of legislative inquiry. Kilbourn v. Thompson (1880) 103 U. S. 168, 26 L. Ed. 377.

The court, without affirming that such a power can arise in any case other than those already specified, decides that it can exist in no case where the house, attempting to exercise it, invokes its aid in a matter to which its authority does not extend, such as an inquiry into the private affairs of the citizen. Id.

Congress cannot compel the production of private books and papers of citizens for its inspection, except in the course of judicial proceedings, or in suits instituted for that purpose, and then only upon averments that its rights in some way depend upon evidence therein contained. In re Pacific Ry. Commission (C. C. 1887) 32 Fed. 241.

Congress cannot empower a commission to investigate the private affairs, books, and papers of the officers and employés of corporations indebted to the government, as to their relations to other companies with which such corporations have had dealings, except so far as such officers and employés are willing to submit the same for inspection; and the investigation of the Pacific Railway Commission into affairs of officers and employés of the Pacific Railway Companies, under the act of March 3, 1887, is limited to that extent. Id.

The powers of Congress in respect to investigation and legislation are not absolutely identical; but the power of investigation is the wider and extends to matters on which it could not constitutionally legislate directly, if they are reasonably calculated to afford information useful and material in the framing of constitutional legislation. Interstate Commerce Commission v. Harriman (C. C. 1908) 157 Fed. 432, order modified Harriman v. Interstate Commerce Commission (1908) 29 Sup. Ct. 115, 211 U. S. 407, 53 L. Ed. 253.

6. **Imposing restrictions on United States senators.**—R. S. § 1782, now included in Comp. St. § 10283, making it an offense for a senator to agree to receive or to receive compensation for services to be rendered or rendered to any persón, before a department of the government, in relation to a proceeding, matter, or thing in which the United States is a party or interested, is a valid enactment within the powers of congress. Burton v. U. S. (1906) 26 Sup. Ct. 688, 693, 202 U. S. 344, 50 L. Ed. 1057, 6 Ann. Cas. 392.

7. **Power to punish for contempt.**—The house may punish persons not members thereof for contempt. This authority is incident to all legislative bodies, and extends to the imprisonment of the party for a period not beyond the adjournment or periodical dissolution of such bodies. Anderson v. Dunn (1821) 19 U. S. (6 Wheat.) 204, 5 L. Ed. 242. The power is limited to those cases where such power is necessary to the carrying out or enforcement of the powers granted. Kilbourn v. Thompson (1880) 103 U. S. 168, 190, 26 L. Ed. 377.

The process issued by the house, for a contempt, may be executed at any place within the United States. Anderson v. Dunn (1821) 19 U. S. (6 Wheat.) 204, 5 L. Ed. 242.

K., for refusing to answer certain questions put to him, as a witness, by the house, concerning the business of a real estate partnership of which he was a member, and to produce certain books and papers in relation thereto, was, by an order of the house, imprisoned for 45 days in the common jail of the District of Columbia. He brought suit to recover damages therefor against the sergeant at arms, who executed the order, and the members of the committee who caused him to be brought before the house, where he was adjudged to be in contempt of its authority. Held that, although the house can punish its own members for disorderly conduct, or for failure to attend its sessions, and can decide cases of contested elections, and determine the qualifications of its members, and exercise the sole power of impeachment of officers of the government, and may, where the examination of witnesses is necessary to the performance of these duties, fine or imprison a contumacious witness, there is not found in the United States constitution any general power vested in either house to punish for contempt. Kilbourn v. Thompson (1880) 103 U. S. 168, 26 L. Ed. 377.

The parliament of England, before its separation into bodies since known as the "House of Lords" and the "House of Commons," was a high court of judicature, the highest in the realm, possessed of the general power incident to such a court of punishing for contempt, and on its separation the power remained with each body, but neither house of congress was constituted a part of any court of general jurisdiction, nor has it any history to which the exercise of such power can be traced. Its power must be sought alone in some express grant in the constitution, or be found necessary to

carry into effect such powers as are there granted. Id.

No person can be punished for contumacy as a witness before either house of congress, unless his testimony is required in a matter in which it has jurisdiction to inquire, and neither house possesses the general power to inquire into the private affairs of the citizen. Id.

The senate may punish persons other than its own members for contempts of its authority. Ex parte Nugent (C. C. 1848) Fed. Cas. No. 10,375.

An inquiry by the United States senate as to what person, if any, had violated the rule of the senate which requires that all treaties laid before them should be kept secret until the senate should take off the injunction of secrecy, is a matter within the jurisdiction of the senate, and it may punish for contempt of such rule. Id.

The senate and house of representatives of the United States is the sole judge of its own contempts; and in case of commitment for contempt no other body or court can have a right to inquire directly into the correctness or propriety of the commitment, or to discharge the prisoner on habeas corpus. Id.

8. Delegation of legislative power—To judiciary in general.—R. S. § 102, Comp. St. § 158, making it a misdemeanor punishable by indictment to refuse to give testimony before either house of congress or any committee thereof, is not unconstitutional, as delegating to the courts the powers of the houses to punish for contempt. In re Chapman (1897) 17 Sup. Ct. 677, 681, 166 U. S. 661, 41 L. Ed. 1154.

1 Stat. 275, prescribing rules for the government of the federal courts, "subject however to such alterations and additions as the said courts respectively shall * * * deem expedient or to such regulations as the supreme court * * * shall think proper * * * to prescribe to any circuit or district court concerning the same," under which statute the circuit courts of Kentucky amended their execution process so as to conform to the law of Kentucky which subjected lands to execution, did not contain a delegation by the congress of legislative power to the judiciary. United States Bank v. Halstead (1825) 23 U. S. (10 Wheat.) 51, 6 L. Ed. 264.

The judicial department is independent of the legislative, in the federal government, and congress cannot make the courts its instruments in conducting mere legislative investigations. In re Pacific Ry. Commission (C. C. 1887) 32 Fed. 241.

Congress may confer on a federal court authority to fix the amount of toll chargeable by a bridge company for the use of a bridge constructed by it, under an act of the legislatures of Canada and New York, over public navigable waters of the United States, as the exercise of judicial functions are alone involved in determining the amount of such compensation. Canada Southern Ry. Co. v. International Bridge Co. (D. C. 1881) 8 Fed. 190.

9. —— Anti-trust laws.—Legislative power is not unconstitutionally delegated to the courts by the provisions of Act July 2, 1890, §§ 1, 2 (Comp. St. §§ 8820, 8821), prohibiting combinations in restraint of interstate or foreign trade or commerce, because the general language of these provisions leaves it to the judiciary to decide whether in a given case the particular acts come within the condemnation of the statute. Standard Oil Co. v. U. S. (1911) 31 Sup. Ct. 502, 523, 221 U. S. 1, 55 L. Ed. 619, 34 L. R. A. (N. S.) 834, Ann. Cas. 1912D, 734, affirming judgment U. S. v. Standard Oil Co. (C. C. 1909) 173 Fed. 177.

The anti-trust act of 1890 (Comp. St. § 8820 et seq.), is not a delegation of legislative power to the judiciary on the theory that it is so vague in its terms as to require the courts to declare what shall and what shall not constitute an offense thereunder in contravention of this provision. U. S. v. Patterson (D. C. 1912) 201 Fed. 697.

10. —— To executive or administrative officer in general.—Congress cannot delegate its power to make laws to an executive department, or to an administrative officer. Morrill v. Jones (1882) 106 U. S. 466, 1 Sup. Ct. 423, 27 L. Ed. 267; Field v. Clark (1892) 143 U. S. 649, 691, 12 Sup. Ct. 495, 36 L. Ed. 294; U. S. v. Eaton (1892) 144 U. S. 677, 687, 12 Sup. Ct. 764, 36 L. Ed. 591; Stratton v. Oceanic Steamship Co. (1905) 140 Fed. 829, 72 C. C. A. 241; U. S. v. Hoover (D. C. 1904) 133 Fed. 950; U. S. v. Moody (D. C. 1908) 164 Fed. 269; Robert Dunlap & Co. v. U. S. (1897) 33 Ct. Cl. 135.

Congress may, however, authorize administrative officers to make necessary rules and regulations to enforce the provisions of a law. Field v. Clark (1892) 143 U. S. 649, 691, 12 Sup. Ct. 495, 36 L. Ed. 294; Caha v. U. S. (1894) 152 U. S. 211, 14 Sup. Ct. 513, 38 L. Ed. 415; In re Kollock (1897) 165 U. S. 526, 17 Sup. Ct. 444, 41 L. Ed. 813; Buttfield v. Stranahan (1904) 192 U. S. 470, 24 Sup. Ct. 349, 48 L. Ed. 525; Union Bridge Co. v. U. S. (1907) 204 U. S. 364, 27 Sup. Ct. 367, 51 L. Ed. 523; Stratton v. Oceanic Steamship Co. (1905) 140 Fed. 829, 72 C. C. A. 241; U. S. v. Hoover (D. C. 1904) 133 Fed. 950; U. S. v. Moody (D. C. 1908) 164 Fed. 269.

The power of an administrative officer to make rules and regulations does not by implication give to such officer authority to repeal, extend, or modify an act of congress. Morrill v. Jones (1882) 106 U. S. 466, 1 Sup. Ct. 423,

27 L. Ed. 267; Field v. Clark (1892) 143 U. S. 649, 691, 12 Sup. Ct. 495, 36 L. Ed. 294; U. S. v. Eaton (1892) 144 U. S. 677, 687, 12 Sup. Ct. 764, 36 L. Ed. 591; U. S. v. Eleven Thousand One Hundred and Fifty Pounds of Butter (1912) 195 Fed. 657, 115 C. C. A. 463 (affirming judgment [D. C. 1911] 188 Fed. 157); U. S. v. Moody (D. C. 1908) 164 Fed. 269.

Congress may make the revival of a law conditioned upon a fact then contingent, and empower the president to declare by proclamation that such fact has occurred, and the law is revived. The Aurora v. U. S. (1813) 11 U. S. (7 Cranch) 382, 3 L. Ed. 378.

The act of August 2, 1886, imposing a tax upon the manufacture, etc., of oleomargarine, involves no unconstitutional delegation of power to determine what acts shall be criminal, since the criminal offense is fully and completely defined by the act, and the designation of the marks, brands, and stamps is merely the discharge of an administrative function, needful to the operation of the machinery of the law. In re Kollock (1897) 17 Sup. Ct. 444, 446, 165 U. S. 526, 41 L. Ed. 813.

Legislative powers are not unconstitutionally delegated to the Secretary of War by Comp. St. § 9970, empowering that official, when satisfied, after a hearing of the parties interested, that a bridge over a navigable waterway of the United States is an unreasonable obstruction to navigation, to require such changes or alterations as will render navigation reasonably safe, easy, and unobstructed. Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 370, 204 U. S. 364, 51 L. Ed. 523 (affirming judgment U. S. v. Union Bridge Co. [D. C. 1906] 143 Fed. 377); President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 360, 216 U. S. 177, 54 L. Ed. 435, judgment affirmed U. S. v. Monongahela Bridge Co. (D. C. 1908) 160 Fed. 712.

The distinction is between a delegation of power to make the law, and a discretion as to its execution, to be exercised under and in pursuance of the law. Stratton v. Oceanic Steamship Co. (1905) 140 Fed. 829, 72 C. C. A. 241.

It is within the power of Congress to vest in executive officers the power to promulgate administrative rules, but this is never deemed to extend to the making of rules to subvert the statute. St. Louis Independent Packing Co. v. Houston (C. C. A. 1914) 215 Fed. 553, reversing order (D. C. 1913) 204 Fed. 120.

Act Aug. 11, 1888, § 5 (25 Stat. 424), authorizing the secretary of war to make such rules and regulations as may be necessary to protect improvements on the Mississippi, and providing that any violation of such rules shall constitute a misdemeanor, etc., superseded by section 9931, Comp. St., is not invalid as conferring legislative authority on the secretary of war as he is only authorized to make the rules, and it is the act of congress which declares the violation to be a misdemeanor. U. S. v. Breen (C. C. 1889) 40 Fed. 402.

The delegation of power made by Comp. St. § 9861, authorizing the secretary of war to prescribe regulations for use of canals, is constitutional. U. S. v. Moody (D. C. 1908) 164 Fed. 269.

The enforcement of a law may be made to depend upon a condition to be ascertained by an executive officer. Robert Dunlap & Co. v. U. S. (1897) 33 Ct. Cl. 135.

Mistakes, if any, made in the execution of an act which is subsequently repealed, cannot be rectified by executive action after such repeal. (1881) 17 Op. Atty. Gen. 60.

No mere omission or failure to provide for contingencies, for which it might have been wise to provide specifically, justifies any judicial or executive addition to the language of a statute. (1899) 22 Op. Atty. Gen. 405.

Federal Reserve Act Dec. 23, 1913, § 11k (Comp. St. § 9794), authorizing the Federal Reserve Board to grant to national banks applying therefor the right to act as trustee, etc., under the rules of the board, held not invalid, as an attempted delegation of legislative powers, in violation of this section. People v. Brady (Ill. 1915) 110 N. E. 864.

11. —— Violation of departmental rule as offense.—Congress cannot delegate its power so as to authorize an administrative officer, by the adoption of regulations, to create an offense and prescribe its punishment. U. S. v. Hanson (1909) 167 Fed. 881, 93 C. C. A. 371; U. S. v. Matthews (D. C. 1906) 146 Fed. 306; U. S. v. Louisville & N. R. Co. (D. C. 1910) 176 Fed. 942; (1898) 22 Op. Atty. Gen. 266.

12. —— Suspension of laws.—Congress has power to commit to the President or the head of a department the power to determine whether facts exist on which the operation of a law is to be suspended in a particular instance as provided in it, and thereupon to declare the operation of the law suspended in such instance, and this power has been exercised by Act 1905, c. 1496, §§ 3, 4, relating to quarantine regulations. U. S. v. Louisville & N. R. Co. (D. C. 1910) 176 Fed. 942.

13. —— Recognition of local law in bankruptcy act.—The recognition of the local law by Bankr. Act July 1, 1898, (Comp. St. § 9590), in the matter of exemptions, dower, priority of payments, etc., does not render the act void as an attempt by congress unlawfully to delegate its legislative power. Hanover Nat. Bank v. Moyses (1902) 22 Sup. Ct. 857, 861, 186 U. S. 181, 46 L. Ed. 1113.

14. —— Regulation of commerce in general.—Legislative power was not un-

constitutionally delegated to American Railway Association and Interstate Commerce Commission by the provision in Comp. St. § 8609, that after a date named only cars with drawbars with a uniform height shall be used in interstate commerce, and that the standard shall be fixed by the commission. St. Louis, I. M. & S. R. Co. v. Taylor (1908) 28 Sup. Ct. 616, 617, 210 U. S. 281, 52 L. Ed. 1061.

The mere delegation by Congress to the Interstate Commerce Commission of certain powers is not equivalent to specific action by Congress in respect to the particular matters involved, which prevents a state from making regulations conducive to the welfare of its citizens that may indirectly affect commerce. Missouri Pac. R. Co. v. Larabee Flour Mills Co. (1909) 29 Sup. Ct. 214, 218, 211 U. S. 612, 53 L. Ed. 352.

Congress had power to confide to the Secretary of Commerce and Labor the enforcement of the penalty for bringing into the United States an alien afflicted with a loathsome or dangerous contagious disease, in violation of Act March 3, 1903, c. 1012, § 9. Oceanic Steam Nav. Co. v. Stranahan (1909) 29 Sup. Ct. 671, 676, 214 U. S. 320, 53 L. Ed. 1013; International Mercantile Marine Co. v. Same (1909) 29 Sup. Ct. 678, 214 U. S. 344, 53 L. Ed. 1024.

Leaving to the Interstate Commerce Commission, the carrying out of details under Act Feb. 4, 1887, § 20, as amended by Act June 29, 1906, § 7 (Comp. St. § 8592) prescribing a uniform system of accounting for carriers, is not illegal as a delegation of legislative authority. Interstate Commerce Commission v. Goodrich Transit Co. (1912) 32 Sup. Ct. 436, 224 U. S. 194, 56 L. Ed. 729, reversing judgment Goodrich Transit Co. v. Interstate Commerce Commission (Com. C. 1911) 190 Fed. 943.

Congress may delegate to the Interstate Commerce Commission authority to control the intrastate rates maintained by a carrier under state authority to the extent necessary to remove the resulting unjust discrimination against interstate commerce. Houston, E. & W. T. R. Co. v. U. S. (1914) 34 Sup. Ct. 833, 234 U. S. 342, 58 L. Ed. 1341, affirming decrees Texas & P. Ry. Co. v. Same (Com. Ct. 1913) 205 Fed. 380, and Houston, E. & W. Ry. Co. v. Same (Com. Ct. 1913) 205 Fed. 391.

Legislative power is not unlawfully delegated to the Interstate Commerce Commission by Act June 18, 1910, § 8, amending Act Feb. 4, 1887, § 4 (Comp. St. § 8566), vesting in the Interstate Commerce Commission power to determine whether, in view of the preference and discrimination clauses of sections 2 and 3 (sections 8564, 8565), a petitioning carrier shall be relieved of the operation of the long and short haul clause. U. S. v. Atchison, T. & S. F. R. Co. (1914) 34 Sup. Ct. 986, 234 U. S. 476, 58 L. Ed. 1408; Same v. Union Pac. R. Co. (1914) 34 Sup. Ct. 995, 234 U. S. 495, 58 L. Ed. 1426, reversing decree Atchison, T. & S. F. Ry. Co. v. U. S. (Com. Ct. 1911) 191 Fed. 856.

The power delegated by Congress to the Interstate Commerce Commission to prescribe railroad rates for the future is legislative in its nature, and, since it concerns the administrative affairs of the government which by reason of variable conditions cannot be covered in detail by direct legislation, its delegation is not in violation of the Constitution, and it may be as fully exercised by the commission, as Congress might have exercised it, subject to any limitations imposed by Congress itself. Louisville & N. R. Co. v. Interstate Commerce Commission (C. C. 1910) 184 Fed. 118.

Neither Interstate Commerce Act Feb. 4, 1887 (Comp. St. § 8563, et seq.), nor the amendatory Elkins Law Feb. 19, 1903 (Comp. St. § 8597, et seq.), is unconstitutional on the ground that by authorizing carriers to establish rates binding on the shippers it confers upon them legislative power. U. S. v. Standard Oil Co. of Indiana (D. C. 1907) 155 Fed. 305, judgment reversed Standard Oil Co. of Indiana v. U. S. (1908) 164 Fed. 376, 90 C. C. A. 364, writ of certiorari denied U. S. v. Standard Oil Co. (1909) 29 Sup. Ct. 689, 212 U. S. 579, 53 L. Ed. 659.

Though legislative power, properly speaking, cannot be delegated, the lawmaking body, having enacted into law the standard of charges which shall control, may intrust to an administrative body, not exercising in the true sense judicial power, the duty to fix rates in conformity with that standard. (1905) 25 Op. Atty. Gen. 422.

The rate-making power is not a judicial function and cannot be conferred constitutionally upon the courts of the United States, either by way of original or appellate jurisdiction. Id.

The courts, however, have the power to investigate any rate or rates fixed by legislative authority, and to determine whether they are such as would be confiscatory of the property of the carrier, and, if they are judicially found to be confiscatory in their effect, to restrain their enforcement. Id.

When a state legislature has given to a navigation company authority to collect tolls on a navigable river when the assent of congress is obtained, and congress subsequently assents, acts afterwards passed by the legislature, reviving the corporation or amending its charter, need not be assented to by congress, if no extension of the right to take tolls grows out of the revival or amendment. Duke v. Cahawba Nav. Co. (1846) 10 Ala. 82, 44 Am. Dec. 472.

Laws Mo. 1905, p. 162, § 18, prohibiting the sale of game, whether taken

within or without the state, is not invalid as a regulation of interstate commerce, in view of Act May 25, 1900, § 5 (Comp. St. § 8708), providing that dead bodies of foreign game animals transported into any state shall, on arrival in the state, be subject to the operation of the laws of the state, enacted in the exercise of its police power. State v. Heger (1906) 93 S. W. 252, 194 Mo. 707.

Congress can authorize an exercise of the police power by a state, which, without such authority, would be an unconstitutional interference with commerce. People v. Hesterberg (1906) 76 N. E. 1032, 1034, 184 N. Y. 126, 3 L. R. A. (N. S.) 163, 128 Am. St. Rep. 528, 6 Ann. Cas. 353, reversing orders (1905) 96 N. Y. S. 286, 109 App. Div. 295, and Ex parte Hill (1905) 96 N. Y. S. 296, 109 App. Div. 917.

Comp. St. § 8708, subjecting to the operation of state laws game and game birds imported in interstate commerce, confers on any state the right to enact laws prohibiting the possession of dead game within certain periods whether taken within or without the state. Id.

The provision of the Interstate Commerce Act, giving the Interstate Commerce Commission authority to regulate commerce between a state and a territory, is not contrary to the federal Constitution. Galveston, H. & S. A. Ry. Co. v. Wood, Hagenbarth Cattle Co. (Tex. 1912) 146 S. W. 538, affirming judgment Wood, Hagenbarth Cattle Co. v. Galveston, H. & S. A. Ry. Co. (Civ. App. 1910) 130 S. W. 857.

15. —— Transportation and sale of intoxicating liquors.—Webb-Kenyon Act (Comp. St. § 8739) held not invalid as a delegation of power to the states to act for Congress. State of West Virginia v. Adams Express Co. (1915) 219 Fed. 794, 135 C. C. A. 464 (reversing order [D. C. 1914] 219 Fed. 331); Southern Express Co. v. Whittle (Ala. 1915) 69 So. 652; State v. Grier (Del. Gen. Sess. 1913) 4 Boyce, 322, 88 Atl. 579; State v. United States Express Co. (1914) 164 Iowa, 112, 145 N. W. 451; State v. Doe (1914) 139 Pac. 1169, 92 Kan. 212; State v. Missouri Pac. Ry. Co. (Kan. 1915) 152 P. 777.

The Wilson bill (Comp. St. § 8738) is within the power of congress. In re Rahrer (1891) 140 U. S. 545, 11 Sup. Ct. 865, 35 L. Ed. 572, reversing (C. C. 1890) 43 Fed. 556; In re Van Vliet (C. C. 1891) 43 Fed. 761, 10 L. R. A. 451.

The provision of the federal constitution vesting in congress the exclusive power to regulate interstate commerce does not guarantee the absolute freedom of such commerce; and hence the "Wilson Bill" (Act Aug. 8, 1890 [section 8738, Comp. St.]), which provides that intoxicating liquors brought into any state shall be subject to the laws enacted in the exercise of its police power "to the same extent and in the same manner as though such liquors had been produced in such state, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise," is not an unconstitutional restriction. Wilkerson v. Rahrer (1891) 11 Sup. Ct. 865, 140 U. S. 545, 35 L. Ed. 572, reversing In re Rahrer (C. C. 1890) 43 Fed. 556, 10 L. R. A. 444.

The effect of the law is to subject to the operation of the police power of the state certain subjects which were theretofore excluded from its operation by reason of their being subjects of interstate commerce; and it is not a delegation to the states of the power to regulate commerce, nor an adoption of state laws as such regulation. Id.

Act Aug. 8, 1890, known as the "Wilson Bill" (Comp. St. § 8738), simply defines the time when imported intoxicating liquors shall become subject to state control, and is therefore not unconstitutional as being a delegation to the states of the power to regulate interstate commerce. In re Spickler (C. C. 1890) 43 Fed. 653, 10 L. R. A. 446.

Congress has the power to remove the impediment of the protection of interstate commerce to the enforcement of state liquor laws; and such action is not a delegation of power to the state, but is a regulation of commerce. Glenn v. Southern Express Co. (N. C. 1915) 87 S. E. 136.

The Wilson Law (Comp. St. § 8738) is not a delegation, but an exercise of the power of Congress to regulate interstate commerce, and it subjects intoxicating liquors from other states in the original packages to laws of the state enacted before its passage. State v. Fraser (1891) 48 N. W. 343, 1 N. D. 425.

16. —— Transportation of live stock.—The provision of the 28-hour law (Act June 29, 1906 [Comp. St. § 8651]), authorizing the shipper of cattle or the person accompanying them to extend the time of their confinement to 36 hours, was not such a delegation of legislative power as would render the law unconstitutional. Southern Pac. Co. v. U. S. (1909) 171 Fed. 360, 96 C. C. A. 252 (affirming judgment U. S. v. Southern Pac. Co. [D. C. 1908] 162 Fed. 412); U. S. v. Oregon R. & Nav. Co. (C. C. 1908) 163 Fed. 640.

17. —— Pure food laws.—Oleomargarine Act May 9, 1902, § 4 (Comp. St. § 6237), imposes an internal revenue tax of 10 cents per pound on adulterated butter, and authorizes the Commissioner of Internal Revenue to decide what substances are taxable thereun-

der, and, with the approval of the Secretary of the Treasury, to make all needful regulations for carrying the act into effect. Held, that a regulation that butter containing 16 per cent. or more of water, milk, or cream should be classified as "adulterated butter" was valid, being neither an exercise of legislative or judicial power, but a determination as a question of fact of what constitutes an "abnormal" quantity of water. Coopersville Co-Operative Creamery Co. v. Lemon (1908) 163 Fed. 145, 89 C. C. A. 595.

The oleomargarine act is not unconstitutional, as a delegation of legislative power to an administrative branch of the government, because, after providing that retail dealers in oleomargarine shall sell only from original stamped packages in quantities not exceeding 10 pounds, it also requires that it shall pack the oleomargarine sold by them in suitable wooden or paper packages, which shall be marked and printed as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe. Lockwood v. U. S. (1909) 178 Fed. 437, 102 C. C. A. 441.

18. —— Enforcement of immigration laws.—The power and authority of the United States, as an attribute of its sovereignty, to either prohibit or regulate the immigration of aliens, are plenary, and Congress may choose such agencies as it pleases to carry out whatever policy or rule of exclusion it may adopt, and, so long as such agencies do not transcend the limits of the authority or abuse the discretion reposed in them, their judgment is not open to challenge or review by the courts. U. S. v. Rodgers (1911) 191 Fed. 970, 112 C. C. A. 382.

The department of labor may make rules and regulations to carry out the statutes and facilitate the exclusion and return of persons whose immigration congress has forbidden, but no mere rule can operate to exclude a person not excluded by the statutes. In re Kornmehl (C. C. 1898) 87 Fed. 314.

19. —— Tariff laws and regulations.—Act Oct. 1, 1890, § 3, authorizing the president to suspend, "for such time as he shall deem just," the provisions of that act allowing the free importation of sugars, molasses, coffee, tea, and hides, as to any countries which impose upon the products of the United States duties which he "may deem to be reciprocally unequal and unjust," cannot be considered a delegation of legislative or treaty-making power; especially in view of the fact that, from the foundation of the government, congress has frequently invested the president with similar discretion. Field v. Clark (1891) 143 U. S. 649, 12 Sup. Ct. 495, 36 L. Ed. 294, affirming (C. C. 1891) 45 Fed. 175.

An unconstitutional delegation of legislative power to the Secretary of the Treasury is not made by the provision of Tea Inspection Act March 2, 1897 (Comp. St. § 8786 et seq.), forbidding the importation of teas inferior to the government standards of purity, quality, and fitness for consumption, which authorizes him to establish such standards upon the recommendation of a board of tea experts, but such provision merely leaves to the Secretary the executive duty to effectuate the legislative policy declared in the statute. Buttfield v. Stranahan (1904) 24 Sup. Ct. 349, 355, 192 U. S. 470, 48 L. Ed. 525; Same v. Bidwell (1904) 24 Sup. Ct. 356, 192 U. S. 498, 48 L. Ed. 536, Same v. U. S. (1904) 24 Sup. Ct. 356, 192 U. S. 499, 48 L. Ed. 537.

The provision in the tariff law, excluding from this country teas of inferior quality, and leaving the final determination of the question in respect thereto to the customs officers, is a valid exercise of the legislative power. Cruikshank v. Bidwell (C. C. 1898) 86 Fed. 7.

20. —— Construction or removal of bridges.—Congress has authority to regulate or prohibit the construction of bridges across the Mississippi and can also delegate that authority to the head of a governmental department. U. S. v. Milwaukee & St. P. Ry. Co. (C. C. 1873) Fed. Cas. No. 15,778.

Section 18 of the river and harbor act of 1899 (Act March 3, 1899, c. 425, 30 Stat. 1153, Comp. St. § 9970), authorizes the secretary of war to determine, after notice to the parties, whether any bridge which has been constructed over any of the navigable waterways of the United States is an unreasonable obstruction to the free navigation of such waters, and if he so determines to notify the parties owning or controlling such bridge to so alter the same as to render navigation through or under it reasonably free, easy, and unobstructed, within a reasonable time, which he shall prescribe. It further provides that if, at the end of such time, the alteration has not been made, the parties owning or controlling such bridge, who willfully fail or refuse to remove the same or to comply with the order of the secretary, shall be deemed guilty of a misdemeanor, and shall be prosecuted therefor. Held, that such provision is not unconstitutional, as delegating legislative or judicial power to the secretary of war, but that the power conferred upon him was administrative; a judicial proceeding in the courts being expressly provided for to enforce his orders, in which the legality of his action may be reviewed, and any rights of the defendants may be raised and determined. E. A. Chatfield Co. v. City of New Haven (C. C. 1901) 110 Fed. 788.

Act Aug. 11, 1888, §§ 9, 10 (Comp. St. §§ 9971, 9972), providing that when the secretary of war shall have reason to believe that any bridge is an ob-

struction to free navigation, he shall give notice requiring the bridge to be so altered as to render navigation through or under it easy and unobstructed, and imposing a penalty on the controllers of the bridge for failing to make such provision, is unconstitutional, in that it delegates to the secretary of war powers exclusively vested in congress. U. S. v. Rider (D. C. 1892) 50 Fed. 406, following U. S. v. Keokuk & H. Bridge Co. (D. C. 1891) 45 Fed. 178.

It is not an unconstitutional delegation of the legislative function for Congress to intrust to the Secretary of War the power to declare what is an unreasonable obstruction to navigation. (1896) 21 Op. Atty. Gen. 431.

The power conferred on the Secretary of War by Comp. St. § 9970, as to obstruction of navigation by bridges, is administrative in character and is a lawful delegation of power. (1904) 25 Op. Atty. Gen. 194, 195.

21. —— **Organization of militia.**—The provisions of Acts 2d Cong. (1st Sess.) c. 33, enacting that the militia of the respective states shall be arranged into divisions and brigades as the legislature of each state shall direct, and St. Mass. 1809, c. 108, § 2, authorizing the commander in chief, with the advice of his council, to organize and arrange the state militia conformably to the laws of the United States, are not unconstitutional, as being a delegation of legislative authority. In re Adams (1826) 21 Mass. (4 Pick.) 25.

22. —— **Government of Philippine Islands.**—Congress in dealing with the Philippine Islands may delegate legislative authority to such agencies as it may select. U. S. v. Heinszen (1907) 27 Sup. Ct. 742, 206 U. S. 370, 51 L. Ed. 1098, 11 Ann. Cas. 688, reversing judgment Heinszen v. U. S. (1907) 42 Ct. Cl. 58.

23. —— **Government of city of Washington and the District of Columbia.**—The power given by congress to the corporation of Washington to pass bylaws for the government of the city is not a delegation of the power of exclusive legislation given to congress by the constitution of the United States. Washington v. Eaton (C. C. 1833) Fed. Cas. No. 17,228.

Congress is without power to delegate general legislative authority to the local government of the District of Columbia. An act of this nature, therefore, passed by the legislative assembly of the District, such, for instance, as the act making judgments liens on real estate, is void. Roach v. Van Riswick (D. C. 1879) 4 MacArthur, 171.

24. —— **Postal regulations.**—Congress may confer authority on the postmaster general to forbid delivery of registered letters or payment of money orders to one using the mails for fraudulent purposes, but not to deprive them of the ordinary use of the mails. Fairfield Flower Co. v. Bradbury (C. C. 1898) 89 Fed. 393.

25. —— **Civil service legislation.**—The civil service law does not delegate legislative power to the president and civil service commission. Butler v. White (C. C. 1897) 83 Fed. 578.

26. —— **Regulation of canals and harbors.**—New York Harbor Act (Comp. St. § 9935) does not unlawfully delegate any portion of the power of congress over navigation and commerce. The act, in effect, provides that scows shall be dumped only at the place or places indicated by the supervisor, and makes disobedience of his orders an offense, and is a valid exercise of police power to protect waterways from obstructive and injurious deposits. U. S. v. Romard (C. C. 1898) 89 Fed. 156.

The grant by congress by section 9861, Comp. St., to the secretary of war of authority to prescribe such rules and regulations for canals, etc., owned or operated by the United States, as in his judgment public necessity may require, was not invalid as a delegation of legislative power; and the rules made pursuant thereto have the force of law, so that persons violating the same by drawing off water from a canal are subject to criminal punishment under the provisions of the same act. U. S. v. Ormsbee (D. C. 1896) 74 Fed. 207.

27. —— **Disposition of public lands.**—Congress cannot confer on the secretary of the interior or commissioner of the land office power to make rules and regulations, such as prescribing by whom the oath is to be administered to one making a pre-emption entry, or the facts to be contained in the affidavit, so as to make it perjury for the pre-emptor to make a false affidavit, when the facts sworn to are not required by statute to be sworn to; and the statute does not authorize the oath to be administered by the person who administers it. U. S. v. Bedgood (D. C. 1891) 49 Fed. 54.

By the acts relating to the mineral lands of the public domain of July 26, 1866, July 9, 1870, and May 10, 1872, congress has recognized the authority of the legislative assembly of the territory and miners of districts to enact laws regulating the extent of mining claims which can be located, and the manner of working and developing the same, and appropriating the minerals therein contained; but the power to control and dispose of said land has been conferred on congress by the constitution, and cannot be delegated to the territorial assembly. Territory v. Lee (1874) 2 Mont. 124.

28. —— **Regulation of forest reserves.**—Legislative power was not unconstitutionally delegated to the Secre-

tary of Agriculture by Comp. St. § 5126, authorizing him to make rules and regulations covering forest reservations, and making violations thereof a crime. U. S. v. Grimaud (1911) 31 Sup. Ct. 480, 220 U. S. 506, 55 L. Ed. 563; Light v. U. S. (1911) 31 Sup. Ct. 485, 487, 220 U. S. 523, 55 L. Ed. 570; Dastervignes v. U. S. (1903) 122 Fed. 30, 58 C. C. A. 346 (affirming order U. S. v. Dastervignes [C. C. 1902] 118 Fed. 199); U. S. v. Rizzinelli (D. C. 1910) 182 Fed. 675. CONTRA, U. S. v. Blasingame (D. C. 1902) 116 Fed. 654.

29. —— Reclamation of arid lands.—The reclamation act is not in violation of the Constitution as delegating legislative authority to the Secretary of the Interior. U. S. v. Hanson (1909) 167 Fed. 881, 93 C. C. A. 371.

30. —— Location of mining claims.—Supplementary regulations concerning the location of mining claims, prescribed by a state in addition to the congressional regulations, are not invalid on the theory that they were enacted in the exercise of an unlawful delegation by congress of legislative power. Butte City Water Co. v. Baker (1905) 25 Sup. Ct. 211, 196 U. S. 119, 49 L. Ed. 409, affirming judgment Baker v. Butte City Water Co. (1903) 72 Pac. 617, 28 Mont. 222, 104 Am. St. Rep. 683.

31. Encroachment by executive on legislative power.—A regulation of executive officer or department under legislative authority to make rules to enforce an act of Congress, which subjects classes of property to forfeiture and classes of persons to penalties that are excluded by the statute, held void. U. S. v. Eleven Thousand One Hundred and Fifty Pounds of Butter (1912) 195 Fed. 657, 115 C. C. A. 463, affirming judgment (D. C. 1911) 188 Fed. 157.

Violations of regulations of executive officer, which are not in themselves violations of law, are not criminal, in the absence of an act prescribing penalties therefor, and neither forfeitures, fines, nor penalties may be prescribed by executive officers. Id.

The definition of officers, the classification of officers, and the prescription of the penalties, are legislative and not executive offenses. Id.

The proclamations of amnesty of 1868 did not amount to a repeal of the confiscation act, since the President has no constitutional power to repeal an act of Congress. Confiscation Cases (1873) 87 U. S. (20 Wall.) 92, 112, 22 L. Ed. 320.

The treasury department cannot establish or alter the district of the surveyor general. But where the acts of congress creating such districts have received a uniform construction by the executive, which has been acted upon for a great number of years, under the sanctions of the lawmaking power, it must be considered as conclusive upon the judiciary. U. S. v. Lytle (C. C. 1849) Fed. Cas. No. 15,652.

An order of the interstate commerce commission requiring the railroads, joining in an agreement by which a through rate on a certain class of traffic is conditioned on a reservation to the initial carrier of the absolute and unqualified power to route the shipments beyond its own line, to desist from enforcing such practice, is not legislative in character, because the rule is embodied in the joint through tariff published by the carriers, where it is also promulgated to the public and enforced against all shippers. Interstate Commerce Commission v. Southern Pac. Co. (C. C. 1904) 132 Fed. 829, decree reversed Southern Pac. Co. v. Interstate Commerce Commission (1906) 26 Sup. Ct. 330, 200 U. S. 536, 50 L. Ed. 585.

The order of the Department of Agriculture of April 26, 1904 (Bureau of Animal Industry Order No. 124), prohibiting the importation of hay and straw from continental Europe as a means of preventing the introduction of foot and mouth disease among cattle in the United States, is a regulation of commerce with foreign nations, and an exercise of legislative power, and therefore void. (1904) 25 Op. Atty. Gen. 249.

32. Encroachment by judiciary on legislative power.—Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a reasonable doubt. One branch of the government cannot encroach on the domain of another without danger. Union Pacific R. Co. v. U. S. (1878) 99 U. S. 700, 718, 25 L. Ed. 496; Wells Fargo & Co. v. Johnson (D. C. 1913) 205 Fed. 60.

The federal courts have power to declare an act of the state or federal legislature invalid, when shown to be repugnant to the constitution. Calder v. Bull (1798) 3 Dall. 386, 1 L. Ed. 648; Cooper v. Telfair (1800) 4 Dall. 14, 19, 1 L. Ed. 721; Van Horne v. Dorrance (C. C. 1795) Fed. Cas. No. 16,857, 2 Dall. 304, 309, 1 L. Ed. 391; Southern Ry. Co. v. McNeill (C. C. 1907) 155 Fed. 756.

A federal court will declare an act of congress unconstitutional only when the question is practically free from real doubt, and it must appear clearly that it is beyond the constitutional power before a court will declare the act void. U. S. v. The William (D. C. 1808) Fed. Cas. No. 16,700; U. S. v. Shauver (D. C. 1914) 214 Fed. 154.

A federal district court, which is created and its jurisdiction prescribed by congress cannot hold unconstitutional a provision of a congressional act limiting the right to remove causes from a state court. Gibson v. Bellingham & N. Ry. Co. (D. C. 1914) 213 Fed. 488.

Under Act May, 1828, directing that

writs of execution and final process shall be the same in the federal court in each state as are used in the courts of such state, where the court adopts the law of the state, providing that on levy of execution the property shall be valued by three householders, an alteration of such law by a rule of court providing that two of the three householders shall make the valuation required is invalid, as being, in effect, legislative action by the court. McCracken v. Hayward (1844) 43 U. S. (2 How.) 608, 11 L. Ed. 397.

Where congress has, in the exercise of its lawful authority, inaugurated or adopted a system for the improvement of a harbor, and is, by appropriating the public moneys, carrying it out, the supreme court has no authority to prescribe the manner in which the work shall be conducted, or to forbid its completion, or to require the undoing of that which has been done. Wisconsin v. Duluth (1877) 96 U. S. 379, 24 L. Ed. 668.

One of the separate departments of government may not usurp powers committed by the constitution to another department, and where in the judgment of the legislature the manufacture of intoxicating liquors for the maker's own use as a beverage will defeat the efforts to guard the community against the excessive use of liquors, the courts cannot disregard the legislative determination. Mugler v. Kansas (1887) 8 Sup. Ct. 273, 297, 123 U. S. 623, 31 L. Ed. 205.

If the country with which a treaty is made is dissatisfied with the action of the legislative department in modifying or superseding its provisions, it may present its complaint to the executive head of the government, and take such measures as it may deem essential for the protection of its interests. The courts can afford no redress. Whether the complaining nation has just cause of complaint, or our country was justified in its legislation, are not matters for judicial cognizance. Whitney v. Robertson (1888) 124 U. S. 190, 194, 8 Sup. Ct. 456, 31 L. Ed. 386, citing Taylor v. Morton (C. C. 1855) Fed. Cas. No. 13,799.

The supreme court has no power to set itself up as the instrumentality for enforcing the provisions of a treaty with a foreign nation which the government as a sovereign power chooses to disregard. Botiller v. Dominguez (1889) 9 Sup. Ct. 525, 130 U. S. 238, 32 L. Ed. 926.

There being nothing in the treaties between China and the United States to prevent congress from modifying or repealing the same, the question whether such modification or repeal is wise or just is not a judicial question. Chae Chan Ping v. U. S. (1889) 130 U. S. 581, 9 Sup. Ct. 623, 32 L. Ed. 1068.

The Interstate Commerce Commission being without authority to fix rates for the interstate carriage of goods, and the court, therefore, without authority to enforce such orders, the court cannot in proceedings for their enforcement itself determine in advance what are reasonable rates and compel their observance; such power being legislative, and not judicial. Southern Pac. Co. v. Colorado Fuel & Iron Co. (1900) 101 Fed. 779, 42 C. C. A. 12, appeal dismissed Colorado Fuel & Iron Co. v. Southern Pac. Co. (1901) 22 Sup. Ct. 934, 46 L. Ed. 1264.

Violations of regulations of executive officer, which are not in themselves violations of law, are not criminal, in the absence of an act prescribing penalties therefor, and neither forfeitures, fines, nor penalties may be prescribed by courts. U. S. v. Eleven Thousand One Hundred and Fifty Pounds of Butter (1912) 195 Fed. 657, 115 C. C. A. 463, affirming judgment (D. C. 1911) 188 Fed. 157.

Courts have nothing to do with the justice, wisdom, policy, or expediency of a law. These are matters purely of legislative deliberation and cognizance. Bennett v. Boggs (C. C. 1830) Fed. Cas. No. 1,319; Leger v. Rice (C. C. 1871) Fed. Cas. No. 8,210; Tilley v. Savannah, F. & W. R. Co. (C. C. 1881) 5 Fed. 641.

The action of congress in the allowance of damages for injuries done to private property by the troops of the United States is conclusive, and cannot be revised by the judiciary. U. S. v. Williams (C. C. 1850) Fed. Cas. No. 16,721.

A promise in a treaty for nondiscriminating import duties comes within the political, and not the judicial, department of the government, and the courts cannot try the question of its observance. Taylor v. Morton (C. C. 1855) Fed. Cas. No. 13,799.

The executive cannot alter compensation given to a public officer or agent by act of congress. Goldsborough v. United States (C. C. 1840) Fed. Cas. No. 5,519.

The power of deciding between the conflicting interests of river navigation and of transportation across navigable rivers by permanent structures is a legislative, and not a judicial, power. Milnor v. New Jersey R. Co. (C. C. 1857) Fed. Cas. No. 9,620; Silliman v. Hudson River Bridge Co. (C. C. 1859) Fed. Cas. No. 12,852; Silliman v. Troy & W. T. Bridge Co. (C. C. 1873) Fed. Cas. No. 12,853. CONTRA, Silliman v. Hudson River Bridge Co. (C. C. 1857) Fed. Cas. No. 12,851.

The motives of legislators in the enactment of a statute cannot be inquired into judicially in determining the validity of the enactment. Kountze v. Omaha (C. C. 1879) Fed. Cas. No. 7,928; Farmers' Loan & Trust Co. v. Chicago, P. & S. Ry. Co. (C. C. 1889) 39 Fed.

143; Angle v. Chicago, St. P., M. & O. Ry. Co., Id. 912.

Where the effect of a combination is to directly prevent competition between two parallel and naturally competing lines of railroad engaged in interstate business, it is in restraint of interstate commerce, and a violation of the anti-trust act (Act July 2, 1890 [section 8820 et seq., Comp. St.]), and the court, in a suit to enjoin it as such, cannot consider the question whether the combination may not be of greater benefit to the public, than competition would be; that being a question of public policy, to be determined by Congress. U. S. v. Northern Securities Co. (C. C. 1903) 120 Fed. 721, decree affirmed Northern Securities Co. v. U. S. (1904) 24 Sup. Ct. 436, 193 U. S. 197, 48 L. Ed. 679.

An express provision by Congress as to the construction and effect to be given to bonds executed to the United States cannot be defeated by the courts upon considerations applicable to agreements improvidently made between individuals, nor by the practice of department officials, through mistake or otherwise, to give such bonds a different construction. U. S. v. United States Fidelity & Guaranty Co. (C. C. 1907) 151 Fed. 534.

Whether or not Employer's Liability Act April 22, 1908, c. 149, 35 Stat. 65, is effective to carry out the purpose intended, and thus promote interstate commerce, is a legislative and not a judicial question, which cannot affect the constitutional power of Congress to enact it. Zikos v. Oregon R. & Nav. Co. (C. C. 1910) 179 Fed. 893.

The courts have the power to investigate any rate or rates fixed by legislative authority and to determine whether they are such as would be confiscatory of the property of the carrier, and if they are judicially found to be confiscatory in their effect, to restrain their enforcement. (1905) 25 Op. Atty. Gen. 422.

33. —— **Encroachment on executive power.**—See notes under art. 2, § 2, cl. 2, post.

Cited without definite application, McCulloch v. Maryland (1819) 4 Wheat. 316, 412, 4 L. Ed. 579; Dodge v. Woolsey (1855) 18 How. 331, 349, 15 L. Ed. 401; Ex parte Clarke (1879) 100 U. S. 399, 421, 25 L. Ed. 715; U. S. v. Harris (1883) 1 Sup. Ct. 601, 606, 106 U. S. 629, 27 L. Ed. 290; Cunningham v. Neagle (1890) 10 Sup. Ct. 658, 678, 135 U. S. 1, 34 L. Ed. 55 (dissenting opinion); In re Sing Tuck (C. C. 1903) 126 Fed. 386, 394, reversed (1904) 128 Fed. 592, 63 C. C. A. 199.

Section. 2. [1]The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Notes of Decisions

Right to vote for representatives.—The right to vote for members of congress is not derived from the constitution and laws of the state in which they are chosen, but has its foundation in the constitution of the United States. The Ku-Klux Cases (1884) 4 Sup. Ct. 152, 158, 110 U. S. 651, 28 L. Ed. 274; Wiley v. Sinkler (1900) 21 Sup. Ct. 17, 20, 179 U. S. 58, 45 L. Ed. 84; Knight v. Shelton (C. C. 1905) 134 Fed. 423. See, also, Swafford v. Templeton (1902) 185 U. S. 487, 491, 22 Sup. Ct. 783, 46 L. Ed. 1005.

Electors in a state, who have the qualifications requisite for electors of the most numerous branch of the state legislature, have the right, under this clause, to vote for representatives in congress, and congress has the constitutional power to protect that right. U. S. v. Crosby (C. C. 1871) Fed. Cas. No. 14,893; U. S. v. Goldman (C. C. 1878) Fed. Cas. No. 15,225.

The right of suffrage is not conferred by the constitution. Minor v. Happersett (1874) 21 Wall. 162, 171, 22 L. Ed. 627.

Under this clause and Amend. 17, and Act June 4, 1914 (Comp. St. §§ 14a–14c), the right to vote for Representatives and Senators and to serve on election boards at the election of such officers are rights secured by the Constitution and laws of the United States within Cr. Code, § 19. U. S. v. Acsel (D. C. 1915) 219 Fed. 917.

Prescription of qualifications for voters.—The states in prescribing the qualifications of voters for the most numerous branch of their own legislatures do not do so with reference to the election of members of Congress, nor can they prescribe the qualifications of voters for such members, and the constitution merely adopts the qualifications furnished by the states as the qualification of its own electors for the popular branch of their own legislature. The Ku-Klux Cases (1884) 4 Sup. Ct. 152, 158, 110 U. S. 651, 28 L. Ed. 274.

The provision as to the qualifications of electors does not make the statutes and constitutional provisions of the various states parts of the Constitution and laws of the United States. Shoshone Min. Co. v. Rutter (1900) 20 Sup. Ct. 726, 727, 177 U. S. 505, 44 L. Ed. 864.

Though the states may prescribe the qualifications of voters for the most numerous branch of their own Legisla-

tures, they do not in prescribing such qualifications directly prescribe the qualifications of voters for representation in Congress, though under such constitutional provision the qualifications are the same in each case; the right to vote for a member of Congress being fundamentally based on the federal Constitution creating the office and prescribing the qualifications of voters therefor. Felix v. U. S. (1911) 186 Fed. 685, 108 C. C. A. 503.

Power to determine who are entitled to exercise the right of suffrage is in the several states, except as restricted by the fifteenth amendment of the federal Constitution, and that provision thereof requiring congressional electors to have the qualifications of electors of the most numerous branch of the state Legislature. Gardina v. Board of Registrars of Jefferson County (Ala. 1909) 48 So. 788.

Each state has the undoubted right to prescribe the qualifications of its own voters; and it is equally clear that the act of naturalization does not confer on the individual naturalized the right to exercise the elective franchise. The qualification which the voter is required to possess in a congressional election depends entirely on the laws of the state in which the elective franchise is exercised, and is purely dependent on the municipal regulations of the state. Spragins v. Houghton (1840) 3 Ill. (2 Scam.) 377.

Pub. Acts Mich. 1891, No. 50 (the "Minor Law"), providing for the election of presidential electors by congressional districts instead of by the voters of the state at large, does not violate this clause, which must be construed as conferring on the legislature plenary power to prescribe the method of choosing the electors, and not as requiring the state, in appointing them, to act as a unit. This construction is not affected by the fact that after it had been so placed on the constitution for 40 years all the states abandoned the method of choosing the electors by districts, and adopted the method of electing them by the voters of the state at large, and that the latter method has continued for 60 years, since it does not of necessity involve a negation of the right of the legislature to prescribe the former method. McPherson v. Secretary of State (1892) 92 Mich. 377, 52 N. W. 469, 31 Am. St. Rep. 587, 16 L. R. A. 475.

The constitution of the United States confers no authority upon congress to prescribe the qualifications of electors within the several states that compose the federal union. Huber v. Reily (1866) 53 Pa. St. (3 P. F. Smith) 112, 23 Leg. Int. 228.

Cited without definite application, Ex parte Clarke (1879) 100 U. S. 399, 418, 25 L. Ed. 715; Fitzgerald v. Green (1890) 10 Sup. Ct. 586, 587, 134 U. S. 377, 33 L. Ed. 951; McPherson v. Blocker (1892) 13 Sup. Ct. 3, 7, 146 U. S. 1, 36 L. Ed. 869; Pope v. Williams (1904) 24 Sup. Ct. 573, 576, 193 U. S. 621, 48 L. Ed. 817; Mills v. Green (C. C. 1895) 67 Fed. 818, 825 (reversed [1895] 69 Fed. 852, 16 C. C. A. 516, 30 L. R. A. 90); Chicago, R. I. & P. R. Co. v. Swanger (C. C. 1908) 157 Fed. 783, affirmed (1910) 30 Sup. Ct. 633, 218 U. S. 135, 54 L. Ed. 970, and (1910) 30 Sup. Ct. 639, 218 U. S. 159, 54 L. Ed. 978.

[2]No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Notes of Decisions

State defined.—As used in this clause, the word "state" is used in its geographical sense. Texas v. White (1868) 7 Wall. 700, 721, 19 L. Ed. 227.

Cited without definite application, Boyd v. Nebraska (1892) 12 Sup. Ct. 375, 381, 143 U. S. 135, 36 L. Ed. 103; U. S. v. Wong Kim Ark (1898) 18 Sup. Ct. 456, 482, 169 U. S. 649, 42 L. Ed. 890 (dissenting opinion).

[3][Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Provi-

dence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

The clause of this paragraph inclosed in brackets was amended, as to the mode of apportionment of representatives among the several states, by the fourteenth amendment, § 2, post, and as to taxes on incomes without apportionment, by the sixteenth amendment, post.

Notes of Decisions

Apportionment.—See, also, Amend. 14, § 2, post, and notes thereunder.

Power to apportion representatives after the enumeration is made is nowhere found among the express powers given to congress, but it has always been acted upon as irresistibly flowing from the duty positively enjoined by the constitution. Prigg v. Pennsylvania (1842) 16 Pet. 539, 619, 10 L. Ed. 1060.

Direct taxes.—See, also, art. 1, § 9, cl. 4, and notes thereunder.

See, also, notes under art. 1, § 8, cl. 1, post.

The succession tax or duty imposed by War Revenue Act June 13, 1898, §§ 29–31, was not unconstitutional on the ground that it was a direct tax. Knowlton v. Moore (1900) 178 U. S. 41, 79, 20 Sup. Ct. 747, 44 L. Ed. 769; Murdock v. Ward (1900) 178 U. S. 139, 143, 20 Sup. Ct. 775, 44 L. Ed. 1009; High v. Coyne (C. C. 1899) 93 Fed. 450, affirmed (1900) 20 Sup. Ct. 747, 178 U. S. 111, 44 L. Ed. 997.

Act June 7, 1862 (12 Stat. 422), imposing a penalty for default of voluntary payment of the direct tax on lands, is not unconstitutional. It reserved to the owner of them the right to pay the tax within a specified time, and take a certificate of payment by virtue whereof the lands would be discharged. On his failing to do so, the penalty attached. De Treville v. Smalls (1878) 98 U. S. 517, 527, 25 L. Ed. 174; Sharpleigh v. Surdam (C. C. 1876) Fed. Cas. No. 12,711.

Taxes on real estate being direct taxes, taxes on the rent or income of real estate are equally direct taxes; and taxes on personal property or on the income of personal property are likewise direct taxes. Pollock v. Farmers' Loan & Trust Co. (1895) 15 Sup. Ct. 912, 913, 158 U. S. 601, 39 L. Ed. 1108; Emery-Bird-Thayer Realty Co. v. U. S. (D. C. 1912) 198 Fed. 242.

Direct taxes are capitation or poll taxes and taxes on land. Hylton v. U. S. (1796) 3 U. S. (3 Dall.) 171, 1 L. Ed. 556; Veazie Bank v. Fenno (1869) 75 U. S. (8 Wall.) 533, 19 L. Ed. 482; Springer v. U. S. (1880) 102 U. S. 586, 26 L. Ed. 253.

A tax on carriages is not a direct tax. Hylton v. U. S. (1796) 3 Dall. 171, 173, 1 L. Ed. 556.

The provision that "direct taxes shall be apportioned among the several states * * * according to their respective numbers," does not restrict to states only the power of imposing such taxes. This power is coextensive with the territory of the United States; and though no state can be exempted from its share of the burden of such taxes, yet territories and districts may be exempted therefrom or may be taxed. Loughborough v. Blake (1820) 18 U. S. (5 Wheat.) 317, 5 L. Ed. 98.

This provision furnishes a standard by which taxes are to be apportioned, but does not exempt from taxation any part of the country, or make taxation dependent on representation, and congress has authority to impose a direct tax on the District of Columbia in proportion to the census directed to be taken by the constitution. Id.

The courts of the United States have jurisdiction to determine the validity of an act imposing direct taxes, and thereby insure compliance with the rule of apportionment. Dodge v. Woolsey (1855) 18 How. 331, 351, 15 L. Ed. 401.

The income tax imposed by Act June 30, 1864, §§ 105, 120, and the amendment thereto of July 13, 1866, on the amounts insured, renewed, or continued by insurance companies on the gross amounts of premiums received, and assessments made by them, and also on dividends, undistributed sums, and income, is not a direct tax, but a duty or excise. Pacific Ins. Co. v. Soule (1868) 7 Wall. 433, 444, 19 L. Ed. 95.

The tax imposed by Act July 13, 1866, c. 184, § 9, of 10 per cent. on notes of state banks used for circulation, is not a direct tax. Veazie Bank v. Fenno (1869) 8 Wall. 533, 540, 19 L. Ed. 482.

Direct taxes do not include taxes on incomes, which cannot be distinguished in principle from succession taxes. Scholey v. Rew (1874) 23 Wall. 331, 347, 23 L. Ed. 99.

An income tax is not a direct tax, but an excise or duty, and hence need not be apportioned. Springer v. U. S. (1880) 102 U. S. 586, 595, 26 L. Ed. 253; Clark v. Sickel (C. C. 1871) Fed. Cas. No. 2,862; Smedberg v. Bentley (C. C. 1874) Fed. Cas. No. 12,964.

In so far as Act Aug. 15, 1894, c. 349, 28 Stat. 509, imposing taxes on incomes, levies a tax on rents and income of real estate, it is invalid, because such tax, being equivalent to a tax on the real estate itself, and therefore a direct tax, is not apportioned among the states, according to the rule prescribed by this clause, and art. 1, § 9, cl. 4, post, for direct taxes. Pollock

v. Farmers' Loan & Trust Co. (1895) 157 U. S. 429, 15 Sup. Ct. 673, 39 L. Ed. 759.

The interpretation of the constitutional provisions requiring direct taxes to be apportioned among the several states, which confines the word "direct" to capitation taxes and taxes on land, having been adopted by the legislative, executive, and judicial departments of the government, soon after the formation of the constitution, and thereafter continuously acted upon, and having been reiterated in repeated adjudications of the supreme court, should be regarded as the established construction Per Mr. Justice White and Mr. Justice Harlan. Id.

The income tax imposed by sections 27-37, inclusive, of the act of Aug. 28, 1894, so far as it fell on the income of real estate and of personal property, being a direct tax within the meaning of the constitution, and void, because not apportioned according to representation, all those sections, constituting one entire scheme of taxation, were necessarily invalid. Justices Harlan, Brown, Jackson, and White dissenting. Id. (1895) 15 Sup. Ct. 912, 920, 158 U. S. 601, 39 L. Ed. 1108.

The inquiry whether the taxes are direct or indirect must involve the prior determination of the objects or rights upon which they are imposed and assessed, since it becomes essential primarily to know what the law assesses and taxes in order to completely learn the nature of the burden. Knowlton v. Moore (1900) 178 U. S. 41, 46, 20 Sup. Ct. 747, 44 L. Ed. 769.

The tax levied on tobacco by War Revenue Act June 13, 1898, c. 448, § 3, 30 Stat. 449, "in lieu of the tax now imposed by law," is an excise and not a direct tax upon property, which must be apportioned according to population. Patton v. Brady (1902) 22 Sup. Ct. 493, 496, 184 U. S. 608, 46 L. Ed. 713.

The stamp tax on a memorandum or contract of sale of a certificate of stock, imposed by Act June 13, 1898, c. 448, 30 Stat. 448, was not unconstitutional as a direct tax on property within this clause, but falls within the class of duties, imposts, and excises which, by art. 1, § 8, cl. 1, of that article, are required to be uniform throughout the United States. Thomas v. U. S. (1904) 24 Sup. Ct. 305, 306, 192 U. S. 363, 48 L. Ed. 481, affirming judgment U. S. v. Thomas (C. C. 1902) 115 Fed. 207.

The tax imposed on sugar refining by section 27 of the War Revenue Act of 1898 is an excise imposed by Congress under its power to lay and collect excises, and not a direct tax. Spreckels Sugar Refining Co. v. McClain (1904) 24 Sup. Ct. 376, 380, 192 U. S. 397, 48 L. Ed. 496, reversing judgment (1902) 113 Fed. 244, 51 C. C. A. 201.

The tax measured by net annual income imposed by Act Aug. 5, 1909, § 38 (Comp. St. § 6300 et seq.), upon the carrying on or doing of business in a corporate or quasi corporate capacity, being an excise, and not a direct, tax, is not invalid because not apportioned among the several states according to population. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

Treating the proceeds of ore mined by a corporation upon its own premises as "income" within the meaning of the Act of Aug. 5, 1909, § 38 (Comp. St. § 6300 et seq.), which imposes an excise tax does not make such excise the equivalent of a direct tax upon the property, and therefore invalid, because not apportioned to population. Stratton's Independence v. Howbert (1913) 34 Sup. Ct. 136, 231 U. S. 399, 58 L. Ed. 285.

A tax on each sale, agreement of sale, or agreement to sell any products or merchandise at any exchange or board of trade or other similar place, imposed by Internal Revenue Act 1898, schedule A, par. 2, is not a direct tax. Nicol v. Ames (C. C. 1898) 89 Fed. 144, 147, affirmed (1899) 19 Sup. Ct. 522, 173 U. S. 509, 43 L. Ed. 786.

Taxes on sales or transfers of property are indirect. U. S. v. Thomas (C. C. 1902) 115 Fed. 207, affirmed (1904) 24 Sup. Ct. 305, 192 U. S. 363, 48 L. Ed. 481.

Stamp duties on writs and other legal documents are not direct taxes. (1866) 12 Op. Atty. Gen. 23.

Enumeration of persons.—See, also, art. 1, § 9, cl. 4, post, and notes thereunder.

Under the authority merely to make an enumeration by persons in the states and territories, congress may compile statistics regarding the people. The Legal Tender Cases (1870) 12 Wall. 457, 536, 20 L. Ed. 287.

Slaves were to be included among "other persons" in this provision. U. S. v. Amy (C. C. 1859) Fed. Cas. No. 14,445.

In connection with the ascertainment of the number of inhabitants, congress has provided for inquiries as to age, birth, marriage, occupation, and other matters of interest, and imposed a penalty for a refusal of any one to answer them. There is no attempt in such inquiries to pry into the private affairs and papers of any one. In re Pacific Railway Commission (C. C. 1887) 32 Fed. 241, 250.

But Congress cannot empower a commission to investigate the private affairs, books, and papers of the officers and employés of corporations indebted to the government, as to their relations to other companies with which such corporations have had dealings, except so far as such officers and employés are willing to submit the same for inspection. Id.

The functions vested in the national

government authorize the obtainment of information relating to manufacturing and mechanical establishments demanded by Census Act March 3, 1899, c. 419, 30 Stat. 1015, though this clause and Const. art. 1, § 9, merely direct congress to take a census of the population for the purpose of apportioning representatives and direct taxes. U. S. v. Moriarity (C. C. 1901) 106 Fed. 886.

Cited without definite application, U. S. v. Kagama (1886) 6 Sup. Ct. 1109, 1111, 118 U. S. 375, 30 L. Ed. 228; Elk v. Wilkins (1884) 5 Sup. Ct. 41, 44, 112 U. S. 94, 28 L. Ed. 643; McPherson v. Blacker (1892) 13 Sup. Ct. 3, 146 U. S. 1, 36 L. Ed. 869; Downes v. Bidwell (1901) 21 Sup. Ct. 770, 776, 182 U. S. 244, 45 L. Ed. 1088; Rainey v. U. S. (1914) 34 Sup. Ct. 429, 430, 232 U. S. 310, 58 L. Ed. 617.

[4] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

Notes of Decisions

Necessity of writ.—Whether the election of a congressman to fill a vacancy is to be recognized as valid or invalid because no writ of election to fill the vacancy was issued by the governor in compliance with this provision is a matter for congress and not the court to determine. In re Wilkins (1913) 143 N. Y. S. 758, 158 App. Div. 523.

Under Election Law N. Y. § 292, as amended by Laws N. Y. 1911, c. 891, a vacancy occurring September 1st in the office of congressman is to be filled at the general election in November, though no writ of election has been issued by the governor. Id.

Under Pub. St. R. I. c. 11, §§ 5, 6, providing for the determination of the result of an election for representatives by the general assembly, and the ordering of a new election by it if no person have a majority of the votes cast, the general assembly should order a new election whenever it determines that there is a failure to elect at any regular election; although the term of the former incumbent has expired, and this clause does not apply to such a case. In re Congressional Election (1887) 15 R. I. 624, 9 Atl. 224, distinguishing In re Representation Vacancy (1887) 15 R. I. 621, 9 Atl. 222.

Cited without definite application, McPherson v. Blacker (1892) 13 Sup. Ct. 3, 7, 146 U. S. 1, 36 L. Ed. 869.

[5] The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Notes of Decisions

See, also, notes under art. 1, § 1, ante.

Power to subpœna witnesses.—In impeachment proceedings the house may compel the attendance of witnesses, and their answer to proper questions, in the same manner and by use of the same means that courts of justice can in like cases. Kilbourn v. Thompson (1880) 103 U. S. 168, 190, 26 L. Ed. 377.

Section. 3. [1][The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.]

This paragraph and the clause of paragraph 2 of this section next following, inclosed in brackets, were superseded by the seventeenth amendment, post.

Notes of Decisions

Primary election prior to the seventeenth amendment.—Primary Election Law (Laws N. D. 1907, c. 109), permitting the electors of a party to express their choice of a candidate for the United States senate, did not, as to such provisions, amount to an election by the people of a United States senator, in contravention of this clause. State v. Blaisdell (N. D. 1908) 118 N. W. 141; Same v. Beery (1908) 118 N. W. 150.

Election by legislature.—Neither the secretary of state nor the supreme court has power to pass upon the legality of an election of a United States senator by the legislature, or of an appointment of a senator by the executive of the state. State v. Crawford (1891) 28 Fla. 441, 10 South. 118, 14 L. R. A. 253.

The legislature of 1881 must choose the senator whose term begins March 4, 1883, as the next legislature, not coming into existence till June, 1883, could not give the state its constitutional right of senatorial representation for a full term. Opinion of the Court (1881) 60 N. H. 585.

Cited without definite application, Minor v. Happersett (1874) 21 Wall. 162, 171, 22 L. Ed. 627; Fitzgerald v. Green (1890) 10 Sup. Ct. 586, 587, 134 U. S. 377, 33 L. Ed. 951; Pollock v. Farmers' Loan & Trust Co. (1895) 15 Sup. Ct. 912, 914, 158 U. S. 601, 39 L. Ed. 1108.

[2] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]

See note to preceding paragraph of this section.

Notes of Decisions

Execution of commission.—Where there has been an election of a United States senator by the legislature, and afterwards the governor, holding that there is a vacancy in the office on account of the illegality of such election, signs an appointment or commission of a United States senator, and requests the secretary of state to seal the same with the great seal of state, and to countersign it, it is the duty of the secretary to do so, and he has no right to refuse because he deems the governor's action illegal. State v. Crawford (1891) 28 Fla. 441, 10 South. 118, 14 L. R. A. 253.

The commission of a United States senator appointed by the governor should be signed by the governor, and sealed with the great seal of state, and countersigned by the secretary of state, in accordance with Const. art. 4, § 14. Id.

[3] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

Cited without definite application, Boyd v. Nebraska (1892) 12 Sup. Ct. 375, 381, 143 U. S. 135, 36 L. Ed. 103; U. S. v. Wong Kim Ark (1898) 18 Sup. Ct. 456, 482, 169 U. S. 649, 42 L. Ed. 890 (dissenting opinion).

[4] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

[5] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

[6] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Notes of Decisions

See, also, notes under art. 1, § 1, ante.

Liability of government for tort.—The maxim of English constitutional law that the king can do no wrong does not apply to our system of government. Langford v. U. S. (1879) 101 U. S. 341, 342, 25 L. Ed. 1010.

Power to subpœna witnesses.—In trying impeachments the senate may compel the attendance of witnesses, and their answer to proper questions, in the same manner and by use of the same means that courts of justice can in like cases. Kilbourn v. Thompson (1880) 103 U. S. 168, 190, 26 L. Ed. 377.

Cited without definite application, The Legal Tender Cases (1870) 12 Wall. 457, 535, 20 L. Ed. 287; Ex parte N. K. Fairbank Co. (D. C. 1912) 194 Fed. 978.

[7] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. [1] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State

by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Notes of Decisions

Meaning of "legislature."—The word "legislature," does not mean simply the members who compose the Legislature, but refers to the lawmaking body or power of the state, as established by the state Constitution, and which in South Dakota, under the referendum Const. art. 3, § 1, includes the people, and hence Sess. Laws S. D. 1909, c. 223, dividing the state into congressional districts, is subject to the referendum vote of the people the same as any other law passed by the Legislature. State v. Polley (S. D. 1910) 127 N. W. 848.

Exercise of power by congress.—Congress had power to enact laws forbidding interference with election officers. Ex parte Siebold (1879) 100 U. S. 371, 25 L. Ed. 717; U. S. v. O'Connor (D. C. 1887) 31 Fed. 449; U. S. v. Kelsey (D. C. 1890) 42 Fed. 882.

R. S. § 2011 et seq., relating to the supervision of elections under the direction of a judge of a federal circuit court, held within the power of congress under this clause. Ex parte Siebold (1879) 100 U. S. 371, 379, 25 L. Ed. 717.

R. S. § 5515, relating to violations of duty by officers of elections for representatives in congress, held not repugnant to this clause. Id.; U. S. v. Gale (1883) 3 Sup. Ct. 1, 2, 109 U. S. 65, 27 L. Ed. 857. And see U. S. v. Clarke (C. C. 1879) Fed. Cas. No. 14,809; U. S. v. Jackson (C. C. 1885) 25 Fed. 548.

R. S. § 5512, relating to fraudulent registration, etc., of voters for elections for representatives in congress, held not repugnant to this clause. U. S. v. Gale (1883) 3 Sup. Ct. 1, 2, 109 U. S. 65, 27 L. Ed. 857. And see U. S. v. Quinn (C. C. 1870) Fed. Cas. No. 16,-110.

Under this clause congress has power to legislate for the protection of all persons in their right to vote in national elections. Ku-Klux Cases (1884) 110 U. S. 651, 4 Sup. Ct. 152, 28 L. Ed. 274; U. S. v. Waddell (1884) 112 U. S. 76, 5 Sup. Ct. 35, 28 L. Ed. 673, on certificate from (C. C. 1883) 16 Fed. 221; U. S. v. Mosley (1915) 238 U. S. 383, 35 Sup. Ct. 904, 59 L. Ed. 1355.

R. S. § 5520, punishing conspiracy to prevent voters from giving support to candidates to federal offices, protects a right secured by the federal constitution and laws, and was valid. Id.

R. S. § 5508, Comp. St. § 10,183, punishing persons conspiring to prevent by force or threat any lawful voter from voting, held valid. Id.

Congress may protect the pollbooks, which contain the vote for a member of Congress, from the danger arising from the exposure thereof to falsification, and may also adopt state election statutes as far as necessary to secure a fair and honest election for a member of Congress, and the preservation, proper return, and counting of the votes cast thereat. Ex parte Coy (1888) 8 Sup. Ct. 1263, 1269, 127 U. S. 731, 32 L. Ed. 274, reversing order In re Coy (C. C. 1887) 31 Fed. 794.

This danger of exposure of these papers to falsification or other tampering is not removed because the purpose of conspirators was to falsify returns as to state officers found in the same pollbooks and certificates, and not those of the member of congress. Id.

Under this clause it is competent for congress to require that state officers of elections at which such representatives are voted for shall perform the duties imposed by the state in regard to such elections, and to declare a failure to do so an offense against the United States. In re Coy (C. C. 1887) 31 Fed. 794, order reversed (1888) 8 Sup. Ct. 1263, 127 U. S. 731, 32 L. Ed. 274.

While congress has power to legislate in respect to congressional elections it has no power to interfere with state elections for state and municipal officers only. Lackey v. U. S. (1901) 107 Fed. 114, 46 C. C. A. 189, 53 L. R. A. 660, reversing U. S. v. Lackey (D. C. 1900) 99 Fed. 952.

The power as to elections for representatives includes the power to protect the electors in a free interchange of views, in making a free choice, and in expressing that choice freely at the ballot box. U. S. v. Goldman (C. C. 1878) Fed. Cas. No. 15,225.

The United States may interfere where there is a registration of voters for an election of members of congress. Ex parte Geissler (C. C. 1880) 4 Fed. 188.

Congress had power to prohibit, and follow with penal consequences, the doing, by the officers of election for members of congress, of any act unauthorized, with the intent to affect any election or its result. U. S. v. Bader (C. C. 1883) 16 Fed. 116.

R. S. § 5506, making it unlawful to hinder a citizen from voting, though unconstitutional in so far as it attempts to regulate state or municipal elections, was valid as a regulation of congressional elections. U. S. v. Munford (C. C. 1883) 16 Fed. 223 (distinguishing U. S. v. Reese [1875] 92 U. S. 214, 23 L. Ed. 563); U. S. v. Belvin (C. C. 1891) 46 Fed. 381.

Under this clause congress has general powers of legislation concerning federal elections; but under the fifteenth amendment can legislate concerning state and municipal elections solely for the purpose of preventing discrimina-

tion on account of race, color, or previous condition of servitude. U. S. v. Munford (C. C. 1883) 16 Fed. 223. See, also, Brown v. Munford (C. C. 1883) 16 Fed. 175.

R. S. § 5507, providing that every person preventing another from exercising the right of suffrage, "to whom that right is guaranteed by the fifteenth amendment to the constitution," shall be punished, etc., was based solely on Const. Amend. 15, declaring that the right of United States citizens to vote shall not be denied, etc., on account of race, color, or previous condition of servitude; and this clause cannot be invoked to support the validity of such statute. U. S. v. Miller (D. C. 1901) 107 Fed. 913.

The crime of destroying the ballot box used and the ballot cast at an election for congressman and presidential electors can be punished by the state as well as the United States. Mason v. State (1892) 55 Ark. 529, 18 S. W. 827.

—— **Adoption of state laws and officers.**—As the state laws on the subject of election of members of congress have been adopted by the United States, they have become the laws of congress, and an indictment for violating the same should properly conclude as against the statute of the United States. U. S. v. Bader (C. C. 1883) 16 Fed. 116.

The political machinery of a state, when employed for the purposes of selecting representatives for congress in a state, is a part of the machinery of the United States, and the statutes providing therefor must be construed as if enacted by congress. Anthony v. Burrow (C. C. 1904) 129 Fed. 783.

Legislative proceedings. — Congress has provided that the time for holding elections to fill vacancies caused by failure to elect representatives at the regular biennial elections, or otherwise, "may be prescribed by the law of the several states, respectively." The general assembly of Rhode Island has provided that, in case of any such failure to elect, "the general assembly should order a new election." Held, that when the general assembly, in grand committee, canvasses the vote for representatives, and there has been a failure to elect, an election to fill the vacancy may be called by resolution of the grand committee, and it need not be by joint resolution of the two houses, as required by the state constitution in the enactment of a law. In re Representative Election (1891) 17 R. I. 820, 21 Atl. 963.

Cited without definite application, Minor v. Happersett (1874) 21 Wall. 162, 171, 22 L. Ed. 627; U. S. v. Reese (1875) 92 U. S. 214, 218, 23 L. Ed. 563; Ex parte Clarke (1879) 100 U. S. 399, 415, 25 L. Ed. 715; Cunningham v. Neagle (1890) 10 Sup. Ct. 658, 678, 135 U. S. 1, 34 L. Ed. 55 (dissenting opinion); McPherson v. Blacker (1892) 13 Sup. Ct. 3, 7, 146 U. S. 1, 36 L. Ed. 869; Ex parte Perkins (C. C. 1887) 29 Fed. 900, 904; Ex parte Morrill (C. C. 1888) 35 Fed. 261, 265.

[2] The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Cited without definite application, La Abra Silver Mining Co. v. U. S. (1899) 20 Sup. Ct. 168, 178, 175 U. S. 423, 44 L. Ed. 223.

Section. 5. [1] Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Notes of Decisions

See, also, notes under art. 1, § 1, ante.

Elections, returns, and qualifications of members.—In deciding the election and qualification of members, each house may examine witnesses and inspect papers, subject to the usual rights of witnesses in such cases; and it may be that a witness would be subject to like punishment at the hands of the body engaged in trying a contested election, for refusing to testify, that he would be if the case were pending before a court of judicature. Kilbourn v. Thompson (1880) 103 U. S. 168, 190, 26 L. Ed. 377.

To constitute one a member of the senate under this clause, the favorable judgment of the senate on his election, credentials, and qualifications is essential. U. S. v. Dietrich (C. C. 1904) 126 Fed. 676, 681.

This court has no jurisdiction to decide whether the election of a United States senator by the legislature conforms to the regulations of congress or is void. Such question belongs exclusively to the United States senate. Opinion of Justices (1869) 12 Fla. 686.

Acts 1887, No. 208 (3 How. Ann. St. § 234a), which provides that any candidate voted for at any election, con-

ceiving himself aggrieved by the action of inspectors of election in canvassing the votes cast, may file his petition and ask for a correction, does not apply to a candidate for congress, as the house of representatives is the judge of the election of its members. Belknap v. Ionia County Canvassers (1893) 94 Mich. 516, 54 N. W. 376.

The question whether Primary Election Law (Laws N. D. 1907, c. 109) permitting the electors of each party to express their choice of a candidate for the United States Senate, contravenes Const. art. 1, § 3, providing for the election of United States Senators by the state Legislature, is not a judicial question for the courts to determine, but rests entirely with the United States Senate. State v. Blaisdell (N. D. 1908) 118 N. W. 141; Same v. Beery, Id.

It is not within the power of the state Legislature to superadd anything to the qualifications of members of the Congress of the United States. State v. Russell (1900) 8 Ohio N. P. 54, 10 Ohio Dec. 255.

The fact that the supreme court will require the board of canvassers to determine, in accordance with law, which one of the candidates at an election in this state for the office of representative in the congress of the United States is entitled to the certificate of election, does not contravene the constitutional power of the house to determine its member's right to the office, the court merely deciding whether the return made to such board of votes cast in any county should be included in their canvass and statement. State v. Board of State Canvassers (1874) 36 Wis. 498.

The state court cannot determine the right to the office of member of the house of representatives, but only the duty of the board of state canvassers in respect to the canvass; the power to determine the right being, by the constitution of the United States, vested exclusively in the house of representatives. Id.

Quorum.—See, also, note under art. 1, § 5, cl. 2, post.

It is the presence of a majority of the members at the time action is taken, and not their assent or dissent to that action, which creates the capacity of the assembly to do business. U. S. v. Ballin (1892) 12 Sup. Ct. 507, 509, 144 U. S. 1, 36 L. Ed. 321.

Attendance of absent members.—To compel attendance of absent members, each house is authorized to inflict imprisonment, and this may be for a violation of some order or standing rule as to attendance. Kilbourn v. Thompson (1880) 103 U. S. 168, 190, 26 L. Ed. 377.

Effect of certificate of admission.—A member of the house of representatives who receives his certificate of admission, and is seated, is prima facie entitled to the seat. Page v. U. S. (1887) 23 Ct. Cl. 4.

Holding more than one office.—Under Const. art. 6, § 7, and section 748 of the Code, which disqualifies a member of congress from holding any office under the state government, a member of congress, by the act of accepting the office of judge of the supreme court of the state, thereby vacates his seat in congress. Calloway v. Sturm (1870) 48 Tenn. (1 Heisk.) 764.

Cited without definite application, Thomas v. Loney (1890) 10 Sup. Ct. 584, 585, 134 U. S. 372, 33 L. Ed. 949 (affirming [C. C. 1889] 38 Fed. 101); Ex parte N. K. Fairbank Co. (D. C. 1912) 194 Fed. 978.

[2] Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Notes of Decisions

See, also, notes under art. 1, § 1, and art. 1, § 5, cl. 1, ante.

Scope of power in general.—The senate has jurisdiction to inquire whether any of its members are engaged in speculating in stocks the market price of which may be affected by the senate's action on a pending tariff bill. In re Chapman (1897) 166 U. S. 661, 669, 17 Sup. Ct. 677, 41 L. Ed. 1154.

That the preamble and resolutions do not specify that the proceedings are taken for the purpose of censure or expulsion does not deprive the senate of jurisdiction. Id.

Either house of congress has the right to require the personal attendance before its committees, as a witness or otherwise, of any citizen of the country, to be paid or not according to its own will and pleasure. Lilley v. U. S. (1878) 14 Ct. Cl. 539.

Rules of proceedings.—Rule 15 of the house of representatives of the Fifty-First congress, providing that the names of members present who do not vote may be entered on the journal and counted in determining the presence of a quorum, does not infringe any constitutional or fundamental right, and is a valid exercise of the power of the house to determine the rules of its proceedings. U. S. v. Ballin (1892) 12 Sup. Ct. 507, 144 U. S. 1, 36 L. Ed. 321, reversing In re Ballin (C. C. 1891) 45 Fed. 170.

Statute as interfering with authority over members.—The authority of the senate of the United States over its members is not interfered with by R.

S. § 1782, Comp. St. § 10,283, making it a misdemeanor for a United States senator to receive or agree to receive compensation for services rendered before any department, in relation to any proceeding in which the United States is interested, and declaring that any one convicted under its provisions shall be incapable of holding any office of honor, trust, or profit under the government of the United States. Burton v. U. S. (1906) 26 Sup. Ct. 688, 693, 202 U. S. 344, 50 L. Ed. 1057, 6 Ann. Cas. 392.

Punishment for disorderly behavior.—Punishment for disorderly behavior may in a proper case be imprisonment, and it may be for refusal to obey some rule for the preservation of order. Kilbourn v. Thompson (1880) 103 U. S. 168, 189, 190, 26 L. Ed. 377.

The right to expel extends to all cases where the offense is such as in the judgment of the senate is inconsistent with the trust and duty of a member. In re Chapman (1897) 166 U. S. 661, 669, 17 Sup. Ct. 677, 41 L. Ed. 1154.

Punishment for contempt.—Though the constitution gives no power to either house of congress to punish for contempt, except when committed by their own members, the house of representatives, while a congress is sitting, may convict one for contempt for breach of the privileges of the house and of the dignity and authority of the same. Anderson v. Dunn (1821) 6 Wheat. 204, 225, 5 L. Ed. 242.

A refusal to answer pertinent questions in a matter of inquiry within the jurisdiction of the senate constitutes a contempt of that body. In re Chapman (1897) 166 U. S. 661, 671, 17 Sup. Ct. 677, 41 L. Ed. 1154.

The senate has a right to hold secret sessions whenever in its judgment the proceedings shall require secrecy, and may pronounce judgment in secret session for a contempt which took place in secret session. Ex parte Nugent (C. C. 1848) Fed. Cas. No. 10,375.

The warrant of commitment need not set forth the particular facts which constitute the alleged contempt. Id.

This clause says nothing of contempts, which were left to the operation of the common-law principle that every court has a right to protect itself from insult and contempt, without which right of self-protection they could not discharge their high and important duties. It is not at all probable that the framers of the constitution, by giving an express power to each house to punish its members for disorderly behavior, and even to expel a member, intended to deprive them of that protection from insult which they knew very well belonged to and was enjoyed by both houses of Parliament and the legislatures of the former colonies and now states of this Union. This provision may have been intended to remove a doubt whether a member of either house could be guilty of a contempt to a body of which he himself was a member, or it may have been intended to apply only to such disorderly behavior as did not amount to a contempt of the house, or to remove a doubt whether either house had power to expel a member. But, whatever may have been the intention, it does not justify an inference that their power to punish for contempts can be executed only upon its own members. Hence it follows that the senate has power, when acting in a case within its jurisdiction, to punish all contempts of its authority; and where a person has been committed by it for such a contempt, and is still held and detained for that cause, the courts of the District of Columbia cannot discharge him under a writ of habeas corpus. Id.

The order of the house directing the commitment of a party for contempt is a complete protection to the speaker who orders him into the custody of the sergeant at arms. Stewart v. Blaine (D. C. 1874) 1 MacArthur, 453.

Power to arrest for contempt given to the sergeant at arms cannot be delegated by him. Sanborn v. Carleton (Mass. 1860) 15 Gray, 399.

Secret sessions.—The senate of the United States has a right to hold secret sessions whenever in its judgment the proceedings shall require secrecy, and may pronounce judgment in secret session for a contempt which took place in secret session. Ex parte Nugent (C. C. 1848) Fed. Cas. No. 10,375.

[3] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.

Notes of Decisions

Journal entries—Conclusiveness.—See, also, notes under art. 1, § 7, cl. 2, post.

If the journal may be looked to to determine whether the yeas and nays were ordered, and what was the vote thereby disclosed, the journal must be conclusively presumed to speak the truth, and its statement that a quorum was present, though not disclosed by the yeas and nays, is final. U. S. v. Ballin (1892) 12 Sup. Ct. 507, 508, 144 U. S. 1, 36 L. Ed. 321.

—— Reference to entries to show omission of section of bill.—When an

enrolled bill, signed by the presiding officers of both houses of congress and by the president, is placed in the custody of the secretary of state, its authentication as a law is complete, and no reference can be had to the journal of either house or other extrinsic evidence to show that a section of the bill, as actually passed, has been omitted. Field v. Clark (1892) 12 Sup. Ct. 495, 497, 143 U. S. 649, 36 L. Ed. 294.

Cited without definite application, Board of Commissioners of Wilkes County v. W. N. Coler & Co. (1901) 21 Sup. Ct. 458, 464, 180 U. S. 506, 45 L. Ed. 642.

[4] Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Cited without definite application, La Abra Silver Mining Co. v. U. S. (1899) 20 Sup. Ct. 168, 178, 175 U. S. 423, 44 L. Ed. 223.

Section. 6. [1] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

Notes of Decisions

Compensation.—One who is elected representative to congress by a territory, on the adoption of a state constitution, is not entitled to pay and mileage till such territory is admitted to the Union by congress. Conway v. U. S. (1863) 1 Ct. Cl. 68; Riley v. U. S. (1865) 1 Ct. Cl. 299.

A. occupied a seat in congress, B. contested it, and died pending the contest. After his death, the house declared B. rightfully elected and the seat vacant. A. was elected to fill the vacancy. Rev. St. provides that one so elected shall be "paid from the time that the compensation of his predecessor ceased." Held, that A. was entitled to the salary from the time when the seat was declared vacant, not from B.'s death. Shelley v. U. S. (1884) 19 Ct. Cl. 653.

A member of the house of representatives who receives his certificate of admission, and is seated, is prima facie entitled to the seat and to the salary. Page v. U. S. (1887) 23 Ct. Cl. 4.

The constitution places the compensation of members of congress upon the same footing with all other officers of the government; i. e., it is fixed by law, and not by the constitution. Wilson v. U. S. (1909) 44 Ct. Cl. 428.

Privilege from arrest.—All criminal offenses are comprehended by the terms "treason, felony, and breach of the peace," as used in this clause. Williamson v. U. S. (1908) 28 Sup. Ct. 163, 166, 207 U. S. 425, 52 L. Ed. 278.

The privilege of a member of congress of exemption from arrest while going to attend a session of congress is limited to a reasonable time. It is not strictly confined to the exact number of days required for the journey, nor will it be forfeited for a slight deviation from the route which is most direct. Miner v. Markham (C. C. 1886) 28 Fed. 387.

A congressman is not privileged from arrest on a warrant charging that he is about to commit a breach of the peace by fighting a duel. U. S. v. Wise (Cr. Ct. D. C. 1842) Fed. Cas. No. 16,746a.

The privilege is limited to a reasonable time for coming and going. Hoppin v. Jenckes (1867) 8 R. I. 453, 5 Am. Rep. 597.

The privilege of a member of congress is not available as against an indictment for bribery in a state court. State v. Smalls (1879) 11 S. C. 262.

A delegate from a territory is within the protection of the clause. Doty v. Strong (Wis. 1840) 1 Pin. 84.

—— Surrender by bail.—When bail may surrender principal, who is a member of congress. Coxe v. McClenachan (1798) 3 Dall. 478, 1 L. Ed. 687.

—— Civil process in general.—The immunity of members of congress from arrest under the constitution does not exempt them from service of summons in a civil suit. Kimberly v. Butler (C. C. 1869) Fed. Cas. No. 7,777.

A member of congress is entitled to exemption from service of process, although not accompanied with arrest of the person, while on his way to attend a session of congress. Miner v. Markham (C. C. 1886) 28 Fed. 387.

Members of congress, while in attendance upon its sessions, are not privileged from being sued in this District. Howard v. Citizens' Bank & Trust Co. (1899) 12 App. D. C. 222.

A territorial delegate to congress, being in this commonwealth during the recess of that body, was arrested on mesne process in a civil action. Held, that he was entitled to be discharged

on habeas corpus. Flanders v. Kimball (Mass. 1868) 3 Am. Law Rev. 376.

In the absence of a decision of the United States supreme court extending the exemption from arrest accorded congressmen under this section to privilege from service of process in civil actions, such process from a state court will not be quashed because served upon a member while attending congress. Bartlett v. Blair (1895) 38 A. 1004, 68 N. H. 232.

A member of congress, while in his state on private business, with leave of absence, during a session of congress, is not exempt from service of civil process. Worth v. Norton (1899) 33 S. E. 792, 56 S. C. 56, 45 L. R. A. 563, 76 Am. St. Rep. 524, affirmed (1900) 35 S. E. 135, 56 S. C. 479.

The privilege from arrest extends to trial of private suits. Doty v. Strong (Wis. 1840) 1 Pin. 84.

—— Attachment to compel attendance as witness.—An attachment will not be issued against a member of congress who declines to attend as a witness. U. S. v. Thomas (C. C. 1847) Fed. Cas. No. 16,476.

—— Service of subpœna.—A member of congress is not exempt from the service of a subpœna in a criminal case. U. S. v. Cooper (C. C. 1800) Fed. Cas. No. 14,861.

Freedom of debate.—Under this clause it was held that members of a congressional committee of investigation could not be held to answer for their acts in connection with the punishment of a witness for contempt. Kilbourn v. Thompson (1880) 103 U. S. 168, 201, 26 L. Ed. 377.

Cited without definite application, Burton v. U. S. (1905) 25 Sup. Ct. 243, 245, 196 U. S. 283, 49 L. Ed. 482.

[2] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Notes of Decisions

Senator or representative elect holding other office.—While the two offices of governor of a state and senator in congress cannot be held by the same person at the same time, being a senator-elect is not being a senator, and hence the same person may be governor of a state and a senator-elect at the same time without holding two offices. U. S. v. Dietrich (C. C. 1904) 126 Fed. 676, 682.

A representative-elect does not become a member of the house, within the meaning of this clause until he is sworn in as such, and hence he may till then lawfully hold office under the United States. (1874) 14 Op. Atty. Gen. 406.

Office with salary increased during term.—During the term of a senator of the United States, congress increased the salary of the minister to Mexico. On February 23, 1895, the President nominated such senator (whose term would not expire until March 4, 1895) to the office in question, and on the same day such nomination was confirmed by the senate. He took the oath of office on March 4, 1895, and his commision was delivered to him on the following day. Held, that the nomination and confirmation constituted an appointment to the office in question and was a nullity, because in conflict with this clause. (1895) 21 Op. Atty. Gen. 211.

Office created during term.—A senator's term would have expired in March, 1883. He resigned in March, 1881, to accept the position of secretary of the interior, which office he also resigned in the latter part of the same year. Held, that he was disqualified for appointment as tariff commissioner created by Act May 15, 1882 (22 Stat. 64). (1882) 17 Op. Atty. Gen. 365.

Nomination and confirmation as appointment to office.—The nomination of a senator as minister to a foreign country by the president and its confirmation by the senate constituted an appointment to office within the constitutional inhibition. (1895) 21 Op. Atty. Gen. 211.

Appointment to office after eligibility ceases.—The nomination and confirmation of a person who, at the time, is ineligible for the office by force of this clause, cannot be made the basis of his appointment to such office after his ineligibility ceases. (1883) 17 Op. Atty. Gen. 522.

Offices which members may hold.—A member of either house of congress is eligible to be appointed to any other office not forbidden to him by law, the duties of which are not incompatible with those of a member of congress. (1907) 26 Op. Atty. Gen. 457.

Under other circumstances than those which involve the entire control of the congress over a position established and filled by itself, the holding of a visitorial and an administrative office by the same person would be regarded as legally incompatible. Id.

There is no constitutional objection to the election of a member of congress as a member of the board of managers of the National Home for Disabled Volunteers, although such an election would seem to be contrary to sound public policy. But the question is wholly a matter for the decision of congress itself. Id.

Section. 7. [1]All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Notes of Decisions

Bills within clause.—The construction of this limitation is practically settled by the uniform action of congress confining it to bills to levy taxes in the strict sense of the word, and it has not been understood to extend to bills for purposes which incidentally create revenue. U. S. v. Norton (1875) 91 U. S. 566, 568, 569, 23 L. Ed. 454; Dundee Mortgage Trust Inv. Co. v. Parrish (C. C. 1885) 24 Fed. 197, 201; Twin Falls Canal Co. v. Foot (C. C. 1911) 192 Fed. 583.

An act of congress providing a national currency secured by a pledge of United States bonds, and which, in furtherance of that object, and also to meet the expenses of executing the law, imposes a tax on the notes in circulation of banking associations organized thereunder, is not a revenue bill, such as the constitution declares must originate in the house of representatives. Therefore the taxing provisions of the national bank law, reproduced in R. S. § 5214, Comp. St. § 9779, are not invalid because they originated in the senate after the law had first passed the house. Twin City Nat. Bank v. Nebeker (1897) 17 Sup. Ct. 766, 769, 167 U. S. 196, 42 L. Ed. 134.

Bills for other than tax purposes, but which may incidentally create revenue, such as Act Feb. 12, 1901, cc. 353, 354, 31 Stat. 767, 774, and Act Feb. 28, 1903, c. 856, 32 Stat. 909, for the elimination of grade crossings and for a union railway station in the District of Columbia, which provide for the payment of a sum of money to the railway companies, to be raised by a tax on property in the District, are not revenue bills which must originate in the house of representatives. Millard v. Roberts (1906) 26 Sup. Ct. 674, 202 U. S. 429, 50 L. Ed. 1090, affirming decree (1905) 25 App. D. C. 221.

The senate has constitutional power to originate an act increasing the postage on certain mail matter (Act March 3, 1875). Such a bill is not a bill "for raising revenue," such as the house only can originate. U. S. v. James (C. C. 1875) Fed. Cas. No. 15,464.

The cotton futures act having originated in the senate, contrary to the constitutional requirement as to bills for raising revenue, it is not and never was a law. Hubbard v. Lowe (D. C. 1915) 226 Fed. 135.

"Bill," within constitutional provision requiring revenue bills to originate in the house of representatives, held a project for a statute, and not the statute itself. Id.

Amendments by senate.—The substitution in the senate of a tax on corporations in lieu of the plan of inheritance taxation contained in a general bill for the collection of revenue as it came from the house of representatives where the bill originated was not violative of this clause. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 345, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

The requirement that revenue bills must originate in the house of representatives does not invalidate the provision of Tariff Act Aug. 5, 1909, § 37, imposing an excise tax based on gross tonnage upon the use of foreign-built pleasure yachts, which was proposed by the senate as an amendment; the bill itself originating in the house of representatives. Rainey v. U. S. (1914) 34 Sup. Ct. 429, 232 U. S. 310, 58 L. Ed. 617.

That a provision of a revenue act originating in the house of representatives was added as an amendment in the senate, and afterward concurred in by the house, does not render it invalid as a bill for raising revenue originating in the senate. U. S. v. Billings (C. C. 1911) 190 Fed. 359.

Cited without definite application. Kilbourn v. Thompson (1880) 103 U. S. 168, 192, 26 L. Ed. 377.

[2] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted)

after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Notes of Decisions

Joint resolutions.—Joint resolutions are not distinguishable from bills, and if approved by the president or if duly passed without the approval of the president they have all the effect of law. (1854) 6 Op. Atty. Gen. 680.

Approval of bills after adjournment or during recess.—A bill passed by congress and duly presented to the president during its session may be signed by him, so as to make it a law during a recess which congress has taken for a fixed period. La Abra Silver Min. Co. v. U. S. (1899) 20 Sup. Ct. 168, 177, 175 U. S. 423, 44 L. Ed. 223.

A bill signed by the president after the usual adjournment of congress for the winter holidays, but within ten days from the time when it was presented to him, was duly approved, and must be recognized and administered as a law of the United States. U. S. v. Weil (1894) 29 Ct. Cl. 523.

The dispersion of the two houses of congress for a definite period in pursuance to a joint resolution, as during the holiday recess, is an adjournment within the meaning of this clause. (1892) 20 Op. Atty. Gen. 503.

It is competent for the president to approve within ten days any bill presented to him, although congress may adjourn in the interim, not sine die, but for a longer period than ten days, exclusive of Sundays. Id.

Should a bill presented to the president on adjournment not sine die not be signed within the ten days, it would probably fail to become law. Suggested, however, that the better plan would be, in case the bill does not meet with executive approval, to return it vetoed to congress when that body reconvenes. Its validity can then be determined by the courts. Id.

Veto of bill—Record as showing when sent to house.—An act of congress discharging certain sureties became a law, unless the president's veto was sent to the house by the 24th of February, 1877. Held, that a memorandum in the minute book of the journal clerk of the house, to the effect that a message in writing was received from the president on the 24th and laid on the speaker's table, together with testimony by such clerk that such memorandum could refer to no other message than the one in question, and that it undoubtedly did refer to such one, and that, under house rule 24, a message received in the afternoon of the 24th would, according to the usual practice, be laid before the house by the speaker on the succeeding morning, is sufficient proof that the message was received on the 24th, although the journal of the house shows that it was not laid before the house till the following day. U. S. v. Allen (C. C. 1888) 36 Fed. 174.

Passage of bills over veto.—Under the clause it is not essential to the passing of a bill by the senate on reconsideration after veto that two-thirds of the senators vote therefor, but is sufficient if two-thirds of a quorum support the bill. State v. Missouri Pac. Ry. Co. (Kan. 1915) 152 P. 777.

When bill becomes a law.—A statute takes effect on the day of its approval by the executive, and includes that day, unless its operation is postponed by its own terms. Weed v. Snow (C. C. 1843) Fed. Cas. No. 17,347; In re Williams (C. C. 1874) Fed. Cas. No. 17,700; U. S. v. Chong Sam (D. C. 1891) 47 Fed. 878; (1836) 3 Op. Atty. Gen. 82.

In Lapeyre v. U. S. (1872) 17 Wall. 191, 21 L. Ed. 606, it was said obiter: "The act becomes effectual upon the day of its date. In some cases it is operative from the first moment of that day. Fractions of the day are not recognized. Any inquiry involving that subject is inadmissible."

The rule that, where a computation is to be made from an act done, the day on which the act is done is to be included, applies to statutes to take effect from and after passage. Arnold v. U. S. (1815) 9 Cranch, 104, 120, 3 L. Ed. 671.

The internal revenue act of March 3, 1875 (18 Stat. 339), increasing a tobacco tax, became effective when approved by the president on the afternoon of that day, and did not apply to tobacco against which the tax under its provisions had been paid on the forenoon of that day. Burgess v. Salmon (1878) 97 U. S. 381, 24 L. Ed. 1104.

Where congress directs that an act shall take effect as of a prior date, such effect must be given to it. U. S. v. Green (1891) 138 U. S. 293, 296, 11 Sup. Ct. 299, 34 L. Ed. 960.

A statute takes effect, if not otherwise provided, on the day of its passage. The Ann (C. C. 1812) Fed. Cas. No. 397; In re Ankrim (C. C. 1843) Fed. Cas. No. 395; In re Carrier (D. C. 1875) Fed. Cas. No. 2,443. See, also, U. S. v. Williams (C. C. 1814) Fed. Cas. No. 16,723.

Where a bill is approved by the president, it takes effect as a law from the time of the approval, and cannot reach backward. In re Richardson (C. C. 1843) Fed. Cas. No. 11,777; U. S. v. Stoddard, Haserick, Richards & Co. (C. C. 1898) 89 Fed. 699, 701 (affirmed [1899] 91 Fed. 1005, 34 C. C. A. 175).

The doctrine that in law there is no fraction of a day is a mere legal fiction,

and is true only sub modo, and in a limited sense, where it will promote the right and justice of the case. In re Richardson (C. C. 1843) Fed. Cas. No. 11,777. By the constitution the very time of the approval of a public law, constitutes the time as to when the law is to have its effect; prospectively and not retrospectively. Id.

When the question is as to the effect of a proceeding instituted on the same day on which an act affecting the validity of such proceeding was passed, the precise time at which the act became a law may be properly inquired into. In re Wynne (C. C. 1868) Fed. Cas. No. 18,117.

Approval by president of constitutional amendments.—An amendment to the constitution need not be presented to the president for approval. Hollingsworth v. Virginia (1798) 3 Dall. 378, 382, 1 L. Ed. 644.

Cited without definite application, McCulloch v. Maryland (1819) 4 Wheat. 316, 412, 4 L. Ed. 579; Gardner v. Barney (1867) 6 Wall. 499, 500, 502, 503, 506, 18 L. Ed. 890; Kilbourn v. Thompson (1880) 103 U. S. 168, 191, 26 L. Ed. 377; Cunningham v. Neagle (1890) 10 Sup. Ct. 658, 678, 135 U. S. 1, 34 L. Ed. 55 (dissenting opinion); Holy Trinity Church v. U. S. (1892) 12 Sup. Ct. 511, 516, 143 U. S. 457, 36 L. Ed. 226; Lyons v. Woods (1894) 14 Sup. Ct. 959, 963, 153 U. S. 649, 38 L. Ed. 854.

[8] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Notes of Decisions

Joint resolution suspending execution of act of congress.—Joint resolution suspending the execution of an act of congress held to be one of the character mentioned in this clause, to which the concurrence of the senate and house of representatives and the approval of the president is necessary. U. S. v. Stockslager (1889) 9 Sup. Ct. 382, 384, 129 U. S. 470, 32 L. Ed. 785.

Senate resolution as law.—A senate resolution, not concurred in by the House of Representatives, nor approved by the president, directing the interstate commerce commission to make investigation of certain railroads, held not a law of the United States, and did not enlarge the authority or jurisdiction of the commission to inspect defendant's records and correspondence, conferred by the interstate commerce act. U. S. v. Nashville, C. & St. L. Ry. (D. C. 1914) 217 Fed. 254.

Cited without definite application, La Abra Silver Mining Co. v. U. S. (1899) 20 Sup. Ct. 168, 178, 175 U. S. 423, 44 L. Ed. 223; The Diamond Rings (1901) 22 Sup. Ct. 59, 62, 183 U. S. 176, 46 L. Ed. 138 (concurring opinion).

Section. 8. [1] The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Notes of Decisions

1. What are taxes, duties, imposts, or excises.
2. Taxing power as exclusive or concurrent.
3. Right to tax as sounding in contract.
4. Taking private property for public use.
5. Justice and equality of taxation.
6. Motive of tax.
7. Treaty as defeating libility for tax.
8. Common defense and general welfare.
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10. Territorial extent of power.
11. —— Conquered territory.
12. Duties on imports from and to Porto Rico.
13. State interference and interference with state taxes.
14. —— Police power.
15. —— Effect of payment of license tax to federal government.
16. Subjects of taxation.
17. —— States and state agencies or franchises.
18. Stamp taxes.
19. —— Process of state courts.
20. —— Unstamped instruments as evidence.
21. Mode of taxation and collection in general.
22. Use of prescribed meters in distilleries.
23. Tax sales.
24. Forfeitures.
25. Contracts as to payment of duties between seller and purchaser.
26. Rate of taxation.
27. Uniformity.

1. What are taxes, duties, imposts, or excises.—Pilotage fees or penalties are not imposts or duties, within the meaning of the constitution of the United States. Cooley v. City of Phila-

delphia (1851) 53 U. S. (12 How.) 299, 13 L. Ed. 996.

The term "duties," in its widest signification, is hardly less comprehensive than taxes, but in its restricted sense it is applied to customs, and is nearly the synonym of imposts. Pacific Ins. Co. v. Soule (1868) 7 Wall. 433, 445, 19 L. Ed. 95.

Impost is a duty on imported goods and merchandise, but in a larger sense it is any tax or imposition. Id.

Excise is an inland imposition, sometimes on the consumption of a commodity and sometimes on a retail sale, and sometimes on the manufacturer and sometimes on the vendor. Id.

The tax laid by Act June 30, 1864, §§ 105, 120, and the amendment thereto of July 13, 1866, on the amounts insured, renewed, or continued by insurance companies on the gross amount of premiums received and assessments made by them, and on dividends, undistributed sums, and income, is not a direct tax, but a duty or excise. Id.

The tax imposed on distillers is in the nature of an excise, and the only limitation on the power of congress in the imposition of such taxes is that they shall be uniform. U. S. v. Singer (1872) 15 Wall. 111, 121, 21 L. Ed. 49.

The charges exacted as a condition of carrying on trade in the insurrectionary states was not a tax. Hamilton v. Dillin (1874) 21 Wall. 73, 75, 22 L. Ed. 528.

The tax levied on tobacco by War Revenue Act June 13, 1898, c. 448, § 3, 30 Stat. 449, "in lieu of the tax now imposed by law," is an excise, and not a direct tax upon property, which must be apportioned according to population. Patton v. Brady (1902) 22 Sup. Ct. 493, 496, 184 U. S. 608, 46 L. Ed. 713.

Act June 13, 1898, c. 448, requiring stamps to be affixed to memoranda of stock sales, levies an excise tax under this section and not a direct tax. Thomas v. U. S. (1904) 24 Sup. Ct. 305, 306, 192 U. S. 363, 48 L. Ed. 481.

The "special excise tax" imposed on sugar refining by War Revenue Act June 13, 1898, c. 448, § 27, 30 Stat. 448, 464, to be measured by gross annual receipts in excess of a named sum, is not a direct tax, which, under the federal constitution, must be apportioned among the several states according to population, but is an excise imposed by congress under its power to lay and collect excises which shall be uniform through the United States. Spreckels Sugar Refining Co. v. McClain (1904) 24 S. Ct. 376, 380, 192 U. S. 397, 48 L. Ed. 496, reversing judgment (1902) 113 Fed. 244, 51 C. C. A. 201.

This clause, giving congress power to lay and collect duties, necessarily implies that there must be some article imported on which such duty is imposed, and charges cannot be imposed on portions of an importation which are nonexistent, or which did not arrive when the rest of the importation reached the United States. Alexander D. Shaw & Co. v. U. S. (C. C. 1905) 141 Fed. 469, judgment reversed U. S. v. A. D. Shaw & Co. (1906) 144 Fed. 329, 75 C. C. A. 291, writ of certiorari denied Shaw v. U. S. (1906) 27 Sup. Ct. 779, 203 U. S. 591, 51 L. Ed. 331. Hence an imposition of duties on imported wines, without allowance for leakage, would make the duty unequal.

The term "tax" in this clause is apparently used in contradistinction to duties and imports, rather than as including them. U. S. v. Fifty-Nine Demijohns Aguadiente and Four Barrels of Cigarettes (D. C. 1889) 39 Fed. 401, 402.

The tax imposed on corporations by Act Aug. 5, 1909, c. 6, § 38, is an excise tax imposed on the exercise of the privilege of doing business in a corporate capacity. U. S. v. General Inspection & Loading Co. (D. C. 1911) 192 Fed. 223.

2. Taxing power as exclusive or concurrent.—The power of taxation under the constitution as a general rule is a concurrent power. The qualifications of the rule are the exclusions of the state from the taxation of the means and instruments employed in the exercise of the functions of the federal government. Van Allen v. Assessors (1865) 3 Wall. 573, 585, 18 L. Ed. 229.

The power conferred by this clause does not, proprio vigore, operate as a prohibition on the states to exercise the same powers to raise money to support their own governments. They cannot lay imposts or duties on imports or exports, except as it is absolutely necessary to execute their inspection laws, because the constitution expressly provides that no state shall exercise that power without consent of congress. Want of authority in the states to tax securities of the United States issued in exercise of the admitted power of congress to borrow money on the credit of the United States is equally certain, though not expressly prohibited. Outside of those provisions, however, the power of the state to tax extends to all objects, except the instruments and means of the federal government, within the sovereign power of the state. Hamilton Mfg. Co. v. Massachusetts (1867) 6 Wall. 632, 639, 18 L. Ed. 904.

Where the power of taxation exercised by congress is warranted by the constitution as to mode and subject, it is unlimited in its nature, and congress may prescribe the basis, fix the rates, and require payment as it may deem proper, and no power of supervision or control is lodged in either of the oth-

er departments of the government. Pacific Ins. Co. v. Soule (1868) 7 Wall. 433, 443, 19 L. Ed. 95.

Power to lay and collect taxes is vested in congress. Oulton v. German Sav. & L. Soc. (1872) 17 Wall. 109, 121, 21 L. Ed. 618.

Power to lay and collect taxes for federal purposes is vested exclusively in congress, and when the validity of a tax is questioned it is necessary to examine the act as the question necessarily depends on its true construction unless it appears that the tax is not apportioned as required, or not uniform, or the object taxed is one not taxable for such a purpose. Barnes v. Philadelphia & R. R. Co. (1872) 17 Wall. 294, 299, 21 L. Ed. 544.

The state has power, so long as it does not trench upon the constitution of the United States, to tax all persons, property, and business within its jurisdiction or reach. Dundee Mortg. Trust Inv. Co. v. School Dist. No. 1 (C. C. 1884) 19 Fed. 359; Same v. Parrish (C. C. 1885) 24 Fed. 197 (appeal dismissed Hughes v. Dundee Mortg. & Trust Inv. Co. [1891] 11 Sup. Ct. 727, 140 U. S. 98, 35 L. Ed. 354).

The succession tax or duty imposed by War Revenue Act June 13, 1898, §§ 29–31, was not unconstitutional as an exercise of a power which belongs exclusively to the states. High v. Coyne (C. C. 1899) 93 Fed. 450, affirmed (1900) 20 Sup. Ct. 747, 178 U. S. 111, 44 L. Ed. 997.

Under this clause Congress has the exclusive taxing power, and Act July 24, 1897 (Comp. St. § 6204), providing that no package of smoking tobacco shall be permitted to have packed in it any article other than the manufacturers' labels, etc., is a valid law. U. S. v. 288 Packages of Merry World Tobacco (D. C. 1900) 103 Fed. 453.

The adoption of the constitution of the United States was not a repeal of the revenue laws of a state before congress passed a law for the collection of duties. State v. Sluby (Md. 1790) 2 Har. & McH. 480.

3. Right to tax as sounding in contract.—The Act March 3, 1883 (22 Stat. 511), providing for a drawback upon coal imported confers a privilege not in the nature of a contract, liable to be withdrawn at any time. Cunard Steamship Co. v. U. S. (1890) 25 Ct. Cl. 428.

4. Taking private property for public use.—This clause does not authorize congress to take private property for public use. U. S. v. Certain Tract of Land in Cumberland (C. C. 1895) 67 Fed. 869, 871, reversed (1896) 16 Sup. Ct. 427, 160 U. S. 668, 40 L. Ed. 576.

5. Justice and equality of taxation.—The progressive rate feature of War Revenue Act June, 1898, §§ 29, 30, by which the rates are graded in accordance with the amounts of the legacies or distributive shares and progressively increased as those amounts increase, cannot be held unconstitutional on the ground that it is repugnant to fundamental principles of equality and justice; but the question whether a progressive tax is more just and equal than a proportional one is, in the absence of constitutional limitation, a legislative, and not a judicial, question. Knowlton v. Moore (1900) 20 Sup. Ct. 747, 774, 178 U. S. 41, 44 L. Ed. 969.

6. Motive of tax.—The motive or purpose of Congress in adopting Act Aug. 2, 1886, § 8, as amended by Act May 9, 1902, § 3 (Comp. St. § 6220), imposing a tax upon artificially colored oleomargarine, cannot be inquired into by the courts, if the adoption of such act was within the constitutional powers of congress. McCray v. U. S. (1904) 24 Sup. Ct. 769, 777, 195 U. S. 27, 49 L. Ed. 78, 1 Ann. Cas. 561.

7. Treaty as defeating liability for tax.—A treaty with a foreign country cannot be invoked by an individual to defeat liability for a tax imposed by a subsequent act of congress. U. S. v. Billings (C. C. 1911) 190 Fed. 359.

8. Common defense and general welfare.—The power of the state to levy taxes for state purposes is as exclusive as that of the federal government to levy taxes for the common defense and general welfare. Ward v. Maryland (1870) 12 Wall. 418, 426, 20 L. Ed. 449.

License fees imposed on certain lines of business by Pen. Code Alaska, c. 429, tit. 2, § 460 (30 Stat. 1253, 1337), as amended by Act June 6, 1900, c. 786 (31 Stat. 321, 330), are not "excises" levied "to pay the debts and provide for the common defense and general welfare;" but such fees must be deemed local taxes, imposed under the plenary power of congress over the territories, for the purpose of defraying the expense of the territorial government, where the total sum derived from these and all other revenues of the territory does not equal the cost of maintaining such government. Binns v. U. S. (1904) 24 Sup. Ct. 816, 819, 194 U. S. 486, 48 L. Ed. 1087; Wynn-Johnson v. Shoup (1904) 24 Sup. Ct. 820, 194 U. S. 496, 48 L. Ed. 1091.

The words "to pay the debts and provide for the common defense and general welfare of the United States" do not confer any distinct and substantial power on congress to enact any legislation. U. S. v. Boyer (D. C. 1898) 85 Fed. 425.

The commissioners of the harbor of Portland have no authority to prevent the deposition of stone or other materials deemed necessary by the officers of the United States for the construction of a fort on Hog Island Ledge in that harbor. The work has been au-

thorized by congress, for the protection of commerce and the common defense, and the legislature of the state of Maine has ceded to the United States jurisdiction over the premises for the purposes of the fort. (1859) 9 Op. Atty. Gen. 319.

Act July 17, 1862, § 5 (12 Stat. 589), confiscating the property of those engaged in rebellion against the United States, is within the powers conferred upon congress by the constitution, and is binding upon the courts of the states. Knœfel v. Williams (1868) 30 Ind. 1. Under the provision of this clause as to common defense and general welfare, and clauses 15 and 18, post, Confiscation Act July 17, 1862, was held constitutional. Id.

9. Payment of debts or claims.—The power to lay and collect taxes and to pay "debts" is broad enough to include claims of citizens resting on obligations of right and justice. U. S. v. Realty Co. (1896) 16 Sup. Ct. 1120, 1125, 163 U. S. 427, 41 L. Ed. 215; Chieves v. U. S. (1906) 42 Ct. Cl. 21.

This clause either embodies a grant of power to pay the debts of the United States or presupposes and assumes that power as inherent in the United States as a sovereign government, and in either case congress must possess the choice of means, and must be empowered to use any means which is in fact conducive to the exercise of the power. Legal Tender Cases (1884) 4 Sup. Ct. 122, 126, 110 U. S. 421, 28 L. Ed. 204.

The claim of sugar producers to be paid the amount of the bounties allowed by Act Oct. 1, 1890, in spite of the repeal of this act by Act Aug. 19, 1894, which forbade the payment of bounties, was such an equitable and honorable obligation on the part of the government as to authorize the appropriation by congress of money for the payment of such bounties, the producers having in good faith acted in reliance upon the former act. U. S. v. Realty Co. (1896) 16 Sup. Ct. 1120, 163 U. S. 427, 41 L. Ed. 215.

The equitable obligation of the government to pay the bounty was not affected by the question of the constitutionality of the bounty provision; no attack thereon having been made by any government officer during three years of its operation, and the payments thereunder having been made without objection. Id.

The power to raise money to pay debts implies the power to appropriate it to that object. Id.

There is no vested right to import superior to the power of congress to say upon what terms it shall be done, and it is quite within the constitutional discretion of congress to say upon what terms foreign trade may be had, and to determine how the justice of the claims for alleged excessive tariff taxation shall be ascertained and disposed of. Such claims may in the discretion of congress be left altogether to an executive department, or in suits against the collectors of customs, or to the determination of a board of general appraisers, subject to review by the courts upon such particulars only as the law may prescribe. U. S. v. American Express Co. (C. C. 1910) 177 Fed. 735.

10. Territorial extent of power.—14 Stat. 138, imposing a tax on interest paid by corporations to bondholders of the corporation, being valid as an excise tax on the income of the corporation, and not on the income of the bondholder, is not invalidated by the provisions for the withholding of such tax from the interest due a resident of a foreign country. Michigan Cent. R. Co. v. Slack (1879) 100 U. S. 595, 25 L. Ed. 647.

The tax of 5 per cent. on interest paid on bonds or dividends on stock of "any railroad, canal, turnpike, canal navigation, or slack-water company," levied by Act June 30, 1864, c. 173, § 122, amended by Act July 13, 1866, c. 184, is not invalid with respect to interest paid by a railroad company to the nonresident alien holders of its bonds, as being a tax on property beyond the jurisdiction of the sovereign. U. S. v. Erie Ry. Co. (1882) 106 U. S. 327, 1 Sup. Ct. 223, 27 L. Ed. 151; Id. (1882) 107 U. S. 1, 2 Sup. Ct. 83, 27 L. Ed. 385.

The rule that the power of a state to impose taxes is limited with respect to tangible personal property, to property within its territorial jurisdiction, does not apply in the same degree to federal legislation, since the underlying principle on which such rule is based is that taxes are the consideration for protection afforded, and the federal government, unlike that of a state, has power to afford protection to the persons and property of its citizens although they may be domiciled and the property located in a foreign country. U. S. v. Billings (C. C. 1911) 190 Fed. 359.

11. —— Conquered territory.—Duties exacted by military authorities in conquered territories held lawful. Cross v. Harrison (1853) 16 How. 164, 198, 14 L. Ed. 889.

The regulation of the revenue of conquered territory, even after the treaty of cession, remains with the executive and military authority, in the absence of congressional legislation. Downes v. Bidwell (1901) 21 Sup. Ct. 770, 810, 182 U. S. 244, 45 L. Ed. 1088 (concurring opinion).

12. Duties on imports from and to Porto Rico.—See, also, notes under art. 1, § 9, cl. 5, post.

The imposition of duties upon imports from Porto Rico by the act of congress known as the "Foraker Act," approved April 12, 1900 (Comp. St. § 3749), temporarily providing a civil gov-

ernment and revenues for that island, was a constitutional exercise of the power of congress. Downes v. Bidwell (1901) 21 Sup. Ct. 770, 772, 182 U. S. 244, 45 L. Ed. 1088.

A duty on imports to Porto Rico within the power of congress "to law and collect taxes, duties, imposts and excises," was imposed by Act April 12, 1900 (Comp. St. § 3748), as temporary legislation for the island, since the tax was for the benefit of the island and could be abolished by its legislative assembly at will. Dooley v. U. S. (1901) 22 Sup. Ct. 62, 69, 183 U. S. 151, 46 L. Ed. 128.

Porto Rico did not, by reason of the cession by Spain, become a part of the United States, so that no customs could be collected by the United States upon imports from Porto Rico, the cession of the island not incorporating it as part of the United States. Goetze v. U. S. (C. C. 1900) 103 Fed. 72, 74, reversed (1901) 21 Sup. Ct. 742, 182 U. S. 221, 45 L. Ed. 1065.

13. State interference and interference with state taxes.—The power is not only to impose duties and taxes, but to collect them, and from the power to collect is necessarily inferred the disability of the legislatures of the states or of the courts of the states from interfering with its execution as directed by congress. Dodge v. Woolsey (1855) 18 How. 331, 352, 15 L. Ed. 401.

The power to impose and collect taxes is given in absolute terms and imports a system of assessment and collection under the exclusive control of the federal government, and the grant of the power and its limitation are inconsistent with the proposition that the states may by legislation interfere with the assessment of federal taxes or set up a limitation of time within which they must be collected, and a state law requiring that all liens on real estate must be recorded to affect third parties does not apply to tax liens in favor of the United States. U. S. v. Snyder (1893) 13 Sup. Ct. 846, 848, 149 U. S. 210, 37 L. Ed. 705.

Act N. D. March 13, 1907, requiring that receipts for the payment of the federal internal revenue tax upon the business of selling intoxicating liquors be registered and published at the holder's expense, is invalid, as placing a direct burden upon the taxing power of the federal government. North Dakota ex rel. Flaherty v. Hanson (1910) 30 Sup. Ct. 179, 183, 215 U. S. 515, 54 L. Ed. 307.

The United States and the states act separately and independently of each other in the field within which each is sovereign, and neither have power to impose a tax which will interfere with the exercise of the sovereignty of the other within their own sphere, either by taxing their functions or the means by which they are exercised. A power in the federal government to exact a tax upon the right to qualify, under a state law, for the performance of the duties of a state office, is inconsistent with the existence of any supreme governmental authority in the state, and the converse is true as regards the power of the state to tax the means employed by the federal government to carry into execution the powers vested in it by the constitution. Bettman v. Warwick (1901) 108 Fed. 46, 47 C. C. A. 185, affirming judgment (C. C. 1900) 102 Fed. 127.

The question whether the war stamp tax imposed by the United States upon the manifests and bills of lading of express companies shall be borne by the companies or by shippers is one not within the control of the administrative officers of a particular state, and an order by a state railroad commission requiring its payment by the express companies is without jurisdiction and void. Dinsmore v. Southern Exp. Co. (C. C. 1899) 92 Fed. 714.

Act Ala. Oct. 1, 1903 (Acts 1903, p. 342) §§ 1-5 (Code Ala. 1907, § 3573), authorizing associates to incorporate, and under which they were incorporated, to own and lease lands to apply and demonstrate the single tax principle of taxation, held not to violate Const. art. 1, §§ 8, 9. Fairhope Single Tax Corporation v. Melville (Ala. 1915) 69 So. 466.

The New York act of 1850, providing for the appointment of harbor masters, to regulate and station vessels does not conflict with this clause. Benedict v. Vanderbilt (N. Y. 1863) 25 How. Prac. 209.

Congress has no authority to interfere with state taxes, either in amount, assessment, collection, or means of payment. Whiteaker v. Haley (1865) 2 Or. 128.

14. —— Police power.—Congress has power to pass a law imposing a license duty on those who are engaged in a business which is a subject of a police regulation by the states. U. S. v. Riley (C. C. 1864) Fed. Cas. No. 16,164.

Act Aug. 2, 1886, c. 840, 24 Stat. 210, imposing a tax on manufacturers and dealers in oleomargarine, and regulating the sale of such article, having for its primary object the raising of revenue, and not protection to purchasers, is not unconstitutional, as being an infringement upon the police powers of the states. U. S. v. Dougherty (D. C. 1900) 101 Fed. 439, judgment affirmed Dougherty v. U. S. (1901) 108 Fed. 56, 47 C. C. A. 195, and writ of certiorari denied (1901) 21 S. Ct. 926, 181 U. S. 622, 45 L. Ed. 1033.

If a state unites in one undertaking an exercise of the police power with a commercial business, the national government cannot be compelled to aid the operation of the police power by foregoing its constitutional right to lay and collect an excise on the business. State

of South Carolina v. U. S. (1904) 39 Ct. Cl. 257.

The state has constitutional power to impose a tax on the business of liquor dealers, and an exaction whether imposed as a license fee or under the name of a tax is not prima facie designed to raise revenue, but to exercise the police power by restricting a traffic dangerous to the best interests of the community. Cooper v. City of Hot Springs (Ark. 1908) 111 S. W. 997.

Laws Dak. 1887, c. 70, known as the "Local Option Act," regulating the sale of intoxicating liquors, is a valid exercise of police power, not contrary to the revenue laws of the United States granting licenses for such sales. Territory v. O'Connor (Dak. 1888) 37 N. W. 765; Minnehaha County v. Champion, Id. 766; Territory v. O'Connor (1889) 5 Dak. 397, 41 N. W. 746, 3 L. R. A. 355.

The prohibitory liquor law is not in conflict with Act July 16, 1862, entitled "An act to provide internal revenue." State v. Carney (1866) 20 Iowa, 82; Same v. Baughman, Id. 497.

Laws N. D. 1907, c. 189, requiring the registration and publication of internal revenue tax receipts, is a legitimate exercise by the state of its police power, as it tends to aid in the enforcement of the law against the unlawful traffic in intoxicating liquors. State v. Hanson (N. D. 1907) 113 N. W. 371.

Laws Wis. 1870, c. 72, relating to peddlers' licenses being an exercise of the police power of the state, does not violate the clause of the federal constitution relating to taxes and imposts. Morrill v. State (1875) 38 Wis. 428, 20 Am. Rep. 12.

15. —— Effect of payment of license tax to federal government.—A license granted by the United States under an internal revenue act to carry on the business of a liquor dealer in a particular state does not give the licensee power to carry on the business in violation of the state laws. McGuire v. Commonwealth (1865) 70 U. S. (3 Wall.) 387, 18 L. Ed. 226; In re License Tax Cases (1866) 72 U. S. (5 Wall.) 462, 18 L. Ed. 608; Pervear v. Commonwealth (1866) 72 U. S. (5 Wall.) 475, 18 L. Ed. 608; In re Jordan (D. C. 1892) 49 Fed. 238; Pierson v. State (1882) 39 Ark. 219; Block v. Town of Jacksonville (1865) 36 Ill. 301; State v. McCleary (1864) 17 Iowa, 44; Same v. Carney (1866) 20 Iowa, 82; Same v. Stulz, Id. 488; Same v. Baughman, Id. 497; Stommel v. Timbrel (1892) 84 Iowa, 336, 51 N. W. 159; Combast v. Commonwealth (Ky. 1910) 125 S. W. 1092; State v. Delano (1867) 54 Me. 501; Commonwealth v. Thornley (1863) 88 Mass. (6 Allen) 445; Same v. O'Donnell (1864) 90 Mass. (8 Allen) 548; Same v. Holbrook (1865) 92 Mass. (10 Allen) 200; Same v. Keenan (1865) 93 Mass. (11 Allen) 262; Same v. McNamee (1873) 113 Mass. 12; Same v. Sanborn (1874) 116 Mass. 61; State v. Funk (1880) 27 Minn. 318, 7 N. W. 359; State v. Hazell (1888) 100 N. C. 471, 6 S. E. 404; State v. Downs (1895) 116 N. C. 1064, 21 S. E. 689.

A brewer selling intoxicating liquors through an agency in a town other than that where his beer is manufactured is not to be regarded as selling in the usual course of manufacture, but is to be regarded as selling directly to the consumer, and is not protected by the license issued to him under the federal laws. Pietz v. State (1887) 68 Wis. 538, 32 N. W. 763.

16. Subjects of taxation.—An annual tax on carriages may be considered as within the powers of congress to lay duties. Hylton v. U. S. (1796) 3 Dall. 171, 173, 1 L. Ed. 556.

The recognition by the acts of congress of the power and right of the states to tax, control, or regulate any business carried on within its limits does not preclude congress from taxing such business for national purposes. In re License Tax Cases (1866) 72 U. S. (5 Wall.) 462, 18 L. Ed. 497.

Act June 30, 1864 (13 Stat. 223), providing that no persons should be engaged in certain occupations without obtaining licenses from the United States, and imposing penalties for not taking out and paying them, is not unconstitutional. Id.

The succession tax imposed by Act June 30, 1864, and Act July 13, 1866, held valid as an impost or excise. Scholey v. Rew (1874) 23 Wall. 331, 346, 23 L. Ed. 99.

Act Aug. 3, 1882 (22 Stat. 214), entitled "An act to regulate immigration," imposes on the owners of vessels who shall bring passengers from a foreign port into a port of the United States a duty of 50 cents for every such passenger not a citizen of the United States, and is not a tax subject to the limitations imposed by the constitution on the general taxing power of congress. Edye v. Robertson (1884) 5 Sup. Ct. 247, 251, 112 U. S. 580, 28 L. Ed. 798, affirming judgment (C. C. 1883) 18 Fed. 147.

Subject to constitutional limitations, the taxing power of congress extends to all usual objects of taxation. Knowlton v. Moore (1900) 20 Sup. Ct. 747, 754, 178 U. S. 41, 44 L. Ed. 969.

It was within the power of congress to impose by the war revenue act of June 13, 1898, an additional excise upon manufactured tobacco on which the excise theretofore imposed by law had been paid, even though such tobacco had passed from the hands of the manufacturer, where it had not reached the consumer, and was, at the time of the passage of the act, held and intended for sale. Patton v. Brady (1902) 22 Sup. Ct. 493, 184 U. S. 608, 46 L. Ed. 713.

The power to tax inheritances does not arise solely from the power to regulate the descent of property, but from

the general authority to impose taxes upon all property within the jurisdiction of the taxing power, and congress may impose such taxes as well as the states. Snyder v. Bettman (1903) 23 Sup. Ct. 803, 804, 190 U. S. 249, 47 L. Ed. 1035.

The United States may, under the federal constitution, exact the license taxes prescribed by the internal revenue laws for dealers in intoxicating liquors from the dispensing and selling agents of a state which, in the exercise of its sovereign power, has taken charge of the business of selling such liquors. State of South Carolina v. U. S. (1905) 26 Sup. Ct. 110, 199 U. S. 437, 50 L. Ed. 261, affirming judgment (1904) 39 Ct. Cl. 257.

Congress may impose a tax on beer in barrels and an additional tax on it when put up in bottles, and a tax paid on beer in the barrel does not necessarily exempt the product from a stamp tax when it possesses mild tonic properties and is put up in bottles and named and labeled in a manner bringing it within the revenue act of 1898. U. S. v. J. D. Iler Brewing Co. (1903) 121 Fed. 41, 57 C. C. A. 381.

Congress has discretion in selecting the subjects of taxation within its province and in prescribing regulations facilitating the collection of internal revenues and to prevent frauds thereon which will not be supervised by the courts. Ripper v. U. S. (1910) 178 Fed. 24, 101 C. C. A. 152, rehearing denied (1910) 179 Fed. 497, 103 C. C. A. 478.

Congress has power to impose a tax on incomes. Clark v. Sickel (C. C. 1871) Fed. Cas. No. 2,862.

Congress has power to tax occupations, business, trades, transfers of property, and contracts. U. S. v. Thomas (C. C. 1902) 115 Fed. 207, affirmed (1904) 24 Sup. Ct. 305, 192 U. S. 363, 48 L. Ed. 481.

The right to tax a pursuit, occupation, or business involves the right to tax the same in whatsoever limited degree it is adopted and followed, so that the right to tax one for carrying on the business of selling shares of stock involves the power to tax the sale of a single share of stock. Id.

In the exercise of the taxing power by the United States, so long as congress follows the particular constitutional provisions relating to the levying of taxes, there are no limitations upon its right to discriminate in selecting the subjects of taxation. U. S. v. Billings (C. C. 1911) 190 Fed. 359.

Under the revenue laws, the government has the right to control and regulate the manufacture of spirits for the purpose of collecting the revenue. U. S. v. Mason (D. C. 1875) Fed. Cas. No. 15,735.

Act Dec. 17, 1914 (Comp. St. § 6267g et seq.), imposing a special tax on dealers in opium, requiring dealers to register with collectors of internal revenue, and making it unlawful for any person who has not registered and paid the tax to have opium in his possession, held within the power of congress. U. S. v. Brown (D. C. 1915) 224 Fed. 135. Such statute, in regulating traffic in opium or coca leaves, etc., held within the power of congress, even though not designed to protect the revenues. U. S. v. Charter (D. C. 1915) 227 Fed. 331.

Act Oct 3, 1913 (Comp. St. § 6319, et seq.), so far as it imposes a tax upon incomes for a period partially preceding the enactment of the law, held not unconstitutional. Edwards v. Keith (D. C. 1915) 224 Fed. 585.

Such statute held not unconstitutional, so far as it imposes income tax on insurance agent's percentage of premiums on policies issued before its passage. Id.

17. —— **States and state agencies or franchises.**—Act July 13, 1866 (14 Stat. 146), imposing a tax of 10 per cent. upon notes of state banks, etc., used for circulation, does not violate the constitution of the United States, and the tax is not objectionable upon any principle that congress cannot tax a franchise granted by a state. Veazie Bank v. Fenno (1869) 75 U. S. (8 Wall.) 533, 19 L. Ed. 482.

Congress cannot impose a tax on the salary of a judicial officer of a state. Buffington v. Day (1870) 11 Wall. 113, 122, 20 L. Ed. 122.

The right of the states to administer their own affairs through their legislative, executive, and judicial departments, in their own manner, through their own agencies, carries with it an exemption of the agencies of the states from the taxing power of the federal government. U. S. v. Baltimore & O. R. Co. (1872) 17 Wall. 322, 327, 21 L. Ed. 597.

A municipal corporation is a part of the sovereign power of the state and is not subject to taxation by congress on its municipal revenues. Id.

In so far as Act Aug. 15, 1894, c. 349, imposing taxes on incomes, levied a tax upon income derived from municipal bonds, it was invalid as being a tax on the power of the states and their instrumentalities to borrow money, and consequently repugnant to the constitution. Pollock v. Farmers' Loan & Trust Co. (1895) 15 Sup. Ct. 673, 690, 157 U. S. 429, 39 L. Ed. 759.

The taxes upon legacies and distributive shares of personal property, which are imposed by War Revenue Act June, 1898 (30 Stat. 448) §§ 29, 30, are imposed upon the transmission or receipt of such inheritances and legacies, and not upon the right of the state to regulate the devolution of property upon death. Knowlton v. Moore (1900) 20 Sup. Ct. 747, 753, 178 U. S. 41, 44 L. Ed. 969.

A succession tax imposed under the authority of Act June 13, 1898, c. 448,

30 Stat. 448, upon a bequest to a municipality, is not unconstitutional as a tax upon an agency of the state, since such tax cannot be regarded as a tax upon the municipality, although it may operate incidentally to reduce the bequest by the amount of the tax. Snyder v. Bettman (1903) 23 Sup. Ct. 803, 805, 190 U. S. 249, 47 L. Ed. 1035.

The United States may, under the federal constitution, exact the license taxes prescribed by the internal revenue laws for dealers in intoxicating liquors from the dispensing and selling agents of a state, which, in the exercise of its sovereign power, has taken charge of the business of selling such liquors. South Carolina v. U. S. (1905) 26 Sup. Ct. 110, 112, 199 U. S. 437, 50 L. Ed. 261, 4 Ann. Cas. 737, affirming judgment (1904) 39 Ct. Cl. 257.

The excise imposed by Act Aug. 5, 1909, § 38 (Comp. St. § 6300 et seq.), upon the carrying on or the doing of business in a corporate or quasi corporate capacity, is not invalid because the business taxed is done in pursuance of the authority granted by a state in the creation of private corporations. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 357, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

The federal government has no power to tax agencies employed by a municipal corporation in the exercise of its legitimate powers, such as an advance of money to aid in the construction of a railroad to the city. U. S. v. Baltimore & O. R. Co. (C. C. 1871) Fed. Cas. No. 14,511.

The exemption of a state from taxation extends no further than the functions belonging to it in its ordinary capacity. State of South Carolina v. U. S. (1904) 39 Ct. Cl. 257.

Congress has no power to impose a tax upon the bonds required by a state law from persons holding office under the state. State v. Garton (1869) 32 Ind. 1, 2 Am. Rep. 315.

The United States revenue act, requiring stamps on written instruments, including bonds of public officers, is not unconstitutional, as "taxing the constitutional means employed by a state to execute and carry out its constitutional powers." City of Muscatine v. Sterneman (1871) 30 Iowa, 526, 6 Am. Rep. 685.

The United States government cannot tax the salary of any state functionary. City of New Orleans v. Salmen Brick & Lumber Co. (1914) 66 So. 237, 135 La. 828.

18. Stamp taxes.—Congress may say that a tax shall be paid by stamps, and the requirement must be complied with. U. S. v. Keyes (C. C. 1882) 10 Fed. 876.

So long as a contractor is taxed uniformly with all others in the same line of business, upon the same transactions, and the tax is levied for proper objects of taxation, he cannot complain merely because his compensation or profits under his contract with the government are thereby indirectly reduced. (1898) 22 Op. Atty. Gen. 192.

The constitutional power of congress to levy taxes did not confer on such body authority to pass Act July 1, 1862, as amended by Act June 30, 1864, § 152, declaring that it shall not be lawful to record any instrument or paper required by the previous provisions of the act to be stamped, unless a stamp has been affixed and canceled, and that the record of any such instrument without the proper stamp shall not be used in evidence, in so far as it attempts to provide a rule of evidence in state courts. Craig v. Dimock (1868) 47 Ill. 308.

The United States revenue act, requiring stamps on written instruments, including bonds of public officers, is not unconstitutional, as "taxing the constitutional means employed by a state to execute and carry out its constitutional powers." City of Muscatine v. Sterneman (1871) 30 Iowa, 526, 6 Am. Rep. 685.

Congress has no power to make void a contract for want of a revenue stamp, made in one of the states between the citizens thereof, and permitted by local law. Sammons v. Halloway (1870) 21 Mich. 162, 4 Am. Rep. 465.

Congress has no power to prohibit state courts from taking jurisdiction of an action for want of a revenue stamp. Coppernoll v. Ketcham (N. Y. 1867) 56 Barb. 111.

It is not within the statutory power of congress to prescribe for the states a rule for the transfer of property within them, and hence a deed is not invalid because not duly stamped according to the internal revenue laws. Moore v. Moore (1872) 47 N. Y. 467, 7 Am. Rep. 466.

Congress has not the power to make a revenue stamp necessary to the validity of a paper as a muniment of title. Sporrer v. Eifler (1870) 48 Tenn. (1 Heisk.) 633.

Congress has no power to require a revenue stamp on a tax deed executed under the laws of a state. Sayles v. Davis (1867) 22 Wis. 225; Delorme v. Ferk (1869) 24 Wis. 201.

Congress has no power to impose a tax on a certificate of sale of land for taxes issued by state authority by requiring a revenue stamp to be affixed thereto. Barden v. Columbia County Sup'rs (1873) 33 Wis. 445, 14 Am. Rep. 762.

19. —— Process of state courts.—The internal revenue acts requiring stamps on process of state courts constitute an unconstitutional interference with their proceedings. Smith v. Short (1867) 40 Ala. 385; Craig v. Dimock (1868) 47 Ill. 308; Warren v. Paul

(1864) 22 Ind. 276; Fifield v. Close (Mich. 1867) 15 Mich. 505; Walton v. Bryenth (N. Y. 1863) 24 How. Prac. 357; Dawson v. McCarty (1899) 57 Pac. 816, 21 Wash. 314, 75 Am. St. Rep. 841; Jones v. Keep's Estate, 19 Wis. 369. CONTRA, German Liederkranz v. Schiemann (N. Y. 1863) 25 How. Prac. 388; Baird v. Pridmore (1865) 29 How. Prac. 253; Id. (1866) 31 How. Prac. 359.

Whether or not congress has the constitutional power to tax the judicial process of a state, it has no power to make the stamp an essential part of the process. Tucker v. Potter (1868) 35 Conn. 43.

Congress has no power to deprive a state court of jurisdiction by declaring a notice of appeal from a justice court to a court of record void for want of a revenue stamp. Lewis v. Randall (N. Y. 1866) 30 How. Prac. 378, 1 Abb. Prac. (N. S.) 135.

The state courts do not exist by the authority of the government of the United States, and they do not come within its jurisdiction, and are not objects over which its sovereign power extends, except, perhaps, for purposes of protection. And the government does not possess, even as an incidental power, the power to lay a tax or duty upon the judicial proceedings of the state courts. Union Bank v. Hill (1866) 43 Tenn. (3 Cold.) 325.

20. —— Unstamped instruments as evidence.—Congress has no power to declare that a written instrument shall not be received in evidence in a state court unless stamped. Bumpass v. Taggart (1870) 26 Ark. 398, 7 Am. Rep. 623; Forcheimer v. Holly (1872) 14 Fla. 239; Small v. Slocumb (1900) 37 S. E. 481, 112 Ga. 279, 53 L. R. A. 130, 81 Am. St. Rep. 50; Latham v. Smith (1867) 45 Ill. 29; United States Express Co. v. Haines (1868) 48 Ill. 248; Masterofsky v. Hellman (1901) 99 Ill. App. 214; Wallace v. Cravens (1870) 34 Ind. 534; Holt v. Hart (1881) 33 La. Ann. 673; Davis v. Richardson (1871) 45 Miss. 499, 7 Am. Rep. 732; Gilbert v. Sage (N. Y. 1871) 5 Lans. 287; Sporrer v. Eifler (1870) 48 Tenn. (1 Heisk.) 633. CONTRA, Davy v. Morgan (N. Y. 1868) 56 Barb. 218; Woodson v. Randolph (1800) 1 Va. Cas. 128.

21. Mode of taxation and collection in general.—The power to lay and collect taxes and make necessary laws includes all known and appropriate means of effectually collecting the revenue, and congress may determine what officer shall be appointed to collect the revenue and what duties shall be required of him, and may, as is done by Act 1820, provide summary means to compel collectors and their sureties to pay balances in their hands. Den ex dem. Murray v. Hoboken Land & Improvement Co. (1855) 18 How. 272, 281, 15 L. Ed. 372.

Distraining lands and selling them in order to collect an income tax is not in conflict with this section. Springer v. U. S. (1880) 102 U. S. 586, 593, 26 L. Ed. 253.

It was competent for congress to create a board of general appraisers as is done by Customs Administrative Act June 10, 1890, and declare that the decision of the board shall be final as to the dutiable valuation of merchandise. Passavant v. U. S. (1893) 13 Sup. Ct. 572, 574, 148 U. S. 214, 37 L. Ed. 426; Fong Yue Ting v. U. S. (1893) 13 Sup. Ct. 1016, 1022, 149 U. S. 698, 37 L. Ed. 905.

The clause in Act July 24, 1897, § 10 (Comp. St. § 6204), although construed to prohibit the insertion in tobacco packages of a coupon printed on thin paper of nonappreciable weight and without intrinsic value, which does not affect the ascertainment of the proper tax or interfere with its collection, is not an unconstitutional regulation. Felsenheld v. U. S. (1902) 22 Sup. Ct. 740, 742, 186 U. S. 126, 46 L. Ed. 1085.

The measurement by the net corporate income from all sources of the excise imposed by Act Aug. 5, 1909, § 38 (Comp. St. § 6300 et seq.), upon the doing or carrying on of business in a corporate or quasi corporate capacity, is not so arbitrary and baseless as to fall outside of the authority of the taxing power. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 355, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

Measuring the excise thus does not invalidate the tax, although a part of such income may be derived from property in itself not taxable. Id.

In so far as section 6218, Comp. St., provides for marking, stamping, and branding packages used by retail dealers in oleomargarine, it is not merely a police regulation, and as such unconstitutional, as such requirement must be regarded as a means to effect the objects of the act in raising revenue, and, so regarded, it is clearly within the constitutional power of congress. Dougherty v. U. S. (1901) 108 Fed. 56, 47 C. C. A. 195, affirming judgment U. S. v. Dougherty (D. C. 1900) 101 Fed. 439, and writ of certiorari denied Dougherty v. U. S. (1901) 21 Sup. Ct. 926, 181 U. S. 622, 45 L. Ed. 1033.

Congress has a right to impose a tax by a new statute, although the measure of the tax is governed by the income of the past year. Schuylkill Nav. Co. v. Elliott (C. C. 1875) Fed. Cas. No. 12,497.

Act May 13, 1866, § 45 (14 Stat. 163), is not rendered unconstitutional by the provision which requires affirmative proof on the part of the claimant of the payment of the taxes due on the spirits seized. U. S. v. Seventy-Eight Barrels (D. C. 1867) Fed. Cas. No. 16,257.

22. Use of prescribed meters in distilleries.—Congress has the right to

compel distillers to affix certain patented meters to their stills as a condition precedent to carrying on their business. Nusbaum v. Emery (C. C. 1873) Fed. Cas. No. 10,380.

23. Tax sales.—A law of congress which requires that the whole land shall be sold in all cases for payment of taxes, without regard to the fact that it may be divided without injury to it and the tax paid by a sale of a part of it, is unconstitutional. Martin v. Snowden (Va. 1868) 18 Grat. 100.

24. Forfeitures.—Congress may declare a forfeiture for nonpayment of taxes that will take effect ipso jure. Schenck v. Peay (C. C. 1869) Fed. Cas. No. 12,451.

It is not within the constitutional power of congress to declare that, on nonpayment of a tax within 60 days, the land charged with the tax should be absolutely forfeited to the United States. Martin v. Snowden (Va. 1868) 18 Grat. 100.

25. Contracts as to payment of duties between seller and purchaser.—Act June 30, 1864 (13 Stat. 273, § 97), which empowers persons who, before its enactment, have made contracts without other provision therein for the payment of taxes subsequently imposed by law on articles to be delivered under them, to recover from the purchaser of the articles a sum equivalent to the duties, if the same have not been previously paid by him, is within the power of congress to lay taxes. Ammidown v. Freeland (1869) 101 Mass. 303.

26. Rate of taxation.—Act July 13, 1866 (14 Stat. 146), imposing a tax of 10 per cent. upon notes of state banks, etc., used for circulation, does not violate the constitution of the United States. The tax cannot be held invalid for being so excessive as to indicate a purpose to destroy the franchise of the state banks. The judiciary cannot set aside a tax laid in the exercise of an acknowledged power of congress on the ground that the power has been exercised oppressively. Moreover, as congress has, in the exercise of its constitutional powers, undertaken to provide a banking currency for the entire country, it may restrain by suitable enactments the circulation as money of any notes not issued under its authority. Veazie Bank v. Fenno (1869) 75 U. S. (8 Wall.) 533, 19 L. Ed. 482.

An excise which does not conflict with any express limitation of the federal constitution cannot be held invalid because the court may deem the rate of taxation too high. McCray v. U. S. (1904) 24 Sup. Ct. 769, 778, 195 U. S. 27, 49 L. Ed. 78, 1 Ann. Cas. 561.

The congressional power to levy excises was not exceeded by the enactment of section 6220, Comp. St., imposing a tax on artificially colored oleomargarine, because the enforcement of such tax will destroy or restrict the manufacture of that article. Id.

If it be conceded that the license fees imposed by Pen. Code Alaska, tit. 2, § 460, would be excise taxes, and therefore unconstitutional, if the amount of revenue thereby produced exceeded the cost of maintaining the territorial government, the burden of proving such fact rests upon one attacking the constitutionality of the fees. Binns v. U. S. (1904) 24 Sup. Ct. 816, 819, 194 U. S. 486, 48 L. Ed. 1087.

The possibility that the rights of the several states to create corporations may practically be destroyed by the exercise of the power assumed by congress in Act Aug. 5, 1909, § 38 (Comp. St. § 6300 et seq.), to impose an excise upon the doing or the carrying on of business in a corporate or quasi corporate capacity, furnishes no ground for judicial interference with the tax. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

27. Uniformity.—The island of Porto Rico by the treaty of cession became territory appurtenant to the United States, but not a part of the United States, within the requirement of uniformity. The United States must be understood to mean the states whose people united to form the constitution and such as have since been admitted to the Union upon an equality with them. Downes v. Bidwell (1901) 21 Sup. Ct. 770, 182 U. S. 244, 45 L. Ed. 1088; Dooley v. U. S. (1901) 22 Sup. Ct. 62, 64, 183 U. S. 151, 46 L. Ed. 128; De Pass v. Bidwell (C. C. 1903) 124 Fed. 615.

The tax on private carriages imposed by Act June 5, 1794, was not a direct tax within Const. art. 1, § 9, and hence could be laid by the rule of uniformity. Hylton v. U. S. (1796) 3 U. S. (3 Dall.) 171, 1 L. Ed. 556.

The grant is generally without limitation as to place, and extends to all places over which the government extends, and the power may and must be exercised throughout the United States including the states and territories, and congress may impose a direct tax on the District of Columbia in proportion to the census directed to be taken by the constitution. Loughborough v. Blake (1820) 5 Wheat. 317, 319, 5 L. Ed. 98.

A state statute providing for forfeiture on a vessel neglecting to take a pilot is not repugnant to this clause of the constitution as it relates to uniformity. Cooley v. Board of Wardens of Port of Philadelphia (1851) 12 How. 299, 314, 13 L. Ed. 996.

Act July 14, 1862, increasing temporarily the duties on imports and providing in section 14 that they shall be levied and paid on all goods, wares, and merchandise of the growth of produce of countries beyond the Cape of Good Hope and imported from places on this

side of the Cape, a duty of 10 per cent. ad valorem and an addition to the duties imposed on any such articles when imported directly from the place or places of their growth or production does not contravene this provision by making a discrimination in favor of the ports of the Pacific.' Hadden v. Collector (1866) 5 Wall. 107, 112, 18 L. Ed. 518.

Act Aug. 3, 1882, imposing on the owners of vessels a duty on alien passengers brought into the United States, did not impose a tax subject to the limitations imposed by the constitution on the general taxing power of congress. Edye v. Robertson (1884) 5 Sup. Ct. 247, 112 U. S. 580, 28 L. Ed. 798, affirming judgment (C. C. 1883) 18 Fed. 147.

A tax is uniform when it operates with the same effect in all places where the subject of it is found, and is not wanting in such uniformity because the thing taxed is not equally distributed in all parts of the United States. Id.

The whole of Act Aug. 15, 1894, c. 394, should be declared void as to that part laying duties, imposts, and excises, as not providing for the uniformity required in such cases. Per Mr. Justice Field, in Pollock v. Farmers' Loan & Trust Co. (1895) 15 Sup. Ct. 673, 697, 157 U. S. 429, 39 L. Ed. 759.

Internal Revenue Act, Act June 13, 1898, c. 448, Schedule A, par. 2, imposing a tax on each sale or agreement to sell merchandise at any exchange or board of trade or other similar place, was uniform throughout the United States, and therefore valid. Nicol v. Ames (1899) 19 Sup. Ct. 522, 527, 173 U. S. 509, 43 L. Ed. 786.

The uniformity required is not an intrinsic uniformity relating to the inherent character of the tax as respects its operations on individuals, but is merely a geographical uniformity requiring the same plan and the same method to be operative throughout the United States. Knowlton v. Moore (1900) 20 Sup. Ct. 747, 764, 178 U. S. 41, 44 L. Ed. 969.

A difference between the testamentary and intestacy laws of the states does not prevent the geographical uniformity of War Revenue Act June, 1898, §§ 29, 30, under which the primary right of taxation upon legacies and distributive shares depends upon the degree of relationship or want of relationship to the deceased, since the rate is the same wherever the degree of relationship or the want of relationship is the same, so that the rule is uniform, although there may be different conditions among the states as to the objects upon which the tax is levied. Id.

The stamp tax on a memorandum or contract of sale of a certificate of stock, imposed by Act June 13, 1898, c. 448, 30 Stat. 448, falls within the class of duties, imposts, and excises which are required to be uniform throughout the United States. Thomas v. U. S. (1904) 24 Sup. Ct. 305, 306, 192 U. S. 363, 48 L. Ed. 481, affirming judgment U. S. v. Thomas (C. C. 1902) 115 Fed. 207.

The license taxes provided for in Pen. Code Alaska, tit. 2, § 460, are not in conflict with the uniformity requirement of this article. Binns v. U. S. (1904) 24 Sup. Ct. 816, 194 U. S. 486, 48 L. Ed. 1087.

Taxing a business when carried on by a corporation, and exempting a similar business when carried on by a partnership or by a private individual, as is done by Act Aug. 5, 1909, § 38 (Comp. St. § 6300 et seq.), imposing an excise upon the carrying on or the doing of business in a corporate or quasi corporate capacity, does not invalidate the tax, since the only limitation upon the power of congress is uniformity in laying the tax, and this is a geographical uniformity, which does not require the equal application of the tax to all persons or corporations who may come within its operation. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

The uniformity requirement is not violated by the excise tax based upon gross tonnage levied by Act Aug. 5, 1909, § 37, upon the use of foreign-built pleasure yachts owned by citizens of the United States because a like tax is not imposed upon the use of a domestic yacht under similar circumstances. Rainey v. U. S. (1914) 34 Sup. Ct. 429, 232 U. S. 310, 58 L. Ed. 617; Billings v. U. S. (1914) 34 Sup. Ct. 431, 232 U. S. 261, 58 L. Ed. 596; U. S. v. Bennett (1914) 34 Sup. Ct. 433, 232 U. S. 299, 58 L. Ed. 612.

Construing Act Aug. 5, 1909, § 38 (Comp. St. § 6300 et seq.), imposing an excise tax on net income of corporation as preventing a realty corporation from deducting from gross income interest paid on mortgage in excess of its capital stock, held not unconstitutional as an arbitrary and unreasonable classification. Anderson v. Forty-Two Broadway Co. (1915) 36 Sup. Ct. 17.

No unconstitutional discrimination results because the tariff act does not compel owners of houses to estimate their rental value thereof, but those who live in rented houses are not allowed to deduct the rent paid, nor because farmers are permitted to omit from their income products of farms used by their families during the year. Brushaber v. Union Pac. R. Co. (1916) 36 Sup. Ct. 236.

No unconstitutional discrimination results from a progressive rate feature of income tax imposed by Act Oct. 3, 1913 (Comp. St. § 6320). Stanton v. Baltic Mining Co. (1916) 240 U. S. 103, 36 Sup. Ct. 278, 60 L. Ed. 546.

Corporations are not unconstitutionally discriminated against by exemption which the income tax statute makes of individual incomes below $4,000. Id.

The requirement of uniformity establishes the rule only for taxation by the federal government, and has no appli-

cation to the powers of taxation of a state or territorial legislature. W. C. Peacock & Co. v. Pratt (1903) 121 Fed. 772, 58 C. C. A. 48.

The statute regulating the sale of oleomargarine violates no constitutional right, and persons selling oleomargarine at retail in original packages in quantities greater than 10 pounds at any one time are violators of the law, and do not form a class outside its provisions. Ripper v. U. S. (1910) 178 Fed. 24, 101 C. C. A. 152, rehearing denied (1910) 179 Fed. 497, 103 C. C. A. 478.

A provision for the collection of a tax, in districts where the same is forcibly resisted, so soon as such resistance is put down, does not show a want of uniformity in the tax. U. S. v. Riley (C. C. 1864) Fed. Cas. No. 16,164.

The clause within the act of 1862 creating a penalty for nonpayment of the direct tax is not unconstitutional, as a discriminating tax. Sharpleigh v. Surdam (C. C. 1876) Fed. Cas. No. 12,711.

The tax imposed by R. S. § 3408 (Comp. St. § 6292), is a tax on the bank, and not on the depositor, and is not subject to the objection that it is not a uniform tax. German Sav. Bank v. Archbold (C. C. 1878) Fed. Cas. No. 5,364.

The succession tax or duty imposed by War Revenue Act June 13, 1898, §§ 29–31, was not unconstitutional, for want of uniformity, because it exempts from its operation all legacies under the value of $10,000. Hugh v. Coyne (C. C. 1899) 93 Fed. 450, affirmed (1900) 20 Sup. Ct. 747, 178 U. S. 111, 44 L. Ed. 997.

On an importation of wine in casks having a vintage in excess of normal, the collector assessed duty without allowance for the leakage, and was within the terms of paragraph 296, Tariff Act 1897, forbidding constructive or other allowance for breakage, leakage, or damage on wines. Held, that this was in violation of this clause, prescribing that all duties shall be uniform throughout the United States. Alexander D. Shaw & Co. v. U. S. (C. C. 1905) 141 Fed. 469, judgment reversed U. S. v. A. D. Shaw & Co. (1906) 144 Fed. 329, 75 C. C. A. 291, and writ of certiorari denied Shaw v. U. S. (1906) 27 S. Ct. 779, 203 U. S. 591, 51 L. Ed. 331.

The main purpose of tariff laws is to collect revenues, but the provisions thereof adjusting rates so as to protect American manufacturers and producers from foreign competition are different in their objects from laws regulating commerce, and they operate equally in all parts of the country. Atchison, T. & S. F. Ry. Co. v. Interstate Commerce Comm'n (Com. Ct. 1911) 190 Fed. 591.

The constitutional requirement with reference to uniformity in the imposition of taxes, imposts, etc., is satisfied when a particular impost is uniform upon all subjects of the same kind or class. (1898) 22 Op. Atty. Gen. 192.

The direct tax apportioned to the state of Maryland by Act Aug. 5, 1861, was levied and collected in the mode prescribed by the constitution. Wailes v. Smith (1893) 76 Md. 469, 25 Atl. 922.

The provisions of the United States constitution with regard to uniformity of imposts requires uniformity as between states only, and not as between different classes of property; but the similar provision in our state constitution requires uniformity between different classes of property. Attorney General v. Winnebago Lake & F. R. Plank Road Co. (1860) 11 Wis. 35.

Cited without definite application. Pennsylvania v. Wheeling & Belmont Bridge Co. (1855) 18 How. 421, 435, 15 L. Ed. 435; Woodruff v. Parham (1868) 8 Wall. 123, 132, 19 L. Ed. 382; Van Brocklin v. Anderson (1886) 6 Sup. Ct. 670, 675, 117 U. S. 151, 29 L. Ed. 845; U. S. v. Hill (1887) 8 Sup. Ct. 308, 311, 123 U. S. 681, 31 L. Ed. 275; Field v. Clark (1892) 12 Sup. Ct. 495, 505, 143 U. S. 649, 36 L. Ed. 294; Pollock v. Farmers' Loan & Trust Co. (1895) 15 Sup. Ct. 912, 913, 158 U. S. 601, 39 L. Ed. 1108; Fairbank v. U. S. (1901) 21 Sup. Ct. 648, 653, 181 U. S. 283, 45 L. Ed. 862; Lawder v. Stone (1902) 23 Sup. Ct. 79, 80, 187 U. S. 281, 47 L. Ed. 178; Collet v. Collet (C. C. 1792) Fed. Cas. No. 3,001, 2 Dall. 294, 296, 1 L. Ed. 387; U. S. v. Angell (C. C. 1881) 11 Fed. 34, 45; Pacific Coast Steamship Co. v. U. S. (1907) 42 Ct. Cl. 228; Moyer v. Peabody (C. C. 1906) 148 Fed. 870 (affirmed [1909] 29 Sup. Ct. 235, 212 U. S. 78, 53 L. Ed. 410); Twin Falls Canal Co. v. Foote (C. C. 1911) 192 Fed. 583.

[2] To borrow Money on the credit of the United States;

Notes of Decisions

Borrowing money in general.—Congress has substantial power to borrow money. To do so it may resort to any measure which is appropriate, which plainly conduces to that end, and is not prohibited, and is not inconsistent with the letter and spirit of the constitution. Thayer v. Hedges (1864) 23 Ind. 141.

Legal tender notes and bills of credit.—The acts of congress making United States notes legal tender for pre-existing debts are constitutional. Norwich & W. Co. v. Johnson (1872) 15 Wall. 195, 21 L. Ed. 178. CONTRA, Hepburn v. Griswold (1869) 8 Wall. 603, 617, 19 L. Ed. 513.

The power of congress to issue the

obligations of the United States in such form and to impress on them such qualities as currency for the purchase of merchandise and the payment of debts as accord with the usages of sovereign governments is a power universally understood to belong to sovereignty at the time of the framing and adoption of the constitution. Legal-Tender Cases (1884) 4 Sup. Ct. 122, 129, 110 U. S. 421, 28 L. Ed. 204.

The "legal tender act" is constitutional. Latham v. U. S. (1864) 1 Ct. Cl. 149.

The issue of legal tender notes is authorized by the federal constitution as a means to effect loans under the power to borrow money. Thayer v. Hedges (1864) 23 Ind. 141.

Congress, under its power to borrow money, has power to make treasury notes legal tender in the payment of debts. Thayer v. Hedges (1864) 23 Ind. 141. See Brown v. Welch (1866) 26 Ind. 116; Reynolds v. Bank of State of Indiana (1862) 18 Ind. 467. But see also, Thayer v. Hedges (1864) 22 Ind. 282.

Power to "emit bills of credit" is properly incident to the other powers conferred on the federal government, and its exercise by that government is not prohibited by the constitution. Breitenbach v. Turner (1864) 18 Wis. 140.

The power to emit such bills carries with it, as an incident, the power to declare their effect. Id.

See, also, notes under art. 1, § 8, cls. 5, 18, post.

National bank currency.—Under its power over money and the revenue, congress can establish a national bank and subscribe to its stock, although it be a corporation organized for profit. The Legal Tender Cases (1870) 12 Wall. 457, 537, 20 L. Ed. 287.

Congress has the power to incorporate national banks with the capacity for their own profit, as well as for the use of the government in its moneyed transactions, of issuing bills which under ordinary circumstances pass as money at their nominal value, and which when so current the law recognizes as a good tender in payment of money debts, unless specifically objected to at the time of tender. Legal Tender Cases (1884) 4 Sup. Ct. 122, 128, 110 U. S. 421, 28 L. Ed. 204.

See, also, notes under art. 1, § 8, cl. 18, post.

Exemption from taxation.—A state tax on the loans of the federal government is a restriction on its power to borrow money, and, if it existed, might wholly defeat the federal power. Bank of Commerce v. City and County of New York (1862) 67 U. S. (2 Black) 620, 17 L. Ed. 451; People v. Commissioners of Taxes and Assessments for City and County of New York (N. Y. 1863) 25 How. Prac. 9.

A tax imposed by a state law, or under the authority of such a law, on stock issued for loans made to the United States, is unconstitutional. Weston v. Charleston (1829) 2 Pet. 449, 465, 7 L. Ed. 481.

Government bonds cannot be the subject of state taxation. Hamilton Mfg. Co. v. Massachusetts (1867) 6 Wall. 632, 639, 18 L. Ed. 904; Home Ins. Co. v. New York (1890) 10 Sup. Ct. 593, 594, 134 U. S. 594, 33 L. Ed. 1025.

The power of the government to borrow, or the action of the government in borrowing, is not subject to taxation by the states. New York ex rel. Bank of N. Y. Nat. Bkg. Ass'n v. Connelly (1868) 7 Wall. 16, 23, 19 L. Ed. 57.

Capital stock of an insurance company, invested in United States bonds exempted by congress under which they were issued, from state taxation, is, by a divided court, not exempt from a tax imposed by a state statute imposing a tax on the corporate franchise or business of corporations within the state. Home Ins. Co. v. New York (1888) 8 Sup. Ct. 1385, 1389, 119 U. S. 129, 30 L. Ed. 350.

A state law requiring a corporation to pay a franchise tax computed by the extent of dividends on the capital stock is valid, though part of the capital stock is invested in government bonds. Home Ins. Co. v. New York (1890) 10 Sup. Ct. 593, 594, 134 U. S. 594, 33 L. Ed. 1025.

The impairment of the borrowing power of the government, as the remote effect of a state statute imposing a tax upon the transfer of a decedent's property when the statute is applied to property consisting of United States bonds, is not sufficient to make such statute unconstitutional. Plummer v. Coler (1900) 20 Sup. Ct. 829, 837, 178 U. S. 115, 44 L. Ed. 998.

The provision in the act of June 20, 1874 (18 Stat. 120, § 7), providing for the issuance of bonds of the District of Columbia, that such bonds "shall be exempt from taxation, by federal, state or municipal authority," applies not only to taxation within the District of Columbia, but to taxation anywhere within the limits of the United States, whether by federal, state, or municipal authority. Grether v. Wright (1896) 75 Fed. 742, 23 C. C. A. 498.

The act of 1867, allowing a tax of 5 per cent. on the gross annual income from interest paid on bonds issued by the general government is repugnant to this clause. Bank of Kentucky v. Commonwealth (1872) 72 Ky. (9 Bush) 46.

Act N. H. July 1, 1865, entitled "An act for the taxation of incomes," is unconstitutional, in so far as it provides for the taxation of incomes derived from securities of the United States. Opinion of Justices (1873) 53 N. H. 634. But see, now, Const. Amend. 16, post.

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

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26. —— Hours of service of employés.
27. —— Liability for injuries to employés.
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138. Seamen.
139. Pilots and pilotage.
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141. Ferries.
142. Bridges.
143. Telegraphs and telephones.
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I. POWER TO REGULATE IN GENERAL

1. Nature, extent, and grounds of power in general.—The power of congress extends to such acts done on land which interfere with the due exercise of its powers to regulate commerce, including navigation. U. S. v. Coombs (1838) 37 U. S. (12 Pet.) 72, 9 L. Ed. 1004.

Act Feb. 26, 1845 (5 Stat. 726), extending the jurisdiction of the district courts to certain cases upon the lakes and navigable waters connecting the same, is not referable to that clause in the constitution giving congress power to regulate commerce between the states, but was enacted under the clause granting maritime and admiralty jurisdiction to the federal courts. The Genesee Chief v. Fitzhugh (1851) 53 U. S. (12 How.) 443, 13 L. Ed. 1058; Fretz v. Bull (1851) 53 U. S. (12 How.) 466, 13 L. Ed. 1068.

The power of congress to regulate commerce is without limitation and extends to all the subjects of commerce, and to all persons engaged in it, and embraces traffic, navigation and intercourse, and the whole subject of pilots and pilotage, but the constitution does not in terms exclude the exercise of any authority by the states to regulate pilots, and the states have authority to regulate the subject, in the absence of congressional legislation. Pacific Mail S. S. Co. v. Joliffe (1864) 2 Wall. 450, 459, 17 L. Ed. 805.

Congress may regulate commerce with foreign nations and among the several states, but the judicial power, which extends to all cases of admiralty and maritime jurisdiction, is conferred on the federal government by the constitution, and congress may not enlarge it, not even to suit the wants of commerce, nor for the more convenient execution of its commercial regulations. The Belfast (1868) 7 Wall. 624, 640, 19 L. Ed. 266.

The power granted by this clause is not confined to the instrumentalities of commerce known and in use when the constitution was adopted, but keeps pace with the progress of the country, and adapts itself to the new developments of time and circumstances. It was intended for the government of the business to which it relates, at all times and under all circumstances, and it is not only the right but the duty of congress to see that intercourse among the states is not obstructed or unnecessarily incumbered by state legislation. Pensacola Teleg. Co. v. Western Union Teleg. Co. (1877) 96 U. S. 1, 9, 24 L. Ed. 708.

So far as it may be necessary to protect the products of other states and countries from discrimination by reason of their foreign origin, the power of the national government over commerce with foreign nations and among the several states reaches the interior of every state in the Union. Guy v. City of Baltimore (1879) 100 U. S. 434, 25 L. Ed. 743, 1 Ky. Law Rep. 205.

The word "regulate" is one of broad import. St. Louis v. Western Union Telegraph Co. (1893) 13 Sup. Ct. 990, 992, 149 U. S. 465, 37 L. Ed. 810.

The power to regulate commerce has no limitation other than those prescribed in the constitution, but does not carry with it the right to destroy or impair those limitations and guaranties which are also placed in the constitution or in the amendments thereto. U. S. v. Joint Traffic Ass'n (1898) 19 Sup. Ct. 25, 32, 171 U. S. 505, 43 L. Ed. 259.

The principles of the common law are operative upon all interstate commercial transactions, except so far as they are modified by congressional enactments. Western Union Tel. Co. v. Call Pub. Co. (1901) 21 Sup. Ct. 561, 565, 181 U. S. 92, 45 L. Ed. 765, affirming judgment (1899) 78 N. W. 519, 58 Neb. 192.

The power of congress to legislate on the subject of the right of recovery for death on the high seas caused by negligence has been derived both from the power to regulate commerce and from the clause extending the judicial power of the United States to all cases of maritime and admiralty jurisdiction. Old Dominion S. S. Co. v. Gilmore (1907) 28 Sup. Ct. 133, 134, 207 U. S. 398, 52 L. Ed. 264.

This clause operates as a necessary, wise, and self-imposed limitation upon the otherwise sovereign power of the states over the subject; it is not a police power in any proper sense, but applies, it may be, to that immense and almost unlimitable residuum of governmental power which has not been technically classified, the commercial power, or the power to regulate commerce. Per Hammond, J. Louisville & N. R. Co. v. Railroad Commission of Tennessee (C. C. 1884) 19 Fed. 679, 701.

Commerce is not limited to an ex-

change of commodities, but includes navigation and intercourse with foreign nations and between the states, and the transportation of passengers as well as property, and the power of congress to regulate commerce is subject to no limitations other than those prescribed in the constitution. U. S. v. Craig (C. C. 1886) 28 Fed. 795, 796.

Congress may encourage or entirely prohibit interstate and foreign commerce, or may regulate the same in any way it may see fit. Id.

The commerce clause authorizes legislation by congress with respect to all the subjects of foreign and interstate commerce, the persons engaged in it, and the instruments by which it is carried on, and as to such subjects is without limitation. Kelley v. Great Northern Ry. Co. (C. C. 1907) 152 Fed. 211.

Congress has power to regulate and restrict the use, in commerce among the several states and with foreign nations, of contracts, of the method of holding title to property, and of every other instrumentality employed in that commerce so far as necessary to prevent the restraint thereof denounced by the anti-trust act (Comp. St. § 8820 et seq.). U. S. v. Standard Oil Co. of New Jersey (C. C. 1909) 173 Fed. 177, decree affirmed Standard Oil Co. v. U. S. (1911) 31 Sup. Ct. 502, 221 U. S. 1, 55 L. Ed. 619, 34 L. R. A. (N. S.) 834, Ann. Cas. 1912D, 734.

The power of congress is plenary, and without limitations other than those found in the constitution itself. St. Louis & S. F. R. Co. v. Allen (C. C. 1910) 181 Fed. 710.

The constitutional power of congress to regulate commercial intercourse, qualified by the limitations and restrictions expressed in the constitution, and by the treaty-making power of the president and senate, is sovereign, and may be used, not only for the advancement of commerce, but for the promotion of other objects of national concern. U. S. v. The William (D. C. 1808) Fed. Cas. No. 16,700.

The admiralty jurisdiction of the courts of the United States cannot be made to depend on regulations of commerce. They are entirely distinct things, having no necessary connection with one another, and are conferred in the constitution by separate and distinct grants. U. S. v. Burlington & H. County Ferry Co. (D. C. 1884) 21 Fed. 331.

Congress has authority under the power to regulate interstate and foreign commerce, to protect the lives, persons, and property of passengers, carriers, and shippers and others connected with navigation by the enactment of penal laws. Ex parte Byers (D. C. 1887) 32 Fed. 404, 407.

The power of congress to legislate over the maritime law is derived from this clause and from the provision extending the judicial power to all cases of maritime jurisdiction. The City of Norwalk (D. C. 1893) 55 Fed. 98, 105, affirmed (1894) 61 Fed. 364, 9 C. C. A. 521.

The constitutional power of congress to regulate interstate and foreign commerce also involves the power, not only to prescribe rules for the carrying on of such commerce, but also in certain instances to absolutely prohibit it. U. S. v. Hoke (D. C. 1911) 187 Fed. 992, judgment affirmed Hoke v. U. S. (1913) 33 Sup. Ct. 281, 227 U. S. 308, 57 L. Ed. 523, 43 L. R. A. (N. S.) 906, Ann. Cas. 1913E, 905.

Where congress is without the power under the constitution to enact and enforce a law as a regulation of interstate commerce, it cannot derive such powers from a state enactment. Prairie Oil & Gas Co. v. U. S. (Com. C. 1913) 204 Fed. 798.

The power of congress to regulate commerce includes the power to regulate the use of all means and instrumentalities used in commerce, whether on sea, navigable rivers, and lakes, in harbors, or on land, irrespective of whether a state has attempted to regulate the same matter or not. (1899) 22 Op. Atty. Gen. 501, 646.

The power to regulate commerce with foreign nations and among the several states is general, absolute, and without limit, either as to the time, place, or detail of its exercise, except as to waters whose entire navigability for commerce is limited to the confines of a single state. (1899) 22 Op. Atty. Gen. 646.

The character of regulations to be adopted in matters of commerce is necessarily left largely to the discretion of congress. St. Louis & S. F. R. Co. v. Heyser (Ark. 1910) 130 S. W. 562.

The power to regulate commerce conferred on congress by the constitution of the United States is plenary, and may be exercised to the utmost extent, and has no limitation except that prescribed by the constitution. Id.

Congress is vested with a power to regulate commerce in all its branches, including every species of commerce and intercourse, and this power may be exercised upon persons as well as property. Lin Sing v. Washburn (1862) 20 Cal. 534.

Congress may prescribe a new rule of right as to transactions occurring in the course of interstate commerce to control the disposition of causes in all courts, state and federal, for such a rule is a change in substantive law. Hoxie v. New York, N. H. & H. R. Co. (1909) 73 A. 754, 82 Conn. 352.

The plenary power conferred on congress to regulate interstate and foreign commerce, is subject to limitations spe-

cifically prescribed in the constitution, and others may exist by virtue of the necessary implication from the dual system of political government. Id.

It is settled that the right of dominion and controlling power over the sea and its coasts, shores, and tidewaters, as between the several states and the United States, vested in the several states in their sovereign capacity, respectively, and was not transferred to the United States by the adoption of the constitution. Commonwealth v. Alger (1851) 61 Mass. (7 Cush.) 53.

The power of congress to regulate commerce confers no power to declare the status which any person shall sustain while in a state. This power may be exercised over persons, as passengers, while on the ocean, and until they come under the state jurisdiction. Lemmon v. People (N. Y. 1857) 26 Barb. 270.

Commerce for the purpose of defining federal and state jurisdiction in legislation is divided into three fields: That in which the power of the state is exclusive, that in which the state may act in the absence of legislation by congress which is controlling and exclusive, and that in which the authority of congress is exclusive, and the states cannot interfere at all. People v. Erie R. Co. (N. Y. 1910) 91 N. E. 849, reversing order (1909) 119 N. Y. S. 873, 135 App. Div. 767.

The constitutional grant of power to congress to regulate interstate commerce is to be liberally construed. Welch Lumber Co. v. Norfolk & W. Ry. Co. (1910) 121 N. Y. S. 985, 137 App. Div. 248.

The word "regulate," as used in the commerce clause, means to control. Titsworth v. State (Okl. 1909) 101 Pac. 288.

Where parties contract to engage in interstate commerce, they do so subject to the right of congress to afterwards pass laws regulating such commerce. Fitzgerald v. Grand Trunk R. Co. (1891) 63 Vt. 169, 22 Atl. 76, 13 L. R. A. 70.

The protection of the interstate commerce clause extends to commerce conducted by corporations as well as to that conducted by individuals. Greek-American Sponge Co. v. Richardson Drug Co. (1905) 102 N. W. 888, 124 Wis. 469, 109 Am. St. Rep. 961.

The test whether congress or a state can regulate commerce is not the kind of business a corporation is engaged in, nor the instrumentalities it employs therein, nor that it is conducted on navigable waters, but whether the business constitutes interstate commerce either because it is carried on between the states or affects them, or because it is conducted on the high seas, thereby becoming subject to international law, and relieved from state regulations. Independent Tug Line v. Lake Superior Lumber & Box Co. (1911) 131 N. W. 408, 146 Wis. 121.

2. Supreme Court decisions as binding on state courts.—See notes under art. 6, cl. 2, post.

3. Right to raise constitutional question.—One who does not appear to have imported black powder from outside the state cannot raise the question of the validity under the commerce clause of the provisions of Laws Kan. 1907, c. 250, making it unlawful to sell, offer for sale, or deliver black powder for use in any coal mines in the state, except in original sealed packages containing 12½ pounds of powder. Williams v. Walsh (1912) 32 Sup. Ct. 137, 139, 222 U. S. 415, 56 L. Ed. 253.

An interstate carrier who has refused to furnish cars for intrastate transportation, as required by Act Ark. April 19, 1907 (Laws 1907, pp. 454, 463) §§ 1, 17, cannot test the constitutionality of the act as affecting interstate commerce in a suit to enjoin actions to recover penalties for violation of its provisions, where provisions affecting interstate commerce are separable from the remaining provisions. Hampton v. St. Louis, I. M. & S. R. Co. (1913) 33 Sup. Ct. 263, 227 U. S. 456, 57 L. Ed. 596, reversing decree St. Louis, I. M. & S. Ry. Co. v. Hampton (C. C. 1908) 162 Fed. 693.

One against whom judgment was rendered on a claim not arising in interstate commerce may not urge invalidity, under the commerce clause and Interstate Commerce Act Feb. 4, 1887, and its amendments (Comp. St. § 8563 et seq.), of Acts Tex. 31st Leg. c. 47, allowing attorney's fee to plaintiff in a suit for overcharges on freight, or for lost or damaged freight, or for stock killed by negligence of the railroad company and not paid within 30 days. Missouri, K. & T. Ry. Co. of Texas v. Cade (1914) 34 Sup. Ct. 678, 233 U. S. 642, 58 L. Ed. 1135.

Where an injury suffered by a railroad employé was alleged to have happened while he was employed on a train engaged in interstate commerce, the action is within the rule of law that the courts will not listen to an objection to the unconstitutionality of the act under which he sues as applied to an employé injured on a train not engaged in interstate commerce. Spain v. St. Louis & S. F. R. Co. (C. C. 1907) 151 Fed. 522.

The constitutionality of a statute prohibiting the sale of intoxicating liquors within five miles of the seat of a certain university cannot be attacked on the ground that it is in conflict with the laws of congress authorizing the importation of liquors in certain quantities, and the sale of them in the original casks or packages, where the objector has not shown himself to be an importer. Dorman v. State (1859) 34 Ala. 216.

4. Cases involving commerce clause or otherwise.—The question whether a state prohibitory liquor law interferes

with interstate or foreign commerce will not be determined where a manufacturer in the state assailing the statute does not show that he intends to have the liquor manufactured and delivered to other states or to foreign countries. Mugler v. Kansas (1887) 8 Sup. Ct. 273, 304, 123 U. S. 623, 31 L. Ed. 205.

The exclusion of evidence of a demand in some portions of the United States for artificially colored coffee, on the issue whether such coffee was adulterated within the prohibition of Laws N. Y. 1893, c. 661, § 41, against the sale within the state of adulterated food products, will not require a reversal of the judgment of a state court on writ of error from the United States Supreme Court, on the theory that the effect of such evidence would have been to show that coffee artificially colored as a means of fraud and deception was a recognized article of commerce, the right to deal in which was protected by the commerce clause. Crossman v. Lurman (1904) 24 S. Ct. 234, 192 U. S. 189, 48 L. Ed. 401, affirming judgment (1902) 63 N. E. 1097, 171 N. Y. 329, 98 Am. St. Rep. 599.

A bill by an express company to restrain a messenger's wife from suing a railroad company for her husband's death, because of the messenger's contract to save the express company and any of its contract railroads harmless from any liability resulting from personal injuries to him, etc., did not state a case arising under the commerce clause. Roundtree v. Adams Express Co. (1908) 165 Fed. 152, 91 C. C. A. 186.

A bill sought to enjoin an inspection of flour, under Acts La. Ex. Sess. 1870, p. 156, on the ground that the statute was unconstitutional because the inspection provided for was confined to flour coming to New Orleans "for sale"; thus discriminating in favor of those who bought for their own use, and in favor of resident merchants, as against merchants residing in other states, contrary to the interstate commerce clause of the federal constitution. Held, that as the question was a doubtful one, and it seemed probable that the court would be aided by proof of the manner in which the statute operated, a demurrer to the bill would be overruled. Glover v. Board of Flour Inspectors (C. C. 1891) 48 Fed. 348.

On an indictment charging a common carrier with carrying on the business of a retail liquor dealer without a license by receiving liquors from a liquor company without the state, carrying them to the consignee C. O. D., receiving the money, and carrying it to the liquor company, the "commerce clause" of the constitution was not involved, the only question being whether defendant sold the liquors. U. S. v. Adams Exp. Co. (D. C. 1902) 119 Fed. 240.

5. Waiver of constitutional objections.—Where a complaint before the public service commission against an interstate carrier prayed an order requiring defendant to operate passenger trains which would afford service for the residents of D. north and south bound at or about the same time of day that was formerly afforded by two trains known as Nos. 9 and 12, which no longer stopped there, and for further relief, but nowhere prayed that the commission order trains 9 and 12 to again stop at D., the railroad's failure to plead and prove that to stop such trains, as required by the commission's subsequent order, would interfere with interstate commerce, the carrying of United States mails, and would confiscate the railroad company's property, in violation of state and federal constitutions, did not constitute a waiver of such objections. Delaware, L. & W. R. Co. v. Stevens (C. C. 1909) 172 Fed. 595.

6. Effect of the fifth amendment.—The power of congress to regulate commerce is subject to the limitation of the fifth amendment, and in exercising the power to take private property it must proceed subject to the fifth amendment. Monongahela Navigation Co. v. U. S. (1893) 13 Sup. Ct. 622, 630, 148 U. S. 312, 37 L. Ed. 463.

The constitutional guaranty of liberty of the individual to enter into private contracts does not limit the power of congress, so as to prevent it from legislating upon the subject of contracts in restraint of interstate or foreign commerce. Addyston Pipe & Steel Co. v. U. S. (1899) 20 Sup. Ct. 96, 102, 44 L. Ed. 136, modifying judgment (1898) 85 Fed. 271, 29 C. C. A. 141, 46 L. R. A. 122.

Riparian owners who have erected on a water front wharves conforming to harbor line adopted by the federal government have no right to compensation under Const. Amend. 5, where congress establishes a new harbor line requiring destruction of a portion of such structures. Greenleaf-Johnson Lumber Co. v. Garrison (1915) 35 Sup. Ct. 551, 237 U. S. 251, 59 L. Ed. 939, affirming decree Garrison v. Greenleaf Johnson Lumber Co. (1914) 215 Fed. 576, 131 C. C. A. 644.

The power of congress under the commerce clause to regulate interstate and foreign commerce is limited by the other provisions of the constitution, and among them that of the fifth amendment, that no person shall be deprived of life, liberty, or property without due process of law; and the validity of a statute enacted in the assumed exercise of such power may be challenged on the ground that it is in violation of such provision. U. S. v. Delaware & H. Co. (C. C. 1908) 164 Fed. 215, judgment and decree reversed (1909) 29 Sup. Ct. 527, 213 U. S. 366, 53 L. Ed. 836.

7. Effect of the eleventh amendment.—The eleventh amendment, prohibiting

the bringing of a suit against a state by a citizen of another state, cannot be construed to nullify the power conferred on congress to regulate the commerce among the several states, nor prevent an action to restrain a state railroad commission from enforcing an order injuriously affecting interstate commerce. Illinois Cent. R. Co. v. Mississippi Railroad Commission (1905) 138 Fed. 327, 70 C. C. A. 617, judgment affirmed Mississippi Railroad Commission v. Illinois Central Railroad Co. (1906) 27 Sup. Ct. 90, 203 U. S. 335, 51 L. Ed. 209.

8. Commerce clause as operating proprio vigore.—The power to regulate commerce is one of the instances in which the constitution operates proprio vigore, and its effect as to the navigable waters of the Union was to establish them as highways, open to the free and unrestricted use of all persons engaged in foreign or interstate commerce. (1886) 18 Op. Atty. Gen. 404.

The power to regulate commerce is one of the instances in which the constitution operates proprio vigore, and its effect as to the navigable waters of the Union was to establish them as highways, open to the free and unrestricted use of all persons engaged in foreign or interstate commerce. (1886) 18 Op. Atty. Gen. 405.

Whether, then, congress has spoken or not spoken, the duty of the United States towards commerce in its several departments of traffic, intercourse, and navigation is equally imperative. Id.

9. Commerce with foreign nations.—Commerce with foreign nations is such as is necessarily connected with the nation, and consisting of transactions which either immediately or at some stage of their progress must be extraterritorial. The phrase does not apply to transactions wholly internal between citizens of the same community, or to a polity and laws whose ends and purposes and operations are restricted to the territory and soil and jurisdiction of such community. The fact that the products of domestic enterprise in agriculture or manufactures or in the arts may ultimately become the subjects of foreign commerce does not render the means or the encouragements by which enterprises are fostered and protected foreign commerce. Veazie v. Moor (1852) 14 How. 568, 574, 14 L. Ed. 545.

The power to regulate commerce with foreign nations, being an enumerated power, is complete in itself, acknowledging no limitations other than those prescribed in the constitution, and authorizing congress in the exercise of the police power to exclude any particular goods from importation. Buttfield v. Stranahan (1904) 24 Sup. Ct. 349, 354, 192 U. S. 470, 48 L. Ed. 525.

The power to prohibit the foreign slave trade is part of the power of congress to regulate foreign commerce. Charge to Grand Jury (C. C. 1859) Fed. Cas. No. 18,269a; U. S. v. Gould (D. C. 1860) Fed. Cas. No. 15,239.

10. Commerce among the states.—Webb-Kenyon Law (Comp. St. § 8739), prohibiting the interstate transportation of intoxicating liquors intended to be used in violation of state laws, held constitutional. Southern Express Co. v. State (Ala. 1914) 66 So. 115; State v. Grier (Del. 1913) 88 A. 579; State v. Missouri Pac. Ry. Co. (Kan. 1915) 152 Pac. 777; Adams Express Co. v. Commonwealth (1914) 169 S. W. 603, 160 Ky. 66; American Express Co. v. Beer (Miss. 1914) 65 So. 575; Southern Express Co. v. Longinotti, Id. 583; American Express Co. v. Miller, Id. 652; Glenn v. Southern Express Co. (1915) 87 S. E. 136, 170 N. C. 286; Taylor v. Commonwealth (Va. 1915) 85 S. E. 499; Gottstein v. Lister (Wash. 1915) 153 Pac. 595.

The power to regulate interstate commerce is plenary, complete in itself, and may be exerted to its utmost extent, subject only to such limitations as the constitution imposes upon the exercise of the powers granted by it. Champion v. Ames (1903) 23 Sup. Ct. 321, 325, 188 U. S. 321, 47 L. Ed. 492; Cummings v. Chicago (1903) 23 Sup. Ct. 472, 477, 188 U. S. 410, 47 L. Ed. 525; Louisville & N. R. Co. v. Mottley (1911) 31 Sup. Ct. 265, 269, 219 U. S. 467, 55 L. Ed. 297, 34 L. R. A. (N. S.) 671; Hoke v. U. S. (1913) 33 Sup. Ct. 281, 227 U. S. 308, 57 L. Ed. 523, 43 L. R. A. (N. S.) 906, Ann. Cas. 1913E, 905; Smeltzer v. St. Louis & S. F. R. Co. (C. C. 1908) 158 Fed. 649.

The Wilson bill, which provides that intoxicating liquors, brought into a state shall be subject to the laws enacted in the exercise of its police power, "to the same extent and in the same manner as though such liquors had been produced in such state, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise," is within the power of congress. In re Rahrer (1891) 11 Sup. Ct. 865, 140 U. S. 545, 35 L. Ed. 572 (reversing [C. C. 1890] 43 Fed. 556, 10 L. R. A. 444); In re Van Vliet (C. C. 1890) 43 Fed. 761, 10 L. R. A. 451.

The Wilson bill, which provides that intoxicating liquors brought into a state shall be subject to the laws enacted in the exercise of its police power, "to the same extent and in the same manner as though such liquors had been produced in such state, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise," is within the power of congress. Id.

Whether, under the power to regulate commerce among the several states, congress may extend the remedy

by summary process in the admiralty to the case of voyages on the western waters of the United States, query. The Thomas Jefferson (1825) 23 U. S. (10 Wheat.) 428, 6 L. Ed. 358.

The power to regulate commerce among the several states was vested in congress in order to secure equality and freedom in commercial intercourse against discriminating state legislation; it was not intended that the power should be exercised so as to interfere with private contracts not designed when made to create impediments to such intercourse. Dubuque & S. City R. Co. v. Richmond (1873) 86 U. S. (19 Wall.) 584, 22 L. Ed. 173.

The power of congress to regulate commerce among the states extends to the subject, and protects it from any burdens imposed by reason of its foreign origin, even after it has entered the state and until it has been mingled with the general property of the state. Welton v. State (1875) 91 U. S. 275, 23 L. Ed. 347.

In the exercise of its power over interstate commerce, it is competent for congress to remove all obstructions upon highways, natural or artificial, to interstate traffic or the carrying of the mails, and while it may be competent for the executive branch of the government to forcibly remove such obstructions, it is equally competent to appeal to the civil courts to remove or restrain such obstructions by injunction. In re Debs (1895) 15 Sup. Ct. 900, 904, 158 U. S. 564, 39 L. Ed. 1092.

The power to regulate commerce among the several states is vested in congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. Champion v. Ames (1903) 23 Sup. Ct. 321, 325, 188 U. S. 321, 47 L. Ed. 492.

In determining the character of the regulations to be adopted with respect to interstate commerce, congress has a large discretion which is not to be controlled by the courts, simply because, in their opinion, such regulations may not be the best or most effective that could be employed. Id.

A carrier, by engaging in interstate commerce, does not thereby submit all its business affairs to the regulating power of congress. Howard v. Illinois Cent. R. Co. (1908) 28 Sup. Ct. 141, 147, 207 U. S. 463, 52 L. Ed. 297, affirming judgments Brooks v. Southern Pac. Co. (C. C. 1906) 148 Fed. 986, and Howard v. Illinois Cent. R. Co. (C. C. 1907) Id. 997.

Congress has the power to regulate interstate commerce to prevent favoritism, and to secure equal rights to all engaged in interstate trade, and Congress may control those who are conducting interstate commerce by holding them responsible for the intent and purposes of their agents. New York Cent. & H. R. R. Co. v. U. S. (1909) 29 Sup. Ct. 304, 307, 212 U. S. 481, 53 L. Ed. 613.

No question with reference to the power of Congress to enact a regulation of interstate commerce can arise if the regulating act be one directly applicable to such commerce, not obnoxious to any other provision of the federal Constitution, and reasonably adapted to the purpose by reason of legitimate relation between such commerce and the rule provided. Atlantic Coast Line R. Co. v. Riverside Mills (1911) 31 Sup. Ct. 164, 219 U. S. 186, 55 L. Ed. 167, 31 L. R. A. (N. S.) 7 (affirming judgment Riverside Mills v. Atlantic Coast Line R. Co. [C. C. 1909] 168 Fed. 990); Louisville & N. R. Co. v. Scott (1911) 31 Sup. Ct. 171, 219 U. S. 209, 55 L. Ed. 183 (affirming judgment [1909] 118 S. W. 990, 133 Ky. 724, 19 Ann. Cas. 392).

If a congressional enactment is a valid exercise of the power of congress to regulate interstate commerce, how it may affect persons or states is immaterial. Hoke v. U. S. (1913) 33 Sup. Ct. 281, 227 U. S. 308, 57 L. Ed. 523, 43 L. R. A. (N. S.) 906, Ann. Cas. 1913E, 905, affirming judgment U. S. v. Hoke (D. C. 1911) 187 Fed. 992.

Congress may adopt means necessary and convenient to regulation of interstate commerce, and they may have the quality of police regulations. Id.

Congress is vested with power to regulate commerce between the states, and may provide that there shall not be unrestrained commercial intercourse. Rupert v. U. S. (1910) 181 Fed. 87, 104 C. C. A. 255.

It may be that in the regulation of interstate commerce congress may exclude that which it deems prejudicial to public morals, especially when commerce in such matters is already prohibited by the laws of the states. U. S. v. Ames (C. C. 1899) 95 Fed. 453, 455.

If necessary to sustain its validity, Act June 11, 1906, 34 Stat. 232, c. 3073, relating to liability of carriers engaged in interstate commerce for injuries to employés, may be construed as extending only to injuries occurring when they are actually engaged in interstate traffic. Kelley v. Great Northern Ry. Co. (C. C. 1907) 152 Fed. 211.

While congress has no power under the interstate commerce clause to legislate directly with respect to a purchase by a state corporation engaged in interstate commerce of property from its directors, even though such purchase should be at a price so excessive as to be illegal or fraudulent as between the parties, yet having power to regulate the operations of such corporations as interstate carriers, as well

with respect to their finances as other instrumentalities, it may lawfully require a disclosure as to such transactions. Interstate Commerce Commission v. Harriman (C. C. 1908) 157 Fed. 432, order modified Harriman v. Interstate Commerce Commission (1908) 29 Sup. Ct. 115, 211 U. S. 407, 53 L. Ed. 253.

The power to regulate interstate commerce is a distinct and substantive power granted to congress by the constitution, subject to the limitations thereof, and is not the equivalent of the reserved police power, of the states, which must always remain indefinite in character and incapable of classification or definition; but an enactment in the assumed exercise of such power, like one by a state under its police powers, is reviewable by the courts to determine whether it is within the power granted as so limited by the constitution itself, and a legitimate and reasonable exercise thereof. U. S. v. Delaware & H. Co. (C. C. 1908) 164 Fed. 215, judgment and decree reversed U. S. ex rel. v. Same (1909) 29 Sup. Ct. 527, 213 U. S. 366, 53 L. Ed. 836.

The power of congress to regulate interstate commerce does not include the power to entirely exclude from such commerce an article or commodity which is a legitimate and useful subject of commerce, and not inimical to public safely, health, or morals, save when, and because, it is the property of a certain class of owners. Id.

The power to regulate commerce among the states was granted by the people to the nation in the constitution, and may be exercised to its utmost extent by the use of all means requisite to its complete exercise. Shepard v. Northern Pac. Ry. Co. (C. C. 1911) 184 Fed. 765, decree modified Simpson v. Shepard (1913) 33 Sup. Ct. 729, 230 U. S. 352, 57 L. Ed. 1511.

Under its power to regulate interstate commerce, establish post roads, and provide for the transportation of troops and munitions of war, congress has power to charter a corporation to operate an interstate railroad and engage in the general business of a common carrier for its own purposes in addition to serving the government. Mercantile Trust Co. v. Texas & P. Ry. Co. (C. C. 1908) 216 Fed. 225.

All persons entering into contracts involving interstate commerce must do so subject to the right of congress thereafter to control, regulate, or prohibit the performance thereof. Elliott Mach. Co. v. Center (D. C. 1915) 227 Fed. 124.

Where the state of Virginia grants the right to construct a milldam in a navigable stream, and the state reserved the right to withdraw assent for the use of the privilege at any time, the act reserving the right to the state inured to the benefit of the national government under the constitutional power to regulate commerce between the states. Hood v. U. S. (1914) 49 Ct. Cl. 669.

Power of congress to regulate interstate commerce includes power to define what shall be interstate commerce, and the Webb-Kenyon Law (Comp. St. § 8739) is valid. Southern Express Co. v. Whittle (Ala. 1915) 69 So. 652.

The power of congress to enact laws applicable to the District of Columbia is plenary, and not dependent on the interstate commerce clause. McNamara v. Washington Terminal Co. (D. C. 1910) 35 App. D. C. 230.

Congress may adopt a law which divests intoxicating liquor of its character as interstate commerce, sooner than would otherwise be the case, for the purpose of supplementing the prohibitory laws of the state. State v. Grier (Del. Gen. Sess. 1913) 88 A. 579, 4 Boyce, 322.

Congress, having exclusive control over the commerce between the states, may subject such commerce to the laws of the states. City of Indianapolis v. Bieler (1894) 36 N. E. 857, 138 Ind. 30.

Congress has the power to prohibit the shipment of intoxicating liquor into a state having a prohibitory law, and thereby take such liquor out of the sphere of legitimate interstate commerce within the state for the purpose of supplementing the state's prohibitory laws. State v. United States Express Co. (Iowa, 1914) 145 N. W. 451.

Under the commerce clause of the federal constitution, congress may regulate the contract between the carrier and shipper as to liability for loss in interstate shipments. Ford v. Chicago, R. I. & P. Ry. Co. (Minn. 1913) 143 N. W. 249.

II. Commerce in the territories and the District of Columbia.—The invalidity, so far as interstate commerce is concerned of the provisions of the employer's liability act (Act June 11, 1906, c. 3073, § 1, 34 Stat. 232), does not invalidate such of its provisions as attempt to regulate commerce within the District of Columbia and the territories. El Paso & N. E. Ry. Co. v. Gutierrez (1909) 30 Sup. Ct. 21, 23, 215 U. S. 87, 54 L. Ed. 106, affirming judgment Gutierrez v. El Paso & N. E. R. Co. (1909) 117 S. W. 426, 102 Tex. 378.

A state is a collection of persons occupying a certain territory with a legislative and executive organization, and is a member of the union, and does not include a territory; but congress has power to regulate commerce in the territories by virtue of its general powers over them. Ex parte Hanson (D. C. 1886) 28 Fed. 127, 131.

The power of congress to enact laws applicable to the territories is plenary, and not dependent upon the interstate commerce clause of the federal consti-

tution. McNamara v. Washington Terminal Co. (1910) 35 App. D. C. 230.

The employers' liability act of June 11, 1906, was valid as to the territories. El Paso & N. E. Ry. Co. v. Gutierrez (1909) 30 Sup. Ct. 21, 23, 215 U. S. 87, 54 L. Ed. 106 (affirming Gutierrez v. El Paso & N. E. R. Co. [1909] 117 S. W. 426, 102 Tex. 378, reversing El Paso & N. E. Ry. Co. v. Gutierrez [Tex. Civ. App. 1908] 111 S. W. 159); Philadelphia, B. & W. R. Co. v. Tucker (1910) 35 App. D. C. 123; Friday v. Santa Fé Cent. Ry. Co. (N. M. 1911) 120 Pac. 316; Atchison, T. & S. F. Ry. Co. v. Pickens (Tex. 1909) 118 S. W. 1133. CONTRA, Atchison, T. & S. F. Ry. Co. v. Mills (1908) 108 S. W. 480, 49 Tex. Civ. App. 344; El Paso & N. E. Ry. Co. v. Gutierrez (Tex. Civ. App. 1908) 111 S. W. 159.

Said act was constitutional in its application to the territories, notwithstanding its unconstitutionality in its application to interstate commerce; the provisions defining the liabilities of carriers engaged in commerce in any territory being within the constitutional power of congress to govern territories and independent of the provisions relating to carriers engaged in interstate commerce, based on the constitutional power of congress to regulate interstate commerce. Gutierrez v. El Paso & N. E. R. Co. (Tex. 1909) 117 S. W. 426, reversing judgment El Paso & N. E. Ry. Co. v. Gutierrez (Tex. Civ. App. 1909) 111 S. W. 159.

Employers' Liability Act June 11, 1906, c. 3073, § 1, 34 Stat. 232, as applied to the District of Columbia, was constitutional. Hyde v. Southern Ry. Co. (1908) 31 App. D. C. 466; Philadelphia, B. & W. R. Co. v. Tucker (1910) 35 App. D. C. 123; McNamara v. Washington Terminal Co. (1910) 35 App. D. C. 230; Washington Ry. Co. v. Downey (1913) 40 App. D. C. 147. CONTRA, Atchison, T. & S. F. R. Co. v. Mills (1908) 108 S. W. 480, 49 Tex. Civ. App. 349.

The application of that act to the District of Columbia, so far as it grants a right of action to employés, or as it applies to common carriers operating exclusively within the District, and not forming part of an interstate system, is not dependent upon the right of congress to legislate under the commerce clause of the constitution, but to the power of congress to legislate generally for the District. McNamara v. Washington Terminal Co. (1911) 37 App. D. C. 384.

In construing an act of congress imposing a license tax on agents doing business in the District of Columbia and in considering the power of congress to regulate commerce as between the District and the states, it will be presumed, in the absence of an express declaration to that effect, that congress did not intend to disregard the principle of commercial intercourse as embodied in the constitution, prohibiting a state from imposing a license tax on agents of nonresident owners for the privilege of soliciting local orders for property to be shipped to residents. Beitzell v. District of Columbia (1903) 21 App. D. C. 49.

12. Internal commerce of states.—The power of congress to regulate commerce extends only to the external commerce of the states, and has no application to commerce which is purely internal. Kansas City S. Ry. Co. v. Board of Railroad Com'rs (C. C. 1901) 106 Fed. 353 (affirmed [1903] 23 Sup. Ct. 214, 187 U. S. 617, 47 L. Ed. 333); People v. Huntington (1846) 4 N. Y. Leg. Obs. 187.

The grant of power to regulate commerce among the states virtually denies the power to interfere with the internal trade and business of the separate states, except as a necessary and proper means for carrying into execution some other power expressly granted or vested. U. S. v. Dewitt (1869) 9 Wall. 41, 44, 19 L. Ed. 593.

Internal Revenue Act March 2, 1867, § 29, making it a misdemeanor to sell naphtha inflammable at less than a certain temperature, is a police regulation, valid only in localities over which congress has complete control; this being so despite the congressional power over interstate commerce. Within state limits it can have no constitutional operation. Id.

The power to regulate commerce extends to every species of commercial intercourse between the United States and foreign nations and among the several states. But it does not comprehend commerce which is entirely internal, which is carried on between individuals in a state, or between different parts of the same state, and which does not extend to or affect other states. Gibbons v. Ogden (1824) 22 U. S. (9 Wheat.) 1, 6 L. Ed. 23, reversing (1820) 17 Johns. 488.

R. S. § 4283, Comp. St. § 8021, providing that the liability of vessel owners for the loss of property shipped on the vessel shall not exceed the amount of the value of the interest of such owner in the vessel and her freight then pending, as limited by section 4283, which provides that the provisions of R. S. § 4289, Comp. St. § 8027, shall not apply to vessels engaged in inland navigation, is not unconstitutional as an attempt of the federal government to control commerce within the several states. Lord v. Goodall, Nelson & Perkins, S. S. Co. (1880) 102 U. S. 541, 26 L. Ed. 224.

Internal Revenue Act June 13, 1898, c. 448, schedule A, par. 2, 30 Stat. 458, taxing sales at exchanges, boards of trade, etc., and requiring the execution and delivery by the seller to the buyer of a written bill or memorandum showing the date, seller's name, amount of sale, and the matter or thing sold, to which should be attached revenue

stamps, in value equal to the tax on the sale, is not invalid as an illegal interference with commerce within the states, in requiring a written note or memorandum of the contract not required by the state laws, since the tax is not on the memorandum, which is required merely to identify the sale and furnish a means for the collection of the tax, which, in the manner provided, does not interfere with internal state commerce. Nicol v. Ames (1899) 19 Sup. Ct. 522, 528, 173 U. S. 509, 43 L. Ed. 786, affirming order (C. C. 1898) 89 Fed. 144.

Quarantine regulations promulgated by the secretary of agriculture acting under cover of Act Feb. 2, 1903 (Comp. St. § 8699), entitled "An act to enable the secretary of agriculture to more effectually suppress and prevent the spread of contagious and infectious diseases of live stock, and for other purposes," are void as in excess of the powers conferred by that act, where, on their face, they apply as well to intrastate as to interstate commerce. Illinois Cent. R. Co. v. McKendree (1906) 27 Sup. Ct. 153, 203 U. S. 514, 51 L. Ed. 298; Same v. Edwards (1906) 27 Sup. Ct. 159, 203 U. S. 531, 51 L. Ed. 305.

A regulation of intrastate as well as of interstate commerce, and therefore beyond the power of congress is made by the provision of Employer's Liability Act June 11, 1906, c. 3073, 34 Stat. 232, that "every common carrier engaged in trade or commerce" in the District of Columbia or in the territories or between the several states shall be liable for the death or injury of "any of its employés" which may result from the negligence of "any of its officers, agents, or employés." Howard v. Illinois Cent. R. Co. (1908) 28 Sup. Ct. 141, 144, 207 U. S. 463, 52 L. Ed. 297, affirming (C. C. 1907) 148 Fed. 997. CONTRA, Spain v. St. Louis & S. F. R. Co. (C. C. 1907) 151 Fed. 522.

A regulation of intrastate as well as of interstate commerce, and therefore one beyond the power of congress to enact, is made by the provision of Employers' Liability Act July 11, 1906, c. 3073, 34 Stat. 232, that "every common carrier engaged in trade or commerce" in the District of Columbia or in the territories or between the several states shall be liable for the death or injury of "any of its employés" which may result from the negligence of "any of its officers, agents, or employés." Howard v. Illinois Cent. R. Co. (1908) 28 S. Ct. 141, 207 U. S. 463, 52 L. Ed. 297, affirming judgments (C. C. 1906) 148 Fed. 986, and (C. C. 1907) 148 Fed. 997.

The restrictions upon the hours of labor of railway employés connected with the movement of trains in interstate transportation, made by Act March 4, 1907 (Comp. St. § 8677 et seq.), are not unconstitutional because many of such employés are, by virtue of practical necessity, also employed in intrastate transportation. Baltimore & O. R. Co. v. Interstate Commerce Commission (1911) 31 Sup. Ct. 621, 221 U. S. 612, 55 L. Ed. 878.

Intrastate railroads and employés wholly engaged in local business were not affected by the provisions of Act March 4, 1907, § 2 (Comp. St. § 8678), making it "unlawful for any common carrier, its officers or agents, subject to this act, to require or permit any employé subject to this act to be or remain on duty" for a longer period than that prescribed, since such carriers and employés are defined in section 1 (Comp. St. § 8677) as those who are engaged in the transportation of passengers or property by railroad in the District of Columbia or the territories, or in interstate or foreign commerce, although that section further defines "railroad" as including all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any carrier operating a railroad by contract, agreement, or lease, and "employés" as meaning persons actually engaged in, or connected with, the movement of any train. Id.

Congress had the power, under the commerce clause, to require, as it did in Safety Appliance Act March 2, 1893, as amended by Act March 2, 1903 (Comp. St. § 8613), that all locomotives, cars, and similar vehicles used on any railway engaged in interstate commerce shall be equipped with certain designated safety appliances, regardless of whether such vehicles are used in moving intrastate or interstate traffic. Southern R. Co. v. U. S. (1911) 32 Sup. Ct. 2, 4, 222 U. S. 20, 56 L. Ed. 72, affirming judgment U. S. v. Southern R. Co. (D. C. 1908) 164 Fed. 347.

The power of congress, under the commerce clause, to regulate the liability of an interstate railway carrier for the death or injury of an employé engaged in interstate commerce, which may result from the negligence of a fellow servant, is not exceeded by the enactment of Employers' Liability Act April 22, 1908 (Comp. St. § 8657 et seq.), though that act embraces instances where the causal negligence is that of an employé engaged in intrastate commerce. Mondou v. New York, N. H. & H. R. Co. (1912) 32 Sup. Ct. 169, 174, 223 U. S. 1, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44, reversing judgment (1909) 73 Atl. 762, 82 Conn. 373.

Taking of sponges from land under water within state territory limits held not subject to congressional control. The Abby Dodge v. U. S. (1912) 32 Sup. Ct. 310, 223 U. S. 166, 56 L. Ed. 390.

Congress may prevent the common instrumentalities of interstate and intrastate commercial intercourse from being used in their intrastate operations to the injury of interstate commerce. Houston, E. & W. T. R. Co. v. U. S. (1914) 34 Sup. Ct. 833, 234

U. S. 342, 58 L. Ed. 1341, affirming decree Texas & P. Ry. Co. v. Same (Com. C. 1913) 205 Fed. 380, and Houston, E. & W. T. Ry. Co. v. Same (Com. C. 1913) Id. 391.

Congress may lawfully affect intrastate commerce so far as necessary to regulate effectually and completely interstate commerce, the constitution reserving to congress plenary powers to regulate interstate commerce, and the constitution and acts of congress in pursuance thereof are the supreme law of the land. U. S. v. Colorado & N. W. R. Co. (1907) 157 Fed. 321, 85 C. C. A. 27, 15 L. R. A. (N. S.) 167, 13 Ann. Cas. 893, writ of certiorari denied Colorado & N. W. R. Co. v. U. S. (1908) 28 Sup. Ct. 570, 209 U. S. 544, 52 L. Ed. 919.

Congress may regulate interstate commerce, but not intrastate commerce; and the state may regulate purely internal, and not interstate, commerce. In re VanVliet (C. C. 1890) 43 Fed. 761, 764, 767, 10 L. R. A. 451.

The nation may regulate interstate fares and all interstate commerce, and to the extent necessary to regulate interstate commerce it may by congress and its courts regulate intrastate commerce. Shepard v. Northern Pac. Ry. Co. (C. C. 1911) 184 Fed. 765, decree modified Simpson v. Shepard (1913) 33 Sup. Ct. 729, 230 U. S. 352, 57 L. Ed. 1511.

State affairs are under the exclusive control of the respective states, and the act of congress requiring railroads engaged in interstate commerce to equip their cars with automatic couplers cannot be extended to cars of such companies when employed only in the carriage of commerce between points in the state. Rio Grande Southern R. Co. v. Campbell (Colo. 1908) 96 Pac. 986.

Act April 22, 1908 (Comp. St. § 8657), making railroads while engaged in interstate commerce liable for injuries to employés while employed in such commerce, is invalid, except so far as it is a regulation of interstate commerce, and it is not sufficient that it remotely affects such commerce, if that result is only to be secured by invading the settled limits of the sovereignty of the states as to their own internal police. Hoxie v. New York, N. H. & H. R. Co. (1909) 73 A. 754, 82 Conn. 352.

Where adequate regulation of interstate rates cannot be maintained without affecting intrastate rates, congress may determine what regulation shall be applied. Chicago, M. & St. P. Ry. Co. v. State Public Utilities Commission of Illinois (1915) 108 N. E. 729, 268 Ill. 49.

The interstate commerce act has no application to a contract for intrastate transportation. Chesapeake & O. Ry. Co. v. Maysville Brick Co. (Ky. 1909) 116 S. W. 1183.

A coasting license, granted to a vessel plying upon the interior waters, from which it could not reach another state or a foreign nation, is unauthorized and inoperative. Moor v. Veazie (1850) 32 Me. 343, 52 Am. Dec. 655.

A conspiracy to create a monopoly only in that part of the commerce in a commodity which is interstate is subject only to the laws of the general government, while one having for its object a monopoly in intrastate commerce is subject only to the laws of the state, but a conspiracy whose object is a monopoly in both the interstate and intrastate commerce in a commodity is subject to the laws both of the general government and the state affected thereby. Standard Oil Co. of Kentucky v. State (Miss. 1914) 65 So. 468.

Act March 4, 1907, § 2 (Comp. St. § 8678), regulating the hours of labor of train dispatchers, etc., is not invalid, because applying to both interstate and intrastate commerce, though an employé within the act may engage in the movement of both interstate and intrastate trains. People v. Erie R. Co. (1909) 119 N. Y. S. 873, 135 App. Div. 767, order reversed (1910) 91 N. E. 849, 198 N. Y. 369.

It seems that the authority given to congress by the constitution to regulate commerce with foreign nations and among the several states does not extend to the regulation of the rights and liabilities of such common carriers by water as confine their operations to the limits of one state. Houston & G. Nav. Co. v. Dwyer (1867) 29 Tex. 376.

13. Delegation of power by congress.—See notes under art. 1, § 1, ante.

13½. Regulation procedure.—Comp. St. § 8824, providing that in any equity suit in any federal circuit court, to protect trade and commerce against unlawful restraints and monopolies, the attorney general may file a certificate of importance, whereupon the case shall be given precedence and shall be heard by not less than three circuit judges, etc., though discriminatory, is not unconstitutional. U. S. v. New York, N. H. & H. R. Co. (C. C. 1908) 165 Fed. 742.

II. EXCLUSIVE OR CONCURRENT POWERS OF CONGRESS AND THE STATES

14. In general.—This clause vests the power to regulate interstate commerce exclusively in congress. Kaeiser v. Illinois Cent. R. Co. (C. C. 1883) 18 Fed. 151; Kansas City S. Ry. Co. v. Board of Railroad Com'rs (C. C. 1901) 106 Fed. 353 (affirmed [1903] 23 Sup. Ct. 214, 187 U. S. 617, 47 L. Ed. 333); People v. Downer (1857) 7 Cal. 169; Mitchell v. Steelman (1857) 8 Cal. 363; Carson River Lumbering Co. v. Patterson (1867) 33 Cal. 334; Wilcox v. People (1909) 104 Pac. 408, 46 Colo. 382.

The power to regulate commerce between states, delegated to the federal government, makes its exercise of such power supreme, to the exclusion of the powers of state governments. Van Winkle v. State (Del. 1914) 91 A. 385, reversing judgment State v. Van Winkle (Del. 1913) 88 A. 807.

The power of regulating commerce among the states is in congress, and the subject of exclusive federal control. Sligh v. Kirkwood (Fla. 1913) 61 So. 185; Southern Ry. Co. v. Railroad Commission of Indiana (Ind. 1913) 100 N. E. 337; Gatton v. Chicago, R. I. & P. Ry. Co. (1895) 95 Iowa, 112, 63 N. W. 589, 28 L. R. A. 556; D. E. Foote & Co. v. Clagett (1911) 81 Atl. 511, 116 Md. 228; Barnhard Bros. & Spindler v. Morrison (Tex. 1905) 87 S. W. 376.

The power to regulate interstate and foreign commerce is exclusive when the subjects of regulation are national in character or admit only of one uniform system or plan of regulation. In re McNiel (1871) 13 Wall. 236, 240, 20 L. Ed. 624; In re State Freight Tax (1872) 82 U. S. (15 Wall.) 232, 21 L. Ed. 146; Mobile County v. Kimball (1880) 102 U. S. 691, 26 L. Ed. 238; Cardwell v. American River Bridge Co. (1885) 113 U. S. 205, 5 Sup. Ct. 423, 28 L. Ed. 959; Atlantic & P. Tel. Co. v. Philadelphia (1903) 23 Sup. Ct. 817, 190 U. S. 160, 47 L. Ed. 995; Kaeiser v. Illinois Cent. R. Co. (C. C. 1883) 18 Fed. 151; Rhea v. Newport N. & M. V. R. Co. (C. C. 1892) 50 Fed. 16; Fulgham v. Midland Valley R. Co. (C. C. 1909) 167 Fed. 660 (reversed [1910] 181 Fed. 91, 104 C. C. A. 151); Welch v. Dean (Mont. 1914) 141 Pac. 548; Southern Express Co. v. Goldberg (1903) 101 Va. 619, 44 S. E. 893, 62 L. R. A. 669.

No part of the power of regulating commerce, that is vested in congress, can be executed by a state; that power, so far as it is thus vested, belongs exclusively to congress. Gibbons v. Ogden (1824) 22 U. S. (9 Wheat.) 1, 6 L. Ed. 23.

Though inspection laws have a remote and considerable influence on commerce, the power of the states to enact them is not derived from the power to regulate commerce, and the possession of power to pass inspection laws does not indicate a power concurrent with congress to regulate commerce. Id.

The commerce clause excludes the states from regulating commerce in any way except their own internal trade, and confides its legislative regulation completely and entirely to congress. Passenger Cases (1849) 7 How. 283, 393, 12 L. Ed. 702.

The power to regulate commerce, granted to congress, includes subjects which are necessarily of a national character, and hence exclusively within its control, but it also includes matters merely local in their operation, as the regulation of port pilots, authorization of bridges over navigable streams, and perhaps others, and on this class of subjects the state may legislate in the absence of any such legislation by congress, and if a tax on passengers when carried out of the state be called a regulation of commerce it belongs to the latter class, and in the absence of legislation by congress on the same subject is not void as a regulation of commerce. Crandall v. Nevada (1867) 6 Wall. 35, 41, 18 L. Ed. 745.

The authority of congress to regulate commerce is in part exclusive, for some of the rules prescribed must be uniform throughout the country, and to that extent the authority must be exclusive; but otherwise the states may regulate commerce until congress acts on the subject, at which time the authority of the state ceases until the occasion for its exercise recurs. Chicago & N. W. R. Co. v. Fuller (1873) 17 Wall. 560, 568, 21 L. Ed. 710.

The commercial power of congress is exclusive of state authority only where the subjects upon which it is exerted are national in their character, and admit and require uniformity of regulations affecting alike all the states; and when the subjects within that power are local in their nature or operation, or constitute mere aids to commerce, the states may provide for their regulation and management until congress intervenes and supersedes their action. Cardwell v. American River Bridge Co. (1885) 5 Sup. Ct. 423, 113 U. S. 205, 28 L. Ed. 959 (affirming decree [C. C. 1884] 19 Fed. 562); Rhea v. Newport N. & M. V. R. Co. (C. C. 1892) 50 Fed. 16.

The grant of power to congress to regulate interstate and foreign commerce is paramount over all legislative powers reserved to the states, and any legislation of the state, though in pursuance of an acknowledged power reserved to it, which conflicts with the actual exercise of the power of congress over commerce, must give way. Smith v. Alabama (1888) 8 Sup. Ct. 564, 566, 124 U. S. 465, 31 L. Ed. 508.

Nothing which is a direct burden on interstate commerce can be imposed by the state without the assent of congress, and the silence of congress with respect to any matter of interstate commerce is equivalent to a declaration that it shall be absolutely free. Brennan v. Titusville (1894) 14 Sup. Ct. 829, 832, 153 U. S. 289, 38 L. Ed. 719.

The overthrow of the existing state quarantine systems, and the abrogation of the power on the subject of health and quarantine exercised by the states, because the enactment of state laws on these subjects would in particular instances affect interstate and foreign commerce, were not contemplated by Act Feb. 15, 1893 (Comp. St. § 9156 et seq.), "granting additional quarantine

powers and imposing additional duties upon the Marine Hospital service," in view of the provisions of section 3 of that act (Comp. St. § 9158), directing the supervising surgeon general to cooperate with and aid state and municipal boards of health in the execution and enforcement of their rules and regulations, and those made by the secretary of the treasury to prevent the introduction of contagious or infectious diseases into the United States from foreign countries. Compagnie Francaise De Navigation A Vapeur v. Board of Health of State of Louisiana (1902) 22 Sup. Ct. 811, 186 U. S. 380, 46 L. Ed. 1209, affirming judgment (1899) 25 So. 591, 51 La. Ann. 645.

No unconstitutional regulation of commerce is made by Acts La. 1898, No. 192, § 8, under which the state board of health may exclude healthy persons from entering a locality infested with a contagious or infectious disease, whether such persons come from within or without the state. Id.

The subject of transportation of cattle from one state to another is not so far covered by the provisions of Animal Industry Act May 29, 1884 (Comp. St. §§ 850, 8690 et seq.), for the investigation and suppression of diseases of cattle, or those relating to the exportation of diseased cattle to ports in foreign countries and the transportation between the states of live stock known to be diseased, as to preclude the enactment of Sess. Laws Colo. 1885, p. 335, prohibiting the importation of cattle from south of the thirty-sixth parallel of north latitude between April 1st and November 1st, unless first kept for 90 days at some place north of that parallel, or unless a certificate of freedom from contagious or infectious disease has been obtained from the state veterinary sanitary board. Reid v. People of State of Colorado (1902) 23 Sup. Ct. 92, 187 U. S. 137, 47 L. Ed. 108, affirming judgment (1902) 68 Pac. 228, 29 Colo. 333, 93 Am. St. Rep. 69.

Inhibitive congressional legislation is not essential to exclude state legislation upon incidental matters relating to interstate commerce with respect to which the states and congress have a concurrent power. It is sufficient if the congressional legislation occupies the field of regulation. Southern R. Co. v. Reid (1912) 32 Sup. Ct. 140, 222 U. S. 424, 56 L. Ed. 257 (reversing judgment Reid v. Southern R. Co. [1910] 69 S. E. 618, 153 N. C. 490); Southern R. Co. v. Reid & Beam (1912) 32 Sup. Ct. 145, 222 U. S. 444, 56 L. Ed. 263, reversing judgment Reid & Beam v. Southern R. Co. (1909) 64 S. E. 874, 150 N. C. 753, 17 Ann. Cas. 247.

Any power which a state has over interstate commerce because of congressional inaction ceases to exist from the moment that congress exerts its paramount authority over the subject. Chicago, R. I. & P. Ry. Co. v. Hardwick Farmers' Elevator Co. (1913) 33 Sup. Ct. 174, 226 U. S. 426, 57 L. Ed. 284, 46 L. R. A. (N. S.) 203.

A state law enacted under any of the reserved powers will not be set aside as inconsistent with an act of congress regulating commerce, unless there is actual repugnancy, or congress has manifested a purpose to exercise its paramount authority over the subject. Missouri, K. & T. Ry. Co. of Texas v. Harris (1914) 34 Sup. Ct. 790, 234 U. S. 412, 58 L. Ed. 1377.

Right to determine what articles offered for import shall be admitted is solely for congress, and it may refuse admission of articles without interfering with the police power of the states. Weber v. Freed (1915) 224 Fed. 355, 140 C. C. A. 41.

Contracts between Indiana manufacturer and dealer in Texas held governed by federal anti-trust laws, and not those of Texas; the transaction being a consignment, and not a sale, and the contract an interstate one. Cole Motor Car Co. v. Hurst (1915) 228 Fed. 280, 142 C. C. A. 572.

A state law authorizing the seizure and imprisonment of free negroes brought into the state on board of any foreign vessel is unconstitutional. Elkison v. Deliesseline (C. C. 1823) Fed. Cas. No. 4,366.

The power to regulate commerce among the several states is paramount in the federal government, and cannot be restricted by a state. Palmer v. Cuyahoga County (C. C. 1843) Fed. Cas. No. 10,688.

Statutes passed by congress in pursuance of this power are of paramount authority, and cannot be invalidated or impaired by the action of any state or states. Any law, ordinance, or constitution made by them for that purpose is wholly nugatory, and can afford no legal protection to those who may act under it. Charge to Grand Jury (C. C. 1861) Fed. Cas. No. 18,256.

There is not, and has never been, any jurisdiction at common law over commerce between the states, and the interstate commerce act (Comp. St. § 8563 et seq.) creates rights and remedies not existing at common law, and which the federal government had sole power to create. Sheldon v. Wabash R. Co. (C. C. 1900) 105 Fed. 785.

The police power of the state, exercised as to proper subjects of interstate commerce, must yield to the federal constitution, for it and the laws passed in pursuance thereof are the supreme law of the land. In re Bergen (C. C. 1900) 115 Fed. 339.

Congress alone by legislation may occupy the whole field of interstate commerce. Snead v. Central of Georgia Ry. Co. (C. C. 1907) 151 Fed. 608.

While the states may enact valid legislation incidentally affecting interstate

commerce in many ways, when congress has acted in any matter pertaining to the regulation of such commerce, no state can by legislation interfere with, burden, or control it. St. Louis & S. F. R. Co. v. Allen (C. C. 1910) 181 Fed. 710.

The power to regulate commerce among the states, granted by the people to the nation in the constitution, is exclusive, and no state, by virtue of its police power, or any other power it possesses, may restrict this grant or the plenary exercise of this power, for these inhere in the supreme law of the land and are paramount to the powers of the states. Shepard v. Northern Pac. Ry. Co. (C. C. 1911) 184 Fed. 765, decree modified Simpson v. Shepard (1913) 33 Sup. Ct. 729, 230 U. S. 352, 57 L. Ed. 1511.

The passage by congress of an act regulating interstate commerce from the date of such passage excludes the power of the states to legislate and supersedes state laws, though the federal act is not to take effect until a subsequent date. Louisville & N. R. Co. v. Hughes (D. C. 1912) 201 Fed. 727.

A state act, which necessarily by its requirements brings about a conflict with the requirements of an act of congress on the same subject passed in the exercise of its exclusive power over interstate commerce, produces that direct interference with such commerce which is not permissible. Id.

Within their proper sphere federal acts regulating commerce are paramount, but beyond that a state law, whose purpose is wholesome, is operative as against all that come within its provisions. Pullman Co. v. Linke (D. C. 1913) 203 Fed. 1017.

The absolute power of congress to regulate commerce includes the power to regulate the use of all means and instrumentalities used in commerce, whether on sea, rivers, and lakes, in harbors or on land, irrespective of whether a state has attempted to regulate the same matter or not. (1899) 22 Op. Atty. Gen. 501, 646.

This power is general, absolute, and without limit, either as to the time, place, or detail of its exercise, except as to waters whose entire navigability for commerce is limited to the confines of a single state. (1899) 22 Op. Atty. Gen. 646.

The regulation of commerce and navigation being entirely within the control of congress, there is no authority for an executive department to make or enforce rules or regulations relative to the registry of vessels or kindred matters connected with such subjects. (1899) 22 Op. Atty. Gen. 566.

No action by any state or by an officer thereof can operate to impair or nullify the effect of a law of congress duly enacted upon this subject. (1907) 26 Op. Atty. Gen. 180.

Congress has exclusive power to regulate commerce between the states, the states alone having power to regulate intrastate commerce. St. Louis, I. M. & S. Ry. Co. v. Hesterly (Ark. 1911) 135 S. W. 874.

By well-settled rules of construction, the right of the states to regulate commerce is concurrent with that of congress, with the understanding always that all state regulations, inconsistent with those of the federal government, on this subject, must give way. People v. Coleman (1854) 4 Cal. 46, 60 Am. Dec. 581.

The commerce clause and section 10, clause 2, post, forbidding any state without the consent of Congress to lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws, gives congress the sole power to regulate commerce among the several states. Smith v. Farr (1909) 104 Pac. 401, 46 Colo. 364.

When congress does act, and its action covers the subject-matter, its action is exclusive as to interference with interstate commerce. Sligh v. Kirkwood (1913) 61 So. 185, 65 Fla. 123.

The federal constitution, though conferring on congress exclusive power of regulating commerce among the several states and of dealing with the other subjects mentioned in article 1, § 8, has not conferred on the national judiciary the exclusive jurisdiction of administering those regulations. Southern Pac. Co. v. Crenshaw Bros. (1909) 63 S. E. 865, 5 Ga. App. 675.

Power of congress over interstate commerce held supreme, and to extend to every instrumentality by which such commerce may be carried on, and the states have only such power as is consistent with the grant to congress. Staley v. Illinois Cent. R. Co. (1915) 109 N. E. 342, 268 Ill. 356, reversing judgment (1914) 186 Ill. App. 593.

Interstate commerce can be regulated exclusively by congress, but the regulation is within and for the benefit of the states and their citizens. Pittsburg, C., C. & St. L. Ry. Co. v. Mitchell (Ind. 1910) 91 N. E. 735.

The power of congress to regulate interstate commerce is exclusive, so that, even in the absence of federal legislation, the state cannot legislate on such subject. Hardy v. Atchison, T. & S. F. R. Co. (1884) 32 Kan. 698, 5 Pac. 6.

The power to regulate commerce is vested solely and exclusively in congress. Foster v. Blue Earth County Com'rs (1862) 7 Minn. 140 (Gil. 84).

A conspiracy to monopolize both interstate and intrastate commerce in a commodity, but to be consummated by dealing with the commodity only while it is the subject of an interstate transaction, is punishable only under the

laws of the general government. Standard Oil Co. of Kentucky v. State (1914) 65 So. 468, 107 Miss. 377.

The Interstate Commerce Act, as amended, governs interstate commerce, and state courts must apply it in conformity with decisions of the federal courts. Dunlap v. Chicago & A. Ry. Co. (1915) 172 S. W. 1178, 187 Mo. App. 201.

The Interstate Commerce Act and its amendments (Comp. St. § 8563, et seq.) supersede the regulations and policies of the states on the same subject and define the liability of an interstate carrier. Thomas Bros. v. St. Louis & S. F. R. Co. (Mo. App. 1915) 173 S. W. 96.

The federal statute and the decisions of the federal courts interpreting it govern the question of the validity of contracts relating to interstate commerce. Keithley v. Lusk (1915) 177 S. W. 756, 190 Mo. App. 458.

The rights and liabilities growing out of interstate commerce are governed by the federal laws. Colby v. American Express Co. (1915) 94 A. 198, 77 N. H. 548.

When the general government leaves the regulation of commerce, the states may take it up within their respective jurisdictions; but as to foreign commerce, and all questions relating thereto, that government alone can speak and act, and the power is necessarily exclusive. People ex rel. Barlow v. Curtis (1872) 50 N. Y. 321, 328, 10 Am. Rep. 483.

While congress, in the exercise of its power to regulate commerce between the states and foreign nations, can legislate upon that subject as well in ports and harbors as on the high seas, by so doing it does not repeal but suspends, state law upon the subject; and when the act producing this result is repealed, or so modified as to permit the operation of the state law, it becomes again valid and in force. Henderson v. Spofford (1874) 59 N. Y. 131, affirming (1871) 10 Abb. Prac. (N. S.) 140, 3 Daly, 361.

Where congress deals with a subject over which it and the states have concurrent jurisdiction, its action is exclusive. People v. Erie R. Co. (1909) 119 N. Y. S. 873, 135 App. Div. 767, order reversed (1910) 91 N. E. 849, 198 N. Y. 369.

Where congress has legislated on a subject within its province, such as interstate commerce, its power as to such matter is exclusive, and the state courts have no jurisdiction thereof. J. M. Pace Mule Co. v. Seaboard Air Line Ry. Co. (N. C. 1912) 76 S. E. 513; Herring v. Atlantic Coast Line R. Co. (N. C. 1912) Id. 527.

The state may control commerce generally where its power is exclusive, or where its power is concurrent with that of the federal government, but, where the action of congress is exclusive, the state cannot interfere at all. Blalock Hardware Co. v. Seaboard Air Line Ry. Co. (N. C. 1915) 86 S. E. 1025.

The power granted to congress to regulate commerce among the several states, is not exclusive, as a state may, at all times, regulate commerce carried on wholly within its borders. Thoms v. Greenwood (1878) 6 Ohio Dec. 639.

The exclusive power to regulate interstate commerce, vested in congress, is recognized by Laws Okl. 1909, c. 10, art. 1, § 3, providing that "this act shall not be effective in * * * conflict with the powers of Congress or the federal laws." Fruit Dispatch Co. v. Wood (1914) 140 Pac. 1138, 42 Okl. 79.

The Interstate Commerce Act, and amendment thereto of June 29, 1906 (Comp. St. § 8563 et seq.), supersedes an act of the territorial legislature which relates to the same subject. Chicago, R. I. & P. Ry. Co. v. Beatty (1914) 141 Pac. 442, 42 Okl. 528.

The authority of congress to regulate interstate and foreign commerce is supreme and unlimited, except by the federal constitution, and when congress legislates upon any particular subject of such commerce, all conflicting state laws, whether statute or common law, affecting the same subject are thereby superseded; but, in the absence of such legislation, the police power of the state remains unimpaired. Varnville Furniture Co. v. Charleston & W. C. Ry. Co. (S. C. 1913) 79 S. E. 700.

The state has no power to prohibit importations from other states, as such traffic is regulated wholly by federal law. Motlow v. State (Tenn. 1912) 145 S. W. 177.

The power of congress over interstate commerce is supreme, and the levying of taxes by a state which impedes or burdens such commerce is invalid. Atlas Powder Co. v. Goodloe (1915) 175 S. W. 547, 131 Tenn. 490.

The states have no power to control beyond their own limits the conduct of corporations and individuals engaged in interstate commerce, and any such legislation is void as creating an unwarranted burden thereon. Bailey v. Western Union Telegraph Co. (Tex. Civ. App. 1914) 171 S. W. 839.

Where the subjects on which the police power of the state is to be exerted are local, and limited in their nature or sphere of operation, the states may prescribe regulations until congress intervenes and assumes control of them; but, when they are national in character, and require uniformity of regulation affecting all the states alike, the power of congress is exclusive, and the nonaction of congress is tantamount to a declaration that all commerce within its exclusive control shall remain free from burdens imposed by state legislation. State v. Peet (1908) 68 A. 661, 80 Vt. 449.

Articles recognized by congress as subjects of interstate commerce cannot be held to be otherwise. Id.

The discretionary power to impose conditions on granting to a foreign corporation the privilege of doing business in a state is subject to implied restraint in that congress is invested with the power to regulate commerce among the several states, whereby is excluded the exercise of any power of regulation by the several states. Loverin & Browne Co. v. Travis (Wis. 1908) 115 N. W. 829.

Where the wood supply out of which was to be manufactured the pulp wood to be supplied pursuant to a contract to furnish pulp wood for a paper mill came from the states of Wisconsin, Minnesota, and Michigan, and the Dominion of Canada, the contract, being one involving interstate commerce, was subject to the federal Anti-Trust Act (Comp. St. § 8820 et seq.), rather than to the Wisconsin statute (St. 1913, §§ 1747e, 1791j) on the same subject. Pulp Wood Co. v. Green Bay Paper & Fiber Co. (1914) 147 N. W. 1058, 157 Wis. 604.

The federal government is the paramount authority in the regulation of interstate commerce, and the laws of congress thereon supersede and override all conflicting state statutes. Chicago, M. & St. P. Ry. Co. v. Rock County Sugar Co. (Wis. 1916) 156 N. W. 607.

15. Navigation and shipping.—See, also, notes under art. 3, § 2, cl. 1, post.

The enrollment and licensing of a vessel under the laws of the United States enacted under the power derived from this clause does not of itself exclude the right of a state to exact a license from her own citizens on account of their ownership and use of such property having its situs within the state. Wiggins Ferry Co. v. City of East St. Louis (1883) 2 Sup. Ct. 257, 267, 107 U. S. 365, 27 L. Ed. 419.

Navigation on the high seas between ports of the same state is subject to regulation by congress, and is not subject to regulation by the state. Hanley v. Kansas City Southern R. Co. (1903) 23 Sup. Ct. 214, 215, 187 U. S. 617, 47 L. Ed. 333.

New York statute giving a lien for repairs and supplies to vessels is valid in regard to domestic vessels, but does not apply to foreign vessels. The Chusan (C. C. 1843) Fed. Cas. No. 2,717.

A government license to a vessel to carry on a coasting trade does not exempt the owners from liability to pay a license, under the municipal regulations of a town within the limits of which the vessel is moored for the purpose of giving theatrical exhibitions on board. Spalding v. Baton Rouge (C. C. 1853) Fed. Cas. No. 13,200.

A lien given under the local law for materials furnished in the construction of a vessel will be postponed in a federal court of another state to a subsequent mortgage recorded under the act of congress in the home port of the vessel in the latter state. Underwriters' Wrecking Co. v. The Katie (C. C. 1878) Fed. Cas. No. 14,342.

Rules and regulations for landings made by Mississippi towns, when authorized by state laws, will be enforced in federal courts. Culbertson v. the Southern Belle (D. C. 1854) Fed. Cas. No. 3,462.

District court in admiralty is not in all cases bound by the city ordinances regulating navigation. The B. S. Sheppard (D. C. 1857) Fed. Cas. No. 2,072.

By the national constitution the power of regulating commerce with foreign nations and among the states is given to congress; and this power is, from its nature, exclusive. It is the power of prescribing the terms on which the intercourse between foreign nations and the United States, and between the several states of the Union, shall be carried on. Congress has exercised this power; and among those terms there is no requisition that the vessels permitted to enter the ports of the several states shall be navigated wholly by white men. All foreign and domestic vessels complying with the requisitions prescribed by congress have a right to enter any port of the United States, and a right to remain there, unmolested in vessel or crew, for the peaceful purposes of commerce. (1824) 1 Op. Atty. Gen. 659.

Congress has the exclusive power to provide where the evidences of title to registered and enrolled vessels shall be recorded. Wood v. Stockwell (1867) 55 Me. 76.

St. Mass. 1907, c. 465, as amended by St. 1909, c. 393, § 1, relative to inspection of steam boilers, held not inapplicable to a boiler on a barge, used for loading and unloading merely because the barge was licensed and registered under federal laws. Commonwealth v. Breakwater Co. (1913) 100 N. E. 1034, 214 Mass. 10.

A state may lawfully pass laws prescribing the number of lights to be carried on a vessel navigating waters within its limits, though the boat is engaged in interstate commerce, and though congress has passed a regulation on that point, as the statute merely adds to the regulation of congress. Fitch v. Livingston (1851) 6 N. Y. Super. Ct. (4 Sandf.) 492.

The New York statute enacted in 1826, and continued in the Revised Statutes, which requires every steamboat navigating the rivers and lakes of that state in the nighttime to carry and show two good lights, one near her bows and the other near her stern, is still valid and obligatory upon all such vessels, whether navigating from place to place, within the state, or from foreign states, under a coasting license, notwithstanding the subsequent enactment of congress in 1838 that every steam-

boat navigating at night shall carry one or more signal lights. Id.

That statute applies to the class of steamboats known as propellers, as well as to those in use when it was enacted. Id.

16. Navigable waters in general.—See, also, notes under art. 3, § 2, cl. 1.

The power of a state or territory over navigable streams and their tributaries is limited by the superior power of the general government to secure the uninterrupted navigability of all navigable streams within the limits of the United States. Gutierres v. Albuquerque Land & Irrigation Co. (1903) 23 Sup. Ct. 338, 342, 188 U. S. 545, 47 L. Ed. 588.

The sovereignty of the state of Wisconsin extends to the middle of Lake Michigan; and its laws, so far as not in conflict with laws of the United States passed in the regulation of commerce and of navigation, are operative within the boundaries of that state. Bigelow v. Nickerson (1895) 70 Fed. 113, 17 C. C. A. 1, 34 U. S. App. 261.

The rights and jurisdiction of the several states over the sea adjacent to their coasts are those of an independent nation, except as qualified by any right of control granted to the United States by the constitution. And where, by a state's constitution and laws, her boundaries and those of her counties are three miles from the shore, her statutes giving an action for death by negligence are operative within such boundaries where death occurs by negligence in the navigation or towage of vessels. Humboldt Lumber Mfrs. Ass'n v. Christopherson (1896) 73 Fed. 239, 19 C. C. A. 481, 44 U. S. App. 434, affirming (D. C. 1894) 60 Fed. 428.

All state laws and regulations with respect to navigable waters, and all rights acquired under them, are subject to the paramount right of the United States to appropriate any portion of the submerged soil for the purposes of navigation. Garrison v. Greenleaf Johnson Lumber Co. (1914) 215 Fed. 576, 131 C. C. A. 644, reversing decree Greenleaf Johnson Lumber Co. v. Garrison (D. C. 1913) 208 Fed. 1022.

It is only when the exercise of the power of eminent domain comes in collision with the paramount authority of the United States that it is inhibited, and until congress has asserted its power to regulate commerce, and by legislation has assumed to restrict the jurisdiction of the state over its navigable waters, no conflict can arise, and the authority of the state is conclusive. Ormerod v. New York, W. S. & B. R. Co. (C. C. 1882) 13 Fed. 370.

The provision of the act admitting California into the Union "upon the express condition * * * that all navigable rivers within said state shall be common highways and forever free, as well to the inhabitants of said state as to the citizens of the United States," is valid as a law under the authority of congress to regulate commerce, which the state has no authority to violate, and with which it cannot interfere. Woodruff v. North Bloomfield Gravel-Min. Co. (C. C. 1884) 18 Fed. 753.

Where a navigable stream forms the boundary line between two states, state consent to the crossing of the stream with a pipe line laid under the bed to be used in interstate commerce is not necessary if authority has been obtained from congress. Hubbard v. Fort (C. C. 1911) 188 Fed. 987.

The paramount right of the federal government to fix harbor lines, etc., does not destroy the power of the state to regulate tidelands and waters in the interest of navigation, so long as such regulations do not interfere with those of the federal government made to promote commerce. People v. California Fish Co. (1913) 138 Pac. 79, 166 Cal. 576.

17. Improvement of navigable waters.—Nothing in congressional legislation creating the Mississippi River Commission justifies the conclusion that congress assumed the control of the entire work of protection from overflow by levees, to the displacement of local authorities. Jackson v. U. S. (1913) 33 Sup. Ct. 1011, 230 U. S. 1, 57 L. Ed. 1363, affirming judgment (1912) 47 Ct. Cl. 579.

Acts of congress merely making appropriations for the improvement of a river lying within a state do not operate as an inhibition against state legislation authorizing the construction of booms, dams, piers, etc., so as to make unlawful such structures when erected under state authority. U. S. v. Bellingham Bay Boom Co. (1897) 81 Fed. 658, 26 C. C. A. 547, affirming judgment (C. C. 1896) 72 Fed. 585.

The federal government's expenditure of money for the improvement of the Chicago river did not evidence an intention on its part to exclude the state of Illinois from all dominion and control over such river, lying wholly within the boundaries of the state. Corrigan Transit Co. v. Sanitary Dist. of Chicago (1905) 137 Fed. 851, 70 C. C. A. 381, affirming decree Corrigan Transp. Co. v. Sanitary Dist. of Chicago (D. C. 1903) 125 Fed. 611.

Both federal and state governments may authorize alterations in navigable streams to afford greater facilities for navigation, and in so doing may take property of riparian owners, upon making compensation therefor. Avery v. Fox (C. C. 1868) Fed. Cas. No. 674.

The United States may bring an injunction bill in the proper circuit court to protect improvements made under the authority of congress in navigable waters, from injury which will be caused by works of internal improvement within state limits, by state authority. U. S. v. Duluth (C. C. 1871) Fed. Cas. No. 15,001.

The drainage law (Acts Tenn. 1909, c. 185), providing for the establishment of drainage districts, and authorizing the drainage of swamp lands and the improvement of water courses within the state, did not confer on county courts the authority to change or alter navigable streams within the control of congress. State v. Powers (Tenn. 1911) 137 S. W. 1110.

Under the commerce clause the government has a control over navigation and its incidents, including improvements of navigable rivers, which, while paramount to the rights of the state, is not exclusive. State v. City of Milwaukee (1914) 146 N. W. 775, 156 Wis. 549.

18. Obstructions of navigation.—The power to regulate commerce with foreign nations and among the several states includes the power to control all navigable waters between the states or connecting with the ocean, so as to preserve and protect their free navigation, and hence the power of congress to determine what shall be deemed an obstruction to a navigable river is paramount and conclusive. Miller v. New York (1883) 3 Sup. Ct. 228, 232, 109 U. S. 385, 27 L. Ed. 971.

The authority of a state to prohibit the erection, without its permission, of a structure in a navigable river wholly within its limits, was not superseded by the provision of River and Harbor Act March 3, 1899, § 10 (Comp. St. § 9910), that it shall not be lawful to erect any structure in a navigable river except on plans recommended by the chief of engineers and authorized by the Secretary of War. Cummings v. City of Chicago (1903) 23 Sup. Ct. 472, 188 U. S. 410, 47 L. Ed. 525; Calumet Grain & Elevator Co. v. City of Chicago (1903) 23 Sup. Ct. 477, 188 U. S. 431, 47 L. Ed. 532.

A municipal corporation cannot be held liable for an injury to a vessel arising from an obstruction in a navigable stream within its limits unless the duty to keep the stream free from such obstructions is positively imposed on the corporation by statute. Such duty is one which rests primarily upon congress and the state, and is of a governmental character, performance of which cannot be coerced by an individual; and the fact that the corporation has voluntarily assumed to exercise supervision over the stream does not bind it to continue the same, or render it liable for a marine disaster resulting from its failure to do so. Faust v. City of Cleveland (1903) 121 Fed. 810, 58 C. C. A. 194.

Where congress has declared a navigable river to be a common highway, the state cannot authorize an obstruction thereof. Hatch v. Willamet Iron Bridge Co. (C. C. 1881) 6 Fed. 780.

The Mississippi river, being a navigable stream, is within the exclusive control of congress, and neither the city of New Orleans nor the state of Louisiana can authorize any obstruction of its navigation; nor can the courts, by injunction, protect complainant in the erection of structures outside the wharf line of the city. Texas & P. Ry. Co. v. City of New Orleans (C. C. 1889) 40 Fed. 111.

When congress has assumed jurisdiction over a navigable river lying wholly within one state, it has power to order obstructions to navigation removed, even though their construction was authorized by such state. U. S. v. City of Moline (D. C. 1897) 82 Fed. 592.

When congress chooses to act, it is not concluded, by anything that the states or that individuals by its authority have done, from assuming entire control of the matter and abating any erection that may have been made and preventing any others from being made, except in conformity with such regulations as it may impose. (1896) 21 Op. Atty. Gen. 430.

A state cannot seriously obstruct the navigation of those streams which are channels of interstate trade, as congress has interfered to regulate commerce upon them. So held in an action for damages sustained by an individual by reason of obstruction of a stream by a canal company which acted under authority of the legislature. Depew v. Board of Trustees of Wabash & E. Canal (1854) 5 Ind. 8.

Where congress by Act April 12, 1900, declared a trestle built across a tide water channel by a railroad company a lawful structure, such act is conclusive, and the question cannot be raised in a state court whether the trestle is so constructed as not unnecessarily to obstruct the navigation of that channel, as required by an act of the state legislature authorizing its construction. Frost v. Washington County R. Co. (1901) 51 A. 806, 96 Me. 76, 59 L. R. A. 68.

While waters constituting highways for state, interstate, and foreign commerce are primarily under the control of congress, the state may properly assume control thereof, and cause the removal of obstacles, if such regulation does not conflict with the action of congress. Kitsap County Transp. Co., Inc. v. City of Seattle (1913) 135 Pac. 476, 75 Wash. 673.

19. Seamen.—Act La. 1842, No. 123, prohibiting colored seamen belonging to domestic vessels being brought in such vessels into the ports of that state, is unconstitutional. The Cynosure (D. C. 1844) Fed. Cas. No. 3,529.

20. Pilots.—The grant to congress, by the constitution, of the power to regulate commerce, did not of itself deprive the states of the power to regulate pilots. Cooley v. Wardens of Port of Philadelphia (1851) 53 U. S. (12 How.) 299, 13 L. Ed. 996; Stilwell v. Raynor (N. Y. 1860) 1 Daly, 47.

The power to regulate commerce is exclusive in congress where there must

be a uniform rule, but is not exclusive where the subject permits of different rules in different localities, and the mere grant to congress of the power to regulate commerce does not deprive the states of power to regulate pilots. Cooley v. Board of Wardens of Port of Philadelphia (1851) 12 How. 299, 320, 13 L. Ed. 996.

Act Aug. 30, 1852, providing for the employment of pilots on vessels propelled in whole or in part by steam, engaged in carrying passengers on any of the bays, lakes, or other navigable waters of the United States, so far as it goes, supersedes all state laws regulating the employment of pilots on such vessels. The Panama (D. C. 1861) Fed. Cas. No. 10,702.

The territory of Washington has power to pass pilot laws. Such power is recognized as concurrent in the states by Act Aug. 7, 1794. Id.

In case of conflict the presumption is that congress intended to abrogate state laws on the subject. Id.

Act Fla. 1859, § 3, prohibiting any person from acting as pilot in certain waters between Florida and Georgia, who has not a license from the authorities of Florida, is unconstitutional, being in conflict with Act March 2, 1837, which provides that a master of a vessel may employ a person to act as pilot in waters dividing two states who is licensed by either state. Cribb v. State (1861) 9 Fla. 409.

Act Fla. 1859, § 2, prohibiting any person residing within the jurisdiction of the commissioners for the port of Fernandina from holding a license as pilot from the state of Georgia for certain waters is constitutional. Id.

The validity of a state law for the regulation of port pilotage is not affected by the laws of congress. Cisco v. Roberts (N. Y. 1867) 33 How. Prac. 424.

Pub. Laws N. C. 1907, c. 625, § 13, requires all coastwise or foreign vessels over 60 gross tons to take a state licensed pilot between the sea and a certain port in the state. R. S. § 4444 (Comp. St. § 8206), provides that no state shall require pilots of steam vessels to procure a license in addition to that issued by the United States, except that a state may require vessels entering or leaving a port, "other than coastwise steam vessels," to take a pilot licensed by the state, etc. Held, that section 13 is not unconstitutional as undertaking to regulate commerce between the states and foreign countries, as applied to vessels other than coastwise steam vessels; the federal statute recognizing the right of the states to regulate pilots, except in so far as congress sees fit to do so. St. George v. Hardie (1908) 60 S. E. 920, 147 N. C. 88.

Congress has paramount jurisdiction to regulate pilotage in the public waters of the United States, and its acts supersede state laws on the subject. State v. Ames (Wash. 1907) 92 Pac. 137.

21. **Harbors.**—The establishment of harbor lines did not operate to destroy all state power concerning structures in navigable waters within its border, or to automatically destroy all vested property rights, though acquired under state authority prior to this section. Gring v. Ives (1912) 32 Sup. Ct. 167, 222 U. S. 365, 56 L. Ed. 235.

Action of state in fixing lines of ordinary high and low water in certain rivers held to give riparian owners no rights which will prevent congress from fixing harbor lines in accordance with the high-water mark as changed by the wearing away of banks in the course of years. Philadelphia Co. v. Stimson (1912) 32 Sup. Ct. 340, 223 U. S. 605, 56 L. Ed. 570, affirming decree Same v. Dickinson (1909) 33 App. D. C. 338.

The commissioners of the harbor of Portland have no authority to prevent the deposition of stone or other materials deemed necessary by the officers of the United States for the construction of a fort on Hog Island Ledge in that harbor. The work has been authorized by Congress for the protection of commerce and the common defense, and the legislature of the state of Maine has ceded to the United States jurisdiction over the premises for the purposes of the fort. (1859) 9 Op. Atty. Gen. 319.

Whenever congress in the exercise of its power to regulate commerce makes any rule or regulation in harbors or elsewhere, whether in establishing harbor lines or otherwise, such regulations necessarily supersede any that the state may have made on the same subject within its limits. (1899) 22 Op. Atty. Gen. 501.

Congress has the power to establish harbor lines or modify existing ones in navigable waters within the limits of a state, although such state has already established such harbor lines. Id.

The fact that harbor lines have once been established is no bar to the exercise of the same power as often as the needs of commerce require. Id.

A state or a municipality has and may exercise jurisdiction over the improvement of harbors until the federal government indicates its intention to do so, or exercises its jurisdiction; but, whenever the latter is done, it is exclusive of every other jurisdiction, control, or interference. (1899) 22 Op. Atty. Gen. 646.

A state or a municipality has and may exercise jurisdiction over the improvement of harbors until the federal government indicates its intention to do so, or exercises its jurisdiction; but, whenever the latter is done, it is exclusive of every other jurisdiction, control, or interference. (1899) 22 Op. Atty. Gen. 651.

The state of Virginia, through its legislature, having duly relinquished jurisdiction over the lands belonging to the United States at the navy yard at Norfolk, upon which it is proposed to construct a dry dock, the state board of harbor commissioners for the port of Norfolk and Portsmouth is without authority to require the submission to and approval by it of the plans of the contemplated improvement, although such improvement be within the harbor line established by that board. The authority of the United States over that harbor is paramount and absolute. (1902) 24 Op. Atty. Gen. 50.

The federal statutes regulating harbors used in interstate commerce are merely restrictive of certain acts, and on their face do not prevent the states from exercising ordinary police control over the conduct of their citizens, or the erection of structures within their limits which would obstruct an inland navigable harbor. City of Milwaukee v. Gimbel Bros. (1906) 110 N. W. 7, 130 Wis. 31.

22. Ferries.—The states have exclusive power to establish and regulate ferries, but the state cannot grant ferry rights which will seriously impair the navigation of a river. Conway v. Taylor (1861) 66 U. S. (1 Black) 603, 17 L. Ed. 191.

The inclusion of railroad ferries in Act Feb. 4, 1887, § 1 (Comp. St. § 8563), as one of the subjects regulated by that statute, is such an extension of the federal authority over the operation by a railway company of a ferry upon a navigable river forming the boundary between two states as to invalidate any regulation under state authority of the rates to be charged by such company for the interstate ferriage of persons, although such regulation relates only to persons other than railroad passengers. New York Cent. & H. R. R. Co. v. Board of Chosen Freeholders of County of Hudson (1913) 33 Sup. Ct. 269, 227 U. S. 248, 57 L. Ed. 499.

Suit to recover damages for injuries alleged to have been done to certain lands, and to a certain ferry franchise by reason of the construction of a certain dike in the Mississippi river by the defendant. Held, that plaintiff had, under the laws of Illinois, and according to the evidence, no title to the lands, for injury to which the suit was brought; that the act of the general assembly of Illinois, granting a charter for a ferry across the Mississippi river, under which the plaintiff claims, did not give the grantee any right to control the channel of the river, or to prevent its improvement, without compensation to him by the United States. Lonergan v. Mississippi River Bridge Co. (C. C. 1881) 5 Fed. 777.

Under acts of Illinois and Missouri, a ferry privilege had been granted across the Mississippi river. Act March 3, 1871, authorized the building of a bridge, and in pursuance of that act, the bridge company was required to erect a dike in the river, which averted the channel, and caused a deposit of earth so as to destroy the ferry landing. Held, that the ferry privilege was subject to the power of congress to regulate navigation and commerce, to which the construction of the bridge and the dike were incidents. Mississippi River Bridge Co. v. Lonergan (1879) 91 Ill. 508.

The regulation of tolls and fares at a ferry between two states is not such a regulation of commerce as is exclusively in the power of congress, under the constitution of the United States. Freeholders of Hudson County v. State (1853) 24 N. J. Law (4 Zab.) 718.

23. Bridges.—The states may authorize all structures over navigable waters which may either impede or improve navigation, in the absence of federal legislation; but, when congress has legislated, its action is conclusive. Gilman v. City of Philadelphia (1865) 70 U. S. (3 Wall.) 713, 18 L. Ed. 96; Pound v. Turck (1877) 95 U. S. 459, 24 L. Ed. 525; Wisconsin v. City of Duluth (1877) 96 U. S. 379, 24 L. Ed. 668; Escanaba & Lake Michigan Transp. Co. v. City of Chicago (1883) 107 U. S. 678, 2 Sup. Ct. 185, 27 L. Ed. 442; Milnor v. New Jersey R. Co. (C. C. 1857) Fed. Cas. No. 9,620; Pennsylvania R. Co. v. New York & L. B. R. Co. (C. C. 1873) Fed. Cas. No. 10,953; State v. Inhabitants of Freeport (1857) 43 Me. 198; Talbot County Com'rs v. Queen Anne County Com'rs (1878) 50 Md. 245.

The United States laws for the enrollment and licensing of coasting vessels are such legislation as prohibits a state from impeding navigation by the erection of a bridge. Gilman v. City of Philadelphia (1865) 70 U. S. (3 Wall.) 713, 18 L. Ed. 96.

Powers of congress and of a state as to the construction of a bridge over a navigable river within the state determined. Id.

The paramount power of regulating bridges that affect the navigation of navigable waters of the United States is in congress, and it is derived from the power to regulate commerce with foreign nations and among the states. The power of congress in respect to legislation for the preservation of interstate commerce is free from state interference, and when, therefore, congress in a proper way declares a bridge across a navigable river of the United States to be an unlawful structure, no legislation of a state can make it lawful. Newport & C. Bridge Co. v. U. S.

(1881) 105 U. S. 470, 475, 26 L. Ed. 1143.

By expending money in improving the Willamette river in Oregon, and making Portland a port of entry, congress did not assume police power over that stream so as to deprive the state of the power to authorize the erection of a bridge over that river without the consent of congress. Willamette Iron-Bridge Co. v. Hatch (1888) 8 Sup. Ct. 811, 817, 125 U. S. 1, 31 L. Ed. 629, reversing decree Wallamet Iron Bridge Co. v. Same (C. C. 1884) 19 Fed. 347.

Act Feb. 14, 1859, 11 Stat. 383, admitting Oregon into the Union and providing "that all the navigable waters of said state shall be common highways and forever free, as well to the inhabitants of said state as to all other citizens of the United States, without tax, duty, impost, or toll therefor," did not prohibit obstructions by bridges or otherwise to the navigation of such waters as authorized by state law where congress had not assumed control. Id.

The power of congress to regulate commerce is paramount to the power of a state to authorize the building of a bridge across a public river navigable from the sea. Silliman v. Hudson River Bridge Co. (C. C. 1857) Fed. Cas. No. 12,851.

A state statute, authorizing the bridging of a navigable stream within the state, is not in conflict with the constitutional power of congress to regulate foreign and interstate commerce, unless in conflict with a special enactment. Pennsylvania R. Co. v. New York & L. B. R. Co. (C. C. 1873) Fed. Cas. No. 10,953.

The provision in section 2 of the act of Feb. 14, 1859 (11 Stat. 383), admitting Oregon into the Union, which declares that "all the navigable waters of said state shall be common highways and forever free" to all the citizens of the United States, is paramount to a law of the state authorizing a bridge to be erected across the Wallamet river; and therefore, if such bridge as proposed to be constructed will materially impede or obstruct the free navigation of said river, it is unlawful, and the parties constructing it may be enjoined at the suit of riparian owners injured thereby. Hatch v. Wallamet Iron Bridge Co. (C. C. 1881) 6 Fed. 326.

The New Jersey act of April 6, 1886, prohibiting any person or corporation from erecting any bridge, etc., over or in any part of the navigable waters where the tide ebbs and flows, and separating that state from other states, without permission from the legislature of that state, is unconstitutional so far as it is sought to be put into operation against the Staten Island Rapid Transit Company, a corporation of New York, claiming to exercise the privilege conferred upon it by the act of congress of June 16, 1886, of erecting and maintaining a railroad across Staten Island Sound, or Arthur Kill. Stockton v. Baltimore & N. Y. R. Co. (C. C. 1887) 32 Fed. 9.

The power of congress to regulate bridges over navigable waters is paramount, and where it comes in conflict with that of a state the latter necessarily becomes ineffective. (1885) 18 Op. Atty. Gen. 164.

The power of the state to legislate in regard to navigable waters is subject to the paramount power in congress to regulate commerce among the several states. Until congress acts directly in the matter the power of the state is plenary, but when congress has acted with reference to bridges in the state its will must control so far as may be necessary to secure free navigation. (1891) 20 Op. Atty. Gen. 101.

The action of a state with reference to the rights of parties among themselves concerning the construction of a bridge over a navigable river does not affect the interests of the United States so long as the directions of the secretary of war concerning the location and plan of the bridge are respected. (1896) 21 Op. Atty. Gen. 293.

The power to control the management of a drawbridge over a navigable stream after its construction, by requiring the draw to be kept open at all proper times, etc., in the interest of the public welfare, is in the federal and state government. Pedrick v. Raleigh & P. S. R. Co. (N. C. 1906) 55 S. E. 877.

24. Railroads and other carriers.—The state of Wisconsin, at least after it had given its consent to the Northern Pacific Railroad Company to enter its territory and construct its road (Act April 10, 1865), could not, by the decisions of its courts, transform that corporation, which was formed by national legislation for national purposes and interstate commerce, into one of a local character, with rights and powers restricted by views of policy applicable to state corporations. Roberts v. Northern Pac. R. Co. (1895) 15 Sup. Ct. 756, 762, 158 U. S. 1, 39 L. Ed. 873.

Rev. St. Ohio 1890, § 3320, requiring all railroads within the state to stop three regular passenger trains, if so many were run daily, at places containing over 3,000 inhabitants, was not inconsistent with R. S. § 5258, Comp. St. § 10058, which was not intended to interfere with the state's authority to enact regulations for public convenience only incidentally affecting interstate commerce. Lake Shore & M. S. R. Co. v. Ohio (1899) 19 Sup. Ct. 465, 474, 173 U. S. 285, 43 L. Ed. 702.

A state statute authorizing a railway company incorporated under the laws of the state to issue transportation in

payment for printing and advertising must give way, so far as interstate transportation is concerned, before the provisions of the act to regulate commerce (Act Feb. 4, 1887, and Act Feb. 19, 1903, and Act June 29, 1906, amendatory thereof [Comp. St. § 8597 et seq.]), under which a carrier can accept nothing but money in exchange for interstate transportation. Chicago, I. & L. Ry. Co. v. U. S. (1911) 31 Sup. Ct. 272, 219 U. S. 486, 55 L. Ed. 305, affirming judgment U. S. v. Chicago, I. & L. Ry. Co. (C. C. 1908) 163 Fed. 114.

Congress has so taken possession of the subject of delivery of railroad cars for interstate commerce under Act June 29, 1906, as to invalidate, when applied to cars demanded for interstate commerce, provisions of Laws Minn. 1907, c. 23 (Rev. Laws Supp. 1909, §§ 2023—1 to 2023—13), requiring railroad companies to furnish freight cars on demand under penalty. Chicago, R. I. & P. Ry. Co. v. Hardwick Farmers' Elevator Co. (1913) 33 Sup. Ct. 174, 226 U. S. 426, 57 L. Ed. 284, 46 L. R. A. (N. S.) 203, reversing judgment Hardwick Farmers' Elevator Co. v. Chicago, R. I. & P. Ry. Co. (1910) 124 N. W. 819, 110 Minn. 25, 19 Ann. Cas. 1088.

Congress has not taken over the whole subject of terminals, switching, etc., of interstate railways so as to invalidate all state regulations as to interchange of traffic. Grand Trunk R. Co. of Canada v. Michigan R. R. Commission (1913) 34 Sup. Ct. 152, 231 U. S. 457, 58 L. Ed. 310, affirming decree (D. C. 1912) 198 Fed. 1009.

An order of a public service commission directly interfering with or directly regulating interstate commerce is not merely erroneous, but is absolutely void. Delaware, L. & W. R. Co. v. Stevens (C. C. 1909) 172 Fed. 595.

Congress, having been given sole jurisdiction over, and the right to regulate, interstate commerce, and having created the interstate commerce commission as a tribunal for that purpose, the states have no power or jurisdiction to directly interfere with or directly regulate the same by public service commissions or otherwise. Id.

Railroads engaged in interstate commerce are subjects of such commerce, national in their character, and the power of congress over the same is exclusive, and may be exercised to the utmost extent, and the sovereignty of congress, though limited to specific objects, is plenary as to such objects, and the power over commerce among the several states is vested in congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. U. S. v. Southern Ry. Co. (D. C. 1908) 164 Fed. 347, judgment affirmed Southern R. Co. v. U. S. (1911) 32 Sup. Ct. 2, 222 U. S. 20, 56 L. Ed. 72.

When a state statute affecting interstate commerce prescribes different rules from those prescribed by the federal statute, or where the enforcement of both may expose the carrier to conflicts in its duties, the state statute must yield. Southern Ry. Co. v. Railroad Commission of Indiana (1913) 100 N. E. 337, 179 Ind. 23.

Code Iowa, § 2116, relating to the duty of railway companies to furnish cars, held not affected by Interstate Commerce Act Feb. 4, 1887, § 1, as amended by Act June 29, 1906, § 1 (Comp. St. § 8563), though such law superseded the state law. Carr v. Chicago, R. I. & P. Ry. Co. (Iowa, 1916) 155 N. W. 840.

Code Iowa, § 2116, as amended by Acts 32d Gen. Assem. c. 107, placing the burden of proving compliance with statutory regulations upon railroad companies, held not affected by Interstate Commerce Act Feb. 4, 1887, § 1, as amended by Act June 29, 1906, § 1 (Comp. St. § 8563). Id.

The interstate commerce commission having tentatively approved the revised demurrage rules under Act June 29, 1906, § 1, amending the Interstate Commerce Act (Comp. St. § 8563), the legislature had no jurisdiction to authorize the state railroad commission to adopt different rules applicable to interstate commerce by Pub. Acts Mich. 1911, No. 173, § 1, amending Pub. Acts 1909, No. 300, §§ 3, 8. Michigan Cent. R. Co. v. Michigan Railroad Commission (Mich. 1914) 148 N. W. 800.

When a law regulating carriers, passed by a state under its police power incidentally affecting interstate commerce, conflicts with an act of congress on the same subject-matter, or the power granted to congress has been exercised by that body, the act of the state legislature must yield and be superseded by the federal act. St. Louis & S. F. R. Co. v. State (Okl. 1910) 107 Pac. 929.

Laws Vt. 1906, No. 122, §§ 8, 10 (P. S. 4539, 4541), and Laws 1910, No. 147, § 1, forbidding any railroad to charge demurrage on cars received or placed for loading in this state until four days, after notice to the consignee, without limiting such charges to intrastate commerce, held repugnant to the commerce clause and to Interstate Commerce Act, §§ 1, 6, 12, as amended June 29, 1906 (Comp. St. §§ 8563, 8569, 8576), enforced by the interstate commerce commission by demurrage rules allowing a free time of only two days. Sargent v. Rutland R. Co. (Vt. 1913) 85 A. 654.

25. —— **Safety appliances and other means to promote safety.**—The validity of Comp. St. Neb. 1911, c. 21, §§ 3, 4, in so far as they impose liability on a railroad company for injury to an employé engaged in interstate commerce from the negligence of a coemployé, and modify the rule of contributory negligence, is not affected because such

statute covers subjects dealt with by Safety Appliance Act March 2, 1893 (Comp. St. § 8605 et seq.), as to negligence of railway companies relating to cars, roadbed, etc. Missouri Pac. R. Co. v. Castle (1912) 32 Sup. Ct. 606, 608, 224 U. S. 541, 56 L. Ed. 875.

Act March 2, 1893 (Comp. St. § 8608), invalidates, as applied to freight cars between points within the state on an interstate railway, the provisions of Burns' Ann. St. Ind. 1908, § 5280, relating to handholds on railway cars. Southern Ry. Co. v. Railroad Commission of Indiana (1915) 35 Sup. Ct. 304, 236 U. S. 439, 59 L. Ed. 661, reversing judgment (1913) 100 N. E. 337, 179 Ind. 23.

Congress having determined to regulate the use of cars running on interstate railroads, so as to provide for the use of certain safety appliances on such cars, has by said acts taken affirmative action in regard thereto, and to this extent the action of congress is exclusive. U. S. v. Southern Ry. Co. (D. C. 1908) 164 Fed. 347, judgment affirmed Southern R. Co. v. U. S. (1911) 32 Sup. Ct. 2, 222 U. S. 20, 56 L. Ed. 72.

Laws Ark. 1907, p. 295, regulating the operation of railroads, and providing that certain freight trains shall be equipped with a crew of not less than an engineer, a fireman, a conductor, and three brakemen, belongs to that field of legislation in which it is competent for both the state and nation to enter, and is therefore not in violation of the interstate commerce clause. Chicago, R. I. & P. Ry. Co. v. State (1908) 111 S. W. 456, 86 Ark. 412.

The acts of congress legislating on safety appliances and other means to promote the safety of freight trains engaged in commerce did not exclude the state from enacting Laws 1907, p. 295, regulating the operation of freight trains, and providing that crews operating certain freight trains should consist of not less than an engineer, fireman, conductor, and three brakemen. Id.

Safety Appliance Act, § 2 (Comp. St. § 8606), held to render unenforceable as to a railroad engaged in interstate commerce Acts Ind. 1907, c. 118 (Burns' Ann. St. Ind. 1914, § 5279), requiring automatic couplers like to those required by the federal law, and prescribing a like penalty. Cleveland, C., C. & St. L. Ry. Co. v. Public Service Commission (Ind. 1915) 108 N. E. 515.

Act March 2, 1893 (Comp. St. § 8605 et seq.), as applied to freight cars on interstate railways, superseded and invalidated the provisions of Burns' Ann. St. Ind. 1914, § 5278 et seq., requiring grabirons on all railway cars, so that no action for the penalty could be maintained under the state law. Southern Ry. Co. v. Railroad Commission of Indiana (Ind. 1915) 109 N. E. 759.

The Safety Appliance Act as amended by Act March 2, 1903 (Comp. St. § 8613 et seq.), held to supplant the state laws as to a railroad engaged in interstate commerce, and to apply to its logging cars used exclusively in intrastate commerce. State v. Orange & N. W. Ry. Co. (Tex. 1915) 181 S. W. 494.

When cars or locomotives which are required to be equipped with safety appliances under the Safety Appliance Act (Comp. St. § 8605 et seq.), are used upon or pass over a railroad which is used for interstate commerce, the federal act applies and is supreme. State v. Beaumont & G. N. R. R. (Tex. Civ. App. 1916) 183 S. W. 120.

In view of exception of logging trains in federal Safety Appliance Act (Comp. St. § 8610), enacted under the commerce clause held, that the Texas Safety Appliance Act was inoperative as to logging trains of railroads engaged in interstate commerce; congress' inaction showing that it did not intend any regulation. Id.

26. —— Hours of service of employés.—Congress had so acted upon the subject of the hours of labor of interstate railway employés by enacting the hours of service act (Act March 4, 1907 (Comp. St. § 8677 et seq.), as to preclude a state, during the period between the date of that act and the time when, by its express terms, it should go into effect, from making or enforcing as to such employés a local regulation limiting hours of labor. Northern Pac. Ry. Co. v. State of Washington (1912) 32 Sup. Ct. 160, 222 U. S. 370, 56 L. Ed. 237 (reversing judgment State v. Northern Pac. Ry. Co. [1909] 102 Pac. 876, 53 Wash. 673, 17 Ann. Cas. 1013); Erie R. Co. v. People of State of New York (1914) 34 Sup. Ct. 756, 233 U. S. 671, 58 L. Ed. 1149, 52 L. R. A. (N. S.) 266, Ann. Cas. 1915D, 138, reversing judgment People v. Erie R. Co. (1910) 91 N. E. 849, 198 N. Y. 369, 29 L. R. A. (N. S.) 240, 139 Am. St. Rep. 828, 19 Ann. Cas. 811.

Labor Law N. Y. § 8, relative to hours of service of railway signalmen, is superseded as to employés engaged in interstate commerce by the Hours of Service Law (Comp. St. § 8677 et seq.). People v. New York Cent. & H. R. R. Co. (1914) 148 N. Y. S. 495, reversing order (1914) 147 N. Y. S. 789.

The power of congress over interstate commerce is plenary, and, as incident thereto, it may regulate the instrumentalities engaged in the business, and may prescribe the number of consecutive hours an employé of a carrier so engaged may be required to remain on duty, and, when it does legislate on the subject, its act supersedes any and all state legislation on the subject. State v. Northern Pac. Ry. Co. (1909) 102 Pac. 876, 53 Wash. 673.

27. —— Liability for injuries to employés.—The laws of the several states, in so far as they cover the same field, were superseded by the Employers' Li-

ability Act April 22, 1908 (Comp. St. § 8657 et seq.), regulating the liability of interstate railway carriers for the death or injury of their employés while engaged in interstate commerce. Mondou v. New York, N. H. & H. R. Co. (1912) 32 Sup. Ct. 169, 223 U. S. 1, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44 (reversing judgment [1909] 73 A. 762, 82 Conn. 373); St. Louis, I. M. & S. Ry. Co. v. Hesterly (1913) 33 Sup. Ct. 703, 228 U. S 702, 57 L. Ed. 1031; Seaboard Air Line Ry. v. Horton (1914) 34 Sup. Ct. 635, 233 U. S. 492, 58 L. Ed. 1062 (reversing judgment [1913] Horton v. Seaboard Air Line R. Co., 78 S. E. 494, 162 N. C. 424); Toledo, St. L. & W. R. Co. v. Slavin (1915) 35 Sup. Ct. 306, 236 U. S. 454, 59 L. Ed. 671 (reversing judgment Slavin v. Toledo, St. L. & W. R. Co. [1913] 106 N. E. 1077, 88 Ohio St. 536); Dewberry v. Southern Ry. Co. (C. C. 1910) 175 Fed. 307; Bottoms v. St. Louis & S. F. R. Co. (C. C. 1910) 179 Fed. 318; Troxell v. Delaware L. & W. R. Co. (C. C. 1910) 180 Fed. 871 (reversed [1910] 183 Fed. 373, 105 C. C. A. 593, certiorari denied [1911] 31 Sup. Ct. 469, 219 U. S. 584, 55 L. Ed. 346); Ex parte Atlantic Coast Line R. Co. (Ala. 1914) 67 So. 256 (reversing judgment Atlantic Coast Line R. Co. v. Jones [1913] 63 So. 693, 9 Ala. App. 499); Atlantic Coast Line R. Co. v. Jones (Ala. 1915) 67 So. 632; Wagner v. Chicago & A. R. Co. (1914) 106 N. E. 809, 265 Ill. 245 (affirming judgment [1913] 180 Ill. App. 196); Devine v. Chicago, R. I. & P. Ry. Co. (1914) 185 Ill. App. 488 (judgment affirmed [1914] 107 N. E. 595); Southern Ry. Co. v. Howerton (Ind. 1914) 105 N. E. 1025 (reversing judgment [1913] 101 N. E. 121, rehearing denied [1914] 106 N. E. 369); Vandalia R. Co. v. Stringer (Ind. 1914) 106 N. E. 865 (rehearing denied [1915] 107 N. E. 673); McGarvey's Guardian v. McGarvey's Adm'r (1915) 173 S. W. 765, 163 Ky. 242.

The Employers' Liability Act, as amended by Act April 5, 1910 (Comp. St. §§ 8657-8665), supersedes the state laws so far as they cover the same field. Penny v. New Orleans Great Northern R. Co. (1914) 66 So. 313, 135 La. 962; Corbett v. Boston & M. R. R. (1914) 107 N. E. 60, 219 Mass. 351; Miller v. Kansas City Western Ry. Co. (1914) 168 S. W. 336, 180 Mo. App. 371; Hawkins v. St. Louis & S. F. R. Co. (Mo. 1915) 174 S. W. 129; Cross v. Chicago, B. & Q. R. Co. (1915) 177 S. W. 1127, 191 Mo. App. 202; Grybowski v. Erie R. Co. (N. J. 1915) 95 A. 764; Winfield v. New York Cent. & H. R. R. Co. (1915) 110 N. E. 614, 216 N. Y. 284; Gee v. Lehigh Valley R. Co. (1914) 148 N. Y. S. 882, 163 App. Div. 274; Erie R. Co. v. Welsh (Ohio, 1913) 105 N. E. 189; Oberlin v. Oregon-Washington R. & Navigation Co. (Or. 1914) 142 Pac. 554; Kamboris v. Oregon-Washington R. & Navigation Co. (Or. 1915) 146 Pac. 1097; Hogarty v. Philadelphia & R. Ry. Co. (1914) 91 A. 854, 245 Pa. 443.

When the federal Employers' Liability Act (Comp. St. § 8657 et seq.) applies, it is the supreme law of the land, and supersedes all other remedies. Delaware, L. & W. R. Co. v. Yurkonis (1915) 220 Fed. 429 (affirming judgment Yurkonis v. Delaware, L. & W. R. Co. [D. C. 1914] 213 Fed. 537, and appeal dismissed Delaware, L. & W. R. Co. v. Yurkonis (1915) 35 Sup. Ct. 902, 238 U. S. 439, 59 L. Ed. 1397); Howard v. Nashville, C. & St. L. Ry. Co. (Tenn. 1915) 179 S. W. 380.

The federal courts are presumed to be cognizant, without pleading, of the employers' liability act of April 22, 1908, and to know that, with respect to the responsibility of interstate carriers by railroad to their employés injured in such commerce after its enactment, it had the effect of superseding state laws upon the subject. Missouri, K. & T. Ry. Co. v. Wulf (1913) 33 Sup. Ct. 135, 226 U. S. 570, 57 L. Ed. 355, Ann. Cas. 1914B, 134.

The liability of an interstate railway carrier for injuries to an employé engaged in interstate commerce is measured by the federal employers' liability act of April 22, 1908 (Comp. St. § 8657 et seq.). St. Louis, I. M. & S. R. Co. v. Hesterly (1913) 33 Sup. Ct. 703, 228 U. S. 702, 57 L. Ed. 1031, reversing judgment (1911) 135 S. W. 874, 98 Ark. 240.

Nothing in the state statute for the distribution of personal property can defeat the rights of the childless widow of an interstate railway employé to the proceeds of a judgment obtained by her as administratrix against the carrier under Employers' Liability Act April 22, 1908, § 1 (Comp. St. § 8657), or section 9 as added by Act April 5, 1910, § 2 (Comp. St. § 8665). Taylor v. Taylor (1914) 34 Sup. Ct. 350, 232 U. S. 363, 58 L. Ed. 638, reversing judgment In re Taylor (1912) 97 N. E. 502, 204 N. Y. 135, which affirmed (1911) 129 N. Y. S. 378, 144 App. Div. 634.

The common-law rule as to assumption of risk from the defective appliance governs an action under Employers' Liability Act April 22, 1908 (Comp. St. § 8657 et seq.), where such appliance is not covered by any federal statute to the exclusion of any state statute, which like Revisal N. C. 1905, § 2646, abolished assumption of risk as a bar to the action by a railroad employé for an injury caused by defective appliance, since otherwise the subject-matter would be controlled by the state laws and not by the federal statute, which in section 4 (Comp. St. § 8660), abolishes assumption of risk when the violation of a federal statute contributed to the injury of an employé. Sea-

board Air Line Ry. v. Horton (1914) 34 S. Ct. 635, 233 U. S. 492, 58 L. Ed. 1062, reversing judgment Horton v. Seaboard Air Line R. Co. (1913) 78 S. E. 494, 162 N. C. 424.

A declaration stating a good cause of action under the federal employers' liability act of April 22, 1908 (Comp. St. § 8657 et seq.), may afford a basis for a recovery under the state law after eliminating allegations that the injury occurred in interstate commerce, which was not sustained by the proof. Wabash R. Co. v. Hayes (1914) 34 Sup. Ct. 729, 234 U. S. 86, 58 L. Ed. 1226, dismissing writ of error Hayes v. Wabash R. Co. (1913) 180 Ill. App. 511.

The provisions of Act N. M. March 11, 1903 (Laws 1903, p. 51, c. 33), relating to suits for wrongful death and personal injuries, so far as they apply to suits by employés against a railroad company, were superseded by the federal employers' liability act (Act June 11, 1906, c. 3073, 34 Stat. 232). Southern Pac. Co. v. McGinnis (1909) 174 Fed. 649, 98 C. C. A. 403.

If a complaint states a cause of action under the federal employers' liability act (Comp. St. § 8657 et seq.), and also under a state statute, but shows that at the time of the injury both plaintiff and defendant were engaged in interstate commerce, the federal statute controls. Peek v. Boston & M. R. R. (D. C. 1915) 223 Fed. 448.

The employers' liability act (Act April 22, 1908 [Comp. St. § 8657]), makes every railroad company while engaging in interstate commerce liable in damages to one suffering injuries while employed by such carrier in such commerce, or, in case of his death, to his personal representative, for the benefit of the widow, etc., and, if none, of his parents, and, if none, for the benefit of the next of kin, for such injury or for death resulting from the negligence of other employés or defects in equipment. Held that, while a state statute regulating interstate commerce which necessarily conflicted with an act of congress is superseded by the latter, the state might act on that subject in absence of exclusive legislation by congress, and the federal employers' liability act does not conflict with, so as to supersede, a state statute providing that a cause of action for personal injuries shall survive in favor of the personal representative of the injured party, the recovery inuring to the exclusive benefit of the widow or next of kin; it not creating a right of action, but only preserving one which would have otherwise abated on the injured person's death. St. Louis, I. M. & S. Ry. Co. v. Hesterly (1911) 135 S. W. 874, 98 Ark. 240.

An agreement between a master and a servant, engaged in interstate commerce, that a written claim stating the particulars of the accident should be filed within 30 days after injury, held void under the Employers' Liability Act (Comp. St. § 8657 et seq.); it superseding state legislation, and creating a new liability. Chicago, R. I. & P. Ry. Co. v. Pearce (Ark. 1915) 175 S. W. 1160, L. R. A. 1915F, 551.

The Employers' Liability Act (Comp. St. § 8657 et seq.), is exclusive of state legislation, and prevents recovery under the California Workmen's Compensation Act by an interstate employé whose injury was not caused by the carrier's negligence. Smith v. Industrial Accident Commission of California (1915) 147 Pac. 600, 26 Cal. App. 560.

Conditions stated under which Gen. St. Fla. 1906, § 3147, giving a right of action to the father for wrongful death of his minor child, is superseded by the Employers' Liability Act (Comp. St. § 8657 et seq.). Flanders v. Georgia Southern & F. Ry. Co. (Fla. 1914) 67 So. 68.

Where the facts on which an action under Gen. St. Fla. 1906, § 3147, for wrongful death, must rest, bring the case within the paramount Employers' Liability Act (Comp. St. § 8657 et seq.), it is immaterial how or when the real facts are developed. Flanders v. Georgia Southern & F. Ry. Co. (1914) 67 So. 68, 68 Fla. 479.

Where the facts developed bring the federal interstate commerce law into operation, such law excludes all conflicting state regulations, though an intrastate operation be also involved. Id.

Where an employé of a common carrier was fatally injured while engaged in interstate commerce, the federal law controlled, though the employé and carrier were also engaged in intrastate commerce. Id.

Workmen's Compensation Act Ill. 1911 held not to apply to railroad employé engaged in interstate commerce, in view of sections 1 and 2; the Employers' Liability Act (Comp. St. § 8657 et seq.), covering that subject. Staley v. Illinois Cent. R. Co. (1915) 109 N. E. 342, 268 Ill. 356, L. R. A. 1916A, 450, reversing judgment (1914) 186 Ill. App. 593.

Rights and liabilities under federal Employers' Liability Act and Illinois Workmen's Compensation Act held not cumulative by reason of section 5 of the Liability Act, relative to offsetting payments to insurance relief, benefit, or indemnity. Id.

If a railroad employé was killed while engaged in interstate commerce, an action for his wrongful death must be brought under the act of congress (Comp. St. §§ 8657–8665), relating to the liability of common carriers for injuries to their employés, etc., instead of under the state statutes. Armbruster v. Chicago, R. I. & P. Ry. Co. (Iowa, 1914) 147 N. W. 337.

The federal Employers' Liability Act (Comp. St. § 8657 et seq.), providing for liability for injury to or death of

employé engaged in interstate commerce, held not to take away a father's right, under the state or common law, to recover for the loss of services of his minor child, resulting from injury. Nelson v. Illinois Cent. R. Co. (Iowa, 1915) 155 N. W. 169.

In a miner's action for injuries due to defendant's failure to comply with Gen. St. Kan. 1909, § 4987, wherein it was alleged that at the time of injury he was employed in mining coal to be used by defendant in running engines doing an interstate railroad business, and that the federal employers' liability act conferred exclusive jurisdiction on the federal courts, held, that the state court had jurisdiction. Baisdrenghien v. Missouri, K. & T. Ry. Co. (1914) 139 Pac. 428, 91 Kan. 730.

The exclusive remedy of an employé on a railroad injured while engaged in interstate commerce is under the federal statute (Comp. St. § 8657), although he may pursue that remedy in the state courts. Moliter v. Wabash R. Co. (1914) 168 S. W. 250, 180 Mo. App. 84.

While the authority of congress over interstate carriers is paramount, a state court having jurisdiction of the class of actions embraced within the employers' liability act as amended (Comp. St. § 8662), may enforce claims arising thereunder; the relief sought being governed by the rulings of the federal courts, and an appeal lying from the state court of last resort to the United States Supreme Court. Hardwick v. Wabash R. Co. (1914) 168 S. W. 328, 181 Mo. App. 156.

A fireman on a locomotive, drawing a train of empty cars to a point in another state and along an interstate railroad, is engaged in interstate commerce, and the action for his death must be brought under the Employers' Liability Act (Comp. St. § 8657 et seq.). Thompson v. Wabash Ry. Co. (Mo. 1914) 171 S. W. 364.

Assumption of risk held available notwithstanding Employers' Liability Act, § 4 (Comp. St. § 8660), in cases not provided for by the act. Fish v. Chicago, R. I. & P. Ry. Co. (Mo. 1914) 172 S. W. 340.

Action for the death of a trackwalker on a track used for interstate commerce, held not sustainable under the state statute, being governed by the federal Employers' Liability Act (Comp. St. § 8657 et seq.). Sells v. Atchison, T. & S. F. Ry. Co. (Mo. 1915) 181 S. W. 106.

The Employers' Liability Act (Comp. St. § 8657 et seq.), furnishes an exclusive remedy for all cases coming within it, to the exclusion of any state statute, so that the two-year limitation provided by section 6 (Comp. St. § 8662), applies to an action for injury to an employé in interstate commerce. Shannon v. Boston & M. R. R. (1914) 92 A. 167, 77 N. H. 349.

The federal Employers' Liability Act of 1908 (Comp. St. § 8657 et seq.), is not in conflict with and does not supersede the New Jersey Workmen's Compensation Act. Hammill v. Pennsylvania R. Co. (1915) 94 A. 313, 87 N. J. Law, 388.

Federal Employers' Liability Act (Comp. St. § 8657 et seq.) does not prevent recovery under New Jersey Workmen's Compensation Act of 1911 for death of railroad employé in New Jersey while engaged in interstate commerce. West Jersey Trust Co. v. Philadelphia & R. Ry. Co. (N. J. 1915) 95 A. 753.

New Jersey Workmen's Compensation Act 1911, § 7, held to apply to employés engaged in interstate commerce where injury or death results without negligence, notwithstanding Employers' Liability Act, § 1 (Comp. St. § 8657). Winfield v. Erie R. Co. (N. J. 1916) 96 A. 394.

The federal Employers' Liability Act (Comp. St. § 8657 et seq.) held not to prevent recovery under the New York Workmen's Compensation Law by a railroad employé accidentally injured while tamping ties in the employment of a railroad company then engaged in interstate commerce. Winfield v. New York Cent. & H. R. R. Co. (1915) 110 N. E. 614. 216 N. Y. 284, Ann. Cas. 1916A, 817.

The New York Workmen's Compensation Law does not, in view of section 144, apply to injuries caused by negligence to those engaged in interstate commerce and within the federal Employers' Liability Act (Comp. St. § 8657 et seq.). Id.

Act Ohio Feb. 28, 1908 (99 Ohio Laws, p. 25 [Gen. Code, § 9017]), in so far as it undertakes to impose a liability on common carriers by railroad while engaged in interstate commerce, is void, but in so far as it undertakes to impose the same liability on such carriers while engaged in intrastate commerce is a valid enactment. Warren v. Hannon (1912) 34 Ohio Cir. Ct. R. 11, judgment affirmed (1914) 106 N. E. 1085, 89 Ohio St. 459.

The language of the act, which divides railroads into those which are in whole and those which are in part within the state, does not distinguish between common carriers by railroad, when engaged in interstate commerce and when engaged in intrastate commerce, nor furnish an universal rule applying to all actions for personal injuries, as such a regulation would apply to all commerce; but there is nothing in the act to warrant the presumption that the legislature would not have passed it, were it to be superseded, as it was, by Act April 22, 1908, in so far as it applied to interstate commerce. Id.

Where both the cause of action and

Co. v. Bilisoly (Va. 1914) 82 S. E. 91.

The amendment of 1910 to the Interstate Commerce Act (Comp. St. § 8563), does not supersede the laws of a state permitting the recovery for mental anguish for the failure to deliver an interstate message, notwithstanding the Carmack Amendment. Bailey v. Western Union Telegraph Co. (Tex. Civ. App. 1914) 171 S. W. 839.

Act June 18, 1910 (Comp. St. § 8563), which made telegraph companies subject to federal rules and regulations, held to supersede state statutes in so far as they impose penalties for delay in the transmission of interstate messages. Western Union Telegraph Co. v. First Nat. Bank of Berryville (1914) 83 S. E. 424, 116 Va. 1009.

29. Manufacture and sale of goods.—Section 5977, Comp. St., imposes special taxes on manufactures of oleomargarine, and wholesale and retail dealers therein. Section 5977 also declares that Comp. St. §§ 5955–5959, 5961–5964, 5970, are, so far as applicable, made to extend to and include such taxes, and the persons on whom they are imposed. Section 5970, provides that the payment of any tax imposed by the internal revenue laws for carrying on any business shall not exempt any person from any penalty provided by the laws of a state for carrying on the same within such state, or authorize such business contrary to the laws of such state, or in places prohibited by municipal law; nor prohibit any state from placing a tax on the same business. Held, that section 5977 was not intended to interfere with the exercise by the states of any authority they can rightfully exercise over the sale of oleomargarine therein. Plumley v. Massachusetts (1894) 15 Sup. Ct. 154, 155 U. S. 461, 39 L. Ed. 223.

An article which congress taxes, and recognizes as a proper subject of foreign and interstate commerce, cannot be totally excluded from a state merely because it is subject to adulteration with substances injurious to health. Schollenberger v. Commonwealth of Pennsylvania (1898) 18 Sup. Ct. 757, 171 U. S. 1, 43 L. Ed. 49.

Congress did not by passage of Food and Drugs Act June 30, 1906 (Comp. St. § 8717), for the prevention of adulteration and misbranding of foods and drugs when the subject of interstate commerce, prohibit the enactment of Acts Ind. 1907, c. 206, relating to sales of foodstuffs in original packages. Savage v. Jones (1912) 32 Sup. Ct. 715, 225 U. S. 501, 56 L. Ed. 1182.

There is no conflict between the provisions of the Food and Drugs Act of June 30, 1906 (Comp. St. § 8717 et seq.), for the prevention of adulteration and misbranding of foods and drugs when the subject of interstate commerce, and Code Supp. Iowa 1907, §§ 5077a6–5077a24, as applied to sales by importers in original packages of concentrated commercial feeding stuffs. Standard Stock Food Co. v. Wright (1912) 32 Sup. Ct. 784, 225 U. S. 540, 56 L. Ed. 1197.

Construing the word "package" as used in Food and Drugs Act, §§ 7, 8 (Comp. St. §§ 8723, 8724), as referring to the immediate container of the article, and not to the outside wrapping, does not render the statute invalid as in excess of the power of congress over interstate commerce. McDermott v. State of Wisconsin (1913) 33 S. Ct. 431, 228 U. S. 115, 57 L. Ed. 754, 47 L. R. A. (N. S.) 984, Ann. Cas. 1915A, 39, reversing judgment (1910) 126 N. W. 888, 143 Wis. 18, 21 Ann. Cas. 1315.

Permitting a sale of cans of a mixture of glucose and refiner's syrup shipped into the state only when the labels prescribed by Laws Wis. 1907, c. 557, governing the sales of food products, are substituted for those affixed in an honest attempt to comply with the food and drugs act of June 30, 1906 (Comp. St. § 8717 et seq.), is an unlawful attempt by the state to discredit and burden legitimate federal regulations of interstate commerce, to destroy rights arising out of the federal statute which have accrued both to the government and the shipper, and to impair the effect of a federal law which has been enacted under the constitutional power of congress over the subject. Id.

Congress having, by the food and drugs act of June 30, 1906 (Comp. St. § 8717 et seq.), made adulterated and misbranded articles contraband of interstate commerce, could, in order to make the legislation effective, authorize, as it did in section 10 of that act (Comp. St. § 8726), seizures for confiscation and condemnation so long as the articles remained unsold, whether in the original packages or not; and such means of enforcement may not be thwarted by state legislation, like Laws Wis. 1907, c. 557, under which cans of a mixture of glucose and refiner's syrup which have been removed from the boxes in which they were shipped in interstate commerce, and are held upon the shelves of the importers for sale, must bear only the labels required by the state law, to the exclusion of those affixed conformably to the federal law. Id.

The anti-trust statute of Missouri (Rev. St. Mo. 1899, §§ 8965–8970) does not apply to a contract for the sale of goods to be manufactured in another state and delivered to the vendee in Missouri; such contract relating to interstate commerce, the regulation of which is within the exclusive authority of congress. Hadley-Dean Plate Glass Co. v. Highland Glass Co. (1906) 143 Fed. 242, 74 C. C. A. 462.

St. Wis. 1913, § 4601—1a, relative to branding articles containing glucose, held void as applied to interstate commerce, because in conflict with Act June

30, 1906, §§ 2, 8, 10 (Comp. St. §§ 8718, 8724, 8726). Corn Products Refining Co. v. Weigle (D. C. 1915) 221 Fed. 988.

St. Wis. 1913, § 4601—1a, relative to branding of articles containing glucose, invalid as to interstate commerce, held valid as applied to internal commerce. Id.

That congress has declared when a package shall be deemed misbranded does not prevent a state from making other requirements not inconsistent with the act of Congress. Ex parte Arrigo (Neb. 1915) 152 N. W. 319; Ex parte De Klotz (Neb. 1915) Id. 321.

Prior to any legislation by congress, the right to sell in the original package was inherent in the shipment of intoxicating liquors from one state to another, and, while this right could not be interfered with by the state, it could be withdrawn by congress. Glenn v. Southern Express Co. (N. C. 1915) 87 S. E. 136.

Congress having, by Act Aug. 2, 1886, declared oleomargarine to be a merchantable article, and having regulated its sale, the prohibition, under a penalty, of its manufacture and sale, by Act May 21, 1885, does not apply to a sale in its original package of oleomargarine manufactured in another state, and brought therefrom in such original package, as the sale of goods so imported into the state, though it may be regulated, cannot be prohibited, by the state. Commonwealth v. Paul (1890) 10 Pa. Co. Ct. R. 332.

One is not liable to prosecution for violation of Acts Tenn. 1909, c. 1, § 1, declaring a penalty for sale of intoxicating liquors within four miles of a schoolhouse, where the act closing a contract of sale of liquor, ordered by mail from without the state of one within the state, to be shipped out of the state, is delivery of the liquor to a common carrier, as such act places the liquor under the protection of the interstate commerce clause; and where the state police power and the national commercial power come into conflict, the former must yield. State v. J. W. Kelly & Co. (Tenn. 1910) 133 S. W. 1011.

The Interstate Commerce Act (Comp. St. § 8563), the Wilson Act (Comp. St. § 8738), and Cr. Code, §§ 238, 239 (Comp. St. §§ 10408, 10409), regulate interstate commerce in intoxicating liquors, to the exclusion of state action, and Acts Tenn. 2d Ex. Sess. 1913, c. 1, §§ 5, 8, and section 9, subsec. 5, relating to the same subject, are invalid, so far as they regulate interstate commerce. Palmer v. Southern Exp. Co. (Tenn. 1914) 165 S. W. 236.

Laws Wis. 1907, c. 557, regulating the sales of syrups, molasses, and glucose, and mixtures thereof, so far as it affects interstate commerce, falls within the field of "concurrent jurisdiction" of the state and federal governments, and wherein the state may enact appropriate regulations not conflicting with congressional legislation on the subject. McDermott v. State (Wis. 1910) 126 N. W. 888.

30. Transportation of goods, passengers, and live stock.—Carmack amendment of June 29, 1906, to Act Feb. 4, 1887, § 20 (Comp. St. § 8592), supersedes all state regulations on the subject of liability of railway carrier for injury to interstate shipment, and of all state laws invalidating contracts limiting liability of carrier to an agreed value. Adams Exp. Co. v. Croninger (1913) 33 S. Ct. 148, 226 U. S. 491, 57 L. Ed. 314, 44 L. R. A. (N. S.) 257; Chicago, St. P., M. & O. Ry. Co. v. Latta (1913) 33 S. Ct. 155, 226 U. S. 519, 57 L. Ed. 328 (reversing judgments Latta v. Chicago, St. P., M. & O. Ry. Co. [1909] 172 Fed. 850, 97 C. C. A. 198, and Chicago, St. P., M. & O. Ry. Co. v. Latta [1911] 184 Fed. 987, 106 C. C. A. 664); Chicago, B. & Q. Ry. Co. v. Miller (1913) 33 Sup. Ct. 155, 226 U. S. 513, 57 L. Ed. 323 (reversing judgment Miller v. Chicago, B. & Q. Ry. Co. [1909] 123 N. W. 449, 85 Neb. 458); Missouri, K. & T. R. Co. v. Harriman Bros. (1914) 33 S. Ct. 397, 227 U. S. 657, 57 L. Ed. 690 (reversing judgment Missouri, K. & T. Ry. Co. of Texas v. Same [Tex. 1910] 128 S. W. 932); Chicago, R. I. & P. R. Co. v. Cramer (1914) 34 S. Ct. 383, 232 U. S. 490, 58 L. Ed. 697 (reversing judgment Cramer v. Chicago, R. I. & P. R. Co. [1911] 133 N. W. 387, 153 Iowa, 103); Atchison, T. & S. F. Ry. Co. v. Robinson (1914) 34 S. Ct. 556, 233 U. S. 173, 58 L. Ed. 901 (reversing judgment [1912] 129 P. 20, 36 Okl. 435); Same v. Moore (1914) 34 S. Ct. 558, 233 U. S. 182, 58 L. Ed. 906 (reversing judgment [1912] 129 Pac. 24, 36 Okl. 433); Kansas City & M. Ry. Co. v. Oakley (Ark. 1914) 170 S. W. 565; Central of Georgia Ry. Co. v. Curtis (1914) 82 S. E. 318, 14 Ga. App. 716; W. H. Mitchell & Co. v. Atlantic Coast Line R. Co. (1915) 84 S. E. 227, 15 Ga. App. 797; Nashville, C. & St. L. Ry. v. C. V. Truitt Co. (Ga. 1915) 86 S. E. 421; Clingan v. Cleveland, C., C. & St. L. Ry. Co. (1913) 184 Ill. App. 202; Michelson v. Judson Freight Forwarding Co. (1915) 109 N. E. 281, 268 Ill. 546 (affirming judgment [1914] 189 Ill. App. 568); Bailey v. Missouri Pac. Ry. Co. (1914) 171 S. W. 44, 184 Mo. App. 457; Donovan v. Wells Fargo & Co. (1915) 177 S. W. 839, 265 Mo. 291; Spada v. Pennsylvania R. Co. (1914) 92 A. 379, 86 N. J. Law, 187; Cook v. Northern Pac. Ry. Co. (N. D. 1915) 155 N. W. 867.

If each state were at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each state could provide for its own passengers, and regulate the transportation of its own freight, re-

gardless of the interests of others. Nay, more. It could prescribe rules by which the carrier must be governed within the state in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassments. No carrier of passengers can conduct his business with satisfaction to himself, or comfort to those employing him, if on one side of a state line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business; and, to secure it, congress, which is untrammeled by state lines, has been invested with the exclusive legislative power of determining what such regulations shall be. Hall v. De Cuir (1877) 95 U. S. 485, 24 L. Ed. 547.

A statute of Texas (May 6, 1882) provides that no railway company in the state shall charge or collect, for the transportation of any freight, a greater sum than is specified in the bill of lading, and any railway company refusing to deliver freight to the consignee on payment or tender of the charges stated in the bill of lading shall be liable to a penalty, equal to the amount of such charges, for each day's delay. Held, that such statute is inconsistent with the provisions of the interstate commerce act (24 Stat. 379; 25 Stat. 855) requiring railway companies engaged in interstate commerce, under penalties prescribed, to charge and collect the rates of freight specified in their published tariff schedules, and is therefore void as to interstate shipments of freight. Gulf, C. & S. F. Ry. Co. v. Hefley (1895) 158 U. S. 98, 15 Sup. Ct. 802, 39 L. Ed. 910.

R. S. § 5258 (Comp. St. § 10058), authorizing all steam railroad companies in the United States to carry freight, passengers, etc., from one state to another, and to connect with other roads so as to form continuous lines of transportation, does not in any wise interfere with the enactment of laws by the states to promote the safety of passengers, while traveling, within their respective limits, from one state to another, in cars propelled by steam. New York, N. H. & H. R. Co. v. People of the State of New York (1897) 17 Sup. Ct. 418, 165 U. S. 628, 41 L. Ed. 853.

Rev. St. Ohio 1890, § 3320, requiring all railroad companies operating lines within the state to cause three, each way, of its regular passenger trains, if so many are run daily, to stop at a city or village containing over 3,000 inhabitants to receive and discharge passengers, is not inconsistent with R. S. § 5258 (Comp. St. § 10058), authorizing every railroad company to carry over its road, etc., all passengers, troops, government supplies, mails, freight, and property, on their way from one state to another, and to connect with roads of other states so as to form continuous lines for transportation to the place of destination, since that section was not intended to interfere with the state's authority to enact regulations designed to subserve public convenience, which only incidentally or remotely affected interstate commerce, and were not in themselves regulations thereof. Lake Shore & M. S. Ry. Co. v. State of Ohio (1899) 19 S. Ct. 465, 173 U. S. 285, 43 L. Ed. 702.

The regulation of the transportation of cattle from state to state is within the power of congress, and when exercised its regulations are paramount throughout the Union, but until the power is exercised the states are not prohibited from making reasonable regulations to exclude cattle infected with contagious disease. Reid v. Colorado (1902) 23 Sup. Ct. 92, 95, 187 U. S. 137, 47 L. Ed. 108.

Congress has so completely taken control of the subject of rate making and charging by the provisions of the act to regulate commerce and the amendments thereof as to invalidate the provisions of Code N. C. 1905, § 2631, so far as they penalize the refusal of a carrier to receive a tender of freight for transportation to a point on the line of another carrier outside the state where no rate for such shipment has been established, filed, or published. Southern Ry. Co. v. Reid (1912) 32 Sup. Ct. 140, 222 U. S. 424, 56 L. Ed. 257, reversing judgment Reid v. Southern Ry. Co. (1910) 69 S. E. 618, 153 N. C. 490; Southern Ry. Co. v. Reid & Beam (1912) 32 Sup. Ct. 145, 222 U. S. 444, 56 L. Ed. 263, reversing judgment Reid & Beam v. Southern Ry. Co. (1909) 64 S. E. 874, 150 N. C. 753, 17 Ann. Cas. 247.

Congress has so taken control of railroad rate making as to invalidate provisions of a state statute penalizing refusal of carrier to receive freight for transportation to a point on line of another carrier outside the state, where it had no rate therefor. Southern R. Co. v. Burlington Lumber Co. (1912) 32 Sup. Ct. 657, 225 U. S. 99, 56 L. Ed. 1001, reversing judgment Burlington Lumber Co. v. Southern R. Co. (1910) 67 S. E. 167, 152 N. C. 70.

The subject of the delivery of an interstate shipment to the consignee is so embraced by Act June 29, 1906, amendatory of Act Feb. 4, 1887, § 1 (Comp. St. § 8563), as to invalidate, when applied to interstate shipments, provisions of Demurrage Law Ark. April 19, 1907 (Laws 1907, p. 457) § 3, exacting per diem penalty from carrier failing to notify consignee of arrival of shipment. St. Louis, I. M. &

S. R. Co. v. Edwards (1913) 33 Sup. Ct. 262, 227 U. S. 265, 57 L. Ed. 506, reversing judgment (1910) 127 S. W. 713, 94 Ark. 394.

The states continued to possess the right to prescribe reasonable rates for the exclusively internal traffic on interstate carriers after the passage of the interstate commerce act of 1887, and the amendment of June 29, 1906 (Comp. St. § 8563 et seq.), although it may be that by reason of the interblending of the interstate and intrastate operations of such carriers adequate regulation of interstate rates cannot be maintained without imposing requirements with respect to their intrastate rates which substantially affect the former. Simpson v. Shepard (1913) 33 Sup. Ct. 729, 230 U. S. 352, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151, Ann. Cas. 1916A, 18.

Act June 29, 1906 (Comp. St. § 8563 et seq.), covers the field of regulation of interstate express carriers, and hence renders invalid an ordinance requiring express companies, doing interstate business, to give a bond for each vehicle conditioned for the safe and prompt delivery of baggage. Barrett v. City of New York (1914) 34 Sup. Ct. 203, 232 U. S. 14, 58 L. Ed. 483, reversing decree (C. C. 1911) 189 Fed. 268.

Congress may control intrastate rates of a carrier under state authority when necessary to remove the resulting unjust discrimination against interstate commerce from the relation between intrastate rates and interstate rates which are unreasonable in themselves. Houston, E. & W. T. R. Co. v. U. S. (1914) 34 Sup. Ct. 833, 234 U. S. 342, 58 L. Ed. 1341, affirming decrees Texas & P. Ry. Co. v. Same (Com. C. 1913) 205 Fed. 380, and Houston, E. & W. T. Ry. Co. v. Same (Com. C. 1913) Id. 391.

State statutes of limitation otherwise applicable to reparation claims already accrued, as well as those thereafter accruing under Act June 29, 1906, § 5, amending Act Feb. 4, 1887, § 16 (Comp. St. § 8584 [2]), by limiting to two years from the accrual of the claim the time for invoking action by Interstate Commerce Commission on complaints by shippers, were superseded by such acts of Congress. Meeker v. Lehigh Valley R. Co. (1915) 35 Sup. Ct. 328, 236 U. S. 412, 59 L. Ed. 644, reversing judgment Lehigh Val. R. Co. v. Meeker (1913) 211 Fed. 785, 128 C. C. A. 311.

Congress has so far taken over the subject of carrier's liability for loss or damage to interstate shipments by Act June 18, 1910, and Act June 29, 1906, amending sections 1, 20, Act Feb. 4, 1887 (Comp. St. § 8592), as to invalidate Civ. Code S. C. 1912, § 2573, subjecting terminal carrier to penalty for failure to pay promptly claims for damages to interstate shipment. Charleston & W. C. Ry. Co. v. Varnville Furniture Co. (1915) 35 Sup. Ct. 715, 237 U. S. 597, 59 L. Ed. 1137, reversing judgment Varnville Furniture Co. v. Charleston & W. C. Ry. Co. (1913) 79 S. E. 700, 98 S. C. 63.

Federal regulations of shipment of cattle from guarantine districts held paramount as to interstate shipments. Chicago, B. & O. Ry. Co. v. Frye-Bruhn Co. (1910) 184 Fed. 15, 106 C. C. A. 217.

The provisions of Orders Nos. 106 and 107 of the Secretary of Agriculture, promulgated March 10 and 13, 1903, respectively, under authority of Act Feb. 2, 1903, §§ 1, 2 (Comp. St. §§ 8698, 8699), establishing quarantine districts for cattle and regulations to be observed by carriers in the shipment of cattle from such districts, and which provide (Order No. 107, § 4) that "cattle from said area may be transported by boat or rail for immediate slaughter" subject to such regulations, have the force of law and are paramount with respect to interstate shipments; and Code Wash. 1896, §§ 3216, 6431, which prohibit the introduction of Texas cattle into the state, so far as they conflict with such federal regulations, are void. Id.

The Webb-Kenyon Act (Comp. St. § 8739), applies to liquors shipped into West Virginia contrary to Acts W. Va. 1913, c. 13 (Code 1913, c. 32a [secs. 1280–1305]), though that act was adopted prior to the federal act. State of West Virginia v. Adams Express Co. (1915) 219 Fed. 794, 135 C. C. A. 464, reversing order (D. C. 1914) 219 Fed. 331.

A state has no power to regulate or interfere with the transportation of persons or merchandise by a steamship company, between ports within the state, if they be in transit to or from other states, or when, in navigating the ocean, the vessel goes beyond a marine league from the shore. This power has been conferred upon congress, and is exclusive. Pacific Coast S. S. Co. v. Board of Railroad Com'rs (C. C. 1883) 18 Fed. 10.

The act of the Tennessee legislature approved March 30, 1883 (chapter 199), entitled "An act to provide for the regulation of railroad companies and persons operating railroads in this state, to prevent discrimination upon railroads in this state, and to provide for the punishment of the same, and to appoint a railroad commission," is invalid so far as it applies to the plaintiffs in these cases, because it is a regulation of interstate commerce, acting directly, by a control of the rates of compensation, upon the transportation of persons and commodities in transit from one state into another. The states have surrendered the power to do this by the commerce clause which confers on congress the exclusive power to regulate commerce among the several states. Louisville & N. R. Co. v. Railroad Commis-

sion of Tennessee (C. C. 1884) 19 Fed. 679.

A state railroad commission is without power to require a railroad company to cancel and abolish "proportional tariffs" which apply only to interstate or foreign shipments, and which were adopted with the approval of the Interstate Commerce Commission, to prohibit the company from permitting export shipments of grain to be stopped in transit within the state for cleaning, grading, etc., or by similar orders to attempt to regulate interstate or foreign commerce. J. Rosenbaum Grain Co. v. Chicago, R. I. & T. Ry. Co. (C. C. 1903) 130 Fed. 46, order affirmed Railroad Commission of Texas v. J. Rosenbaum Grain Co. (1904) 130 Fed. 110, 64 C. C. A. 444.

Where the attempted exercise of the power of the state to regulate intrastate commerce conflicts with the constitutional power of the nation to regulate interstate commerce and the fares and rates therein, the latter must prevail. Shepard v. Northern Pac. Ry. Co. (C. C. 1911) 184 Fed. 765, decree modified Simpson v. Shepard (1913) 33 Sup. Ct. 729, 230 U. S. 352, 57 L. Ed. 1511.

Section 233 of the Criminal Code (Comp. St. § 10403), by authority of which the Interstate Commerce Commission has formulated and issued regulations for the transportation of explosives by land, governs as to all such transportation in interstate or foreign commerce, to the exclusion of state laws. The Ingrid (D. C. 1912) 195 Fed. 596.

Validity of limitation of carrier's liability for loss of interstate shipment held to be determined under the general common law, and not by state laws or regulations. American Brake Shoe & Foundry Co. v. Pere Marquette R. Co. (D. C. 1915) 223 Fed. 1018.

The action of a state in reducing railroad rates on intrastate shipments below what is justly compensatory to the carriers, with the purpose and effect of securing unjust and arbitrary advantage to dealers within the state over competitors in other states, directly affects interstate commerce, and encroaches on the field in which federal authority is supreme and exclusive, and the rates so made cannot be held binding upon the carriers affected. Texas & Pac. Ry. Co. v. U. S. (Com. C. 1913) 205 Fed. 380; Houston E. & W. T. Ry. Co. v. Same (Com. C. 1913) Id. 391.

Since Act Tex. Feb. 27, 1885 (Acts 1885, p. 35), and Interstate Commerce Act Feb. 4, 1887, as amended by Act March 2, 1889 (Comp. St. § 8569), operate on the same subject, and are in conflict, the latter, being within the competency of congress under the power to regulate commerce between the states, must control. Spratlin v. St. Louis Southwestern Ry. Co. (1905) 88 S. W. 836, 76 Ark. 82.

As congress has power over interstate commerce, and permits shipment of liquors into another state, the possession of such a consignee, in the absence of an unlawful intent to sell, cannot be made illegal by a municipal ordinance. Ex parte Luera (Cal. 1915) 152 Pac. 738.

The proviso of the Carmack amendment does not continue in force the rights and remedies given by state laws, where an interstate shipment has been lost, injured, or damaged, but only any rights under existing federal laws. Southern Ry. Co. v. Bennett (Ga. 1915) 86 S. E. 418.

As to interstate shipments, state legislation is superseded by the federal statute thereon. Toledo, St. L. & W. R. Co. v. Milner (Ind. 1915) 110 N. E. 756.

Since the common law, as such, is no part of the national jurisprudence, and since the exclusive right to regulate commerce is vested in congress, overcharges for freight on an interstate shipment, involving unjust discrimination, made prior to the interstate commerce act, cannot be recovered. Gatton v. Chicago, R. I. & P. Ry. Co. (1895) 95 Iowa, 112, 63 N. W. 589, 28 L. R. A. 556.

An interstate shipment is governed by the regulations imposed by congress (Comp. St. § 8563 et seq.), and Code Iowa, § 2074, prohibiting a carrier from limiting its common-law liability by contract, does not apply. Heilman & Clark v. Chicago & N. W. Ry. Co. (Iowa, 1914) 149 N. W. 436.

Interstate shipments of live stock are not governed by the laws of the state, but by the acts of congress and the decisions of the supreme court of the United States. Baldwin & Riggs v. Chicago, R. I. & P. Ry. Co. (Iowa, 1916) 156 N. W. 17.

The decisions of the United States supreme court have settled that no state can pass a law (whether congress has already acted upon the subject or not) which will directly interfere with the free transportation from one state to another, or through a state, of anything which is or may be a subject of interstate commerce. State v. Saunders (1877) 19 Kan. 127, 27 Am. Rep. 98.

The interstate commerce act and its amendments (Comp. St. § 8563 et seq.) supersede all regulations of particular states as to interstate transportation contracts, including Const. Ky. § 196, prohibiting a carrier from contracting for relief against its common-law liability. Robinson v. Louisville & N. R. Co. (1914) 169 S. W. 831, 160 Ky. 235.

A contract made in Illinois for shipment of animals to a point in Kentucky, being an interstate contract, is governed exclusively by federal laws, though in conflict with the state con-

stitution and laws. Howard & Callahan v. Illinois Cent. R. Co. (1914) 171 S. W. 442, 161 Ky. 783.

All interstate commerce shipments are governed by the federal law. Adams Express Co. v. Cook (1915) 172 S. W. 1096, 162 Ky. 592.

No state regulation of the shipment of intoxicating liquors is valid unless the shipments to which it applies are intended for use in violation of the state law, and thus specifically within the Webb-Kenyon Act (Comp. St. § 8739 et seq.). Commonwealth v. White (Ky. 1915) 179 S. W. 469.

Ky. St. § 2569b, subsec. 3, cannot make it unlawful to refuse to give information regarding interstate shipments of liquor intended for a lawful use, since the Mann-Elkins Act (Comp. St. § 8583[6]), prohibits the giving of such information. Id.

The federal law (Comp. St. § 8814), making it an offense to induce women to travel from one state to another for immoral purposes, does not invalidate Act La. No. 134 of 1890, § 1. State v. Wood (1915) 67 So. 542, 136 La. 658.

The liability of a carrier for an interstate shipment is governed by the laws of congress and the decisions of the federal court. Collins v. Denver & R. G. Ry. Co. (1914) 167 S. W. 1178, 181 Mo. App. 213.

There can be no recovery based on the common law for negligence of a railroad agent in quoting freight rates for an interstate shipment; the laws of congress regulating interstate commerce being exclusive. Sloop v. Delano (1914) 170 S. W. 385, 182 Mo. App. 299.

An interstate shipment is governed by the interstate commerce act and the construction placed thereon by the federal courts. Smith v. St. Louis Southwestern Ry. Co. (1914) 171 S. W. 635, 186 Mo. App. 401.

An interstate shipment contract must be construed with reference to the federal decisions and laws, without regard to state laws and decisions on the same subject. Potter v. Kansas City Southern Ry. Co. (1915) 172 S. W. 1153, 187 Mo. App. 56.

It was a valid defense to a shipper's action to recover freight charges on interstate shipments in excess of those permitted by a statute of the state and a contract between the state and the carrier that the rates charged were those lawfully filed and published according to the provisions of the interstate commerce act. E. D. Clough & Co. v. Boston & M. R. R. (1913) 90 A. 863, 77 N. H. 222.

All questions of a carrier's liability for loss or damage to interstate shipments must be determined under the Carmack amendment and rules declared by the federal court; state regulations on the subject being superseded by such legislation. Olivit Bros. v. Pennsylvania R. Co. (N. J. 1916) 96 A. 582; Albrecht v. Same (N. J. 1916) Id. 587.

Federal statutes and decisions held controlling in an action in state court against a carrier for loss of an interstate shipment of goods. A. C. Cheney Piano Action Co. v. New York Cent. & H. R. R. Co. (1915) 152 N. Y. S. 285, 166 App. Div. 706, affirming judgment (1914) 148 N. Y. S. 108, 85 Misc. Rep. 157.

Under the Carmack amendment to the Hepburn interstate commerce act, held, that the validity of any stipulation in an interstate shipment contract is a federal question, to be determined under the general common law as pronounced by the federal court. Lynch v. New York Cent. & H. R. R. Co. (1915) 153 N. Y. S. 633, 89 Misc. Rep. 472, judgment affirmed (1916) 156 N. Y. S. 1131.

Revisal N. C. 1905, § 2634, as amended by Laws 1911, c. 139, prescribing periods for settlement of claims by carriers and imposing a penalty for violations, held superseded, as to interstate shipments, by a rule of the interstate commerce commission covering the same matter, though under the statute the right to a penalty would have accrued before the rule became effective, but after its adoption. Morphis v. Southern Express Co. (N. C. 1914) 83 S. E. 1.

Pub. Laws N. C. 1913, c. 44, § 5, relative to record of shipments of intoxicating liquors, held not void as conflicting with Interstate Commerce Law, § 20 (Comp. St. § 8592). State v. Seaboard Air Line Ry. (N. C. 1915) 84 S. E. 283.

Pub. Laws N. C. 1913, c. 44, § 5, relative to record of shipments of intoxicating liquors, held not void as in conflict with Act Feb. 4, 1887, § 15, as amended by Act June 18, 1910, § 12, subsec. 6 (Comp. St. § 8583[6]), as to disclosures by carriers concerning interstate shipments. Id.

Webb-Kenyon Law (Comp. St. § 8739) held to withdraw shipments of intoxicating liquors from operation of the commerce clause and to bring them within the police power of the state as soon as they cross the state line. State v. Seaboard Air Line Ry. (N. C. 1915) 84 S. E. 283.

Pub. Laws N. C. 1913, c. 44, § 5, relative to record of shipments of intoxicating liquors, held not void as in conflict with Cr. Code, §§ 238, 239. Id.

An order of the state corporation commission providing that ten days' free storage shall be allowed on less than car load shipments, when destined to consignees living at interior points, five miles or more from the railroad station, in so far as it applies to interstate commerce, is void as in conflict with and superseded by the Hepburn Act (Act June 29, 1906, §§ 1, 2, [Comp. St. §§ 8563, 8569]), relating to interstate commerce and covering stor-

age charges, and also as an interference with interstate commerce imposing an unreasonable burden upon it. St. Louis & S. F. R. Co. v. State (Okl. 1910) 107 Pac. 929.

Const. Okl. art. 23, § 9, and all state laws which would otherwise affect interstate shipments and contracts pertaining thereto, are superseded by Comp. St. § 8563 et seq. Chicago, R. I. & P. Ry. Co. v. Harrington (Okl. 1914) 143 Pac. 325.

Since Act June 29, 1906, § 7 (Comp. St. § 8592), the federal statutes have superseded all state laws as to substantive rights in interstate shipments, but in respect to remedies the state laws are applicable in state courts. St. Louis & S. F. R. Co. v. Mounts (Okl. 1914) 144 Pac. 1036.

On account of the passage of Act June 29, 1906 (Comp. St. § 8563 et seq.), the state cannot pass acts relating to interstate shipment contracts. Chicago, R. I. & P. Ry. Co. v. Bruce (Okl. 1915) 150 Pac. 880.

A provision of an interstate shipment contract requiring notice of damages before removal and mingling of the stock shipped held valid under the federal law which is controlling in determining questions arising out of interstate shipments. Id.

In an action for damages to an interstate shipment of stock, held, that the giving of an instruction that a provision limiting plaintiff to six months within which to bring an action was not binding, because violative of the state constitution, was reversible error. Id.

With the enactment of the Carmack amendment, the state has ceased to have authority to pass acts relative to contracts made by carriers concerning interstate shipments, and hence Const. Okl. art. 23, § 9, providing that a contract stipulation for notice or demand other than provided by law shall be void, applies only to intrastate shipments. St. Louis & S. F. R. Co. v. Wood (Okl. 1915) 152 Pac. 848.

Const. Okl. art. 23, § 9, providing that a contract stipulation for notice or demand not provided by law shall be void, held inapplicable, in view of the Carmack amendment, in an action based on a contract of interstate shipment. St. Louis & S. F. R. Co. v. Wynn (Okl. 1915) 153 Pac. 1156.

The Interstate Commerce Law (Comp. St. § 8563 et seq.), which was designed to prevent preferences, does not prohibit a carrier from assuming the common-law liability in carrying goods from one state to another. Grice v. Oregon-Washington R. & Navigation Co. (Or. 1915) 150 Pac. 862, judgment affirmed on rehearing (1915) 152 Pac. 509.

Act Pa. May 24, 1907 (P. L. 229), providing maximum car service charges, including car storage charges, that railroad companies may impose, is invalid as to goods and cars engaged in interstate commerce, in view of the fact that Congress has legislated on the subject by Act Feb. 4, 1887, and Act June 29, 1906 (Comp. St. § 8563). Pennsylvania R. Co. v. M. O. Coggins Co. (1909) 38 Pa. Super. Ct. 129.

The Interstate Commerce Commission under Interstate Commerce Act, § 15, subd. 5 (Comp. St. § 8583), having ruled that a shipper may direct as to terminal routing and delivery, but having provided no penalty for a violation thereof no recovery can be had under the state law. Civ. Code S. C. 1912, §§ 3194, 3195. Mitchell v. Greenville, S. & A. Ry. Co. (1914) 83 S. E. 261, 99 S. C. 311.

Statutory penalty, under Code Civ. Proc. S. C. 1912, § 2571, held not recoverable for refusing to deliver interstate shipment without payment of demurrage; that statute having been superseded by the commerce act. Fennell Infirmary v. Southern Ry. Co. (S. C. 1915) 85 S. E. 237.

Congress has, by Act June 18, 1910, §§ 1, 14, and Act June 29, 1906, §§ 1, 7, amending Act Feb. 4, 1887, §§ 1, 20 (Comp. St. §§ 8563, 8592), so far taken over the subject of a carrier's liability for loss or damage to interstate shipments as to invalidate Civ. Code S. C. 1912, § 2573, subjecting terminal carriers to a penalty for failure to pay promptly claims for damages to an interstate shipment. Spence v. Southern Ry. Co. (1915) 85 S. E. 1058, 101 S. C. 436.

The act imposing a penalty of $50 upon carriers for failure to pay claims within a stipulated time is invalid in so far as it applies to interstate carriers. J. S. Pinkussohn Cigar Co. v. Clyde S. S. Co. (1915) 85 S. E. 1060, 101 S. C. 429.

Under the Carmack amendment (Comp. St. § 8592), held permissible to contract for any reasonable notice of claim for damages as a condition precedent to suit; the state law being superseded. San Antonio & A. P. Ry. Co. v. Bracht (Tex. 1915) 172 S. W. 1116.

The United States statutes and the decisions of the United States courts control the interpretation of contracts for interstate shipments. Chicago, R. I. & G. Ry. Co. v. Whaley (Tex. Civ. App. 1915) 177 S. W. 543.

The validity of a provision restricting the liability of an interstate carrier of live stock depends upon the federal statutes, and the federal decisions are controlling. Henry v. Chicago, M. & P. S. Ry. Co. (1915) 147 Pac. 425, 84 Wash. 633.

The Hepburn act supersedes the common law regarding negligent delay in transporting live stock. Karr v. Baltimore & O. R. Co. (W. Va. 1915) 86 S. E. 43.

St. Wis. 1915, § 1797—10m, giving the consignee of a shipment moved by a common carrier at an average rate

of less than 75 miles per 24 hours additional free time for unloading, is invalid as conflicting, as to interstate commerce, with the federal act to regulate commerce of February 4, 1887, providing in section 1, as amended by Act June 18, 1910, § 7 (Comp. St. § 8563), that the term "transportation" includes services in connection with the receipt, delivery, and handling of property transported. Chicago, M. & St. P. Ry. Co. v. Rock County Sugar Co. (Wis. 1916) 156 N. W. 607.

Such statute is invalid as to interstate shipments because in conflict with federal regulation of terminal charges under the act to regulate commerce of February 4, 1887 (Comp. St. § 8563), is totally void, and not partially good as to intrastate shipments. Id.

31. **Admission of aliens into country.**—The right of congress to regulate the admission of aliens into the United States clearly controls the action of any state agent in this respect. (1907) 26 Op. Atty. Gen. 180, 410.

III. NONEXERCISE OF POWER BY CONGRESS

See, also, notes, ante, as to "Exclusive or concurrent powers of congress and the states."

32. **Nonexercise in general.**—The power to regulate interstate commerce is in part of the character which may be exercised by the states until congress acts, except as to the rules which in the nature of things must be uniform throughout the country, and to that extent the power of congress must be exclusive. In re McNiel (1871) 13 Wall. 236, 240, 20 L. Ed. 624.

In particular cases in which congress has not exercised the power of regulating commerce, and where the subject does not in its nature require the exclusive exercise of that power, the states, until congress acts, may continue to legislate. The Lottawanna (1874) 88 U. S. (21 Wall.) 558, 22 L. Ed. 654.

While the action of congress prescribing a regulation of commerce or the liability for its infringement, is exclusive of state authority, until action is taken by congress, the legislation of a state, not directed against commerce or any of its regulations, but relating generally to the rights, duties, and liabilities of citizens, is of obligatory force within its territorial jurisdiction, notwithstanding it may indirectly and remotely affect the operations of foreign or interstate commerce, or persons engaged in such commerce. Sherlock v. Alling (1876) 93 U. S. 99, 23 L. Ed. 819.

In the absence of federal regulation, legislation of the state, not directed against commerce, but relating to the rights and liabilities of citizens, and only indirectly affecting commerce, is of obligatory force on citizens within its territorial jurisdiction, whether engaged in commerce or in any other pursuit. Id.

When the subjects within the commercial power of Congress are local in their nature, and constitute mere aids to commerce, the states may provide for their regulation until Congress intervenes. Cardwell v. American River Bridge Co. (1885) 5 Sup. Ct. 423, 113 U. S. 205, 28 L. Ed. 959.

The regulation of commerce may consist in abstaining from prescribing positive rules for its conduct, and when it is manifest that congress intends to leave foreign or interstate commerce free and unfettered, such intention cannot be contravened by state laws. Smith v. Alabama (1888) 8 Sup. Ct. 564, 566, 124 U. S. 465, 31 L. Ed. 508.

The mere delegation by Congress to the Interstate Commerce Commission of certain powers is not equivalent to specific action by Congress in respect to the particular matters involved, which preventa a state from making regulations conducive to the welfare of its citizens that may indirectly affect commerce. Missouri Pac. Ry. Co. v. Larabee Flour Mills Co. (1909) 29 Sup. Ct. 214, 211 U. S. 612, 53 L. Ed. 352, affirming judgment Larabee Flour Mills Co. v. Missouri Pac. Ry. Co. (1906) 88 P. 72, 74 Kan. 808.

Any power which a state has over interstate commerce because of congressional inaction ceases the moment Congress exerts its paramount authority. Chicago, R. I. & P. Ry. Co. v. Hardwick Farmers' Elevator Co. (1913) 33 Sup. Ct. 174, 226 U. S. 426, 57 L. Ed. 284, 46 L. R. A. (N. S.) 203, reversing judgment Hardwick Farmers' Elevator Co. v. Chicago, R. I. & P. Ry. Co. (1910) 124 N. W. 819, 110 Minn. 25, 19 Ann. Cas. 1088.

In the absence of federal legislation, the state can prescribe uniform regulations reasonably necessary as to operation on their highways of automobiles moving in interstate commerce. Hendrick v. State of Maryland (1915) 35 Sup. Ct. 140, 235 U. S. 610, 59 L. Ed. 385.

The power of congress to regulate commerce among the several states is not per se, without any exercise thereof by congress, an absolute inhibition of state legislation, which may affect such commerce. U. S. v. Railroad Bridge Co. (C. C. 1855) Fed. Cas. No. 16,114; Silliman v. Hudson River Bridge Co. (C. C. 1859) Fed. Cas. No. 12,852.

State action upon such subjects as are not national, but local, and limited in their nature, such as harbor pilotage, beacons, buoys, etc., can constitute no interference with the commercial power of congress; for, when congress acts, the state authority is suspended. Inaction of congress upon subjects of a local nature or operation is not to be taken as a declaration that nothing

should be done with respect to them, but is rather to be deemed a declaration that for the time being, until it sees fit to act, they may be regulated by state authority. Ouachita & M. R. Packet Co. v. Aiken (C. C. 1883) 16 Fed. 890, decree affirmed (1887) 7 Sup. Ct. 907, 121 U. S. 444, 30 L. Ed. 976.

Where no action has been taken by Congress, the inference is that Congress intends that interstate commerce shall remain free from state regulation. Mobile & O. R. Co. v. Sessions (C. C. 1886) 28 Fed. 592, 596.

The power to regulate commerce with foreign countries and between the states is exclusively in Congress, whose failure to legislate on any part of the subject renders such commerce free. Ex Parte Edgerton (C. C. 1893) 59 Fed. 115, 116.

The implied consent of Congress to state legislation regulating interstate commerce, arising from a failure of Congress to enact similar legislation, is temporary only, and is withdrawn by a congressional enactment covering the same subject-matter. U. S. v. Adair (D. C. 1907) 152 Fed. 737, judgment reversed Adair v. U. S. (1908) 28 Sup. Ct. 277, 208 U. S. 161, 52 L. Ed. 436, 13 Ann. Cas. 764.

Whether Congress has spoken or not, the duty of the United States towards commerce in its several departments of traffic, intercourse, and navigation is equally imperative. (1886) 18 Op. Atty. Gen. 405.

A state legislature may, in the absence of legislation by congress, prescribe regulations adapted to govern commerce, with reference to the requirements and commerce of particular localities. State v. The Constitution (1872) 42 Cal. 578, 10 Am. Rep. 303.

If a regulation of any kind of commerce is local in its character, demanding varying rules, so as to adapt it to a particular locality, it is within the province of the state legislature to adopt such rules and regulations, in the absence of legislation by congress on the subject. Id.

Until and unless Congress does act, and its action covers the subject-matter of interstate commerce, the states may act. Sligh v. Kirkwood (Fla. 1913) 61 So. 185.

Within certain limitations there remains to the states, until congress acts, a wide range for the exercise of power over matters of a local nature, though interstate commerce may be affected. Staley v. Illinois Cent. R. Co. (1915) 109 N. E. 342, 268 Ill. 356, reversing judgment (1914) 186 Ill. App. 593.

The citizens of any state have the right to sell and ship any article of commerce to a citizen of another state unless prohibited by act of Congress. F. W. Cook Brewing Co. v. Vaccaro (1914) 188 Ill. App. 387; Same v. Rodasta, Id. 397.

Conceding that a statute incidentally affects interstate commerce, it is not thereby invalid in the absence of legislation on such subject on the part of Congress. American Express Co. v. Southern Indiana Express Co. (Ind. 1906) 78 N. E. 1021; Same v. State (Ind. 1906) 79 N. E. 353.

Until and unless congress does act relative to the regulation of interstate commerce, and its action covers the subject-matter, the states may act. Southern Ry. Co. v. Railroad Commission of Indiana (Ind. 1913) 100 N. E. 337.

In the absence of legislation by congress, the states may enact reasonable laws under the police power which are local in their operation, though they may incidentally affect interstate commerce. Railroad Commission of Indiana v. Grand Trunk Western R. Co. (Ind. 1913) 100 N. E. 852.

The fact that congress has not prescribed any specific rules to regulate interstate commerce, when considered with reference to other congressional legislation, indicates that interstate commerce shall be free. Hardy v. Atchison, T. & S. F. Ry. Co. (1884) 5 P. 6, 32 Kan. 698.

The power of congress to regulate commerce does not take away the right to legislate on matters where congress has not acted. Newport v. Taylor (1855) 55 Ky. (16 B. Mon.) 699.

The commerce clause does not prevent the exercise of such power by the states, as far as is necessary for the police regulations of their domestic commerce, in regard to which congress has not deemed it expedient to make any regulations. Port-Wardens v. The Martha J. Ward (1859) 14 La. Ann. 289.

The failure of Congress to make express regulations of interstate commerce indicates that the subject must be left free from any restrictions or impositions, and states can affect such commerce only by virtue of their police power and jurisdiction over persons and property within their limits. D. E. Foote & Co. v. Clagett (Md. 1911) 81 A. 511.

The commerce clause excludes state control only over interstate commerce in articles which are legitimate subjects of trade, and not over articles which are inherently unworthy of commerce and unfit for the use of the people and which the state, in the absence of congressional legislation covering the subject, has declared are not legitimate subjects of trade. American Express Co. v. Beer (Miss. 1914) 65 So. 575; Southern Express Co. v. Longinotti, Id. 583; American Express Co. v. Miller, Id. 652.

Where the federal and state governments have jurisdiction to enter the same sphere, the state may legislate upon matters within that sphere, until Congress shall prescribe regulations on the same subject. Winfield v. New York Cent. & H. R. R. Co. (1915) 110 N. E. 614, 216 N. Y. 284.

The mere fact that Congress has a

power, not yet exercised, to legislate as to a particular subject-matter does not render inoperative a state statute relating to the subject-matter. Id.

The control of the Interstate Commerce Commission over interstate commerce does not deprive the state of the right to enforce laws incidentally affecting commerce, in the absence of action by Congress or the Commission as to the particular matter. J. M. Pace Mule Co. v. Seaboard Air Line Ry. Co. (N. C. 1912) 76 S. E. 513; Herring v. Atlantic Coast Line R. Co. (N. C. 1912) Id. 527.

When a state legislates upon a subject within the commercial power of congress, it is not for that reason invalid, if it conflicts with no law of congress upon the same subject. Craig v. Kline (1870) 65 Pa. St. (15 P. F. Smith) 399, 3 Am. Rep. 636.

A state may confer the right to construct a ship canal, and to levy tolls; congress not having legislated concerning the matter. Morris v. State (1884) 62 Tex. 728.

The state is not prohibited absolutely from regulating interstate commerce, but its powers are restricted only where Congress has exercised its power of regulation. Missouri K. & T. Ry. Co. of Texas v. State (Tex. 1916) 181 S. W. 721.

Within its own limits, each state may regulate commerce, in the absence of federal legislation on the subject. State v. Pinckney (S. C. 1857) 10 Rich. Law, 474.

Failure of Congress to act on a subject of interstate commerce is not to be interpreted as licensing the states to act. The silence of congress is held to be an emphatic assertion that the subject shall be left free from any restrictions, exactions, or burdens. Southern Express Co. v. Goldberg (1903) 101 Va. 619, 44 S. E. 893, 62 L. R. A. 669.

A state may legislate on distinctly local matters embraced within federal constitutional authority until such authority is exercised by Congress. State v. Daggett (Wash. 1915) 151 P. 648.

33. **Quarantine laws.**—While some of the rules of a system of quarantine laws established by a state may amount to regulations of commerce with foreign nations or among the states, though not so designed, they belong to that class which the states may establish until congress acts in the matter by covering the same ground or forbidding state laws. Bradley, J., dissenting. Morgan's Louisiana & T. R. & S. S. Co. v. Board of Health (1886) 6 Sup. Ct. 1114, 1118, 118 U. S. 455, 30 L. Ed. 237.

The regulation of the transportation of cattle from state to state is within the power of Congress, and when exercised its regulations are paramount throughout the Union, but until the power is exercised the states are not prohibited from making reasonable regulations to exclude cattle infected with contagious disease. Reid v. Colorado (1902) 23 Sup. Ct. 92, 95, 187 U. S. 137, 47 L. Ed. 108.

34. **Police regulations to prevent disease among plants and trees.**—Congress not having assumed charge of the matter as involving interstate commerce, the states have power to prescribe police regulations calculated to prevent the spread of disease among plants and trees, whether grown and sold within the state or raised in foreign nurseries, and transported and sold for planting within the state. Ex parte Hawley (S. D. 1908) 115 N. W. 93.

35. **Navigation and shipping.**—In the absence of legislation by congress, it is competent for the state legislature to grant a lien to material men for necessaries furnished a vessel in her home port. Rodd v. Heartt (1874) 21 Wall. 558, 580, 22 L. Ed. 654; The Petrel v. Dumont (1876) 28 Ohio St. 602, 22 Am. Rep. 397.

A statute of a state (Indiana) giving an action, when death of a person is caused by a wrongful act or omission of another, in favor of the representatives of the deceased, warrants an action against owners of a vessel employed in interstate commerce for death of a passenger resulting from negligent collision, so long as there is no enactment of congress in operation regulating the liabilities of parties in such cases, provided the wrong is committed within the state. Sherlock v. Alling (1876) 93 U. S. 99, 23 L. Ed. 819.

Applying to a claim for a death on the high seas, due to a tortious collision of two vessels belonging to Delaware corporations, the state law authorizing personal representatives to recover for a death occasioned by negligence does not render such law repugnant to this clause, where Congress has not legislated upon the subject. Old Dominion S. S. Co. v. Gilmore (1907) 28 Sup. Ct. 133, 134, 207 U. S. 398, 52 L. Ed. 264, affirming judgment The Hamilton (1906) 146 Fed. 724, 77 C. C. A. 150.

An ordinance of the city of Chicago regulating the navigation of vessels through bridges over the Chicago river held not invalid as an interference with interstate commerce in the absence of legislation on the subject by Congress. Canada Atlantic Transit Co. v. City of Chicago (1913) 210 Fed. 7, 125 C. C. A. 587.

A federal court cannot adjudge invalid as unreasonable an ordinance regulating navigation through bridges which is within the powers of the municipality to enact, merely because it

may appear from the evidence to be unnecessary. Id.

Until congress assumes control of a navigable river wholly within the limits of the state, the state may legislate in reference to its commercial use as a public highway. Heerman v. Beef Slough M'fg, etc., Co. (C. C. 1878) Fed. Cas. No. 6.320; Id. (C. C. 1880) 1 Fed. 145, 154.

State legislation upon maritime subjects of a local nature, and legislation under the police power for the preservation of life or health, not incompatible with interstate and international interests, is proper in the absence of legislation by congress; and a state statute giving damages for death by negligence, as applied to a negligent collision on navigable waters within the state, does not infringe these conditions, and is valid. The City of Norwalk (D. C. 1893) 55 Fed. 98, decree modified The Transfer No. 4 and The Car Float No. 16 (1894) 61 Fed. 364, 9 C. C. A. 521.

Local statutes subjecting vessels to liens for debts contracted in equipping and fitting them for service are not regarded as amendments of the general maritime law, and, in the absence of legislation by congress establishing a uniform rule, are upheld as applied to vessels engaged in interstate or foreign commerce, and owned in other states, as being in aid of commerce by enabling such vessels to obtain credit for necessaries when away from their home port. The Del Norte (D. C. 1898) 90 Fed. 506.

The owners of vessels, in making contracts for their employment, must be presumed to depend to some extent for their protection on the local laws of the countries or states to which they are sent, and also to subject themselves to such laws, where they do not discriminate to the prejudice of foreign ships. The Energia (D. C. 1903) 124 Fed. 842.

Ballinger's Ann. Codes & St. Wash. §§ 5953, 5954, in so far as they give a lien on all vessels for nonperformance of a charter to carry cargoes to or from ports of the state, are reasonable and just provisions to secure the performance of maritime contracts, which a court of admiralty may properly recognize and enforce against both foreign and domestic vessels, or vessels engaged in either domestic or interstate or foreign commerce, in the absence of legislation by Congress on the subject. Id.

The Washington Workmen's Compensation Act, which substitutes a system of state compensation for all private rights of action in case of injury to a workman engaged in any of the occupations specified, is within the police powers of the state, and is constitutional and valid, and extends to workmen employed in interstate commerce by water, in absence of congressional legislation on the subject. Stoll v. Pacific Coast S. S. Co. (D. C. 1913) 205 Fed. 169.

The establishment, by an act of congress, of a port of delivery on a river, is not an exercise of the power of congress to regulate commerce, which conflicts with an act of a state legislature, imposing tolls on vessels passing to and from such port as a compensation for improving the navigation of such river. Thames Bank v. Lovell (1847) 18 Conn. 500.

St. Mass. 1907, c. 465, as amended by St. Mass. 1909, c. 393, § 1, concerning inspection of steam boilers, construed to apply to boilers on barges used on tide water, unless Congress has legislated relative thereto, is not invalid as an interference with interstate or foreign commerce. Commonwealth v. Breakwater Co. (1913) 100 N. E. 1034, 214 Mass. 10.

See, also, note post as to "transportation of goods and passengers."

36. Navigable waters in general.—Navigable rivers wholly within a state are not outside of state jurisdiction, so long as congress does not interfere. Northern Transp. Co. v. City of Chicago (1878) 99 U. S. 635, 25 L. Ed. 336.

The states may authorize all structures over navigable waters which may either impede or improve navigation, in the absence of federal legislation; but, when congress has legislated, its action is conclusive. Escanaba & Lake Michigan Transp. Co. v. City of Chicago (1883) 107 U. S. 678, 2 Sup. Ct. 185, 27 L. Ed. 442, affirming decree (C. C. 1882) 12 Fed. 777.

Congress not having acted under the commerce clause with reference to the regulation or control of the current introduced into the Chicago river, lying wholly within the boundaries of Illinois, by the improvements of the Chicago Sanitary District constructed under consent of the Secretary of War, such regulation was within the jurisdiction of the state as to all the world except future Congresses. Corrigan Transit Co. v. Sanitary Dist. of Chicago (1905) 137 Fed. 851, 70 C. C. A. 381, affirming decree Corrigan Transp. Co. v. Sanitary Dist. of Chicago (D. C. 1903) 125 Fed. 611.

The power of Congress over navigable rivers, under the authority to regulate commerce, is supreme, but until Congress assumes to exercise its power, the state within whose borders the river lies may legislate with reference to its use. Heerman v. Beef Slough Manufacturing, Booming, Log-Driving & Transportation Co. (C. C. 1878) Fed. Cas. No. 6.320; Id. (C. C. 1880) 1 Fed. 145, 154.

Prior to 1884, no national legislation existed which interfered with the general authority of the States, acting

within the limits of law as administered by the courts, to control within their respective boundaries the navigable waters of the United States. (1891) 20 Op. Atty. Gen. 101.

The power of the state over navigable streams is plenary, until congress acts on the subject, and then the power of the state is subordinate to that of congress. People v. Potrero & B. V. R. Co. (1885) 67 Cal. 166, 7 Pac. 445.

In the absence of the exercise of the power of the federal government over navigable streams within the states, incident to its power to regulate commerce, the states have full power over such waters within their jurisdiction. Minnesota Canal & Power Co. v. Pratt (1907) 112 N. W. 395, 101 Minn. 197, 11 L. R. A. (N. S.) 105.

Where Congress has not acted in the matter, the state has authority over navigable waters within its boundaries, and over the lands under them. American Dock & Improvement Co. v. Trustees for Support of Public Schools (1885) 39 N. J. Eq. (12 Stew.) 409.

In the absence of federal legislation, the states have a right to exercise such rights on the neighboring seas as are essential to the protection of their own domain. Cisco v. Roberts (1867) 36 N. Y. 292, affirming (1860) 19 N. Y. Super. Ct. (6 Bosw.) 494.

Congress has power over navigable waters within the state, but the state has jurisdiction until Congress exercises its power, and title from the state to land under navigable waters is subject to federal regulation as to encroachment. Appleby v. City of New York (1915) 152 N. Y. Supp. 357, 167 App. Div. 369.

In absence of an act of Congress, a state has plenary power over navigable streams entirely within its boundaries, so that it could dispose of the use of its tide lands irrespective of the federal government. Grays Harbor Boom Co. v. Lownsdale (1909) 104 P. 267, 54 Wash. 83.

A state has plenary power, in the absence of congressional action, to regulate navigable streams entirely within its borders, subject to the right of Congress, under the commerce clause, thereafter to assume entire control, and to abate any erections which may have been made, and prevent others from being made. In re Southern Wisconsin Power Co. (1909) 122 N. W. 801, 140 Wis. 245; Appeal of Black Hawk Land Co. (1909) 122 N. W. 801, 140 Wis. 245; Appeal of Whitnall (1909) 122 N. W. 809, 140 Wis. 265.

37. **Fisheries.**—The commerce clause does not prohibit a state from regulating fisheries in the navigable waters within its territory, where such regulation makes no discrimination in favor of its own citizens and against those of other states, and where there is no federal statute or treaty on the subject. Manchester v. Massachusetts (1891) 139 U. S. 240, 11 Sup. Ct. 559, 35 L. Ed. 159, affirming (1890) 152 Mass. 230, 25 N. E. 113, 9 L. R. A. 236; Fuller v. Spear (1837) 14 Me. (2 Shep.) 417; Dunham v. Lamphere (1855) 69 Mass. (3 Gray) 268.

38. **Improvement of navigable waters.**—State legislation authorizing the improvement of harbors, bays, and navigable rivers within the state is not unconstitutional, as an encroachment on the right of congress to regulate interstate commerce, if the free navigation of such waters under the laws of the United States is not thereby impaired, as congress, by its failure to act in such matters, has virtually declared that, until it undertakes to act, such waters may be controlled by state authority. Mobile County v. Kimball (1880) 102 U. S. 691, 26 L. Ed. 238.

The power of congress over water ways connected with the great rivers of the country is supreme whenever it chooses to exercise the same, but before it has acted the legislative power of the state within whose borders the stream flows is competent to charter a corporation to improve the same, and to give it a franchise to collect tolls. Monongahela Navigation Co. v. U. S. (1893) 13 Sup. Ct. 622, 630, 148 U. S. 312, 37 L. Ed. 463, distinguishing Newport & C. Bridge Co. v. U. S. (1881) 105 U. S. 470, 26 L. Ed. 1143.

The paramount right of the public to use a navigable river as a highway does not prevent the state legislature, in the absence of a conflicting enactment of congress, from authorizing the construction of public improvements upon the stream, although they may involve a partial obstruction or inconsiderable detention to navigation. Woodman v. Kilbourn Mfg. Co. (C. C. 1867) Fed. Cas. No. 17,978.

In absence of federal statute, states bordering on the Mississippi river could authorize improvements on their side of the river, but could not justify the destruction or substantial impairment of navigation of the river. Rutz v. St. Louis (C. C. 1882) 10 Fed. 338, 339.

The state of Illinois, in the absence of national legislation upon the subject, can improve the navigable waters within its limits in such mode and to such extent as to her seems best. Huse v. Glover (C. C. 1883) 15 Fed. 292, decree affirmed (1886) 7 Sup. Ct. 313, 119 U. S. 543, 30 L. Ed. 487.

In the absence of any legislation by Congress or acts by federal authorities, the states may improve their navigable harbors. Henry Dalton & Sons Co. v. City of Oakland (Cal. 1914) 143 P. 721.

Where congress, in the execution of its power to regulate commerce, had passed no act to control state legislation over navigable rivers, a state could provide for the improvement of a navi-

gable river within her own borders. Kellogg v. Union Co. (1837) 12 Conn. 7.

Where Congress has not acted, the state Legislature may provide for the development of a stream emptying into one of the great rivers, where such stream is in fact navigable. Boutwell v. Champlain Realty Co. (Vt. 1915) 94 A. 108.

In absence of congressional interference with or control of the subject, the state possesses the undoubted right to promote, by artificial means, the navigability or floatability of rivers and streams within its borders, and thereby render them more useful and beneficial to the public. East Hoquiam Boom & Logging Co. v. Neeson (1898) 54 P. 1001, 1002, 20 Wash. 142.

In the absence of legislation by congress, no one can question the right of the state to incorporate a company for the purpose of improving a navigable river, and authorizing it to charge reasonable tolls for compensation for such improvements. Wisconsin River Imp. Co. v. Manson (1877) 43 Wis. 255, 28 Am. Rep. 542.

The state may authorize improvements on navigable waters, in the absence of federal legislation. Id.

39. Obstructions of navigation.—Where the act of the assembly of the state of Delaware authorized the erection of a dam across a creek, it was held not to conflict with the laws of the United States, inasmuch as congress has passed no act controlling state legislation, but to be a question between the state and the inhabitants. Willson v. Blackbird Creek Marsh Co. (1829) 27 U. S. (2 Pet.) 245, 7 L. Ed. 412.

A state law authorizing a dam on a navigable creek held valid in the absence of federal legislation. Id.

If congress has not legislated on the subject, a state may authorzie an individual to erect a dam across a river, notwithstanding it is navigable, and a person so authorized is not liable in damages to those who may sustain loss through the interruption of navigation caused by the dam. Pound v. Turck (1877) 95 U. S. 459, 24 L. Ed. 525.

A state law authorizing the placing of dams and booms in a navigable stream which is wholly within the state is not invalid in the absence of any act of congress relating thereto. Id.

Congress has power to pass laws for the regulation of the navigation of public rivers and to prevent any and all obstructions therein, but until Congress passes a law, obstructions and nuisances in navigable streams within the states, are not offenses against the United States laws. Willamette Iron Bridge Co. v. Hatch (1888) 8 Sup. Ct. 811, 815, 125 U. S. 1, 31 L. Ed. 629.

The power of a state, if it existed at all, to obstruct or close entirely a navigable stream wholly within a state, depended solely on the absence of congressional legislation asserting the reserved authority of the general government over all navigable streams, including even those wholly within a state, and therefore ceased to exist from the enactment by congress of Act Sept. 19, 1890 (26 Stat. 454). Egan v. Hart (1897) 17 Sup. Ct. 300, 301, 165 U. S. 188, 41 L. Ed. 680.

In the absence of legislation by Congress, a state may improve its lands and promote the general health by authorizing a dam to be built across its interior streams, though they were previously navigable to the sea by vessels engaged in the coastwise trade. Manigault v. Springs (1905) 26 Sup. Ct. 127, 129, 199 U. S. 473, 50 L. Ed. 274, affirming judgment Manigault v. S. M. Ward & Co. (C. C. 1903) 123 Fed. 707.

In the absence of any statute by congress, a state has plenary power over a navigable stream entirely within its limits, and obstructions in the stream may be offenses against the laws of the state, but not an offense against the United States. North Shore Boom & Driving Co. v. Nicomen Boom Co. (1909) 29 Sup. Ct. 355, 357, 212 U. S. 406, 53 L. Ed. 574, citing Willamette Iron Bridge Co. v. Hatch (1888) 8 Sup. Ct. 811, 125 U. S. 1, 31 L. Ed. 629.

The state may, for the purpose of facilitating the floatage of logs, authorize the obstruction of a navigable river by a private corporation, in the absence of federal legislation. Heerman v. Beef Slough Manufacturing, Booming, Log-Driving & Transportation Co. (C. C. 1878) Fed. Cas. No. 6,320; Id. (C. C. 1880) 1 Fed. 145, 154.

In the absence of specific legislation by congress, the regulation of a navigable stream rests entirely with the state, and a bill will not lie by the government to prevent or abate any obstruction. U. S. v. Beef Slough Manufacturing, Booming, Log-Driving & Transportation Co. (C. C. 1879) Fed. Cas. No. 14,559.

So long as congress does not assume jurisdiction of a river to control and direct its commerce, the state may authorize piers, dams, and booms therein, to facilitate the running and securing of loose logs, though materially obstructing other branches of commercial enterprises thereon. Heerman v. Beef Slough Mfg. Booming, Log-Driving & Transportation Co. (C. C. 1880) 1 Fed. 145, 157.

The acts of congress authorizing a vessel to engage in the coasting trade within a state are construed as not manifesting an intention upon the part of congress to interfere with the power of the state to obstruct the navigable waters within its limits, but only to authorize their navigation by such vessel for the purposes of such trade, so long as they are navigable. Hatch v. Wallamet Iron Bridge Co. (C. C. 1881) 6 Fed. 326.

The state has the sole power to

bridge the waters within its limits, but this power is subject to the power of congress to prevent obstructions to navigation being placed in such waters within the state, and accessible from without it; and therefore, in the absence of legislation by congress to the contrary, a state may dam or otherwise obstruct the navigable waters within its limits at pleasure. Id.

In the absence of legislation on the subject by Congress, a state may lawfully authorize the building of any structure in the navigable waters within its limits, but the right so granted is held subject to the right of Congress at any time to require the removal or alteration of such structure as an obstruction to navigation, where such waterway is used as a means for carrying on interstate or foreign commerce. U. S. v. Union Bridge Co. (D. C. 1906) 143 Fed. 377, judgment affirmed, Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523.

In the absence of legislation by Congress the state has exclusive jurisdiction, and may for public good authorize obstructions at pleasure over streams within its limits which are navigable in fact for vessels coming out of or returning into the navigable waters of other states by continuous voyages, and, except so far as private property is taken or injured, no action can be sustained therefor, but Congress has the right under the commerce clause to interpose and divest the state of this jurisdiction. Depew v. Board of Trustees of Wabash & Erie Canal (1854) 5 Ind. 8.

The Green and Barren rivers being entirely within the state of Kentucky, and there being no interfering act of congress, the grant of a license to make reasonable obstructions to navigation in the repair of railroad bridges spanning the rivers is not invalid as being in conflict with the power of congress to regulate commerce between the states. Green & B. R. Nav. Co. v. Chesapeake, O. & S. W. R. Co. (1888) 88 Ky. 1, 10 S. W. 6, 2 L. R. A. 540.

Ordinance of 1787, art. 4, provided that the Mississippi and St. Lawrence, and the navigable waters leading into them, and the carrying places between, should be common highways, and forever free, as well to the inhabitants of the territory as to the citizens of the United States, without tax, impost, or duty. This provision was incorporated in the acts of congress enabling the states of Wisconsin and Minnesota to organize (Gen. St. Minn. 1878, p. 15; R. S. Wis. 1878, p. 1154), and in the constitutions of said states (Const. Wis. art. 9, § 1; Const. Minn. art. 2, § 2). The intention of this provision was not to prevent obstructions to navigation, but to prohibit a tax on it; and congress not having assumed police control over the St. Croix river, a small branch of the Mississippi, in said states, partially navigable at some seasons for small boats, but mainly used for the floatage of logs, the legislature of Minnesota had power to grant a charter to a company to construct booms in the navigable portion to facilitate running logs, though the direct effect was to materially, but not permanently, obstruct navigation for steamboats. J. S. Keator Lumber Co. v. St. Croix Boom Corp. (1888) 72 Wis. 62, 38 N. W. 529, 7 Am. St. Rep. 837.

In the absence of congressional legislation on the subject, a state statute, authorizing a dam across a navigable river wholly within the state, is constitutional; a direct statute of the United States being required in order that such erections may be declared an invalid obstruction and nuisance. In re Southern Wisconsin Power Co. (1909) 122 N. W. 801, 140 Wis. 245; Id., 122 N. W. 809, 140 Wis. 265; Appeal of Black Hawk Land Co. (1909) 122 N. W. 801, 140 Wis. 245; Appeal of Whitnall (1909) 122 N. W. 809, 140 Wis. 265.

See note post as to "Bridges."

40. **Seamen.**—Pen. Code Ga. § 655, provides that, "if any person shall aid an articled seaman or apprentice to desert or leave his vessel while in the waters of this state, he shall be punished as for a misdemeanor." Held that, though the subject was one of congressional cognizance, yet, since that body had failed to legislate with reference thereto, it was within the power of the state legislature to control and regulate the matter, and hence the act was constitutional. Handel v. Chaplin (1900) 36 S. E. 979, 111 Ga. 800, 51 L. R. A. 720.

Under R. S. §§ 4283, 4289, Comp. St. §§ 8021, 8027, the Washington Workmen's Compensation Act held not to cover case of injury to seaman in intrastate commerce on Puget Sound, on plea that federal admiralty jurisdiction was unoccupied by Congress by a compensation act. State v. Daggett (1915) 151 P. 648, 87 Wash. 253, L. R. A. 1916A, 446.

See, also, note post as to "Railroads and other carriers."

41. **Pilots.**—Though Congress may legislate on the subject of pilotage throughout the United States, it has not manifested an intention by R. S. §§ 4235, 4236 (Comp. St. §§ 7981, 7982), to overrule the state laws, except in one instance, and the law of a state imposing a forfeiture for the neglect of a vessel to take a pilot is not invalid. Cooley v. Board of Wardens of Port of Philadelphia (1851) 12 How. 299, 320, 13 L. Ed. 996.

The power of Congress to regulate commerce is without limitation and extends to all the subjects of commerce, and to all persons engaged in it, and embraces traffic, navigation, and intercourse, and the whole subject of pilots and pilotage, but the constitution does

not in terms exclude the exercise of any authority by the states to regulate pilots, and the states have authority to regulate the subject, in the absence of congressional legislation. Pacific Mail Co. v. Joliffe (1864) 2 Wall. 450, 459, 17 L. Ed. 805.

State pilotage laws cannot be considered, in view of the numerous acts of congress recognizing them, as unconstitutional for infringing the exclusive power of congress over the subject, until some act of congress is passed which conflicts with them. Ex parte McNiel (1871) 80 U. S. (13 Wall.) 236, 20 L. Ed. 624.

Even though state laws concerning pilotage are regulations of commerce, they are not necessarily repugnant to the commerce clause, since they fall within that class of powers which may be exercised by the state until Congress has seen fit to act upon the subject. Olsen v. Smith (1904) 25 Sup. Ct. 52, 53, 195 U. S. 332, 49 L. Ed. 224.

Though laws concerning pilotage are regulations of commerce, they fall within that class of powers which may be exercised by the states until Congress sees fit to act. Anderson v. Pacific Coast S. S. Co. (1912) 32 Sup. Ct. 626, 629, 225 U. S. 187, 56 L. Ed. 1047.

State laws providing for compulsory pilotage, authorizing licensed pilots to tender their services to vessels, and providing that the pilot first to offer his service to an inward bound vessel may, if he is not required, and his services are declined, collect one-half of the compensation which he would have earned if employed, are valid regulations of navigation, and interstate and foreign commerce, so long as congress refrains from enacting laws on the subject. The Robert Dollar (D. C. 1902) 151 Fed. 218.

Since the acts of Congress regulating pilotage in the public waters of the United States are confined to the regulation of pilotage of vessels engaged in coastwise commerce, the states are free to enact laws regulating the pilotage of vessels engaged in foreign commerce, and Laws 1887-88, p. 175, regulating pilotage in public waters, is valid so far as it seeks to regulate pilotage of vessels engaged in foreign commerce. State v. Ames (Wash. 1907) 92 P. 137.

42. Wharves.—A state statute or city ordinance regulating the rates of wharfage is not unconstitutional as repugnant to the power of congress to regulate commerce where congress has failed to legislate upon the subject. The Ann Ryan (D. C. 1873) Fed. Cas. No. 428; Sweeney v. Otis (1885) 37 La. Ann. 520; Sterrett v. Houston (1855) 14 Tex. 153.

Though wharves are related to commerce and navigation as aids and conveniences yet, being local in their nature, and requiring special regulations for particular places, in absence of congressional legislation on the subject, the regulation thereof properly belongs to the states in which they are situated. Parkersburg & O. R. Transp. Co. v. City of Parksburg (1883) 2 Sup. Ct. 732, 745, 107 U. S. 691, 27 L. Ed. 584.

Though the regulation of public wharves and wharfage on navigable waters may properly fall within the commercial powers of congress, still, in the absence of national legislation, the powers of the state therein are complete, and an ordinance of a city requiring vessels discharging or receiving freight at a wharf built and owned by it to pay certain rates is not in conflict with the interstate commerce clause. Id.

No subject can be more properly classified as local in its nature, and as requiring the application of town regulations, than that of wharfs and wharfage; and as no act of congress has been passed for the regulation of wharfage, and there is nothing in the constitution to prevent the states from regulating it, so long as congress sees fit to abstain from action on the subject, it is entirely within the domain and subject to the operation of state laws, and the reasonableness of the charge must be determined by the local law. Ouachita & M. R. P. Co. v. Aiken (C. C. 1883) 16 Fed. 890, decree affirmed (1887) 7 Sup. Ct. 907, 121 U. S. 444, 30 L. Ed. 976.

A state government may authorize the construction of wharves on navigable streams within its own territorial limits, even below low-water mark, where the power of the congress of the United States has not been exercised in the premises. City of Savannah v. State (1848) 4 Ga. 26.

43. Ferries.—A state may fix reasonable rates for ferriage from its shore to the shore of another state over a boundary stream, until Congress regulates such rates. Port Richmond & Bergen Point Ferry Co. v. Board of Chosen Freeholders of Hudson County (1914) 34 Sup. Ct. 821, 234 U. S. 317, 58 L. Ed. 1330, affirming judgment Same v. Freeholders of Hudson County (1912) 82 A. 729, 82 N. J. Law, 536.

That ferry rates over a boundary stream were fixed by the state of incorporation of the ferry company did not preclude the state on the other side of the stream from establishing, subject to paramount authority of Congress, the rates to be charged for ferriage from its own shore to the shore of the other state. Id.

State regulation of the rates to be charged for a ticket for a round trip over an interstate ferry from the shore of such state to the shore of another state, and return, is valid until Congress regulates such rates, where the ferry company is not thereby required

to issue round-trip tickets at its office within the state. Id.

A ferry may be an instrument of commerce, and as such subject to the regulation of congress, but until congress has asserted its power the national authority cannot be invoked by suitors as the foundation of any adverse rights. New York v. Independent Steamboat Co. (C. C. 1885) 22 Fed. 801, 802.

The power of states over the regulation of ferries across navigable rivers dividing two states must prevail until and except so far as congress legislates upon the particular question. Newport v. Taylor (1855) 55 Ky. (16 B. Mon.) 699.

44. Bridges.—In the absence of federal legislation, the state may, by authorizing the erection of a bridge, obstruct a navigable river. Willamette Iron-Bridge Co. v. Hatch (1888) 125 U. S. 1, 8 Sup. Ct. 811, 31 L. Ed. 629; Oregon City Transp. Co. v. Columbia St. Bridge Co. (D. C. 1892) 53 Fed. 549, following Willamette Iron-Bridge Co. v. Hatch (1888) 8 Sup. Ct. 811, 125 U. S. 1, 31 L. Ed. 629.

In the absence of federal legislation on the subject, a state may authorize bridges across navigable streams by laws so well guarded as to protect substantial rights of navigation. Atlee v. Northwestern Union Packet Co. (1874) 21 Wall. 389, 395, 22 L. Ed. 619.

The power of the state in the regulation of bridges over navigable rivers, lying wholly within its limits, is plenary, in the absence of legislation by congress. An ordinance of the city of Chicago, in the exercise of its police powers, regulating the opening and closing of draws on bridges over the Chicago river, is not invalid, as an attempt to regulate interstate commerce. Escanaba & L. M. Transp. Co. v. City of Chicago (1883) 2 Sup. Ct. 185, 107 U. S. 678, 27 L. Ed. 442, affirming decree (C. C. 1882) 12 Fed. 777.

The expenditure of money by Congress in improving the Willamette river in Oregon and the making of Portland a port of entry held not an assumption by Congress of power over the river, and the state is not deprived of the power of authorizing a bridge over the river without the assent of Congress. Willamette Iron Bridge Co. v. Hatch (1888) 6 Sup. Ct. 811, 125 U. S. 1, 31 L. Ed. 629.

The states have full power as to the erection of bridges and other works in navigable streams wholly within their jurisdiction, in the absence of the exercise by congress of authority to the contrary. Lake Shore & M. S. Ry. Co. v. Ohio (1897) 17 Sup. Ct. 357, 165 U. S. 365, 41 L. Ed. 747.

The delegation to the secretary of war by Act Sept. 12, 1890 (26 Stat. 453, §§ 4, 5, 7), of authority to direct changes in existing bridges over any navigable waters of the United States, or of bridges to be erected under legislative authority of any state, for the purpose of preventing obstructions to navigation, showed no intention by congress to exercise exclusive control over navigable waters entirely within the jurisdiction of a state; and consequently this act did not deprive the states of power to compel the removal or alteration of bridges erected over such waters without authority. Id.

A state legislature may, in the absence of any restraint by congressional legislation, authorize the erection of a bridge over the state's navigable waters. Silliman v. Hudson River Bridge Co. (C. C. 1859) Fed. Cas. No. 12,852.

The federal court will not enjoin the erection of a bridge over the Raritan river, authorized by the New Jersey legislature, although it may completely intercept navigation, except as accommodated by draws, where congress has not legislated on the subject. Easton v. New York & L. B. R. Co. (C. C. 1873) Fed. Cas. No. 4,259.

The erection of a bridge entirely within a state across a navigable river running partly within and partly without the state is not a matter so intimately connected with interstate commerce as to be under the exclusive control of congress; and, in the absence of congressional action, the state has authority to regulate the same. Rhea v. Newport N. & M. V. R. Co. (C. C. 1892) 50 Fed. 16, distinguishing Grand Trunk Ry. Co. v. Backus (C. C. 1891) 46 Fed. 211.

In the absence of any act of Congress or constitutional provision conferring upon him authority so to do, the President cannot officially consent to and approve the erection of the proposed bridge across the Niagara river. (1883) 17 Op. Atty. Gen. 523.

Until Congress acts, and by appropriate legislation assumes control of the subject, the power of a state over bridges across navigable streams within its limits is plenary. (1885) 18 Op. Atty. Gen. 164.

Accordingly, where a railroad company was authorized by the laws of Minnesota to construct a bridge across the Mississippi river within the limits of that state, held that, if such authority is unaffected by any law of Congress, the company may act thereunder, though in so doing it will subject itself to the risk of future Congressional interference. Id.

A state may authorize the obstruction of a navigable stream within its limits by a bridge, in the absence of any legislation by Congress on the subject. (1886) 18 Op. Atty. Gen. 425. But see case of Union Bridge Co. v. U. S. (1907) 204 U. S. 364, 27 Sup. Ct. 367, 51 L. Ed. 523.

Where, under authority of the legislature of West Virginia it is proposed to construct a bridge over the Little Kanawha, a navigable river within the

limits of that state, which bridge, if built, will be an obstruction to navigation; but its construction is neither expressly nor impliedly forbidden by any law of Congress. The case is not one which warrants the institution of judicial proceedings for the prevention of obstruction to navigation threatened. Id.

Until Congress has acted relative thereto, it is within the power of the states to authorize the construction of bridges across navigable streams within their limits. Mauldin v. Central of Georgia Ry. Co. (Ala. 1913) 61 So. 947.

A state may, until legislation on the subject by congress, authorize the erection of a bridge across a navigable river within the state without violating the commerce clause; and where a bridge has been constructed under an act of the legislature as part of a public highway a citizen has no right to destroy it on the ground that it to some extent interferes with the navigation of the river, and is a public nuisance, and of special injury to him. State v. Leighton (1891) 83 Me. 419, 22 Atl. 380.

In the absence of congressional legislation relative thereto, a state may authorize the building of a bridge over a navigable interstate stream. Kansas City, M. & B. R. Co. v. J. T. Wiygul & Son (1903) 33 So. 965, 82 Miss. 223, 61 L. R. A. 578.

65 Ohio Laws, p. 219, as amended by 73 Ohio Laws, p. 274, authorizing the construction of a bridge across a navigable stream, is within the plenary power of the state, in the absence of any exercise of control by the federal government, and a board of public works cannot, in an action to compel it to proceed according to the provisions of said laws, question the right of the state. Muskingum County Com'rs v. Board of Public Works Muskingum County (1884) 39 Ohio St. 628.

45. Corporations transacting business in state in general.—State statutes, imposing conditions on corporations precedent to their right to transact business within the state, are ineffective to prevent transactions constituting interstate commerce, which is within the exclusive jurisdiction of Congress, whether Congress had exercised such authority or not. La Moine Lumber & Trading Co. v. Kesterson (C. C. 1909) 171 Fed. 980.

46. Railroads and other carriers.—Until congress acts in reference to the relations of the railroad companies to interstate commerce, it is in the power of the state to regulate its affairs, so far as they are of domestic concern. Peik v. Chicago & N. W. Ry. Co. (1876) 94 U. S. 164, 24 L. Ed. 97; Winona & St. P. Ry. Co. v. Blake (1876) 94 U. S. 180, 24 L. Ed. 99.

The act of Wisconsin approved March 11, 1874, entitled "An act relating to railroads, express, and telegraph companies, in the state of Wisconsin," is confined to state commerce, or such interstate commerce as directly affects the people of Wisconsin, and is therefore valid. Until congress shall act in reference to the relations of such a company to interstate commerce, the regulation of its fares, etc., so far as they are of domestic concern, is within the power of the state. Id.

It is within the power of a state, in the absence of national legislation covering the subject, to forbid under penalties the heating of passenger cars in that state by stoves or furnaces kept inside the cars, or suspended therefrom (Laws N. Y. 1887, c. 616), though such cars may be employed in interstate commerce. This power cannot be affected by possible inconveniences resulting from the adoption of conflicting regulations by adjoining states. New York, N. H. & H. R. Co. v. New York (1897) 17 Sup. Ct. 418, 419, 165 U. S. 628, 41 L. Ed. 853.

A regulation by a city of the speed of railroad trains within the city limits is not, as to interstate trains, an unconstitutional regulation of interstate commerce,—at least until congress shall take action in the matter. Erb v. Morasch (1900) 20 Sup. Ct. 819, 820, 177 U. S. 584, 44 L. Ed. 897, affirming judgment (1899) 56 P. 133, 60 Kan. 251.

Until Congress acted there was no repugnancy to the commerce clause of the federal Constitution in Comp. St. Neb. 1911, c. 21, § 4, providing that contributory negligence of a railroad employé while engaged in interstate commerce did not bar recovery, where his negligence was slight and that of the company was gross. Missouri Pac. R. Co. v. Castle (1912) 32 Sup. Ct. 606, 608, 224 U. S. 541, 56 L. Ed. 875.

The intent of Congress to take control of the subject so as to invalidate existing state statutory regulations cannot be based on Employers' Liability Act June 11, 1906, c. 3073, 34 Stat. 232, since that statute has been held invalid. Chicago, I. & L. R. Co. v. Hackett (1913) 33 Sup. Ct. 581, 228 U. S. 559, 57 L. Ed. 966, affirming judgment Hackett v. Chicago, I. & L. R. Co. (1912) 170 Ill. App. 140.

Laws N. Y. 1897, c. 415, § 10, as amended by Laws 1908, c. 442, passed in the exercise of the reserved power of the state over corporations, that railway employés shall be paid semimonthly, prohibiting carrier and employés from contracting otherwise is valid. Erie R. Co. v. Williams (1914) 34 Sup. Ct. 761, 233 U. S. 685, 58 L. Ed. 1155, 51 L. R. A. (N. S.) 1097, affirming judgment (1910) 92 N. E. 1084, 199 N. Y. 525.

Requiring an interstate railway to pay its employés semimonthly as done by Laws N. Y. 1897, c. 415, § 10, as amended by Laws 1908, c. 442, held,

until Congress acts, not an unlawful burden on interstate commerce. Id.

Application to railway locomotives, equipped with oil headlights, used in hauling interstate freight trains over the carrier's main line, of Pub. Laws Ga. 1908, pp. 50, 51, requiring locomotives to be equipped with headlights of a certain capacity, does not render such statute invalid, in absence of congressional legislation, as constituting an unwarrantable interference with interstate commerce. Atlantic Coast Line R. Co. v. State of Georgia (1914) 34 Sup. Ct. 829, 234 U. S. 280, 58 L. Ed. 1312, affirming judgment (1910) 69 S. E. 725, 135 Ga. 545, 32 L. R. A. (N. S.) 20.

The subject of electric headlights for locomotives has not been covered by acts of Congress, relating to safety appliances and to Interstate Commerce Commission Act March 2, 1893, Act March 2, 1903, Act May 27, 1908, Act May 30, 1908, Act April 14, 1910, Act May 6, 1910, Act Feb. 17, 1911 (Comp. St. § 8605 et seq.), or by any regulation established by the commission so as to invalidate, as applied to railway locomotives equipped with oil headlights, and used in hauling interstate freight trains over the carrier's main line, the provisions of Pub. Laws Ga. 1908, pp. 50, 51, relating to headlights on locomotives running on the main line. Id.

In absence of legislation by congress covering the subject, a state may regulate the liabilities of interstate carriers to employés, the use of defective cars, etc., within its borders. Peirce v. Van Dusen (1897) 78 Fed. 693, 698, 24 C. C. A. 280, 69 L. R. A. 705, writ of error dismissed (1899) 19 Sup. Ct. 879, 43 L. Ed. 1184.

Laws Neb. 1907, p. 191, c. 48, § 1, which provides, inter alia, that railroad companies operating trains within the state shall be liable for injuries to employés resulting from the negligence of other employés, is comprehensive in its terms, and applies to railroads doing an interstate business, and governs the liability of such companies to employés operating trains engaged in interstate commerce in the absence of valid legislation by Congress covering such liability. Missouri Pac. Ry. Co. v. Castle (1909) 172 Fed. 841, 97 C. C. A. 124.

Laws affecting the liability of common carriers for injuries to employés are not in themselves regulations of interstate commerce though they control in some degree the conduct and liability of those engaged in such commerce, and a state may, therefore, so long as Congress has not legislated on the particular subject, enact such laws in the exercise of its police power, without invading the exclusive power of Congress. Kelley v. Great Northern Ry. Co. (C. C. 1907) 152 Fed. 211.

Act Ind. March 6, 1909 (Laws 1909, c. 128), authorizing a state railroad commission to prescribe the character of locomotive headlights to be used on the railroads of the state, is within the police powers of the state, and an order made thereunder, if within the powers conferred, is valid in absence of federal legislation on the subject. Baltimore & O. R. Co. v. Railroad Commission of Indiana (C. C. 1912) 196 Fed. 690.

The Washington Workmen's Compensation Act, which substitutes a system of state compensation for all private rights of action in case of injury to a workman engaged in any of the occupations specified, extends to workmen employed in interstate commerce by water, in the absence of congressional legislation on the subject. Stoll v. Pacific Coast S. S. Co. (D. C. 1913) 205 Fed. 169.

In the absence of action by Congress, the states may exercise police power over interstate carriers. Central of Georgia Ry. Co. v. Groesbeck & Armstrong (Ala. 1912) 57 So. 380.

Workmen's Compensation Act Conn. pt. B, § 40, held not to render act inapplicable to employés killed on the high seas or the navigable waters of another state; Congress not having legislated in regard to injuries occurring in interstate commerce by water. Kennerson v. Thames Towboat Co. (1915) 94 A. 372, 89 Conn. 367.

Where a railroad was built by the authority of the state, the company, whether an interstate carrier or otherwise, must, so long as Congress does not interfere, submit to reasonable local regulations in the use of its property, and a municipal ordinance requiring it to maintain electric lights where its tracks intersect streets is not invalid as an interference with interstate commerce. Pittsburg, C., C. & St. L. Ry. Co. v. Hartford City (Ind. 1907) 82 N. E. 787.

Where a railroad company chartered by the state, one of its purposes being to transport intrastate commerce, was ordered by the state railroad commission to join in the construction of a connection with an intersecting railroad, under Burns' Ann. St. Ind. 1908, § 5551, providing that the act authorizing the commission to order such connections should apply only to the transportation of passengers and property between points within the state, and to switching, delivering, storing, and handling of such property, the order was not void as a regulation of interstate commerce; the subject being one on which Congress had not expressly acted. Pittsburgh, C., C. & St. L. Ry. Co. v. Hunt (Ind. 1908) 86 N. E. 328.

Acts Ind. 1907, c. 11, providing the number and character of employés to be carried on trains operated within the state, did not relate to a subject over which Congress was invested with exclusive powers to legislate, and hence the failure of Congress to pass any law on the subject did not prohibit the states from passing proper legislation thereon. Pittsburgh, C., C. & St. L.

Ry. Co. v. State (Ind. 1909) 87 N. E. 1034.

Congress not having passed any act regulating headlights on engines used in interstate commerce, the Indiana Legislature was authorized to pass Act Ind. March 6, 1909 (Laws 1909, c. 128), authorizing the Indiana Railroad Commission to investigate the subject and require installation of efficient headlights. Vandalia R. Co. v. Railroad Commission of Indiana (Ind. 1913) 101 N. E. 85.

Act Ind. March 1, 1911 (Acts 1911, c. 60), regulating the size and construction of cabooses used by common carriers, does not interfere with or place a burden upon or regulate interstate commerce, and is not superseded by the federal laws; Congress not having acted in the matter. Pittsburgh, C., C. & St. L. Ry. Co. v. State (Ind. 1913) 102 N. E. 25.

Congress has not, by the Interstate Commerce Act (Comp. St. § 8565), taken over the whole subject of terminals, so as to render Burns' Ann. St. Ind. 1914, § 5206, invalid, and orders of the Railroad Commission for interchange of business at a terminal in the state are valid. Vandalia R. Co. v. Public Service Commission (Ind. 1914) 106 N. E. 371.

The Minnesota Workmen's Compensation Act, in its application to interstate commerce by water, does not interfere with interstate commerce; Congress not having legislated on that subject. Lindstrom v. Mutual S. S. Co. (Minn. 1916) 156 N. W. 669.

Laws Mo. 1911, p. 150, requiring all corporations to pay wages to their employés as often as semimonthly, is not, in the absence of act of Congress thereon, objectionable as being in conflict with interstate commerce laws, enacted under the commerce clause. State v. Missouri Pac. R. Co. (Mo. 1912) 147 S. W. 118.

Act Mont. Feb. 5, 1907 (Laws 1907, c. 5), providing that those employed in running or operating locomotive engines or railroad trains in this state shall not be required to work more than a certain number of hours without rest, and prescribing penalties for its violation, is not unconstitutional as being a regulation of interstate commerce, in the absence of federal legislation on the subject. State v. Northern Pac. Ry. Co. (1908) 93 P. 945, 36 Mont. 582.

If Congress does not exercise its powers under the commerce clause in regulating the relations of employer and employé engaged in interstate commerce, the state may enact such legislation as does not unreasonably interfere with interstate commerce, but state statutes are superseded by acts of Congress covering the same subject. Melzner v. Northern Pac. Ry. Co. (Mont. 1912) 127 P. 1002.

Though Labor Law N. Y. §§ 10, 11, 12, requiring that railroads shall pay their employés wages semimonthly in cash, relate to the wages of railway servants employed entirely within the state, and also to the wages of those whose duties take them from New York into other states; Congress not having passed any legislation dealing with the same subject-matter, such act is not invalid as an unconstitutional interference with interstate commerce. New York Cent. & H. R. R. Co. v. Williams (1910) 92 N. E. 404, 199 N. Y. 108, affirming judgment (1909) 120 N. Y. Supp. 1137, 136 App. Div. 904, which affirms (1909) 118 N. Y. Supp. 785, 64 Misc. Rep. 15.

Workmen's Compensation Law N. Y. 1914, § 114, held to apply to persons engaged in interstate commerce for whom no federal law has been enacted. Jensen v. Southern Pac. Co. (1915) 109 N. E. 600, 215 N. Y. 514, affirming order In re Jensen (1915) 152 N. Y. S. 1120.

A state may, in the absence of congressional prohibition, enact laws on matters, local in their nature, which tend to enforce the proper performance by interstate carriers of duties arising in the state which facilitate traffic, although such laws may incidentally affect interstate commerce. St. Louis & S. F. R. Co. v. State (Okl. 1910) 107 P. 929.

The Pennsylvania rule that a common carrier cannot contract for exemption from or limitation of liability arising from his negligence or that of his servant is applicable to commerce between Pennsylvania and other states, in the absence of congressional action upon the subject. Wright v. Adams Express Co. (1910) 43 Pa. Super. Ct. 40.

A state statute, regulating the relation of common carriers to their employés, is applicable to interstate commerce until Congress has acted upon the same subject. Freeman v. Swan (Tex. Civ. App. 1912) 143 S. W. 724.

In the absence of exercise of the authority of Congress, it is within the police power of the state to protect passengers on interstate trains by requiring that all trains leave termini or junction points not more than 30 minutes behind their regular schedules, and on such schedules at all other stations. Missouri, K. & T. Ry. Co. of Texas v. State (Tex. 1916) 181 S. W. 721.

It is within the power of the state, in absence of congressional legislation on the subject, to enact laws operative within its boundaries limiting the number of hours railway employés can be required to remain on continuous duty, even if the railway be a common carrier engaged in interstate commerce. State v. Northern Pac. Ry. Co. (1909) 102 P. 876, 53 Wash. 673.

Laws Wis. 1907, c. 575, prohibiting any corporation operating a line of railroad in whole or in part in the state from requiring or permitting any telegraph operator, including train dispatcher, to remain on duty for more than one period of 8 consecutive hours,

is within the field of legislation by the states, notwithstanding the interstate commerce clause in the federal Constitution, until Congress exercises its power to regulate the hours of labor of employés engaged in interstate commerce; and under Const. art. 6, par. 2, declaring that the Constitution and laws of the United States made in pursuance thereof shall be the supreme law of the land, the regulation of Congress on the subject is supreme, and is an assertion of the federal power and a declaration of policy that the subject shall be under federal, and not state, regulation. State v. Chicago, M. & St. P. Ry. Co. (1908) 117 N. W. 686, 136 Wis. 407.

The right of the state in the exercise of its police power to protect its citizens from perils resulting from excessive hours of labor by railroad employés is in no way impaired by the federal Constitution, except as such legislation shall restrain interstate commerce in a respect in which Congress has deemed wise to regulate it. Id.

See, also, note post as to "Transportation of goods and passengers."

47. Telegraphs.—See note ante.

A state statute requiring telegraph companies to transmit and deliver dispatches with impartiality, good faith, and due diligence, under penalty of $100 in each case (Act Ga. Oct. 22, 1887), is not void, as to messages coming from without the state, as an unwarrantable interference with interstate commerce, in the absence of any legislation by congress on the subject. Western Union Tel. Co. v. James (1896) 162 U. S. 650, 16 Sup. Ct. 934, 40 L. Ed. 1105.

In the absence of any action by Congress, a state may regulate the conduct of local messengers of a telegraph company when interstate transit by wire is over. Western Union Telegraph Co. v. Wilson (1909) 29 Sup. Ct. 403, 404, 213 U. S. 52, 53 L. Ed. 693.

A state statute under which a penalty is incurred by a telegraph company which negligently fails to transmit within the state as promptly as practicable a message received at an office in the state, for transmission to a person in another state, is a valid exercise of the power of the state, in the absence of any legislation by Congress on the subject. Western Union Telegraph Co. v. Crovo (1911) 31 Sup. Ct. 399, 402, 220 U. S. 364, 55 L. Ed. 498.

While all telegraph lines extending through different states are instruments of commerce, so that messages passing over them from one state to another constitute "interstate commerce," in absence of the enactment by Congress of statutes upon the same subject, a statute such as Rev. Laws Mass. c. 122, § 9, requiring a telegraph company to receive dispatches from any person and transmit them impartially on payment of the usual charges, is not a regulation of interstate commerce, within the meaning of such constitutional provision, being a proper police regulation, which only incidentally affects interstate commerce. Vermilye v. Western Union Telegraph Co. (1911) 93 N. E. 635, 207 Mass. 401.

48. Transportation and sale of natural gas.—Interstate commerce in natural gas, including the transportation of pipe lines, is national in character, and inaction of Congress regarding it is conclusive that it intends that interstate commerce therein should be free, and laws of states and acts of its officers prohibiting or burdening it are unconstitutional and void. Haskell v. Cowham (1911) 187 Fed. 403, 109 C. C. A. 235.

The sale in Kansas of natural gas produced in Oklahoma, if interstate commerce, is not of that kind which requires exclusive legislation by Congress, and until Congress acts the state has control. State v. Flannelly (Kan. 1915) 152 P. 22.

49. Transportation of goods and passengers.—Congressional inaction leaves each state free to establish reasonable maximum intrastate rates for interstate carriers, though the state's requirements may disturb existing relations between intrastate and interstate rates as to places within zones of competition crossed by the state boundary line. Simpson v. Shepard (1913) 33 Sup. Ct. 729, 230 U. S. 352, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151; Knott v. Chicago, B. & Q. R. Co. (1913) 33 Sup. Ct. 975, 230 U. S. 474, 57 L. Ed. 1571 (modifying decree St. Louis & S. F. R. Co. v. Hadley [C. C. 1909] 168 Fed. 317); Chesapeake & O. Ry. Co. v. Conley (1913) 33 Sup. Ct. 985, 230 U. S. 513, 57 L. Ed. 1597; Oregon R. & Nav. Co. v. Campbell (1913) 33 Sup. Ct. 1026, 230 U. S. 525, 57 L. Ed. 1604 (affirming decrees [C. C. 1909] 173 Fed. 957; Id. [1910] 177 Fed. 318); Southern Pac. Co. v. Campbell (1913) 33 Sup. Ct. 1027, 230 U. S. 537, 57 L. Ed. 1610 (affirming decree [C. C. 1911] 189 Fed. 182); Allen v. St. Louis, I. M. & S. Ry. Co. (1913) 33 Sup. Ct. 1030, 230 U. S. 553, 57 L. Ed. 1625 (reversing decree [C. C. 1911] 187 Fed. 290): Knott v. Chicago, B. & Q. R. Co. (1913) 33 Sup. Ct. 976, 230 U. S. 474, 57 L. Ed. 1571; Louisville & N. R. Co. v. Garrett (1913) 34 Sup. Ct. 48, 231 U. S. 298, 58 L. Ed. 229, affirming order (C. C. 1911) 186 Fed. 176.

A state law allowing recovery for wrongful death held applicable to death of a passenger injured by the collision of vessels engaged in interstate commerce, there being no regulation by Congress as to liability for marine torts resulting in death. Sherlock v. Alling (1876) 93 U. S. 99, 102, 23 L. Ed. 819.

Until Congress undertakes to legislate under this clause, a state may enact a law limiting freight and pas-

senger charges on railroads which is confined to state commerce or such interstate commerce as directly affects the people of the state. Peik v. Chicago & N. W. R. Co. (1876) 94 U. S. 164, 177, 178, 24 L. Ed. 97.

It is within the power of a state, in the absence of national legislation covering the subject, to forbid under penalties the heating of passenger cars in that state by stoves or furnaces kept inside the cars, or suspended therefrom (Laws N. Y. 1887, c. 616), though such cars may be employed in interstate commerce. This power cannot be affected by possible inconveniences resulting from the adoption of conflicting regulations by adjoining states. New York, N. H. & H. R. Co. v. People of the State of New York (1897) 17 Sup. Ct. 418, 165 U. S. 628, 41 L. Ed. 853.

R. S. Ohio 1890, § 3320, requiring all railroads within the state to stop three of its regular passenger trains, if so many were run daily, at cities of over 3,000, was a valid exercise of the state's police power as applied to an interstate railroad incorporated by and running through the state, the Federal government not having exercised its power to regulate interstate commerce. Lake Shore & M. S. R. Co. v. Ohio (1899) 19 Sup. Ct. 465, 470, 173 U. S. 285, 43 L. Ed. 702.

No unlawful regulation of interstate commerce is made by the refusal of a state court to limit the liability of a common carrier for its negligence in the execution of a contract for interstate carriage to the valuation agreed upon, in the absence of congressional action providing a different measure of liability. Pennsylvania R. Co. v. Hughes (1903) 24 Sup. Ct. 132, 135, 191 U. S. 477, 48 L. Ed. 268, affirming judgment Hughes v. Pennsylvania R. Co. (1902) 51 A. 990, 202 Pa. 222, 63 L. R. A. 513, 97 Am. St. Rep. 713.

In the absence of an exercise of the power over interstate commerce by Congress, the states, in the exercise of their police power, may make reasonable rules as to the methods of interstate business, the precautions against danger, the facilities for the comfort of passengers and the safety of freight, and, to a certain extent, the stations at which stoppages shall be made. Houston & T. C. R. Co. v. Mayes (1906) 26 Sup. Ct. 491, 492, 201 U. S. 321, 50 L. Ed. 772.

Compelling a carrier by mandamus to discharge its common-law duty to treat all shippers alike by resuming the transfer of cars loaded and unloaded between the line of a connecting carrier and the flour mill and elevator of a particular shipper is not beyond the power of the state court, at least, until Congress or the Interstate Commerce Commission takes specific action, although both carriers are engaged in interstate commerce, and three-fifths of the output of the mill are shipped out of the state. Missouri Pac. Ry. Co. v. Larabee Flour Mills Co. (1909) 29 Sup. Ct. 214, 211 U. S. 612, 53 L. Ed. 352, affirming judgment Larabee Flour Mills Co. v. Missouri Pac. Ry. Co. (1906) 88 P. 72, 74 Kan. 808.

Congressional inaction is equivalent to a declaration that a carrier may, by its regulations, separate white and negro interstate passengers. Chiles v. Chesapeake & O. R. Co. (1910) 30 Sup. Ct. 667, 668, 218 U. S. 71, 54 L. Ed. 936.

Congressional inaction leaves each state free to establish maximum intrastate rates for interstate carriers, which are reasonable in themselves. Simpson v. Shepard (1913) 33 Sup. Ct. 729, 230 U. S. 352, 57 L. Ed. 1511, modifying decree Shepard v. Northern Pac. Ry. Co. (C. C. 1911) 184 Fed. 765.

The application to a claim against a carrier for loss of freight in interstate commerce, of the provisions of Acts Tex. 31st Leg. c. 47, for the allowance of a reasonable attorney's fee to plaintiff of not over $20 in certain cases where the claim is not paid within 30 days after demand and the recovery is for the full claim, is not repugnant to the commerce clause or otherwise in conflict with federal authority, in absence of congressional legislation covering the subject. Missouri, K. & T. Ry. Co. of Texas v. Harris (1914) 34 Sup. Ct. 790, 234 U. S. 412, 58 L. Ed. 1377.

Congress does not exercise its paramount authority by enacting the Carmack amendment of June 29, 1906, § 7, pars. 11, 12, to the act of Feb. 4, 1887, § 20 (Comp. St. § 8592), regulating the liability of a carrier for loss or damage to interstate shipment, as to prevent the application to a claim against a carrier, for loss of such shipment, of the provisions of Acts Tex. 31st Leg. c. 47, for the allowance of an attorney's fee of not over $20 to the successful plaintiff, where such claim is not paid within 30 days after demand and the recovery is for the full claim. Id.

Absence of federal regulation does not justify the city of Covington, Ky., in regulating interstate business of a street railway company transporting passengers from that city to Cincinnati, Ohio, by restricting the number of passengers which the company may admit to its cars and requiring it to operate sufficient cars to accommodate the public within the limits of such restriction. South Covington & C. St. R. Co. v. City of Covington (1915) 35 Sup. Ct. 158, 235 U. S. 537, 59 L. Ed. 350, L. R. A. 1915F, 192, reversing decree South Covington & C. R. Co. v. Same (1912) 143 S. W. 28, 146 Ky. 592.

Absence of federal regulation of rates for water transportation unconnected by transportation by railroad leaves the state free to prescribe reasonable rates for transportation of passengers and goods wholly by water between two ports in the same state though over the high seas. Wilmington Transp. Co. v. Railroad Commission of California (1915) 35 Sup. Ct. 276, 236 U. S. 151, 59 L. Ed. 508, affirming judgment (1913) 137 P. 1153, 166 Cal. 741.

In the absence of action by congress on the subject, Const. Colo. art. 15, § 6, giving to all individuals, associations, and corporations equal rights as to transportation over any railroad in the state, and providing against unreasonable discrimination, does not violate the interstate commerce clause. Denver & N. O. R. Co. v. Atchison, T. & S. F. R. Co. (C. C. 1883) 15 Fed. 650, decree reversed Atchison, T. & S. F. R. Co. v. Denver & N. O. R. Co. (1884) 4 Sup. Ct. 185, 110 U. S. 667, 28 L. Ed. 291.

Until congress chooses to exercise whatever power it may have over domestic commerce, by reason of any relation it may bear to interstate commerce as an auxiliary or instrumentality thereof, the states may continue their control over it as over any other such instrumentality within their territorial limits, although the interstate commerce of which it is an instrumentality may be indirectly or incidentally affected by such control, but they can never touch the interstate commerce itself by direct action upon it, or any part of it, by these regulations, and any state law, be it wise or unwise, valid or invalid, in other respects, and no matter what its character or the necessity for such a law may be, which acts upon the contract between the carrier and shipper for interstate transportation to regulate the charges for it, or any part of it, or the conditions thereof, in any respect, operates directly on the commerce itself, of which the transportation is certainly a part, and not on an instrumentality of it. These distinctions must be observed in legislation, and that which neglects or overlooks them, or assumes to disregard them, is necessarily invalid; and the courts cannot cure the defect by supplying through judicial decree the necessary qualifications to conform the legislation to constitutional limitations. Louisville & N. R. Co. v. Tennessee R. R. Commission (C. C. 1884) 19 Fed. 679.

The fares and rates of transportation in interstate commerce are national in character, susceptible of uniform regulation, and so far as the nation has not regulated them are free from regulation by virtue of the commerce clause. Shepard v. Northern Pac. Ry. Co. (C. C. 1911) 184 Fed. 765, decree modified Simpson v. Shepard (1913) 33 Sup. Ct. 729, 230 U. S. 352, 57 L. Ed. 1511.

In the absence of any legislation on the subject by Congress, it is within the constitutional power of a state to regulate rates to be charged by railroads within the state. Louisville & N. R. Co. v. Railroad Commission of Alabama (D. C. 1913) 208 Fed. 35.

Act Ark. April 19, 1907 (Acts 1907, p. 453) § 3, requiring railroad companies, failing to give notice of arrival to the consignee within 24 hours thereafter, to forfeit to the interested party $5 a day per car on car load shipments, and 1 cent a hundred pounds per day on less than car load shipments, with a minimum and maximum charge of 5 cents and $5, respectively, on less than car load shipments, together with the other sections imposing a reciprocal demurrage on consignees for failure to remove freight, being a reasonable regulation in aid of commerce, and not a burden upon it, is valid as to interstate commerce; Congress or the Interstate Commerce Commission not having made similar regulations. St. Louis, I. M. & S. Ry. Co. v. Edwards (Ark. 1910) 127 S. W. 713.

The interstate commerce act (Act Feb. 4, 1887 [Comp. St. § 8563 et seq.]) in no way attempts to regulate or change the law of Illinois as to the relation of a consignor and consignee in interstate shipments. Until Congress shall exercise its power in this respect, the law of the state, whether common or statutory, will govern. It is only a direct regulation of interstate commerce by the states, not a regulation incidentally affecting, but not directly burdening, it, that is prohibited even in the absence of congressional legislation. Plaff v. Pacific Express Co. (1911) 159 Ill. App. 493, judgment affirmed (1911) 95 N. E. 1089.

In the absence of any federal enactment relative to the interstate shipment of goods by express, an express company, which refuses to make delivery of express matter at the residence of the consignee, in a city of more than 2,500 inhabitants, in accordance with its implied undertaking, based on the receipt of a package so addressed, is liable to the penalty imposed by Acts Ind. 1901, c. 62 (Burns' Ann. St. Ind. 1901, § 3312a). State v. Adams Express Co. (Ind. 1908) 85 N. E. 337, rehearing denied 85 N. E. 966.

The power of congress to regulate interstate commerce is exclusive, so that, even in the absence of any federal legislation, the attempt of a state to fix the maximum charge for freight on interstate railroads is unconstitutional. Hardy v. Atchison, T. & S. F. R. Co. (1884) 32 Kan. 698, 5 Pac. 6.

Until legislation by Congress, the ex-

tent of the liability of interstate carriers of goods is determined by the common law, or by the public policy or statute of the particular state in which the injury occurred. Ford v. Chicago, R. I. & P. Ry. Co. (Minn. 1913) 143 N. W. 249.

Congress has enacted no law prohibiting agreements regarding the value of the property offered to carriers for interstate shipment, and limiting the amount for which they will be liable if the property is lost while in their custody, and the national courts have sanctioned agreements between carriers and owners of property limiting the liability of the carrier as an insurer of property received for shipment and lost during transit, provided such agreements are just, reasonable, and fairly entered into by the owner, and for a consideration; and such courts enforce state statutes regulating limitations of liability of carriers for interstate shipments in the absence of legislation by Congress. Robert v. Chicago & A. R. Co. (Mo. App. 1910) 127 S. W. 925.

Revisal N. C. 1905, § 2644, which provides a penalty for a carrier's failure to adjust a loss in a shipment of goods from without the state within 90 days after a claim for such loss is filed with it, is not in violation of the interstate commerce clause, since the penalty is in no sense a burden on interstate commerce, but is in aid of such traffic, and, in the absence of congressional legislation to the contrary, is a proper subject of state regulation. Morris-Scarboro-Moffitt Co. v. Southern Express Co. (1907) 59 S. E. 667, 146 N. C. 167.

Revisal N. C. 1905, § 2631, penalizing any carrier $50 for each day it refuses to receive freight for shipment, is not invalid as a burden on interstate commerce; the statute permitting excuses in proper cases for failure to comply therewith, and the federal government not having acted directly on the subject. Reid & Beam v. Southern Ry. Co. (1909) 64 S. E. 874, 150 N. C. 753.

Until there is some valid regulation by Congress or the Interstate Commerce Commission directly affecting the matter, a state may establish a policy that common carriers cannot limit their liability against negligence, and enforce it with reference to interstate shipments. Kessenger v. Fitzgerald (1910) 67 S. E. 588, 152 N. C. 247.

Civ. Code S. C. 1912, § 2573, imposing a penalty for the failure of carriers to adjust claims for overcharges of freight, or injuries to property, promptly, held valid in the absence of action by Congress covering the same subject. Varnville Furniture Co. v. Charleston & W. C. Ry. Co. (S. C. 1913) 79 S. E. 700.

Congress having passed no law regulating the disposition of freight shipped from a point without a state to a consignee within a state, where such consignee declines to receive the freight, and the shipper refuses to give directions for its disposition or assume further control over the same, a state statute authorizing a carrier, warehouseman, etc., after the expiration of six months to sell the freight on 20 days' notice after advertising, etc., was not in violation of the commerce clause of the federal Constitution. St. Louis Southwestern Ry. Co. v. Arkansas & T. Grain Co. (Tex. Civ. App. 1906) 95 S. W. 656.

In the absence of legislation by Congress permitting interstate carriers to limit liability to a stipulated valuation, a state may hold an interstate carrier liable for the whole loss resulting from its negligence, notwithstanding a contract limiting liability, whether the rule as to degree of care is statutory or judicial. Atchison, T. & S. F. Ry. Co. v. Smythe (Tex. Civ. App. 1909) 119 S. W. 892.

While R. S. Tex. 1895, art. 320, prohibiting a carrier from limiting its common-law liability, does not affect contracts for interstate shipments, yet, in the absence of congressional legislation, the common law prohibits an interstate carrier from limiting its liability. Id.

See, also, note ante as to "Railroads and other carriers."

50. Importation or transportation of animals.—Interstate commerce is not unlawfully regulated, in the absence of controlling federal legislation, by state laws making it a misdemeanor for any person to transport into the state cattle from any point south, except for immediate slaughter, without having first caused them to be inspected and passed as healthy by the proper state officials, or by the Bureau of Animal Industry of the Interior Department of the United States. Asbell v. Kansas (1908) 28 Sup. Ct. 485, 209 U. S. 251, 52 L. Ed. 778, 14 Ann. Cas. 1101.

Congress not having acted on the subject, Acts Ex. Sess. Va. 1902-04, c. 609, pars. 24, 25 (Code Va. 1904, § 1294*l*), prohibiting carriers from limiting their liability for negligence, was applicable to an interstate shipment of horses and mules, and invalidated a provision limiting the amount of the carrier's liability in case of loss. Elliott v. Atlantic Coast Line R. Co. (S. C. 1912) 75 S. E. 886, judgment reversed on rehearing (S. C. 1913) 77 S. E. 718.

51. Importation of turtles for food.—Congress not having legislated as to the manner of importation of turtles to be used for food, and not having prohibited cruelty with reference to such importation, such turtles, having been restrained on ship board in a cruel and inhuman manner, were within Penal Law N. Y. § 189, as soon as the vessel arrived within the waters of the

state. People ex rel. Freel v. Downs (1911) 136 N. Y. Supp. 440.

Cr. Code, § 241 (Comp. St. § 10411), held inapplicable to importation of foreign turtles to be used for food, and hence a state may regulate such importation. Id.

52. **Warehouses.**—Where warehouses are situated and their business is carried on exclusively within a state, such state may, as a matter of domestic concern, prescribe regulations for them, notwithstanding they are used as instruments by those engaged in interstate as well as in state commerce; and, until congress acts in reference to their interstate relations, such regulations can be enforced, even though they may indirectly operate upon commerce beyond the immediate jurisdiction of the state. Munn v. Illinois (1876) 94 U. S. 113, 24 L. Ed. 77.

53. **Stockyards.**—Conceding that the business of a stockyards company in handling live stock in transit from other states is so intimately related to interstate commerce which is transacted in its yards by other persons that congress might lawfully prescribe maximum charges for yarding, feeding, and caring for stock coming from other states, yet this power is not of such an exclusive character as to prevent the state from prescribing such rates, in the absence of any legislation on the subject by congress. Cotting v. Kansas City Stock-Yards Co. (C. C. 1897) 82 Fed. 850.

IV. POWERS AND RIGHTS REMAINING IN THE STATES

See, also, notes post as to "Means and methods of regulation."

54. **Powers in general.**—The power of congress does not extend further than the regulation of commerce with foreign nations and among the several states. Beyond these limits the states have not surrendered their power over the subject, and may exercise it independently of any interference of the federal government. Sinnot v. Davenport (1859) 63 U. S. (22 How.) 227, 16 L. Ed. 243.

The power to regulate commerce covers a wide field and embraces a great variety of subjects, some of which call for uniform rules and national legislation, while others can best be regulated by rules and provisions suggested by the varying circumstances of different places, and limited to such places respectively, and to this extent the power to regulate commerce may be exercised by the states. Gilman v. Philadelphia (1865) 3 Wall. 713, 726, 18 L. Ed. 96.

A regulation of interstate commerce which would be valid if rested upon the common law of the state is no less valid because made by a state statute. Western Union Telegraph Co. v. Commercial Milling Co. (1910) 31 Sup. Ct. 59, 218 U. S. 406, 54 L. Ed. 1088, 36 L. R. A. (N. S.) 220, 21 Ann. Cas. 815, affirming judgment Commercial Milling Co. v. Western Union Telegraph Co. (1908) 115 N. W. 698, 151 Mich. 425.

R. S. Tex. 1895, arts. 4536, 4537, 4539, relating to interchange of business between connecting railroads, do not apply to interstate commerce, because the power to regulate such commerce is vested in congress, and has been fully exercised by the enactment of the interstate commerce law. Gulf, C. & S. F. Ry. Co. v. Miami S. S. Co. (1898) 86 Fed. 407, 30 C. C. A. 142.

Interstate commerce in sound and recognized articles of commerce must be free, and any prohibition or burden of it by a state by any method is unconstitutional. Butler Bros. Shoe Co. v. U. S. Rubber Co. (1907) 156 Fed. 1, 84 C. C. A. 167, writ of certiorari denied (1908) 29 Sup. Ct. 686, 212 U. S. 577, 53 L. Ed. 658.

Neither a state nor its officers by the exercise of, or refusal to exercise, any of its powers, may prevent or unreasonably burden interstate commerce in any sound article thereof. Haskell v. Cowham (1911) 187 Fed. 403, 109 C. C. A. 235.

Neither a state nor its officers by the exercise of or refusal to exercise its powers may substantially discriminate against interstate commerce or the right to carry it on. Id.

A state has no power to regulate commerce extending beyond its jurisdiction; otherwise as to commerce beginning and ending within the state. Halderman v. Beckwith (C. C. 1847) Fed. Cas. No. 5,907.

Section 15 of the act of July 1, 1862, incorporating the Union Pacific Railway, and providing "that any other railroads now incorporated, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this act, at such places and upon such just and equitable terms as the president of the United States may prescribe," does not place the right of way of the Union Pacific Railway beyond the reach of the power of eminent domain of the state of Kansas, nor exempt it from the operation of the laws of the state respecting the crossing and connecting of railroads, and the condemnation of property for these purposes. Union Pac. Ry. Co. v. Leavenworth, N. & S. Ry. Co. (C. C. 1887) 29 Fed. 728.

The effect, and neither the terms nor the purpose, of state regulations, determines whether they substantially or only incidentally affect interstate commerce. Shepard v. Northern Pac. Ry. Co. (C. C. 1911) 184 Fed. 765, decree modified Simpson v. Shepard (1913) 33 Sup. Ct. 729, 230 U. S. 352, 57 L. Ed. 1511.

This clause operates as a limitation on the rights of the states to regulate carriers. Louisville & N. R. Co. v.

Railroad Commission of Alabama (C. C. 1911) 191 Fed. 757.

A state regulation of intrastate commerce is not invalidated through an indirect or incidental interference with interstate commerce. Southern Pac. Co. v. Railroad Commission of California (D. C. 1912) 193 Fed. 699.

A state may legislate in a great variety of ways so as to affect interstate commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution. Louisville & N. R. Co. v. Hughes (D. C. 1912) 201 Fed. 727.

It is competent for the state, acting through the counties, to protect the ports, harbors, bays, and rivers therein, if the control of the general government within its sphere is not thereby interfered with. Board of Com'rs of Escambia County v. Board of Pilot Com'rs of Port of Pensacola (1906) 42 So. 697, 52 Fla. 197, 120 Am. St. Rep. 196.

It is not enough to render a state law invalid that it is similar to the federal act on the same subject, but it must interfere directly or substantially with interstate commerce, and not be an incidental interference or have a remote effect. Sligh v. Kirkwood (1913) 61 So. 185, 65 Fla. 123.

A state cannot burden or destroy ultimate rights growing out of interstate commerce dealings, at least until those rights cease to have any direct relation to the interstate transactions out of which they arise. Circular Advertising Co. v. American Mercantile Co. (Fla. 1913) 63 So. 3.

A state cannot, in any manner, either directly or indirectly, burden interstate commerce, or rights proximately flowing therefrom. Id.

A state cannot, under the guise of a public regulation, render ineffectual rights growing out of interstate commerce. Id.

A state Legislature is prohibited from placing any restrictions on interstate commerce; that power being reserved to congress. Belle City Mfg. Co. v. Frizzell (1905) 81 P. 58, 11 Idaho, 1.

The power to regulate property within the limits of the state, the modes of acquiring and transferring it, and the rules of descent and distribution dealt with by trustees, executors, etc., are subjects belonging exclusively to the jurisdiction of the state, not subject to federal control. People v. Brady (Ill. 1915) 110 N. E. 864.

The state will not embarrass commercial communication, abridge the freedom of commerce, discriminate in favor of the products of one state, lay burdens on the instruments of commerce, or exact licenses from persons engaged in interstate commerce without reference to whether Congress has or has not legislated on the subject. Western Union Telegraph Co. v. Pendleton (1884) 95 Ind. 12, 48 Am. Rep. 692.

State legislation is not prohibited, where it amounts to no more than a reasonable regulation of an instrumentality of interstate commerce, and only affects such commerce secondarily or in a remote degree. Pittsburgh, C., C. & St. L. Ry. Co. v. Hunt (Ind. 1908) 86 N. E. 328.

If state legislation does not interfere with or undertake to regulate interstate commerce, or is a mere police regulation, it is valid, although in aid of interstate commerce. Southern Ry. Co. v. Railroad Commission of Indiana (Ind. 1913) 100 N. E. 337.

A state law is not invalid as an interference with interstate commerce because it is similar to the federal act on the same subject, but it must interfere directly or substantially, and not incidentally, therewith. Id.

The spirit of the federal Constitution favors congressional action which promotes obedience to state laws. State v. Missouri Pac. Ry. Co. (Kan. 1915) 152 P. 777.

A state cannot impose any condition upon interstate business that materially or directly burdens that business. International Harvester Co. v. Commonwealth (1912) 145 S. W. 393, 147 Ky. 655.

Special jurisdiction has been from time to time vested in the general government for special purposes, but the general jurisdiction remains with the several states, subject to such regulations as they may make in the exercise of their admitted powers to regulate foreign commerce, and commerce among the states. Commonwealth v. Alger (1851) 61 Mass. (7 Cush.) 53.

There is nothing in either the state or federal Constitution which prevents the enactment of a statute prohibiting the making of all contracts in restraint of trade, whether reasonable or unreasonable. State ex inf. Hadley v. Standard Oil Co. (1909) 116 S. W. 902, 218 Mo. 1.

The Legislature has power to prohibit rebates to customers, the object of which is to restrain trade, for the purpose of fixing and maintaining prices. Id.

The enforcement of a valid state statute will not be stayed merely because it may incidentally affect interstate commerce. De Rochemont v. New York Cent. & H. R. R. (1909) 71 A. 868, 75 N. H. 158.

Each state may pass such laws, affecting commerce, to operate within its own limits, not in direct conflict with the provisions of the constitution of the United States, or acts of congress, as are necessary for the preservation of the life, the health, the personal rights, and the property of its citizens and those enjoying its protection. Fitch v. Livingston (1851) 6 N. Y. Super. Ct. (4 Sandf.) 492.

A state cannot tax, burden, or restrict interstate or foreign commerce even by laws which operate wholly within its own jurisdiction. People ex

rel. Freel v. Downs (1911) 136 N. Y. Supp. 440.

Foreign merchandise may be transported into or through the states without hindrance from state legislation until it becomes part of and is mixed with the general mass of the property of the state. Id.

The right to carry on interstate commerce is conferred by the federal Constitution, and its exercise cannot be controlled by the state in any department of its government. McCord v. State (Okl. Cr. 1909) 101 P. 280.

Defendants' agreement to give another a quantity of coal oil on his countermanding an order given a competitor was none the less a violation of the state anti-trust law because the oil ordered was to be shipped from another state and to that extent the agreement incidentally affected interstate commerce. Standard Oil Co. v. State (1907) 100 S. W. 705, 117 Tenn. 618, 10 L. R. A. (N. S.) 1015.

R. S. Tex. art. 4258, prescribing a penalty against railroad companies for overcharges and unjust discrimination in the shipment of freight, has no application to interstate commerce. Wright v. Howe (Tex. Civ. App. 1893) 24 S. W. 314.

A state may not exert its concededly lawful powers in such a manner as to impose a direct burden on interstate commerce. State v. Northern Express Co. (1914) 141 P. 757, 80 Wash. 309, reversing judgment on rehearing (1913) 136 P. 1160, 76 Wash. 636.

The power of the state to control the conduct of individuals therein for the safety of the community is not taken away by the commerce clause merely because some remote influence on interstate commerce may result; but state legislation which directly and intentionally controls and regulates interstate commerce is prohibited. State v. Chicago, M. & St. P. Ry. Co. (1908) 117 N. W. 686, 136 Wis. 407.

A state may enact a statute regulating the relations of master and servant where both are within the state and the contract of employment is made therein, and the state may by statute fix the liability as between such parties, though an injury to the employé occurs outside the state where he is pursuant to the contract. Ruck v. Chicago, M. & St. P. Ry. Co. (1913) 140 N. W. 1074, 153 Wis. 158.

55. Internal commerce.—A state has power to regulate railroad charges within the state, and the fact that the exercise of such power might affect the value of the railroad's property and franchises does not affect such power. Piek v. Chicago & N. W. Ry. Co. (C. C. 1874) Fed. Cas. No. 11,138, affirmed Peik v. Same (1876) 94 U. S. 164, 24 L. Ed. 97; Thomas v. Greenwood (1878) 6 Ohio Dec. 639.

The commerce clause excludes the states from regulating commerce in any way except their own internal trade, and confides its legislative regulation completely and entirely to congress. In re Passenger Cases (1849) 48 U. S. (7 How.) 283, 12 L. Ed. 702.

A state has power to limit the amount of charges by railroad companies for the transportation of persons and property within its own jurisdiction, unless restrained by some contract in the charter, or unless what is done amounts to a regulation of foreign or interstate commerce. Stone v. Farmers' Loan & Trust Co. (1886) 6 Sup. Ct. 334, 342, 116 U. S. 307, 29 L. Ed. 636.

Telegraph companies cannot be taxed by the state on interstate messages, but may be taxed on messages carried wholly within the state. Western Union Tel. Co. v. Seay (1889) 10 Sup. Ct. 161, 132 U. S. 472, 33 L. Ed. 409.

A railway corporation created by act of congress is subject to the control of a state, as to reasonable rates for transportation wholly within the state, where nothing in the act creating it indicates an intent to remove it from such control, and the enforcement of such rates will not disable it from discharging all the duties and exercising all powers conferred by congress. Reagan v. Mercantile Trust Co. (1894) 154 U. S. 413, 14 Sup. Ct. 1060, 38 L. Ed. 1028.

The states continued to possess the right to prescribe reasonable rates for the exclusively internal traffic on interstate carriers after the passage of Interstate Commerce Act Feb. 4, 1887, and the amendment of June 29, 1906 (Comp. St. § 8563 et seq.), though by reason of the interblending of the interstate and intrastate operations of such carriers adequate regulation of interstate rates cannot be maintained without imposing requirements as to their intrastate rates which substantially affect the former. Simpson v. Shepard (1913) 33 Sup. Ct. 729, 230 U. S. 352, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151, modifying decree Shepard v. Northern Pac. Ry. Co. (C. C. 1911) 184 Fed. 765.

The Interstate Commerce Act (Comp. St. § 8563 et seq.), having no application to intrastate commerce, state statutes regulating commerce are void only so far as they affect commerce of an interstate nature. Hocking Valley R. Co. v. New York Coal Co. (1914) 217 Fed. 727, 132 C. C. A. 387.

A state can regulate its internal commerce as it pleases, but it cannot exclude from its limits foreign corporations as carriers of passengers from state to state, nor can any state charge corporations, domestic or foreign, for the privilege of engaging in interstate commerce. Indiana v. Pullman Palace Car Co. (C. C. 1883) 16 Fed. 193, 199.

The power of the states to regulate railroad rates by direct action is limited to domestic transportation, which means

that carried on exclusively within the boundaries of a state, beginning and ending within those boundaries; and this definition cannot, for the purpose of enlarging state authority, be held to include so much of a transportation on a continuous shipment between two or more states as will cover the distance traveled within the limits of any one of those states. It can only include the transportation carried on upon roads lying wholly within the state, or shipments beginning and ending in the state, without reference to the character of the road in that regard. Louisville & N. R. Co. v. Railroad Com'rs of Tennessee (C. C. 1884) 19 Fed. 679.

The power of a state to regulate railroad rates within the state does not include so much of a transportation on a continuous shipment between two or more states as will cover the distance traveled within the limits of any one of these states. Id.

A state may prescribe the rates for transportation within the state by a railroad corporation created by act of congress, in the absence of anything in the statute indicating an intent by congress to remove such corporation from state control. Ames v. Union Pac. Ry. Co. (C. C. 1894) 64 Fed. 165, following Reagan v. Trust Co. (1894) 14 Sup. Ct. 1060, 154 U. S. 413, 38 L. Ed. 1028.

Union Pacific Railroad Act (12 Stat. 497) § 18, provides that when the net earnings of the entire road and telegraph shall exceed 10 per cent. on its cost, exclusive of the 5 per cent. to be paid the United States, congress may reduce the rates of fare thereon if unreasonable, and reserves to congress the right to "add to, alter, amend, or repeal this act." Held, that congress did not reserve to itself the sole control of all rates to be charged by such company. Id.

The right of a state to regulate the business of common carriers within its boundaries, so far as that business affects the public, is founded on the state's right to protect its commerce. Platt v. Lecocq (C. C. 1906) 150 Fed. 391, decree reversed (1907) 158 Fed. 723, 85 C. C. A. 621, 15 L. R. A. (N. S.) 558.

State laws, orders, and regulations concerning intrastate commerce or the fares or rates therein, which substantially regulate interstate commerce or fares or rates therein, are unconstitutional. Shepard v. Northern Pac. Ry. Co. (C. C. 1911) 184 Fed. 765, decree modified Simpson v. Shepard (1913) 33 Sup. Ct. 729, 230 U. S. 352, 57 L. Ed. 1511.

To the extent that it does not regulate interstate commerce, a state may regulate intrastate commerce and the fares and rates therein within its borders, and enforce regulations which only incidentally affect interstate commerce. Id.

Rates established by a state for the intrastate carriage of freight or passengers necessarily indirectly affect interstate rates; but that fact does not render the establishment of such rates unconstitutional, as an interference with interstate commerce. In re Arkansas Rate Cases (C. C. 1911) 187 Fed. 290, decree reversed Allen v. St. Louis, I. M. & S. R. Co. (1913) 33 Sup. Ct. 1030, 230 U. S. 553, 57 L. Ed. 1625.

A state can regulate purely local or state commerce. Southern Pac. Co. v. Railroad Commission of California (D. C. 1912) 193 Fed. 699.

There is a governmental power to fix the maximum future charges of carriers by railroad, vested in the legislatures of the states with regard to transportation exclusively within the states, and vested in Congress with regard to all other transportation. (1905) 25 Op. Atty. Gen. 422.

Where a contract for shipment of goods was made in the state and the shipment was wholly within the state, the decisions of the Interstate Commerce Commission or the acts of Congress upon which they are based are not binding in determining the effect of state statutes on the contract. Alabama Great Southern R. Co. v. McCleskey (Ala. 1909) 49 So. 433.

The right of a state to regulate intrastate business of a foreign corporation is subject to the limitation that where the corporation does an interstate business no requirement will be constitutional if it imposes a burden on such business. H. K. Mulford Co. v. Curry (1912) 125 P. 236, 163 Cal. 276.

The regulation of intrastate transportation by common carriers is the exercise of an inherent and reserved power of the state. State v. Atlantic Coast Line R. Co. (1908) 47 So. 969, 56 Fla. 617.

The state may enforce regulations to be observed by a railroad common carrier in intrastate transportation for the safety and convenience of the public who are affected by the regulation even though interstate commerce is thereby indirectly and incidentally affected, without violating the interstate commerce clause, where such regulations are in aid of, or do not in fact impose substantial burdens upon, lawful interstate commerce, or do not conflict with regulations of the subject that are legally prescribed or authorized by Congress. State v. Louisville & N. R. Co. (Fla. 1912) 57 So. 175.

Internal and domestic commerce are subject to the taxing and police power of the state. In re Abel (1904) 77 P. 621, 10 Idaho, 288.

The commerce clause does not operate to deprive the states of power over navigable rivers exclusively within their borders. City of Chicago v. McGinn (1869) 51 Ill. 266, 2 Am. Rep. 295.

Act Ill. Feb. 12, 1855, which empowers railroad companies organized in Illinois to make contracts with rail-

road companies in other states for leasing or running their roads, and for other purposes, and Act Ill. Feb. 25, 1867, which provides for the connection of railroads with the rails of railroad bridges, where such railroads terminate at any point on any line of continuous railroad thoroughfare, and where the bridge is so connected as to be a part of such thoroughfare, do not constitute a waiver by the state of its control over railroad companies chartered by it which have connections with railroads in other states. Illinois Cent. R. Co. v. People (1892) 143 Ill. 434, 33 N. E. 173, 19 L. R. A. 119.

The powers over commerce not delegated to the federal government by the Constitution are reserved to the states, and a state may pass such laws regulating commerce within the state as it deems expedient. Luken v. Lake Shore & M. S. Ry. Co. (1911) 94 N. E. 175, 248 Ill. 377.

The clause which confers on congress the power to regulate "commerce among the states" does not comprehend any commerce which is purely internal, between man and man, in a single state, or between different parts of the same state, and not extending to or affecting other states, and commerce among the states means commerce which concerns more states than one. The completely internal commerce of a state is reserved to the state. Sears v. Warren County (1871) 36 Ind. 267, 10 Am. Rep. 62.

A state has the legislative power to establish the rates of compensation for carriage of commodities between points within the state. Southern Ry. Co. v. Hunt (Ind. App. 1908) 83 N. E. 721.

A statute requiring railroad locomotives to have automatic bell ringers could not have extraterritorial effect by applying to roads without the state. State v. Louisville & N. R. Co. (Ind. 1911) 96 N. E. 340.

The states have full power to pass such laws regulating commerce within their boundaries as they may deem expedient or politic. Vandalia R. Co. v. Railroad Commission of Indiana (Ind. 1913) 101 N. E. 85.

The state may regulate the time or manner of making transfers of the subjects of commerce transported by railway carriage between points within its own limits, but cannot impose any burden upon transportation between points lying in different states. Council Bluffs v. Kansas City, St. J. & C. B. R. Co. (1876) 45 Iowa, 338, 24 Am. Rep. 773.

The regulation of the interior commerce of the states is left by the Constitution to the states. State v. Hammond Packing Co. (1903) 34 So. 368, 110 La. 180, 98 Am. St. Rep. 459.

Demurrage rules adopted by the Michigan Railroad Commission under authority conferred by Pub. Acts Mich. 1911, No. 173, § 1, amending Pub. Acts 1909, No. 300, §§ 3, 8, though invalid as to interstate commerce, were valid as to intrastate commerce, in the absence of proof that they were unlawful or unreasonable, as provided by Pub. Acts 1909, No. 300, § 26. Michigan Cent. R. Co. v. Michigan Railroad Commission (1914) 148 N. W. 800, 183 Mich. 6.

A conspiracy to monopolize trade in any commodity to be punishable under state laws must have as one of its objects a monopoly in the intrastate trade to be accomplished, in part at least, by transactions which are also wholly intrastate. Standard Oil Co. of Kentucky v. State (Miss. 1914) 65 So. 468.

That a railroad company is engaged in interstate commerce does not deprive it of the right also to engage in intrastate traffic, or relieve it of its obligation to obey the law of the state while so engaged. Shohoney v. Quincy, O. & K. C. Ry. Co. (1909) 122 S. W. 1025, 223 Mo. 649.

Foreign and domestic corporations engaged in manufacturing and selling lumber at wholesale are, when forming a conspiracy to limit the output and fix the price for lumber to be sold in the state, guilty of violating the state anti-trust law, and cannot defend on the ground that their acts are governed by the interstate commerce law. State ex inf. Attorney General v. Arkansas Lumber Co. (Mo. 1914) 169 S. W. 145.

While interstate commerce and the instrumentalities by which it is carried on are within the exclusive control of Congress, the domestic commerce of a state and the facilities by which it is conducted are within the control of the state, and the Legislature may make such reasonable rules governing its domestic commerce as seem best fitted for the interest of its citizens, provided such regulations do not burden or interfere with the interstate commerce of the nation. State v. Missouri Pac. Ry. Co. (Neb. 1908) 115 N. W. 614.

To deny to the state the power to require the erection of depots, the construction of side tracks and other facilities for the public would enable railroads to create a monopoly in handling products of the country adjacent to their lines. Id.

In the absence of congressional inhibition, the state may establish laws and regulations on matters local in their nature which tend to enforce the proper performance of duties arising in the state, and which do not impede, but aid and facilitate, intercourse and traffic, though such action may incidentally affect interstate commerce. Morris-Scarboro-Moffitt Co. v. Southern Express Co. (1907) 59 S. E. 667, 146 N. C. 167.

Commerce between states consists of intercourse between their citizens and includes the transportation of persons and property and the navigation of public waters for that purpose, as well as the purchase, sale, and exchange of commodities, and the power to regulate that commerce involves the right to

prescribe rules by which it shall be governed, and to bring transportation within the control of the state as a part of its domestic commerce, the subject transported must be during the entire transportation under the exclusive jurisdiction of the state. Hickory Marble & Granite Co. v. Southern Ry. Co. (1908) 60 S. E. 719, 147 N. C. 53.

Act Ohio Feb. 28, 1908 (99 Ohio Laws, p. 25 [Gen. Code, § 9017]), in so far as it undertakes to impose liability on common carriers by railroad while engaged in intrastate commerce is a valid enactment. Warren v. Hannon (1912) 34 Ohio Cir. Ct. R. 11, judgment affirmed (1914) 106 N. E. 1085, 89 Ohio St. 459.

Where a carrier pleaded contributory negligence, and the evidence was undisputed that plaintiff and defendant were engaged in intrastate commerce, it was error to permit the jury to determine whether the state or federal law applied. Atchison, T. & S. F. Ry. Co. v. Pitts (Okl. 1915) 145 P. 1148.

Const. Okl. art. 23, § 9, relating to shipment contracts, held to apply only to intrastate shipments. Chicago, R. I. & P. Ry. Co. v. Bruce (Okl. 1915) 150 P. 880.

The question whether 24 St. at Large S. C. p. 671, authorizing the collection of a penalty for delay in transporting freight between intrastate points, violates the interstate commerce clause, does not arise in an action to recover the penalty for delay in the transportation of goods between intrastate points. Farrell v. Atlantic Coast Line R. Co. (1909) 64 S. E. 226, 82 S. C. 410.

The state may make regulations for the protection of the lives of passengers or the safety of railroad employés, and may declare when the fellow-servant or assumed risk doctrine shall apply in actions between the company and its employés. Missouri, K. & T. Ry. Co. of Texas v. Bailey (Tex. Civ. App. 1909) 115 S. W. 601.

While the regulation of interstate commerce has been delegated to the federal government, and any act of the state interfering therewith, or placing an undue burden thereon, is void, the regulation of intrastate commerce is reserved to the state, and any act of Congress interfering therewith, and not necessary to the regulation of interstate commerce, is equally void. Railroad Commission of Texas v. Texas & P. Ry. Co. (Tex. Civ. App. 1911) 140 S. W. 829.

The business and occupation of peddling goods manufactured in another state, carried on wholly within this state, may be regulated by the state, if the statute does not discriminate between products of residents and nonresidents. Shed v. State (Tex. Cr. App. 1913) 155 S. W. 524.

Within constitutional limitations, a state has power to regulate the doing of local business within its borders. State v. Northern Express Co. (1914) 141 P. 757, 80 Wash. 309, reversing judgment on rehearing (1913) 136 P. 1160, 76 Wash. 636.

An interstate train of a railroad having no local trains may be required by the state public service commission to render an adequate local service. State v. Public Service Commission of Washington (Wash. 1914) 142 P. 684.

See, also, notes post and ante.

56. Police powers in general.—Where a railroad company is chartered by the several states through which it runs each one of such states may make all needful regulations of a police character, so long as such regulations do not impair the usefulness of its facilities for interstate traffic. Stone v. Farmers' Loan & Trust Co. (1886) 6 Sup. Ct. 334, 346, 116 U. S. 307, 29 L. Ed. 636.

The states may provide by law suitable measures to prevent the introduction into the states of articles of trade which on account of their existing condition will bring in and spread disease, for such articles are not merchantable, and are not legitimate subjects of trade and commerce. Bowman v. Chicago & N. W. R. Co. (1888) 8 Sup. Ct. 689, 700, 1062, 125 U. S. 465, 31 L. Ed. 700.

Congress having imposed a tax on oleomargarine and recognized it as a proper subject of foreign and interstate commerce, it cannot be totally excluded from a state because it is subject to adulteration with substances injurious to health. Schollenberger v. Pennsylvania (1898) 18 Sup. Ct. 757, 761, 171 U. S. 1, 43 L. Ed. 49.

A legislative restriction on or prohibition of the sale of cigarettes, the use of which is somewhat generally believed to be deleterious, particularly to young people, is within the police power of the legislature, provided it does not apply to original packages or make any discrimination against cigarettes imported from other states, and if there is no doubt that the statute is designed for the protection of the public health. Austin v. State of Tennessee (1900) 21 Sup. Ct. 132, 179 U. S. 343, 45 L. Ed. 224, affirming judgment (1898) 48 S. W. 305, 101 Tenn. 563, 50 L. R. A. 478, 70 Am. St. Rep. 703.

The commerce clause was adopted that all of the states might have the benefit of the duties collected at the maritime ports, and to relieve them from the embarrassing restrictions imposed on the internal commerce of the country, but the same policy which authorizes the use of this power as a shield to protect commerce from the vexatious interference of the states forbids its employment as a sword to assail measures designed to promote the public health, morals and comfort. Cook v. Marshall County (1905) 25

Sup. Ct. 233, 236, 196 U. S. 261, 49 L. Ed. 471.

Though a state may not pass laws directly regulating foreign or interstate commerce, laws in the exercise of their police power not in conflict with laws of congress on the same subject are valid, though they indirectly or remotely affect interstate commerce. New York ex rel. Silz v. Hesterberg (1908) 29 Sup. Ct. 10, 12, 211 U. S. 31, 53 L. Ed. 75.

The police power of a state cannot justify a direct interference with interstate commerce. Kansas City Southern Ry. Co. v. Kaw Valley Drainage District of Wyandotte County, Kans. (1914) 34 Sup. Ct. 564, 233 U. S. 75, 58 L. Ed. 857.

The states have the right to regulate the relations between employers and employés within their borders, and to fix the liability of the former for the acts and negligence of the latter. Southern Pac. Co. v. Schoer (1902) 114 Fed. 466, 52 C. C. A. 268, 57 L. R. A. 707.

Under the rule that the police power of a state cannot obstruct interstate commerce beyond the necessity for its exercise, state officers cannot accomplish, under the protection of a valid law, results which the state is forbidden to accomplish by legislation; and it is open to the courts to determine whether their action is within the lawful and constitutional powers conferred upon them by the statute, or whether it exceeds such powers, and amounts to an unconstitutional obstruction of interstate commerce. Smith v. Lowe (1903) 121 Fed. 753, 59 C. C. A. 185.

Exclusion of foreigners when convicts, lepers, etc., within police power of states. In re Ah Fong (C. C. 1874) Fed. Cas. No. 102.

The rights and remedies concerning trade-marks generally depend upon the laws of the states, common or statutory, and not upon the laws of the United States. Luyties v. Hollender (C. C. 1884) 21 Fed. 281.

The fact that a law or ordinance has been enacted by the authority of a state is not conclusive as to whether it is an exercise of the police power of the state, or an attempted restriction or regulation of interstate commerce. That question must be determined by the authority of the United States. In re Lebolt (C. C. 1896) 77 Fed. 587.

There is no unqualified right of property in game or fish, which, although reduced to possession, remain subject to the control of the state, in the exercise of its police powers; and a law making it a penal offense for a person to have trout in his possession for sale is a valid police regulation, and not an unlawful interference with interstate commerce, although such trout were brought for sale from another state, where they were lawfully caught. In re Deininger (C. C. 1901) 108 Fed. 623.

Acts of the state in the proper exercise of its police power will not be declared void under the commerce clause, if they incidentally affect interstate commerce, if their main purpose is to protect its people against wrong, fraud, contagious disease, or acts which will corrupt their morals. Logan & Bryan v. Postal Telegraph & Cable Co. (C. C. 1908) 157 Fed. 570.

City ordinances concerning vessels are binding only as police regulations. They cannot change the demands of maritime law. The Palmetto (D. C. 1856) Fed. Cas. No. 10,699.

The provision of Act Feb. 8, 1897 (29 Stat. 512 [Comp. St. § 10415]), making it unlawful for any person to deposit with an express company or other common carrier, for carriage from one state or territory to another, any article or thing designed or intended for the prevention of conception is not unconstitutional, on the ground that it is a police regulation, and as such a matter over which the states have exclusive jurisdiction, but is within the constitutional powers of congress to regulate interstate commerce. U. S. v. Popper (D. C. 1899) 98 Fed. 423.

The dominant power of Congress over interstate commerce does not take from the states the power of legislation with respect to the instruments of such commerce so far as the legislation is within the ordinary police powers of the state, and affects interstate commerce only indirectly and incidentally, and such power may be exercised through an administrative board. Louisville & N. R. Co. v. Hughes (D. C. 1912) 201 Fed. 727.

A state law within the exercise of the police power of the state is not invalid merely because it indirectly and incidentally affects interstate commerce, where it does not go beyond the necessities of the case, and does not constitute an arbitrary or unreasonable interference with interstate commerce, and does not conflict with the expressed or presumed will of Congress on the subject. Id.

The states retain the police power which they, as sovereign nations, possessed prior to the adoption of the national Constitution, so far as such power pertains to the internal affairs of the states. U. S. v. Shauver (D. C. 1914) 214 Fed. 154.

The act of South Carolina, called the port or police bill, authorizing the seizure and detention of free persons of color within the limits of that state, having for its object the regulation and government of free persons of color within the limits of that state, as strictly belongs to her internal police as a law regulating the course of descents, or one defining the crime of murder and prescribing the penalty which shall attach to its commission, and is valid. If there be laws of the United States passed in the exercise of the right to regulate commerce, they cannot control the exercise of this reserved pow-

er, except so far as they may be necessary to the preservation of the commerce of the Union. (1831) 2 Op. Atty. Gen. 427.

Police regulations imposed by the state on the sale of fertilizers are applicable to interstate transactions. Padgett v. Gulfport Fertilizer Co. (1914) 66 So. 866, 11 Ala. App. 366.

So long as the action of a state does not interfere with or place burdens on interstate commerce, or are mere police regulations, their action, though in aid of interstate commerce, is not invalid, unless it is a direct interference. Sligh v. Kirkwood (Fla. 1913) 61 So. 185.

No state statute, which incidentally affects interstate commerce, is valid if repugnant to the federal Food and Drugs Act; but the intent of Congress to supersede the exercise by the states of their police power will not be inferred unless the act of Congress is in actual conflict with the state law. Id.

While a state cannot under its police power directly burden interstate commerce, a police regulation, reasonable in its terms, and not conflicting with any valid act of Congress, is not unconstitutional, though it may incidentally affect interstate commerce. Id.

Act Ill. Feb. 27, 1867, to prevent the importation of Texas and Cherokee cattle into the state as a means of protection to native cattle, is an exercise of the police power of the state, which it is competent for the state to exercise. Yeazel v. Alexander (1871) 58 Ill. 254.

The act to prevent the importation of certain cattle which communicate a fatal disease at certain times of the year to native cattle is a mere exercise of police power of the state, which it is competent for the state to exercise; such power never having been delegated to the federal government. Stevens v. Brown (1871) 58 Ill. 289.

Act Ill. May 11, 1901 (Hurd's Rev. St. Ill. 1901, p. 1793), prohibiting the selling and using of cans, tubs, boxes, bottles, etc., bearing the registered mark of the owner, without his written consent, does not come within the police power of the state, as the written consent of the owner to the sale is no guaranty that injury to the public will not be done. Horwich v. Walker-Gordon Laboratory Co. (1903) 68 N. E. 938, 205 Ill. 497, 98 Am. St. Rep. 254.

Under the commerce clause no state, except in the exercise of the police power for the security of life, health, and comfort of persons and protection of property, can make any law or regulation which will affect the free and unrestrained intercourse and trade between the states, or which will impose any discriminating burden or tax on the citizens or products of other states, coming or brought within its jurisdiction. Lehigh Portland Cement Co. v. McLean (1910) 92 N. E. 248, 245 Ill. 326.

The state is not inhibited from enacting police regulations which operate upon instrumentalities or articles of commerce, provided no discriminations are made against classes of citizens, and no restrictions are placed upon commercial intercourse. Brechbill v. Randall (1885) 102 Ind. 528, 1 N. E. 362, 52 Am. Dec. 695.

The states may, so long as they do no more than legitimately exercise the police power, legislate upon matters connected with interstate commerce. State v. Indiana & O. Oil, Gas & Mining Co. (1889) 22 N. E. 778, 120 Ind. 575, 6 L. R. A. 579.

An ordinance which is a police regulation, and not a revenue measure, is not unconstitutional as an interference with interstate commerce. Schmidt v. City of Indianapolis (Ind. 1907) 80 N. E. 632.

If a penalty imposed by the state on an act in connection with interstate commerce is by way of reprisal, it cannot be upheld, but, if it is a reasonable police regulation tending to induce caution in the interest of the safety of employés, it may be upheld. Southern Ry. Co. v. Railroad Commission of Indiana (Ind. 1913) 100 N. E. 337.

Code Iowa, § 2074, providing that no contract, receipt, rule, or regulation shall exempt any railway corporation from the liability of a common carrier, and thereby invalidating contracts between railroads and shippers, whereby the former attempt, by means of an agreed valuation of the goods shipped, to limit their liability for negligence, having been passed before Congress acted in the matter of interstate commerce and assumed control thereof, is not invalidated by the action of Congress, for such action does not deprive the states of their right to enact such rules by virtue of their police power. Cramer v. Chicago, R. I. & P. Ry. Co. (Iowa, 1911) 133 N. W. 387.

The state cannot regulate interstate commerce, even in the exercise of its police powers. State v. United States Express Co. (Iowa, 1914) 145 N. W. 451.

While the state can make reasonable police regulations affecting the operation of railroads within the state, and which are also engaged in interstate commerce, the regulation should only tend to the efficient discharge of the duties of the railroads to their patrons within the state, and to the safeguarding of persons and property therein, and should impose no considerable burden on the interstate commerce. Patterson v. Missouri Pac. Ry. Co. (Kan. 1908) 94 P. 138.

An interstate railroad company running through the commonwealth, being subject to its police power, is subject to the Public Service Commission in so far as Acts Md. 1910, c. 180, conferred upon that Commission the police power of the state. Laird v. Balti-

more & O. R. Co. (1913) 88 A. 348, 121 Md. 179.

The Public Service Commission created by Acts Md. 1910, c. 180, and given control by section 3 of railroads and common carriers doing business within the state, can exercise that control only over business of interstate carriers wholly conducted within the state. Id.

An act authorizing the board of health to require vessels to be disinfected is valid. Train v. Boston Disinfecting Co. (1887) 144 Mass. 523, 11 N. E. 929, 59 Am. Rep. 113.

It is within the police power of the state Legislature to decide what monopolies in trade should be forbidden as injurious to the general welfare of the public. In re Opinion of the Justices (1907) 81 N. E. 142, 193 Mass. 605.

Interstate commerce is within the exclusive control of Congress, and no state can impose any direct burden on it, under the guise of regulation, restriction, or otherwise, subject to the limitation that laws passed in the exercise of the police power are not void because incidentally affecting interstate commerce. In re Opinion of the Justices (1912) 98 N. E. 334, 211 Mass. 605.

State laws enacted in the exercise of the police power and indirectly and remotely affecting interstate commerce, being in aid thereof, may be enforced, unless superseded by act of Congress, if they are reasonable in operation. Hardwick Farmers' Elevator Co. v. Chicago, R. I. & P. Ry. Co. (1910) 124 N. W. 819, 110 Minn. 25, 19 Ann. Cas. 1088; Gray v. Minneapolis & St. L. R. Co. (1910) 124 N. W. 1100, 110 Minn. 527.

A state, in the exercise of its police power, may prohibit manufacturing or trading companies from forming a trust or other combination, in restraint of trade detrimental to the general public. State ex inf. Hadley v. Standard Oil Co. (1909) 116 S. W. 902, 218 Mo. 1.

The states having reserved to themselves the police power, any reasonable regulation exercised under such power may be enforced against one engaged in interstate commerce transacting business within the states, though interfering directly with such commerce. Welch v. Dean (Mont. 1914) 141 P. 548.

Under the guise of enforcing police regulations, the state may not exact impossible conditions to the right to engage in interstate commerce or impose burdens which amount directly to a regulation of it. Id.

The prevention of discrimination in particular localities, in prices of commodities in general use, for the purpose of destroying the business of a competitor by selling such commodities at a lower rate in such locality than is charged elsewhere, is within the police power of the state. State v. Drayton (Neb. 1908) 117 N. W. 768.

Act N. J. March 15, 1898 (P. L. p. 83), providing for the registration of trade-marks and the protection thereof is unconstitutional. Cigar Makers' International Union of America v. Goldberg (1905) 61 A. 457, 72 N. J. Law, 214, 111 Am. St. Rep. 662, reversing (1904) 57 Atl. 141, 70 N. J. Law, 488.

An action lies under the New York statute for negligently causing the death of a citizen of New York on the high seas on board a vessel registered in a port of New York, and at the time employed by the owners of a vessel in their own business. McDonald v. Mallory (1879) 77 N. Y. 546, 33 Am. Rep. 664.

A proper police regulation does not conflict with any federal or state restrictions on the legislative power, and is valid, though the railroad sought to be regulated is only partly within the state. People v. New York, N. H. & H. R. Co. (1890) 8 N. Y. Supp. 672, 55 Hun, 409, 608, affirming judgment (1889) 5 N. Y. Supp. 945, judgment affirmed in (1890) 25 N. E. 953, 123 N. Y. 635.

The enactment of statutes to prevent fraud in the sale of goods put up and sold under particular trade-marks and labels is a proper exercise of the police power of the state. People v. Luhrs (1909) 89 N. E. 171, 195 N. Y. 377, affirming judgment (1908) 111 N. Y. Supp. 749, 127 App. Div. 634.

In enacting General Business Law N. Y. § 367, as added by Laws 1909, c. 475, providing for the registration and protection of trade-marks, the Legislature did not attempt to confer trade-mark rights, but merely to more effectively regulate existing common-law trade-mark rights, and to afford an additional speedy remedy for the violation thereof, and to prevent fraud and imposition on the public, which are matters within the state's police power. Prest-O-Lite Co. v. Ray (1914) 147 N. Y. Supp. 138, 162 App. Div. 62, reversing judgment (1913) 147 N. Y. Supp. 219; Same v. Brockner (1914) 147 N. Y. Supp. 147, 162 App. Div. 75.

A state, under its police power, may make reasonable regulations as to the place, manner, and delivery of merchandise moving in the channels of interstate commerce, but must not make such regulations as will interfere with such commerce. St. Louis & S. F. R. Co. v. State (Okl. 1910) 107 P. 929.

An act of Congress originating in its power to regulate interstate commerce does not annul a state act originating in its police power, unless there is such conflict that the enforcement of the state act would frustrate the operation of the act of Congress. Chicago, R. I. & P. Ry. Co. v. Beatty (Okl. 1911) 126 P. 736, affirming judgment on rehearing (1911) 118 P. 367.

Coal oil imported into a state becomes subject to the police power and commerce regulations of the state, though an article of interstate commerce before its importation. Standard Oil Co. v. State (1907) 100 S. W.

705, 117 Tenn. 618, 10 L. R. A. (N. S.) 1015.

While the states have general police power, they cannot, under the guise of that power, infringe upon the delegated power of Congress to regulate interstate commerce. Ex parte Peede (Tex. Cr. App. 1914) 170 S. W. 749.

Although Congress has the power to regulate commerce among the several states, there are certain duties whose performance by common carriers the police power of the state may exact, notwithstanding such carriers engage in interstate commerce. Missouri, K. & T. Ry. Co. of Texas v. State (Tex. 1916) 181 S. W. 721.

The state may, in order to secure and protect the lives or health of its citizens, or to preserve good order and the public morals, legislate for such purpose, in good faith, and without discrimination against interstate or foreign commerce, without violating the interstate commerce clause. Norfolk & W. R. Co. v. Commonwealth (1896) 93 Va. 749, 24 S. E. 837.

A state may make valid enactments, in the exercise of its police power, to promote the welfare and convenience of its citizens, though such laws in their operation, incidentally interfere with interstate and foreign commerce. Atlantic Coast Line Ry. Co. v. Commonwealth (1904) 46 S. E. 911, 102 Va. 599.

A valid police regulation is not subject to successful attack under the commerce clause. Wadhams Oil Co. v. Tracy (1909) 123 N. W. 785, 141 Wis. 150.

57. Traffic in intoxicating liquors.—A state law prohibiting the sale of liquors by others, though, by authorizing and providing for the establishment of dispensaries for their sale by agents of the state, it recognizes such liquors as the subject of legitimate commerce is a regulation of their sale, which is a proper exercise of the police powers of the state. Vance v. W. A. Vandercook Co. (1898) 18 Sup. Ct. 674, 170 U. S. 438, 42 L. Ed. 1100, modifying judgment W. A. Vandercook Co. v. Vance (C. C. 1897) 80 Fed. 786.

The exaction by a state of a license fee from a person engaged in selling intoxicating liquors within the state, over the bar, on board a ferryboat employed in interstate commerce, is authorized by Wilson Act Aug. 8, 1890 (Comp. St. § 8738), subjecting to state laws enacted in the exercise of the police power all intoxicating liquors arriving in the state. Foppiano v. Speed (1905) 26 Sup. Ct. 138, 199 U. S. 501, 50 L. Ed. 288, affirming judgment (1904) 82 S. W. 222, 113 Tenn. 167.

Shipments into a state of intoxicating liquors intended for the personal use of consignees were not subjected to a law of such state forbidding carriers to bring intoxicating liquors into any dry territory by Webb-Kenyon Act March 1, 1913 (Comp. St. § 8739). Adams Exp. Co. v. Commonwealth of Kentucky (1915) 35 Sup. Ct. 824, 238 U. S. 190, 59 L. Ed. 1267, Ann. Cas. 1915D, 1167.

Generally speaking, the control of the liquor traffic is within the police power of the state. United States Express Co. v. Friedman (1911) 191 Fed. 673, 681, 112 C. C. A. 219.

The state can under its police power prohibit the delivery of intoxicating liquors by a carrier to an individual for his own use. State of West Virginia v. Adams Express Co. (1915) 219 Fed. 794, 135 C. C. A. 464, reversing order (D. C. 1914) 219 Fed. 331.

The state can under its police power provide that the place of sale of intoxicating liquors shall be the place of delivery by the carrier, if such legislation does not interfere with interstate commerce. Id.

Intoxicating liquors shipped into a state come within the police powers of the state as soon as they become part of the property of the state, and thereafter the commission of any act done in or about them may be punished by the state. Ex parte Edgerton (C. C. 1893) 59 Fed. 115, 118.

Any state may, in the exercise of the police power, declare that the manufacture, sale, barter, and exchange, or the use as a beverage, of alcoholic liquors, are public evils, and, having thus declared, can forbid such manufacture, sale, barter, and exchange, or use within her territory. W. A. Vandercook Co. v. Vance (C. C. 1897) 80 Fed. 786, judgment modified Vance v. W. A. Vandercook Co. (1898) 18 Sup. Ct. 674, 170 U. S. 438, 42 L. Ed. 1100.

The Webb-Kenyon Law, prohibiting shipment of liquor intended by any person interested therein to be received, possessed, or sold in violation of any law of the state into which it is shipped, does not render illegal the shipment of liquor in interstate commerce to a consignee desiring it for his personal use, though without a permit required by the law of his state. Theo. Hamm Brewing Co. v. Chicago, R. I. & P. Ry. Co. (D. C. 1913) 215 Fed. 672.

Under the Webb Law, Carmichael Bill (Acts Ala. Sp. Sess. 1909, p. 8), and the Fuller Bill (Acts Ala. Sp. Sess. 1909, p. 63), an interstate carrier in possession of liquor in the state for delivery to a person intending to use it in violation of law is amenable to the state laws, unless it has no knowledge of the unlawful purpose. Southern Express Co. v. State (Ala. 1914) 66 So. 115.

The anti-advertising liquor law does not violate the commerce clause, when applied to a newspaper published outside the state, containing an advertisement of liquors to be shipped into the

state. State v. Delaye (Ala. 1915) 68 So. 993, L. R. A. 1915E, 640.

As the Webb-Kenyon Act (Comp. St. § 8739), divested intoxicating liquors of their interstate character, Const. Ariz. art. 23, § 1, prohibiting disposal or introduction into the state of intoxicating liquors, is not an interference with interstate commerce. Sturgeon v. State (Ariz. 1916) 154 P. 1050.

The retail traffic in intoxicating liquors is a business in which a person has no inherent right to engage, but the state, in the exercise of its police power, may prohibit or regulate it by the imposition of such conditions and restrictions as it sees fit, provided the restrictions do not interfere with interstate commerce. Reed v. Collins (Cal. App. 1907) 90 P. 973.

In view of Wilson Act of Aug. 8, 1890 (Comp. St. § 8738), a state may, without offending the commerce clause, regulate or control the traffic in intoxicating liquors within its own borders, to the extent of prohibiting the soliciting of orders within the state for the purchase of liquors outside the state. Ex parte Anixter (Cal. App. 1913) 134 P. 193.

The legislature has power as a police regulation to prohibit the sale of intoxicating liquor, subject only to the federal law regulating imports, and which protect it only in the hands of the importer in the original cask or package. State v. Allmond (Del. 1863) 2 Houst. 612.

A state can prohibit all domestic commerce in intoxicating liquors between its citizens, wherever the liquor was manufactured. State v. Grier (Del. Gen. Sess. 1913) 88 A. 579, 4 Boyce, 322.

The Webb-Kenyon Act, divesting liquor of its interstate character in certain cases, and prohibiting its transportation, for use in violation of law, held not to apply to a delivery in a prohibition district, unless intended for an unlawful use, and otherwise not to remove the protection of the commerce clause, so that the Delaware Hazel Law, prohibiting delivery of liquor for any purpose except to physicians and druggists, was invalid as to a shipment for the receiver's personal consumption, recognized by the act to be lawful. Van Winkle v. State (Del. 1914) 91 A. 385, reversing judgment State v. Van Winkle (1913) 88 A. 807.

Pen. Code Ga. 1910, § 434, prohibiting agents of nonresidents engaged in interstate commerce from soliciting orders in the state for sale of intoxicating liquors, is a police regulation, and not violative of the interstate commerce clause. Kirkpatrick v. State (1912) 76 S. E. 53, 138 Ga. 794.

The state has a right to enforce its police regulations against traffic in liquor which is not in the nature of interstate commerce. Lemp v. Fullerton (1891) 83 Iowa, 192, 48 N. W. 1034, 13 L. R. A. 408.

Under the Webb-Kenyon Act (Comp. St. § 8739), intoxicating liquors, brought from another state and intended to be used in violation of the law of Kansas, are not articles of interstate commerce. Kansas City Breweries Co. v. Kansas City (Kan. 1915) 153 P. 523.

The Webb-Kenyon Act, relative to the interstate shipment of intoxicating liquor, is not violated where the liquor is intended for the personal use of the consignee. Adams Express Co. v. Commonwealth (1914) 169 S. W. 603, 160 Ky. 66.

Under the Webb-Kenyon Act interstate shipments of intoxicating liquor to be used in violation of state laws are not protected by the federal Constitution, and may be punished by the states when in violation of their laws. Id.

Though Ky. St. § 2569a, prohibiting the transportation of liquor into prohibition territory, does not apply to interstate commerce, yet when construed in connection with the Webb-Kenyon Law (Act March 1, 1913 [Comp. St. § 8739]), it is applicable to interstate shipments except those for personal use. Adams Express Co. v. Crigler & Crigler Co. (1914) 170 S. W. 542, 161 Ky. 89.

The licensing Acts La. of 1880, No. 119, and 1886, No. 101, continued in the acts of 1890, No. 150, 1898, No. 171, and 1908, No. 176, apply to sales of liquor on vessels plying on the Mississippi river in interstate and foreign commerce subsequent to the Wilson Act. State v. Southern Pac. Co. (1915) 68 So. 819, 137 La. 435, L. R. A. 1915F, 1140.

The May-Mott-Lewis Act Miss. §§ 2, 7, and 11, par. 2, though imposing a direct burden on interstate commerce, is authorized by the Webb-Kenyon Act (Comp. St. § 8739), even as applied to liquor being transported for the personal use of the consignee and his family. American Express Co. v. Beer (Miss. 1914) 65 So. 575; Southern Express Co. v. Longinotti, Id. 583; American Express Co. v. Miller, Id. 652.

The requirement of the May-Mott-Lewis Act Miss. § 5, that those transporting liquors into the state keep a record of same and file statements thereof with the clerk of the circuit court, is not invalid as imposing a direct burden on interstate commerce, regardless whether it is within the Webb-Kenyon Act. Id.

It being only importation of intoxicating liquors for sale, and not importation for personal use, that is prohibited, Pub. Laws N. C. 1907, c. 1014, is in the power of the state. Southern Express Co. v. City of High Point (N. C. 1914) 83 S. E. 254.

Pub. Laws N. C. 1913, c. 44, § 5, relative to record to be kept by transportation companies of shipments of intoxicating liquors, held not in conflict with

the commerce clause, in view of Webb-Kenyon Law. State v. Seaboard Air Line Ry. (N. C. 1915) 84 S. E. 283.

A person living in the western part of Oklahoma has the right under the interstate commerce clause to ship intoxicating loquors into the state, and convey them to his home or place of business for his own use. Gastineau v. State (Okl. Cr. App. 1912) 124 P. 464.

A state has the undoubted right to regulate intrastate shipment of intoxicating liquors, but cannot regulate the interstate shipment of such liquors. Id.

It is within the police power of the state to prohibit, as done in Dispensary Act S. C. March 6, 1896, the handling and hauling in the nighttime of alcoholic liquors by citizens of the state who are owners of such liquors, and it cannot in any sense affect the interstate commerce laws. State v. Holleyman (1898) 31 S. E. 362, 55 S. C. 207, 45 L. R. A. 567.

The state has the right to forbid the manufacture of intoxicating liquor for sale and exportation to other states or countries. Motlow v. State (1912) 145 S. W. 177, 125 Tenn. 547.

Both the Webb-Kenyon Act (Comp. St. § 8739) and the Allison Act Tex. § 5, regulating interstate shipments of liquor, are valid. Ex parte Peede (Tex. Cr. App. 1914) 170 S. W. 749.

Initiative measure No. 3 (Laws Wash. 1915, p. 2), prohibiting the manufacture, keeping, sale, etc., of intoxicating liquors, held not void as an interference with interstate commerce, because expressly permitted by the Webb-Kenyon Act. Gottstein v. Lister (Wash. 1915) 153 P. 595.

58. Corporations doing business in state.—A state statute requiring foreign corporations, doing business in the state, to record their charter with the secretary of state, and in each county where they do business, and making it unlawful for incorporations to do business in the state without complying with the law, has no application to interstate commerce, and, so construed, is valid. Hamilton v. Fowler (1899) 99 Fed. 18, 21, 40 C. C. A. 47, writ of certiorari denied (1900) 20 Sup. Ct. 1027, 176 U. S. 685, 44 L. Ed. 639.

Among the exceptions to the rule that the right of a foreign corporation to do business in another state depends entirely on the will of the latter is where such business constitutes interstate commerce, and is therefore under the paramount authority of Congress. Parsons-Willis Lumber Co. v. Stuart (1910) 182 Fed. 779, 105 C. C. A. 211.

It is competent for a state to prescribe the conditions on which a foreign corporation may enter and do business therein, provided its action does not interfere with or restrain the free exercise of interstate or foreign commerce. Loomis v. People's Const. Co. (1914) 211 Fed. 453, 128 C. C. A. 125.

A state cannot invest a corporation organized under its laws with the power to do acts in the corporate name which would operate to restrain interstate commerce. U. S. v. Northern Securities Co. (C. C. 1903) 120 Fed. 721, decree affirmed Northern Securities Co. v. U. S. (1904) 24 Sup. Ct. 436, 193 U. S. 197, 48 L. Ed. 679.

Corporations possess the same rights as citizens with respect to freedom from state regulation of interstate commerce. La Moine Lumber & Trading Co. v. Kesterson (C. C. 1909) 171 Fed. 980.

The power of a state over the transaction of corporate insurance companies, foreign or domestic, the business of which is not interstate commerce, is as plenary as is the power of Congress over interstate commerce under this clause. German Alliance Ins. Co. v. Barnes (C. C. 1911) 189 Fed. 769.

A state statute, imposing a penalty for transacting business within the state as agent for a foreign insurance company which has not complied with the laws of the state, is not in violation of the Constitution of the United States, because it applies to contracts of insurance on property without, as well as within, the state. Adler-Weinberger S. S. Co. v. Rothschild & Co. (1903) 123 Fed. 145, judgment reversed Rothschild v. Adler-Weinberger S. S. Co. (1904) 130 Fed. 866, 65 C. C. A. 350.

An act which provides that the agent of an insurance company of any other state or government, which does not comply with the laws of the state in which the act is in force, shall be personally liable on all contracts of insurance made by or through such agent directly or indirectly, is not a regulation of the interstate commerce of state. Adler-Weinberger S. S. Co. v. Rothschild & Co. (C. C. 1903) 123 Fed. 145, 147, reversed Rothschild v. Adler-Weinberger S. S. Co. (C. C. 1904) 130 Fed. 866, 65 C. C. A. 350.

The Legislature, in exercising its power to prescribe conditions on which a foreign corporation may do business within the state, may not impose any restrictions or burden on interstate commerce. International Trust Co. v. A. Leschen & Sons Rope Co. (Colo. 1907) 92 P. 727.

The Legislature cannot impose conditions on the right of a foreign corporation to make contracts in the state for carrying on interstate commerce between the states. Belle City Mfg. Co. v. Frizzell (1905) 81 P. 58, 11 Idaho, 1.

A state Legislature has no authority to prevent foreign corporations violating state laws from carrying on interstate trade. State ex inf. Hadley v. Standard Oil Co. (Mo. 1909) 116 S. W. 902.

59. Navigation and shipping.—A state may create liens for materials

and supplies furnished a vessel in her home port where not amounting to a regulation of commerce, and may enact reasonable regulations for their enforcement. The Belfast (1868) 74 U. S. (7 Wall.) 624, 645, 19 L. Ed. 266; The Edith (D. C. 1872) Fed. Cas. No. 4,282.

A maritime lien does not arise upon a contract for materials and supplies furnished to a vessel in her home port; and in respect to such contracts it is competent for the states to create such liens as their legislatures may deem just and expedient, not amounting to a regulation of commerce, and to enact reasonable rules and regulations prescribing the mode of their enforcement. Norton v. Switzer (1876) 93 U. S. 355, 366, 23 L. Ed. 903; Hursey v. Hassam (1871) 45 Miss. 133.

A law of a state granting exclusive navigation of the upper part of a navigable river lying wholly within its borders, to a company which was to improve navigation thereof above dams where the navigation was imperfect, held not in conflict with the commerce clause. Veazie v. Moor (1852) 14 How. 568, 574, 14 L. Ed. 545.

In respect to contracts to furnish materials for the purpose of building ships it is competent for the states to create such liens as their legislatures may deem just and expedient, not amounting to a regulation of commerce, and to enact reasonable rules and regulations, prescribing the mode of their enforcement, not inconsistent with the exclusive jurisdiction of the admiralty courts. Edwards v. Elliott (1874) 88 U. S. (21 Wall.) 532, 22 L. Ed. 487.

The exclusive control over interstate commerce, vested in Congress by the federal Constitution or laws, is not infringed by the enforcement against a vessel engaged in interstate commerce of a lien given by a state statute for materials furnished for her construction. Iroquois Transp. Co. v. De Laney Forge & Iron Co. (1907) 27 Sup. Ct. 509, 512, 205 U. S. 354, 51 L. Ed. 836, affirming judgment De Laney Forge & Iron Co. v. The Winnebago (1905) 105 N. W. 527, 142 Mich. 84, 113 Am. St. Rep. 566.

The creation and enforcement of a lien for a nonmaritime tort against a foreign vessel engaged in interstate commerce, under Ballinger's Ann. Codes & St. Wash. §§ 5953, 5954, which embrace all vessels, whether domestic or foreign, and whether engaged in intrastate or interstate commerce, does not offend against the commerce clause of the federal Constitution. Martin v. West (1911) 32 Sup. Ct. 42, 222 U. S. 191, 56 L. Ed. 159, 36 L. R. A. (N. S.) 592, affirming judgment West v. Martin (1908) 97 P. 1102, 51 Wash. 85, 21 L. R. A. (N. S.) 324.

R. S. Ohio, § 5880, creating liens on steamboats for supplies, labor, etc., furnished under contracts with the master or owner, must be restricted in its operation to domestic vessels. Cuddy v. Clement (1902) 113 Fed. 454, 51 C. C. A. 288, affirming decree Prince v. Ogdensburg Transit Co. (C. C. 1901) 107 Fed. 978.

A Louisiana law adopting regulations as to the navigation of the Mississippi river cannot affect vessels engaged in carrying on commerce between that and other states. Halderman v. Beckwith (C. C. 1847) Fed. Cas. No. 5,907.

The local rules of navigation established by general usage must be observed. Id.

A local ordinance in relation to anchoring is binding on all navigators. The Bedford (C. C. 1863) Fed. Cas. No. 1,216.

Act N. Y. April 12, 1848, requiring steamboats passing up and down the East river to be navigated in the center of the river, applies to a tug whose business is to cruise along the docks, and move vessels from one pier to another, or into or out of the harbor. Vandewater v. Westervelt (D. C. 1851) Fed. Cas. No. 16,846a.

St. Mass. 1847, c. 234, § 2, requiring vessels in Boston harbor to rig in jib booms in certain cases, is valid. The Clover (D. C. 1869) Fed. Cas. No. 2,908.

The state may by statute modify its common-law rules of liability of employers, in their application to injuries occurring on navigable waters, so long as the modification does not amount to a regulation of commerce or an interference with some paramount federal law. Lindstrom v. Mutual S. S. Co. (Minn. 1916) 156 N. W. 669.

The furnishing of material for the equipment and outfit of a steamboat at her home port does not create a maritime lien, and the state may create liens therefor, if the statute does not amount to a regulation of commerce, and enact reasonable rules for their enforcement. Mitchell v. The Magnolia (1869) 45 Mo. 67; Peish v. Same, Id. 69.

A local usage of navigation, forming a part of the common law of a state, is valid on the same ground, and no other, in respect of the power and legislation of congress on the subject, as is a statute of the state affecting commerce or navigation. Fitch v. Livingston (1851) 6 N. Y. Super. Ct. (4 Sandf.) 492.

Chapter 469, Laws N. Y. 1898, entitled "An act to protect navigation in certain tide waters within the state of New York," held to be constitutional. Cox v. City of New York (1898) 55 N. Y. Supp. 74, 26 Misc. Rep. 177.

Vessels afloat on the North river are subject to the exclusive jurisdiction of the state of New York. Carlin v. New York Dock Co. (1909) 120 N. Y. Supp. 261, 135 App. Div. 876, judgment re-

versed on rehearing (1910) 122 N. Y. Supp. 57, 137 App. Div. 71.

60. Navigable waters and lands under or bordering thereon.—The state's ownership of and dominion over lands covered by tide waters is subject to the right of Congress to control navigation where necessary for the regulation of commerce among the states or with foreign nations. City of Providence v. Comstock (1906) 65 A. 307, 27 R. I. 537. See, also, Strawberry Island Co. v. Cowles (1912) 140 N. Y. Supp. 333, 79 Misc. Rep. 279.

The state of Mississippi has the lawful power to change the channels or courses of navigable rivers within the interior of the state for the purpose of internal improvement. Withers v. Buckley (1857) 61 U. S. (20 How.) 84, 15 L. Ed. 816.

Subject to the paramount right of navigation, the regulation of which, in respect to foreign and interstate commerce, has been granted to the United States, each state owns the beds of all tidewaters within its jurisdiction, unless they have been granted away; and, in like manner, the tidewaters themselves and the fish in them, so far as they are capable of ownership while running, and for this purpose represents the people, and the ownership is that of the people in their united sovereignty. McCready v. Virginia (1876) 94 U. S. 391, 394, 24 L. Ed. 248.

Each state may appropriate the beds of all tidewaters within its jurisdiction, to be used by its citizens as a common for taking and cultivating fish, if navigation be not thereby obstructed. Id.

The common-law doctrine as to the dominion, sovereignty, and ownership of lands under tidewaters on the borders of the sea applies equally to the lands beneath the navigable waters of the Great Lakes; and in this country such dominion, sovereignty, and ownership belong to the states, respectively, within whose borders such lands are situated, subject always to the right of congress to control the navigation so far as may be necessary for the regulation of foreign and interstate commerce. Illinois Cent. R. Co. v. State of Illinois (1892) 13 Sup. Ct. 110, 146 U. S. 387, 36 L. Ed. 1018, affirming decree State of Illinois v. Illinois Cent. R. Co. (C. C. 1888) 33 Fed. 730.

The fee in the streets, alleys, commons, and public grounds, as exhibited on the maps of subdivision of fractional sections 10 and 15, lying on the lake front of Chicago, is vested in the city, together with the riparian rights appertaining thereto; and these rights were not divested by the fact that the Illinois Central Railroad occupied the lands underlying the immediate front, and filled them in for its right of way, under authority of a city ordinance; and the city still has the right to exercise such riparian rights, subject to the terms of the ordinance and to the authority of the state to prescribe the lines beyond which no structures may be extended, and also subject to such supervision and control as the United States may lawfully exercise. Id.

The title and rights of riparian or littoral proprietors in the soil below high-water mark are governed by the laws of the several states, subject to the rights granted to the United States by the constitution, and new states have the same rights as the original ones. Shively v. Bowlby (1894) 14 Sup. Ct. 548, 152 U. S. 1, 38 L. Ed. 331.

Grants by congress of lands within a territory to settlers thereon, though bordering on navigable waters, convey no title below high water mark, and leave the control of the use of the shores by the owners of uplands to the future state, subject only to the rights vested by the constitution in the United States. Id.

The provision of the Minnesota enabling act (11 Stat. 166) declaring the Mississippi river a common highway for the inhabitants of the state, and all other citizens of the United States, does not impair the title and jurisdiction of the state over the navigable waters within her boundaries any more than rights of that nature are limited with regard to the thirteen original states. St. Anthony Falls Water-Power Co. v. Board of Water Com'rs of City of St. Paul, Minn. (1897) 18 Sup. Ct. 157, 168 U. S. 349, 42 L. Ed. 497.

Act Feb. 26, 1857, c. 60, 11 Stat. 166, § 2, making the Mississippi a common highway held not to impair the title and jurisdiction of the state of Minnesota over the navigable waters of the Mississippi within her boundaries more than rights of that nature were limited with regard to the original states, so that the fact that the Minnesota Legislature had granted the right to state corporations to improve the river and use the water for power purposes did not prevent the state from thereafter authorizing municipalities to take water from the river for public or municipal uses. Id.

The question as to the nature and extent of the rights of riparian owners upon navigable waters, including the right to the continued flowage of the stream, is one to be decided by the courts of the state as a matter of local law, subject to the right of congress to regulate public navigation and commerce. Id.

The royal charters granted by the English crown to the founders of the Atlantic colonies conveyed to the grantees both the territory described and the powers of government; and, under such charters, the dominion or propriety in the navigable waters, and in the soil under them, passed as a part of the prerogative rights annexed to the political powers conferred on the patentees, and in their hands were intended to be a trust for the common

use and benefit of the new communities, and not as private property which could be parceled out and sold; and, on the Revolution, such rights became vested in the several states for like purposes, where such as were not surrendered by the constitution to the federal government remain. Morris v. U. S. (1899) 19 Sup. Ct. 649, 174 U. S. 196, 43 L. Ed. 946.

Though the power of changing the common-law rule as to streams within its dominion belongs to each state, in the absence of specific authority from Congress a state cannot destroy the right of the United States as the owner of land bordering on a stream to the continued flow of its waters, so far, at least, as may be necessary for the beneficial uses of the government property; and it is limited by the power of the general government to secure the uninterrupted navigability of all navigable streams within the limits of the United States. U. S. v. Rio Grande Dam & Irrigation Co. (1899) 19 Sup. Ct. 770, 775, 174 U. S. 690, 43 L. Ed. 1136.

Commerce between the states of New York and New Jersey is not unlawfully interfered with by Laws N. J. 1905, p. 461, under which a riparian owner may be forbidden to divert the waters of the Passaic river beyond the state, under a contract to furnish a water supply for the city of New York. Hudson County Water Co. v. McCarter (1908) 28 Sup. Ct. 529, 209 U. S. 349, 52 L. Ed. 828, 14 Ann. Cas. 560, affirming decree McCarter v. Hudson County Water Co. (1906) 65 A. 489, 70 N. J. Eq. 695.

Only sponges taken outside of the state territorial limits held included in Act June 20, 1906 (Comp. St. § 8866), making it unlawful to offer for sale in United States sponges from waters of the Gulf of Mexico or Straits of Florida. The Abby Dodge v. U. S. (1912) 32 Sup. Ct. 310, 223 U. S. 166, 56 L. Ed. 390.

Lands underlying navigable waters within the several states belong to the respective states in virtue of their sovereignty, and may be used and disposed of as they may direct, subject always to the rights of the public in such waters and to the paramount power of Congress to control their navigation so far as may be necessary for the regulation of commerce among the states and with foreign nations, and each new state, upon its admission to the Union, becomes endowed with the same rights and powers in this regard. Scott v. Lattig (1913) 33 Sup. Ct. 242, 227 U. S. 229, 57 L. Ed. 490, 44 L. R. A. (N. S.) 107.

What shall be deemed a navigable water within the meaning of the local rules of property in the bed of a stream is for the determination of the several states. Donnelly v. U. S. (1913) 33 Sup. Ct. 449, 228 U. S. 243, 57 L. Ed. 820, Ann. Cas. 1913E, 710.

A state has no authority, under its police power, to close any navigable water of the United States, though located wholly within the limits of the state, for the purpose of reclamation of swamp lands, without the consent of the federal government. Leovy v. U. S. (1899) 92 Fed. 344, 34 C. C. A. 392.

The title which the United States acquired from the republic of Mexico, by the treaty of Guadalupe Hidalgo, to the lands under the tide waters of the bay of San Francisco, passed to the state of California on its admission into the Union, subject to the paramount right of navigation over the waters so far as the same may be required by the necessities of commerce with foreign nations or among the several states, the regulation of which remains vested in the United States; and the state became thereby vested with the right to use any of such lands, or to grant to others the right to use them, in any manner which would aid, or would not impair, the use of the waters for the purposes of commerce and navigation. Mission Rock Co. v. U. S. (1901) 109 Fed. 763, 48 C. C. A. 641, judgment affirmed U. S. v. Mission Rock Co. (1903) 23 Sup. Ct. 606, 189 U. S. 391, 47 L. Ed. 865.

The rights of littoral owners in adjacent navigable waters depend upon the local laws of the several states, subject to the paramount authority of the United States to protect navigation and to make improvements in aid of the same. Western Pac. Ry. Co. v. Southern Pac. Co. (1907) 151 Fed. 376, 80 C. C. A. 606, reversing decree Southern Pac. Co. v. Western Pac. Ry. Co. (C. C. 1906) 144 Fed. 160.

The federal government on admitting a state into the Union relinquishes its control of the disposition of the waters of the state, except in so far as the regulation of commerce is concerned. U. S. v. Hanson (1909) 167 Fed. 881, 93 C. C. A. 371.

The settled decisions of the courts of a state and its laws which infringe no right secured by the Constitution of the United States, or by the general or commercial law, determine the extent of the rights of riparian owners to accretions to their lands in that state. State of Iowa v. Carr (1911) 191 Fed. 257, 112 C. C. A. 477; Same v. John A. Creighton Real Estate & Trust Co. (1911) 191 Fed. 270, 112 C. C. A. 496.

A state has power to regulate fisheries within its territorial limits as to its own citizens and the citizens of other states. Corfield v. Coryell (C. C. 1823) Fed. Cas. No. 3,230.

The state has the right to the soil under navigable water within her territorial limits, subservient only to the right of the general government to regulate interstate and foreign commerce. Griffing v. Gibb (C. C. 1857) Fed. Cas. No. 5,819.

The limit of the authority of states bordering on a navigable river is to

protect their own shores and harbors without interfering with the opposite shores, or common rights of navigation. Where such a state authorizes a structure, which, but for such authorization, would be considered a nuisance, its own citizens must accept the legal consequences, though not without the recovery of damages; but it cannot pass a law to govern a state bordering on the opposite shore, or its citizens, or the realty situated therein. Rutz v. City of St. Louis (C. C. 1881) 7 Fed. 438.

A state cannot, except under its power of eminent domain, and upon making just compensation, interfere with the navigable streams within its territory in any manner or for any purpose other than that of regulating, preserving, and protecting the public easement of navigation therein. Woodruff v. North Bloomfield Gravel-Min. Co. (C. C. 1884) 18 Fed. 753.

On admission into the Union the state of Illinois became owner of and acquired jurisdiction over all lands within her boundaries covered by the waters of Lake Michigan, subject only to supervision and control of the use of such waters as might result from the exercise by Congress of its power to regulate commerce. Illinois v. Illinois Cent. R. Co. (C. C. 1888) 33 Fed. 730, 755.

Code Md. 1878, art. 16, §§ 38, 39, declare that the owner of land bounded on any navigable water in the state is entitled to all accretions by recession of the water to the same extent as the right might be claimed by one owning land bounded on water not navigable, and to the exclusive right of making improvements into the water in front of his land, provided they shall not interfere with navigation. Held. that the title to land added to Edmondson's island for the use of the fish commission by the United States, as lessee, is in the owner of the island, though such improvements extend beyond the lines laid down as the limits within which improvements might be made without interfering with navigation, by the commissioners appointed for that purpose by Laws Md. 1835, c. 99. The Edmondson Island Case (C. C. 1890) 42 Fed. 15.

Where the United States, holding an island under a lease for the use of the fish commission, adds land thereto, with the consent of the lessor; by building out into navigable water and filling up, and claims title to such addition as necessary for the protection of a lighthouse, the lessor is the owner of the addition, subject only to the easement in relation to the lighthouse, and may maintain ejectment for its occupancy by the United States for the use of the fish commission after the lease of the island proper has expired. Id.

A state holds the title to the beds of navigable streams within its boundaries in trust for the public for the purposes of commerce and navigation, the sole control over which is vested by the constitution in congress; and, while the state may grant the use of such river beds to private citizens, such grants are subject to the obligation to suffer the consequences incident to the improvement of navigation on such river under an act of congress, and damages resulting from the prosecution of such improvement cannot be recovered from the United States. Richardson v. U. S. (C. C. 1900) 100 Fed. 714.

Under the boundary agreement of 1833, between the states of New York and New Jersey, although the state of New York has exclusive jurisdiction over the waters of the bay of New York, to the low-water mark on the westerly or New Jersey shore, except the wharves, docks, and improvements made on the shore, and vessels aground or fastened to such wharf, etc., the state of New Jersey has exclusive jurisdiction over such wharves and vessels so fastened. The Mary McCabe (D. C. 1884) 22 Fed. 750.

The waters of Lake Champlain, within the limits of the United States, being partly in New York and partly in Vermont, the right to take fish therefrom depends solely upon the laws of the one or of the other of those states, according as the locus is within the boundaries of the one or of the other. The general government can afford no relief where individual rights are interfered with. (1881) 17 Op. Atty. Gen. 74.

The regulation of fisheries in navigable waters within the territorial limits of the several states, in the absence of federal treaty, is a subject of state rather than of federal jurisdiction. (1898) 22 Op. Atty. Gen. 214.

The "navigable waters" within Alabama have been dedicated to the use of the citizens of the United States, so that it is not competent for congress to grant a right of property in the same to individuals. City of Mobile v. Eslava (Ala. 1839) 9 Port. 577, 33 Am. Dec. 325.

The state of Alabama was admitted into the Union on an equal footing with the original thirteen states, and it is therefore entitled to the same right of property in the tide waters within its limits as was vested in the original states by virtue of their charters. Id.

The congress of the United States does not possess the constitutional power to grant the shore of the navigable waters in the state of Alabama. City of Mobile v. Eslava (Ala. 1839) 9 Port. 577, 33 Am. Dec. 325; Pollard's Heirs v. Files (1841) 3 Ala. 47; Kemp v. Thorpe (1842) 3 Ala. 291.

Though the title to the beds and waters of navigable streams is in the state, subject to the right of navigation lodged in the United States as trustee for all the people, the state may grant the fee by a conveyance not inconsistent with the public interest. State v. Alabama Power Co. (Ala. 1912) 58 So. 462.

The mere establishment of a harbor line does not deprive the state of the right to control the navigable waters within the line; nor does a grant of lots to a city devest the state of its sovereign rights over the navigable highways on which the lots are bounded. People v. Williams (1884) 64 Cal. 498, 2 Pac. 393.

The state may not only convey into private ownership lands under waters between high and low tide, but, subject to the paramount control of the general government, may convey lands perpetually covered by tides. Bolsa Land Co. v. Burdick (Cal. 1907) 90 P. 532.

The state may destroy the public easement in navigable waters by building a seawall and rendering the lands intervening between it and the shore unfit for navigation, and thereafter the land may be sold to private parties. Forestier v. Johnson (1912) 127 P. 156, 164 Cal. 24.

The fixing of harbor lines by the United States is equivalent to a license to the state to fill in the land between the harbor lines and the shore, either before or after the erection of a sea wall, and, until such wall is made, the state may improve for navigation the space between the line fixed and the shore; but the fixing of a bulkhead line does not contemplate the discontinuance of the public use of land within the line. People v. California Fish Co. (1913) 138 P. 79, 166 Cal. 576.

It is competent for the state, acting through the counties, to protect the ports, harbors, bays, and rivers therein, if the control of the general government within its sphere is not thereby interfered with. Board of Com'rs of Escambia County v. Board of Pilot Com'rs of Port of Pensacola (Fla. 1906) 42 So. 697.

The rights of the people of the state in the navigable waters and the lands thereunder, including the shores or spaces between ordinary high and low water marks, are designed for the public welfare, and the state may regulate such rights and the uses of the waters and the lands thereunder for the benefit of the whole people of the state as circumstances may demand, subject, of course, to the powers of Congress in the premises. State v. Gerbing (Fla. 1908) 47 So. 353.

Under the Constitution of the United States, the several states continued to hold title to the beds of all waters within their respective borders that were navigable in fact, not for purposes of disposition to individual owners, but in trust for all the people of the states respectively for the uses allowed by law, subject to the rights surrendered to the federal government by the Constitution. Broward v. Mabry (1909) 50 So. 826, 58 Fla. 398.

The right of the people of the states to the navigable waters and lands thereunder, including the space between high and low water marks, relate to navigation, commerce, fishing, bathing, and other lawful easements, and, being designed to promote the general welfare, are subject to lawful regulation by the states, subordinate to the powers of Congress as to interstate commerce, navigation, post roads, etc., and to the constitutional guaranties of property rights. Id.

The state's rights in the navigable waters and lands thereunder are subject to lawful regulation by the state, which regulation is subordinate to the powers of Congress as to interstate commerce. Ex parte Powell (Fla. 1915) 70 So. 392.

The Legislature cannot by legislative act impress the character of navigability on a stream that is not navigable, as a stream not navigable in fact cannot be made so by legislation. Potlatch Lumber Co. v. Peterson (Idaho, 1906) 88 P. 426.

The state holds title to the beds of all navigable streams, subject to the rights of the general government to regulate commerce and the right of the public to use same as public highways. Callahan v. Price (1915) 146 P. 732, 26 Idaho, 745.

Act Ill. June 4, 1889, authorizing the board of commissioners for Lincoln Park, in the city of Chicago, to extend its driveway over and upon the bed of Lake Michigan, and to sell and convey to the adjoining shore owners the submerged lands which might be reclaimed in extending such driveway, was a valid exercise of legislative discretion, since it did not interfere with the rights of navigation and fishing. People v. Kirk (1896) 45 N. E. 830, 162 Ill. 138, 53 Am. St. Rep. 277.

The title to and dominion over lands beneath the navigable waters of the great lakes are in the states, respectively, within whose boundaries such lands are located, each state holding the fee thereof in trust for the people for the purposes of navigation and fishing. Id.

The provisions of the ordinance of 1787 (article 4), declaring that navigable waters leading into the Mississippi river shall not be obstructed by state authority, must be construed as applying only to those streams which are channels of commerce between the states, such as are navigable in fact for vessels of commerce coming out of, and returning into, by continuous voyages, the navigable waters of other states. Neaderhouser v. State (1867) 28 Ind. 257.

Bayous and sloughs of the Mississippi river, that are not required by the interests of commerce to be preserved for the purpose of navigation, are not covered by the ordinance of 1787, declaring the waters therein referred to, public highways; but the same are subject to the control of the state or municipal authorities. Ingraham v. Chi-

cago, D. & M. R. Co. (1872) 34 Iowa, 249.

It was within the authority of the city of Dubuque to authorize a slough of the Mississippi river at that place, which had been formerly used for purposes connected with navigation, to be filled up and railroad tracks built over or along the same. Id.

Navigable waters in the territories are held as highways of travel and commerce by the government, but with the soil beneath them they pass to the new states on their admission to the Union in virtue of their sovereignty, subject to the regulation of commerce by Congress. State v. Jones (Iowa, 1909) 122 N. W. 241.

The Legislature has power to impose a royalty on the taking of sand for commercial purposes from a navigable stream, so long as it does nothing violative of its duty to hold title as trustee for the people or to interfere with the superior rights of Congress to control navigation. State v. Akers (1914) 140 P. 637, 92 Kan. 169, Ann. Cas. 1916B, 543.

Though the state may alienate soil beneath navigable streams and tide waters, save as it might conflict with the power of Congress to regulate commerce, her policy has always been not to do so, and a statute or contract claimed to have such effect should be strictly construed against the grantee. State v. Bayou Johnson Oyster Co. (1912) 58 So. 405, 130 La. 604.

Navigable tide waters and the land under them beyond the line of private ownership are held by the state, both as owner of the fee and as the repository of the sovereign power, with a perfect right to control for the public good; and this right is paramount to all private rights, and is subject only to the power of the federal government to act in the interest of interstate or foreign commerce. Home for Aged Women v. Commonwealth (1909) 89 N. E. 124, 202 Mass. 422.

The legislature may grant, or authorize the granting, to any person having traffic with craft navigating the contiguous waters, the exclusive use of so much of a public levee as is reasonably necessary for his business with such craft, provided it does not unreasonably interfere with the use of the levee by the public. City of St. Paul v. Chicago, M. & St. P. Ry. Co. (1896) 68 N. W. 458, 63 Minn. 330.

The act of congress for the admission of Mississippi into the Union, which enacts that the Mississippi river, and the navigable rivers and waters leading into it and into the Gulf of Mexico, shall be common highways, etc., does not prevent the state from doing any act which could divert the waters of the Homochitto river from their natural and usual course. Homochitto River Com'rs v. Withers (1855) 29 Miss. (7 Cushm.) 21, 64 Am. Dec. 126.

Where a river is navigable, and therefore public, and entirely within a state, the care and control of it, so far as public use is concerned, belongs to the state, especially if it cannot be used for the purposes of commerce with foreign nations or among the states. Morgan v. King (N. Y. 1854) 18 Barb. 277.

The state of New York has exclusive jurisdiction over the waters to low-water mark on the New Jersey shore, and over ships, vessels, and crafts of every kind afloat in the bay of New York and Hudson river, south of Spuyten Duyvil creek, for quarantine or health purposes, the protection of passengers and property, to secure the interests of trade and commerce, and to preserve the public peace. People v. Central R. Co. of New Jersey (1870) 42 N. Y. 283.

Each state has absolute control over its own soil and everything annexed or attached thereto, and over all vessels attached to the piers or wharves and lying in the docks on its own shore or aground on its shore, and over the persons or property on such wharves, docks, or vessels, except that all such vessels in the Bay of New York and Hudson river are subject to the quarantine of health laws, and laws in relation to passengers, enacted by the state of New York. Id.

Each state, subject to limitations in the federal constitution, has absolute control of all the navigable waters within its limits, and may grant the same to individuals. Langdon v. City of New York (1883) 93 N. Y. 129.

The grant by a state of land under the tide waters adjacent to Long Island or Staten Island, with power to build dykes for the reclamation of the same, is in violation of the United States constitution, granting congress the power to regulate commerce. Coxe v. State (1895) 144 N. Y. 396, 39 N. E. 400.

A grant from the state to the owner of upland of land under water in front of the upland, with the right to erect on the lands under water a pier, subject to the condition that he shall not obstruct the passage of the public in crossing or recrossing the land between high and low water mark, must be given a reasonable construction; and, when that is done, the owner of the upland, whether relying on his right as a littoral owner or on the grant, may erect and maintain a pier for the purpose of connecting the upland with the sea, and, so far as it is a necessary consequence of that right to obstruct the foreshore and limit the convenient passage of the public, the owner's rights are superior to all others, save those reserved to Congress and the state Legislature, but to the extent that the owner transcends these bounds the rights of the public remain unaffected. Barnes v. Midland R. Terminal Co. (N. Y. 1908) 85 N. E. 1093, reversing judgment (1908) 110 N. Y. S. 545, 126 App. Div. 435.

Under the right of conquest and the

treaty of peace after the Revolutionary War, the title to the navigable waters went to the original states, and, when the Constitution was adopted it became subject to the rights surrendered thereby to the United States. Lewis Blue Point Oyster Cultivation Co. v. Briggs (1910) 91 N. E. 846, 198 N. Y. 287, affirming judgment (1908) 114 N. Y. Supp. 313, 129 App. Div. 574.

Control of navigable waters and title to the bed of navigable streams is vested in the state, subject to limitations of the federal Constitution. People v. Delaware & Hudson Co. (1914) 107 N. E. 506, 213 N. Y. 194, modifying judgment (1912) 139 N. Y. Supp. 392, 154 App. Div. 909.

The state is authorized, subject to the limitations of the federal Constitution, to grant lands under water and rights therein. Id.

The treaty between New York and Massachusetts of 1786 vests in New York the title to a strip along the easterly side and for the whole length of the Niagara river, and New York is the owner in fee of the bed of the river subject to the paramount right of Congress to control navigation necessary for the regulation of interstate and foreign commerce. Strawberry Island Co. v. Cowles (1912) 140 N. Y. Supp. 333, 79 Misc. Rep. 279.

A stream which is capable of being used at all seasons of the year, except in summer, for the transportation of logs, and so is a water highway of the third class, is subject to regulation by the state legislature. State v. White Oak River Corp. (1892) 111 N. C. 661, 16 S. E. 331.

The control of navigable waters within the state is in the state; the authority of the general government being only cumulative to protect from an interference with commerce. Pedrick v. Raleigh & P. S. R. Co. (N. C. 1906) 55 S. E. 877.

The title to tidelands vested in the state is subject to the paramount right of navigation and of Congress to regulate commerce between the states. Rasmussen v. Walker Warehouse Co. (Or. 1913) 136 P. 661; Kronenberg v. Same, Id. 666.

A state may change the common-law rule as to riparian rights and permit appropriation of waters, but cannot destroy the right to the use of water for government property, and is limited by the power of the general government to prevent interference with navigation. In re Willow Creek (Or. 1915) 144 P. 505, order modified on rehearing (1915) 146 P. 475.

Navigable streams within a state are subject to the police power of the state, when not in conflict with an act of congress regulating commerce. Craig v. Kline (1870) 65 Pa. St. (15 P. F. Smith) 399, 3 Am. Rep. 636.

The legislatures of the several states have power to grant to private individuals the salt-water "flats" within the limits of such states, if not previously appropriated by grant, prescription, or otherwise, provided the exercise of an exclusive right thus granted does not infringe upon the rights of the government of the United States in its power "to regulate commerce with foreign nations, and among the several states." Galveston v. Menard (1859) 23 Tex. 349.

The navigable waters, and the soil under them, within the territorial limits of the state, are the property of the state, to be controlled by the state, at its own discretion, for the benefit of the people of the state, only so as not to interfere with the authority of the government of the United States in regulating commerce and navigation. McCready v. Commonwealth (Va. 1876) 27 Grat. 985.

The navigable waters of the state and the soil under them, within its territorial limits, are the property of the state for the benefit of its own people, and it has a right to control them as it sees proper, provided it does not interfere with the authority granted the United States to regulate commerce and navigation. Morgan v. Commonwealth (1900) 98 Va. 812, 35 S. E. 448.

Tide lands belong primarily to the state, and, subject to the rights of navigation as determined by the Secretary of War, may be sold without reference to riparian ownership, and an owner of the uplands owns only to the high-water mark, and his rights are subordinate to the rights of the grantee of the state to maintain boom grounds in front of them. Grays Harbor Boom Co. v. Lownsdale (Wash. 1909) 102 P. 1041.

The conveyance by the state of tide lands within its boundaries does not interfere with interstate and foreign commerce. Palmer v. Peterson (1909) 105 P. 179, 56 Wash. 74.

The provisions in Laws Wis. 1911, c. 652, §§ 1596—2 to 1596—4, that all energy of the navigable waters is subject to the control of the state for public good, that the beneficial use of the navigable waters for public uses are held by the state, in trust for the people, and that the state reserves the management and control thereof, are fairly susceptible of the construction that they only assert the possession by the state of the power to regulate the production of such energy, and the instruments of such production, and when so construed the statute is valid, as declaratory of sovereign power over navigable waters. State v. Bancroft (1912) 134 N. W. 330, 148 Wis. 124, 38 L. R. A. (N. S.) 526.

61. Improvement of navigable waters.—Congress has no power to impair the right of a state to make improvements on the rivers and water courses situated within such state. Withers v. Buckley (1857) 61 U. S. (20 How.) 84, 15 L. Ed. 816.

On the admission of Wisconsin as a

state, it accepted a grant of lands previously made by congress to aid in improving the navigation of the Fox and Wisconsin rivers, and entered upon the making of the improvement; reserving to the state, by the act, any water power which should be created by the dams built. By subsequent legislation the state transferred the lands, improvements, and all its rights to a corporation, which undertook to complete the work. The state assented to a mortgage of all the property and franchises of the corporation, and, on a subsequent foreclosure of the mortgage, to the acquiring of such property and rights by a new corporation, and in 1872 to their sale and transfer to the United States. Through the entire history of the improvement, the incidental water powers created by the dams erected were recognized by the legislature as a source of revenue for the promotion of the work, and were specially enumerated as a part of the property transferred to the first corporation and by the subsequent mortgage. The United States purchased the improvement at an appraised value, and in part payment of the price, by agreement, permitted the grantor corporation to reserve from the conveyance all personal property and all water powers created by the dams, and by the use of the surplus waters not needed for purposes of navigation. The United States has completed and maintains the improvements at a large expense. Held, that the reservation to the state of all the water power incidentally created in making the public improvement was lawful, and the subsequent conveyances passed full title and right to the same, free from the claims of any other riparian owners, whose remedy, if injured in their water rights, was by obtaining compensation therefor as was provided by the statutes under which the improvements were made; that the sole power to control or regulate the use or disposition of the surplus waters accumulated by the dams built became vested in the United States when it acquired and took charge of the improvement; that by virtue of the contract by which the United States virtually sold to the canal company, which was its grantor, the water power, the latter became the sole owner of the same, subject only to the control and regulation of its use by the United States. Green Bay & M. Canal Co. v. Patten Paper Co. (1898) 19 Sup. Ct. 97, 172 U. S. 58, 43 L. Ed. 364.

Acts which do not necessarily interfere with the operation of legislation by congress for the improvement of a navigable stream will not be interfered with by the courts. U. S. v. Beef Slough Manufacturing, Booming, Log-Driving & Transportation Co. (C. C. 1879) Fed. Cas. No. 14,559.

The power of a state to improve the navigation of a navigable river, within its limits, between a port of entry and a port of delivery established by a law of congress on such river, and to provide for the expense of such improvement, by a grant of tolls on a description of vessels passing up and down the river, which, without such improvements, could not ordinarily pass, does not conflict with the power of congress to regulate commerce; and such grant of tolls is not therefore void, as repugnant to the constitution of the United States. Kellogg v. Union Co. (1837) 12 Conn. 7.

An act of a state legislature, imposing reasonable tolls, as a compensation for improving the navigation of a river within its own borders, is constitutional and valid, unless it conflicts with the powers of congress in actual exercise. Thames Bank v. Lovell (1847) 18 Conn. 500, 46 Am. Dec. 332.

Nor is commerce, in such case, crippled by the tolls; but the legislation of the state comes in aid of the powers of congress. Id.

Act Fla. June 11, 1891 (Laws 1891, c. 4077), authorizing the county of Duval to improve the navigation of St. Johns river (a navigable river), and remove obstructions therefrom, is not in conflict with the provision of the constitution of the United States which gives congress power to regulate commerce with foreign nations and among the several states. Stockton v. Powell (1892) 29 Fla. 1, 10 South. 688, 15 L. R. A. 42.

The improvement of a navigable river connecting with the ocean, and constituting a navigable water of the United States, but lying entirely within a state, may be made by or under the authority of the state so long as the free navigation of the river, as it may be permitted by the laws of the United States, is not impaired, or any system for its improvement provided by the general government is not interfered with or defeated. Id.

Where a stream is in fact navigable in its natural state, it may be improved to enlarge its usefulness for the public's benefit. People v. Economy Light & Power Co. (1909) 89 N. E. 760, 241 Ill. 290.

The state may improve the navigation of St. Joseph river, and of any and all streams within its borders. St. Joseph County Com'rs v. Pidge (1854) 5 Ind. 13.

While the state cannot grant an exclusive privilege to navigate a stream, it may authorize a corporation to take tolls in consideration of improvements made to the stream. Sinking Fund Com'rs v. Green & B. R. Nav. Co. (1880) 79 Ky. 73.

A state may grant to a corporation the right to levy tolls upon a navigable river in consideration of the undertaking of the corporation to construct

improvements; and such contract cannot be annulled by the legislature without the consent of the corporation. Id.

The state may incorporate a company to convert an unnavigable into a navigable stream of water, and, under the express or implied consent of congress, may authorize the corporation to assess a charge for the use of the stream, on all vessels which shall thereafter navigate it; and such a charge is not a toll, or duty, forbidden by the constitution of the United States, but is a compensation for labor actually performed by the corporation, and availed of by said vessels. Carondelet Canal & Navigation Co. v. Parker (1877) 29 La. Ann. 430, 29 Am. Rep. 339.

All the citizens of a county have, by the common law, an inherent right to navigate its navigable waters, whether tide waters or fresh-water rivers and lakes; and they cannot be deprived of this right, even by the government itself. The care, supervision, and protection of this common right is, however, accorded to the sovereign power; and the state has the right to make improvements in its navigable waters, in order to make the common right more beneficial. It may also encourage new modes of navigation, and may grant the exclusive use, for a term of years, of the waters in the new mode, as a compensation for the skill, expense, and risk required in its introduction. Moore v. Veazie (1850) 32 Me. 343, 52 Am. Dec. 655, affirmed in (1852) 55 U. S. (14 How.) 568, 14 L. Ed. 545.

St. Mass. 1903, c. 465, as amended by St. Mass. 1906, c. 402, authorizing changes in the Charles river for the improvement of navigation and for other public purposes as necessary incidents, is a valid exercise of the paramount power of the state to control navigable tide waters and the land under them for public good. Home for Aged Women v. Commonwealth (1909) 89 N. E. 124, 202 Mass. 422.

A state statute authorizing a corporation to improve a domestic stream, over which, in its natural state, the ordinary vehicles of commerce have little or no occasion or power to pass, does not infringe the power of congress to regulate commerce. Manistee River Imp. Co. v. Sands (Mich. 1884) 53 Mich. 593, 19 N. W. 199, affirmed in (1887) 123 U. S. 288, 8 Sup. Ct. 113, 31 L. Ed. 149.

The state has the constitutional power to improve the navigation of her rivers. Homochitto River Com'rs v. Withers (1855) 29 Miss. 21.

The state, having the power to improve the navigation of her rivers, may judge of the expediency of doing so, and may execute, and provide for executing, such works of public improvement. Homochitto River Com'rs v. Withers (1885) 29 Miss. (7 Cushm.) 21, 64 Am. Dec. 126.

If a stream is a public river, the legislature may not only declare it to be so, but may improve it, remove impediments to its navigation, and also grant permission to erect dams, booms, etc., and perhaps obstruct it entirely. Morgan v. King (N. Y. 1854) 18 Barb. 277.

The Legislature possesses the power to authorize the scheme of river improvement contemplated by Laws N. Y. 1904, c. 734, establishing the river improvement commission, the powers of which are by Laws N. Y. 1906, c. 418, transferred to the state water supply commission, to regulate the flow of water courses in aid of the public health and safety. State Water Supply Commission of New York v. Curtis (1908) 85 N. E. 148, 192 N. Y. 319, affirming judgment (1908) 109 N. Y. Supp. 494, 125 App. Div. 117.

The construction of a barge canal cannot be held within the reserved power of the state to improve a river for navigation, where something entirely apart from the river, except as it may be necessary to obtain from it an additional supply of water. Fulton Light, Heat & Power Co. v. State (1909) 116 N. Y. Supp. 1000, 62 Misc. Rep. 189.

While the state's control over navigable tidal and boundary streams is subordinate to that of the federal government, its power to improve other navigable waters of the state is equal to that of the federal government in tidal and boundary streams. West Virginia Pulp & Paper Co. of Delaware v. Peck (1913) 143 N. Y. Supp. 720, 82 Misc. Rep. 72.

The state has power to improve the navigation of a navigable river, and incidentally, in such improvement, to create hydraulic power. Guthrie v. McConnel (1859) 2 Ohio Dec. 157.

The state may improve a navigable stream, either itself, or by delegation of authority to another. State v. Portland General Electric Co. (Or. 1908) 98 P. 160, denying rehearing (1908) 95 P. 722, 52 Or. 502.

The control of the state of Pennsylvania over the Delaware and Lehigh rivers as navigable streams, for their improvement as highways, is absolute and paramount. McKeen v. Delaware Division Canal Co. (1865) 49 Pa. (13 Wright) 424.

The legislature may authorize the construction and maintenance of dams upon navigable streams for the improvement of the navigability of such streams. Tewksbury v. Schulenberg (1877) 41 Wis. 584; Falls Mfg. Co. v. Oconto River Imp. Co. (1894) 87 Wis. 134, 58 N. W. 257.

It is competent for the legislature to authorize persons constructing and maintaining dams on navigable streams for the improvement of navigation to collect reasonable tolls for the increased facilities thus furnished for travel

and transportation. Tewksbury v. Schulenberg (1877) 41 Wis. 584.

62. Obstructions of navigation.—No state can obstruct a navigable stream which extends to other states, or is connected with a river or lake which falls into the sea. Palmer v. Cuyahoga County (C. C. 1843) Fed. Cas. No. 10,-688.

A state cannot authorize any material obstruction to be placed in the channel of a navigable tributary of the Mississippi (Illinois river), though beyond the ebb and flow of the tide. Columbus Ins. Co. v. Curtenius (C. C. 1853) Fed. Cas. No. 3,045; Same v. Peoria Bridge Ass'n (C. C. 1853) Fed. Cas. No. 3,046.

In the exercise of the right of eminent domain the state may directly, or indirectly by delegation, authorize the construction of bridges, piers, wharves, or other obstructions in navigable waters, and such obstructions are not nuisances, because erected under lawful authority. Ormerod v. New York, W. S. & B. R. Co. (C. C. 1882) 13 Fed. 370.

Neither the state nor any grantee of the state can erect in navigable streams structures which may obstruct or impede their use as highways. Brown v. U. S. (C. C. 1897) 81 Fed. 55, 57.

Where the erection of milldams was authorized by a state after the adoption of the Constitution, the authorization must be deemed subject to the power to regulate commerce. Barnes v. U. S. (1910) 46 Ct. Cl. 7.

The state, having the right of a proprietor over navigable streams entirely within its borders, may obstruct, or even entirely close up, such streams, where public interest or convenience requires it. Bailey v. Philadelphia, W. & B. R. Co. (Del. 1846) 4 Har. 389, 44 Am. Dec. 593. CONTRA, see Guthrie v. McConnel (1859) 2 Ohio Dec. 157.

The state has the right of a proprietor over navigable streams entirely within its borders, and may obstruct or (unless where restricted by the constitution of the United States) may close up such streams at pleasure. Bailey v. Philadelphia, W. & B. R. Co. (Del. 1846) 4 Har. 389, 44 Am. Dec. 593.

The Indiana acts of 1829 and 1831, making it a penal offense to obstruct navigable streams, are not unconstitutional because the United States constitution gives the general government the right to legislate over navigable streams. Cox v. State (Ind. 1833) 3 Blackf. 193.

It is within the power of the state to authorize the obstruction of navigable streams wholly within the state. Depew v. Trustees of Wabash & E. Canal (1854) 5 Ind. 8.

Over streams within and bordering upon the state, which are navigable for all vessels, the state may exercise jurisdiction to the extent of obstructing the same for the public good, so far as such streams are within her territorial limits, and no action can be sustained for such obstruction unless private property be taken or injured; but congress may interfere, and deprive the state of this jurisdiction. Id.

The state may authorize the obstruction, at her pleasure, for the public good, of any stream within her limits which is only navigable for short distances, and by inferior craft, and at brief periods. Butler v. State (1855) 6 Ind. 165.

The legislature of a state has no power to authorize any serious obstruction to those streams which are channels of commerce between the states. Neaderhouser v. State (1867) 28 Ind. 257.

The state can forbid any erections in navigable waters and on navigable streams, and along the Great Lakes can fix the distance beyond which private erections cannot be maintained. Lincoln v. Davis (1884) 53 Mich. 375, 19 N. W. 103.

It is within the power of the state to make indictable any acts which would amount to an obstruction of a navigable stream. State v. White Oak River Corp. (1892) 111 N. C. 661, 16 S. E. 331.

The legislature of Ohio cannot authorize the creation of a serious obstruction to the navigation of the Muskingum river. Guthrie v. McConnelly (Ohio, 1859) 1 West. Law Month. 593.

The authority of the legislature of the territory of Wisconsin, which extended to all "rightful subjects of legislation," extended to acts authorizing the erection of dams across the rivers of the territory. Stoughton v. State (1856) 5 Wis. 291.

The right on the part of the public to regulate and control navigable streams in the interest of commerce and navigation includes the right on the part of the legislature to prohibit by statute the erection of any structure within or over the same which may operate to impair or obstruct the free navigation thereof, unless the permission of the legislature be expressly obtained for that purpose. Wisconsin River Imp. Co. v. Lyons (1872) 30 Wis. 61.

The legislature may authorize the erection of a dam in a navigable river, not materially obstructing navigation, for a public purpose other than the improvement of the navigation. State v. City of Eau Claire (1876) 40 Wis. 533.

63. Pilots.—State legislation concerning pilotage is not necessarily repugnant to the commerce clause. Olsen v. Smith (1904) 25 Sup. Ct. 52, 195 U. S. 332, 49 L. Ed. 224, affirming judgment (Tex. Civ. App. 1902) 68 S. W. 320.

The Pennsylvania compulsory pilotage law of 1803 applies to foreign as

well as American vessels. Smith v. The Creole (D. C. 1852) Fed. Cas. No. 13,032.

A state may permit or require its pilots to tender their services to inward-bound vessels at a greater distance from the shore than three miles, or the outward limit of the pilot ground. The Whistler (D. C. 1882) 13 Fed. 295.

The rates of pilotage are enacted by a power originally within the states, and not by that conferred by the United States. The Chase (D. C. 1882) 14 Fed. 854.

The states retain the power to legislate upon the subject of pilotage within their own territories, and over their own citizens, unless such legislation interferes with some act of congress. Low v. Commissioners of Pilotage (Ga. 1830) R. M. Charlt. 302.

The Legislature may authorize a local board to prescribe limits for pilot grounds and require pilots to cruise therein, as well as adopt regulations to promote the purpose of such service. Morse v. Heide (1910) 68 S. E. 173, 152 N. C. 625.

64. Ports, harbors, and wharves.—A statute authorizing a city to improve its harbor does not conflict with this clause. Mobile County v. Kimball (1880) 102 U. S. 691, 695, 26 L. Ed. 238.

The federal constitution never intended to give congress authority to interfere with state laws relative to the ordinary facilities afforded to commerce, in the shape of wharves, and other means of trade, and the preservation of harbors and keeping open of rivers. Worsley v. Municipality No. 2 (La. 1844) 9 Rob. 324, 41 Am. Dec. 333.

A dock line established under the authority of the state must be presumed to be a reasonable one. But, if it interferes only with commerce within the state, the state courts cannot interfere with it. Tittabawassee Boom Co. v. Cunning (Mich. 1883) Howell, N. P. 82.

The states within which are navigable rivers have a right to exercise jurisdiction over their waters, and may authorize the erection of wharves, not extending beyond low-water mark, or not materially obstructing navigation, and not to an extent to become a nuisance, except where such action is repugnant to the power "to regulate commerce with foreign nations, and among the states." Delaware & H. Canal Co. v. Lawrence (N. Y. 1873) 2 Hun, 163.

65. Ferries.—The legislature, in granting a charter for a ferry across the Mississippi river, cannot give the grantee any right which will hinder or obstruct the free navigation of the river, or impede the commerce of the country along or across the river. Lonergan v. Mississippi River Bridge Co. (C. C. 1881) 5 Fed. 777, 2 McCrary, 451; Mississippi River Bridge Co. v. Lonergan (1879) 91 Ill. 508.

The state cannot authorize the exercise of a ferry franchise in such a manner as will impede the free navigation of the river, or commerce along or across the river. Mississippi River Bridge Co. v. Lonergan (1879) 91 Ill. 508.

Act Miss. Nov. 29, 1865, regulating ferries across the Mississippi river, is not unconstitutional, on the ground of interfering with the public use of the river as a highway. Marshall v. Grimes (1866) 41 Miss. 27.

The regulation of ferries and other means of internal communication between the states is not vested by the constitution of the United States in congress. The power remains with the states. State v. Hudson County Freeholders (1851) 23 N. J. Law (3 Zab.) 206.

The Supreme Court of the United States has not definitely decided that a state cannot fix rates for ferriage from itself to another state, and the former decision in the courts of New Jersey sustaining such right cannot be regarded as in conflict with the federal decisions. New York Cent. & H. R. R. Co. v. Board of Chosen Freeholders of Hudson County (1909) 74 A. 954, 76 N. J. Law, 664, reversing judgment (1907) 65 A. 860, 74 N. J. Law, 367.

66. Bridges.—It is within the power of the state to authorize the construction of bridges over navigable waters within its borders, provided they do not materially obstruct navigation. Columbus Ins. Co. v. Peoria Bridge Ass'n (C. C. 1853) Fed. Cas. No. 3,046; St. Joseph County Com'rs v. Pidge (1854) 5 Ind. 13; Commonwealth v. Breed (1827) 21 Mass. (4 Pick.) 460; Monongahela Bridge Co. v. Kirk (1863) 46 Pa. (10 Wright) 112, 84 Am. Dec. 527.

The legislature alone has power to authorize the construction of a bridge over navigable waters. Inhabitants of Cape Elizabeth v. Cumberland County Com'rs (1874) 64 Me. 456; Inhabitants of Arundel v. McCulloch (1813) 10 Mass. 70.

Laws Miss. 1867, p. 332, requiring a certain railroad company to construct and maintain a drawbridge over Pearl river, between Louisiana and Mississippi, does not violate the federal constitution. New Orleans, M. & T. R. Co. v. Mississippi (1884) 5 Sup. Ct. 19, 25, 112 U. S. 12, 28 L. Ed. 619.

The state has no power to declare that a bridge with a draw of a particular width is not an obstruction. Columbus Ins. Co. v. Peoria Bridge Ass'n (C. C. 1853) Fed. Cas. No. 3,046.

A statute of Indiana cannot give a right to use a bridge across the Ohio river beyond low-water mark, which constitutes the boundary line of the state. Evansville & H. Traction Co. v. Henderson Bridge Co. (C. C. 1904) 134 Fed. 973, judgment affirmed (1905) 141 Fed. 51, 72 C. C. A. 539.

The state has complete jurisdiction

over all navigable waters situated within its limits subject to the paramount power of Congress to regulate commerce thereon, and the state may provide for the construction of bridges over such navigable rivers, provided they do not obstruct navigation and are not in conflict with congressional legislation on the subject. Hilger v. Chrisp (Ark. 1911) 136 S. W. 660.

The power of a state to authorize the construction of a bridge over a navigable stream within its boundaries is not impaired by the provision of the act of congress, admitting it into the Union, "that all the navigable waters within the state shall be common highways, and forever free, as well to the inhabitants of said state as to the citizens of the United States, without any tax, impost, or duty therefor." People v. Potrero & B. V. R. Co. (1885) 67 Cal. 166, 7 Pac. 445.

The act of assembly of 1837, authorizing defendant railroad company to erect a closed bridge over White Clay creek, is constitutional. Bailey v. Philadelphia, W. & B. R. Co. (Del. 1846) 4 Har. 389, 44 Am. Dec. 593.

The fact that a bridge on which the legislature reduced the rates of toll to be charged by the proprietor spanned a river between two states did not render the act of the legislature void as a regulation of interstate commerce. Commonwealth v. Covington, & C. Bridge Co. (Ky. 1893) 21 S. W. 1042; Covington & C. Bridge Co. v. Commonwealth (Ky. 1893) 22 S. W. 851.

A legislature may authorize the construction of a causeway or bridge across navigable or tide waters, although the navigation might thereby be impaired or injured. Rogers v. Kennebec & P. R. Co. (1853) 35 Me. 319.

An act authorizing the construction of a drawbridge over a navigable tidewater river is not unconstitutional, as an interference with interstate commerce, though it fails to designate the size of the draw. City of Baltimore v. Stoll (1879) 52 Md. 435.

The authority of the Legislature to empower persons or corporations to erect and maintain bridges over navigable waters within the limits of the commonwealth, and thereby to obstruct, in a greater or less degree, the free passage of vessels and boats over and through the same, is clear and unquestionable. Commonwealth v. Breed (1827) 21 Mass. (4 Pick.) 460; Same v. Proprietors of New Bedford Bridge (1854) 68 Mass. (2 Gray) 339; Same v. Inhabitants of Taunton (1863) 89 Mass. (7 Allen) 309. Such authority may be granted by implication. Fall River Iron Works Co. v. Old Colony & F. R. R. Co. (1862) 87 Mass. (5 Allen) 221.

The legislature has power to authorize the erection of bridges over navigable waters within the limits of the commonwealth, and whether public convenience and necessity require such interruption or obstruction to navigation is a question exclusively within the province of the legislature to determine. Commonwealth v. Breed (1827) 21 Mass. (4 Pick.) 460.

The constitutionality of a law authorizing the building of a bridge over a navigable channel will not depend on the fact that a public highway passes over the bridge, or upon the number of persons intended to be accommodated by such bridge; for it is a matter wholly within the discretion of the Legislature to determine what number of persons ought to be accommodated by such bridge, in order to justify any obstruction to navigation by its erection. Id.

An act of the legislature authorizing the erection of a bridge over navigable water is not unconstitutional, as interfering with the power to regulate commerce granted to congress by the constitution of the United States. Commonwealth v. New Bedford Bridge (1854) 68 Mass. (2 Gray) 339.

The State Legislature has full power to authorize the construction of a bridge over a navigable stream; and, when such bridge is built as required by the act, no one has a right to complain of it on the ground of mere inconvenience, and the exercise of this power cannot be questioned except by a paramount law of Congress. The Ordinance of 1787 does not affect the question. Highways Com'rs of Manlius v. Chaffee (1870) 1 Mich. N. P. 147.

While the state cannot confer the power to entirely obstruct the navigation of the Saginaw river, it may authorize the construction of bridges which to some extent interfere with the commerce between the States, suitable arrangements being provided for the safe passage of vessels through them. Tittabawassee Boom Co. v. Cunning (Mich. 1883) Howell, N. P. 82.

The building of bridges over navigable waters within the limits of any state may be authorized by its legislature; and, in like manner, the bridging of navigable waters lying between two states may be authorized by the legislatures of each; provided, that no treaties, or other legislation of congress conflict therewith, and the acts of such legislatures are not contrary to the general provisions of the constitution of the United States. Dover v. Portsmouth Bridge (1845) 17 N. H. 200.

The grant of power to congress of regulating commerce does not restrain the states from authorizing the erection of bridges upon navigable waters within their limits which may even totally obstruct the passage of a vessel. Id.

The legislature may authorize a corporation to construct a bridge over a navigable stream, where the wants of the community require it, and it will be for the public benefit, although it may render the navigation of the stream more difficult, if it does not entirely destroy it. Attorney General v. Stevens

(1831) 1 N. J. Eq. (Saxt.) 369, 22 Am. Dec. 526.

A state, by legislative enactment, may authorize the construction of a bridge over a navigable river within its bounds, provided it is constructed in such a way as not to impair navigation. People v. Rensselaer & S. R. Co. (N. Y. 1836) 15 Wend. 113, 30 Am. Dec. 33.

It is at all times competent for the Legislature to improve and increase the navigability of a stream and when necessary for that purpose to require the bridges to be raised or removed. Lehigh Valley R. Co. v. Canal Board (1910) 125 N. Y. Supp. 227, 69 Misc. Rep. 251.

Where a river is wholly within the limits of the state, it is within the power of the legislature to diminish the navigability by the erection of a bridge at or below tide water; the state law not conflicting with any constitutional enactment of the general government in respect to such tide waters. Flanagan v. City of Philadelphia (1862) 42 Pa. St. (6 Wright) 219.

The state has the power to obstruct a navigable river, by the construction of a bridge over it with supporting piers, without liability to navigators. Monongahela Bridge Co. v. Kirk (1863) 46 Pa. (10 Wright) 112, 84 Am. Dec. 527.

Where a stream is entirely within the limits of a state, it is within the power of the legislature to authorize the construction of a bridge over the same, though it may inconvenience the right of navigation. Southern Ry. Co. v. Ferguson (1900) 59 S. W. 343, 105 Tenn. 552, 80 Am. St. Rep. 908.

While the legislature may authorize the construction of bridges across the Wisconsin river, it cannot materially or unnecessarily obstruct navigation. Sweeney v. Chicago, M. & St. P. Ry. Co. (1884) 60 Wis. 60, 18 N. W. 756.

V. SUBJECTS OF REGULATION

(A) In general

67. Property subject of commerce in general.—Act March 4, 1913 (Comp. St. § 8837), for the protection of migratory birds, held not authorized by the commerce clause. U. S. v. Shauver (D. C. 1914) 214 Fed. 154; U. S. v. McCullagh (D. C. 1915) 221 Fed. 288; Id. (Kan. 1915) 153 P. 557; State v. Sawyer (1915) 94 A. 886, 113 Me. 458, L. R. A. 1915F, 1031.

A product, such as tobacco, that has from time immemorial been recognized by custom or law as a fit subject for barter or sale, particularly if its manufacture has been made the subject of federal regulation and taxation, must be recognized as a legitimate article of commerce, although it may, to a certain extent, be within the police power of the states. Austin v. Tennessee (1900) 21 Sup. Ct. 132, 133, 179 U. S. 343, 45 L. Ed. 224, affirming judgment (1898) 48 S. W. 305, 101 Tenn. 563, 50 L. R. A. 478, 70 Am. St. Rep. 703.

Natural gas, when reduced to possession, is a commodity which belongs to the owner of the land, and may be the subject of both intrastate and interstate commerce. West v. Kansas Natural Gas Co. (1911) 31 Sup. Ct. 564, 221 U. S. 229, 55 L. Ed. 716, 35 L. R. A. (N. S.) 1193, affirming decree Kansas Natural Gas Co. v. Haskell (C. C. 1909) 172 Fed. 545.

The common commercial usage and course of trade, rather than the state legislature, determines what are articles of commerce. Swift v. Sutphin (C. C. 1889) 39 Fed. 630, 636.

Newspapers are subjects of commerce, within the meaning of the provision in the constitution of the United States relating to commerce between the states. Preston v. Finley (C. C. 1896) 72 Fed. 850.

Oleomargarine is a lawful article of commerce. In Brundage (C. C. 1899) 96 Fed. 963, 967, reversed (1901) 21 Sup. Ct. 455, 180 U. S. 499, 45 L. Ed. 639.

Intoxicating liquors are articles of commerce so far as the interstate commerce law is concerned, and hence no state may prohibit their introduction within its borders. U. S. v. United States Express Co. (D. C. 1910) 180 Fed. 1006, judgment reversed United States Exp. Co. v. Friedman (1911) 191 Fed. 673, 112 C. C. A. 219.

Stocks, bonds, and securities are subjects of interstate commerce, and sales of the same between the states constitute interstate commerce. William R. Compton Co. v. Allen (D. C. 1914) 216 Fed. 537.

Stocks, bonds, debentures, and other securities are subject-matters of interstate commerce. Bracey v. Darst (D. C. 1914) 218 Fed. 482.

Photo-play films, shipped from one state to another, are subjects of interstate commerce. U. S. v. Motion Picture Patents Co. (D. C. 1915) 225 Fed. 800.

A state has the same power over fish and game brought within its borders as it has over fish and game found within its limits. Eager v. Jonesboro, Lake City & Eastern Express Co. (Ark. 1912) 147 S. W. 60.

Where game birds, though lawfully taken and shipped in Arkansas, were not packed in the manner prescribed by Lacey Act May 25, 1900, § 5 (Comp. St. § 8708), and were seized and confiscated by the game warden in Missouri before arriving at their destination in Illinois, the shipment was not interstate commerce in the full sense. Id.

Pub. Acts Conn. 1893, p. 240, prohibiting the business of transmitting money to race tracks without the state, there to be placed or bet on horse racer, is not repugnant to the commerce clause. State v. Harbourne (1898) 40

A. 179, 70 Conn. 484, 40 L. R. A. 607, 66 Am. St. Rep. 126.

A note, given as the result of transactions which constitute interstate commerce, is not subject to burdensome state regulations. Circular Advertising Co. v. American Mercantile Co. (Fla. 1913) 63 So. 3.

Natural gas, when brought to the surface and placed in pipes for transportation, is an article of commerce. State v. Indiana & O. Oil, Gas & Mining Co. (1889) 120 Ind. 575, 22 N. E. 778, 6 L. R. A. 579; Avery v. Same (1889) 120 Ind. 600, 22 N. E. 781.

Act Ind. March 9, 1889, prescribing that it shall be unlawful to conduct natural gas to any point outside of the state, is unconstitutional, as affecting interstate commerce,—natural gas, when reduced to possession, being an article of commerce,—and hence the court will not enjoin such transmission; no undue appropriation nor the use of artificial means to produce an unnatural flow from the wells being alleged. Manufacturers' Gas & Oil Co. v. Indiana Natural Gas & Oil Co. (1900) 58 N. E. 706, 155 Ind. 545.

The right of property and commerce in slaves is not subject to the ordinary rules which distinguish other property, and is the subject of internal regulation by the states, over which congress has no control. Commonwealth v. Griffin (1842) 42 Ky. (3 B. Mon.) 208.

Game delivered to a common carrier to be transported to a point outside of the state is an article of interstate commerce, and, as such, subject only to national regulation, and not to the police power of the state. Bennett v. American Exp. Co. (1891) 83 Me. 236, 22 Atl. 159, 23 Am. St. Rep. 774, 13 L. R. A. 33.

In granting the right to appropriate waters of a running stream for power purposes, a limitation preventing the transmission or use of the power beyond the confines of the state does not interfere with interstate commerce. Kirk v. State Board of Irrigation (Neb. 1912) 134 N. W. 167.

Act N. J. May 11, 1905 (P. L. p. 461), forbidding the abstraction of waters of any fresh water lake, pond, or stream of this state for transportation beyond the bounds of this state, is not in violation of the interstate commerce clause, because water abstracted contrary to the statutory prohibition cannot legitimately enter into interstate commerce. McCarter v. Hudson County Water Co. (1906) 65 A. 489, 70 N. J. Eq. 695, affirming decree (Ch. 1905) 61 A. 710, 70 N. J. Eq. 525.

Comp. St. § 8708, providing that all dead bodies of foreign game animals, the importation of which is prohibited, or the dead bodies of wild game animals transported into any state or territory, shall, upon arrival in such state or territory, be subject to the operation and effect of the laws of such state or territory enacted in the exercise of its police powers, relates to the transportation of game from one state to another, and has no application to the importation of game, which is not prohibited and which constitutes a conceded article of commerce, from a foreign country. People v. Hesterberg (1905) 96 N. Y. Supp. 286, 109 App. Div. 295; Ex parte Hill (1905) 96 N. Y. Supp. 296, 109 App. Div. 917. Order reversed (1906) 76 N. E. 1032, 184 N. Y. 126, 3 L. R. A. (N. S.) 163.

Game may be the subject of interstate commerce. People v. Fargo (1910) 122 N. Y. Supp. 553, 137 App. Div. 727, reversing judgment (1909) 118 N. Y. Supp. 454, 63 Misc. Rep. 381.

68. Transactions constituting, and means and instrumentalities of commerce in general.—Commerce defined. Welton v. Missouri (1875) 91 U. S. 275, 280, 23 L. Ed. 347; U. S. v. Swift & Co. (C. C. 1903) 122 Fed. 529, modified (1905) 25 Sup. Ct. 276, 196 U. S. 375, 49 L. Ed. 518.

Commerce among the states, within the exclusive regulating power of congress, "consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, as well as the purchase, sale, and exchange of commodities." In re Greene (C. C. 1892) 52 Fed. 104; Interstate Amusement Co. v. Albert (Tenn. 1913) 161 S. W. 488.

A vessel while carrying a cargo from San Francisco to San Diego is engaged in commerce with foreign nations, and such commerce is subject to regulation by Congress. Lord v. Goodall, N. & P. S. S. Co. (1880) 102 U. S. 541, 543, 26 L. Ed. 224.

Commerce with foreign countries and among the states, strictly considered, consists in "intercourse" and "traffic," including in these terms navigation and the transportation of persons and property, as well as purchase, sale, and exchange of commodities. Mobile County v. Kimball (1880) 102 U. S. 691, 26 L. Ed. 238.

The power of congress to regulate interstate or foreign commerce includes the power to legislate upon the subject of private contracts in respect to such commerce. Addyston Pipe & Steel Co. v. U. S. (1899) 20 Sup. Ct. 96, 175 U. S. 211, 44 L. Ed. 136, modifying judgment U. S. v. Addyston Pipe & Steel Co. (1898) 85 Fed. 271, 29 C. C. A. 141.

"Interstate commerce" consists of intercourse and traffic between the citizens or inhabitants of different states, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale, and exchange of commodities. Id.

Commerce among the states embrac-

es navigation, intercourse, communication, traffic, the transit of persons, and the transmission of messages by telegraph. Champion v. Ames (1903) 23 Sup. Ct. 321, 325, 188 U. S. 321, 47 L. Ed. 492.

Commerce is conducted among the states, within the meaning of the federal Constitution, by a corporation engaged in imparting instruction by correspondence, whose business involves the solicitation of students in other states by local agents, who are also to collect and forward to the home office the tuition fees, and the systematic intercourse between the corporation and its scholars and agents, wherever situated, and the transportation of the needful books, apparatus, and papers. International Text-Book Co. v. Pigg (1910) 30 Sup. Ct. 481, 484, 217 U. S. 91, 54 L. Ed. 678, 27 L. R. A. (N. S.) 493, 18 Ann. Cas. 1103.

While commerce is defined to be an exchange of commodities, it is broader, and includes navigation and all forms of intercourse, whether by communication, by telegram, or travel by passengers on trains or boats. Kalen v. U. S. (1912) 196 Fed. 888, 116 C. C. A. 450.

Commerce with foreign nations and among the several states can mean nothing more than intercourse with those nations, and among those states, for purposes of trade, be the object of the trade what it may; and this intercourse must include all the means by which it can be carried on, whether by the free navigation of the waters of the several states, or by a passage over land through the states, where such passage becomes necessary to the commercial intercourse between the states. It is this intercourse which Congress is invested with the power of regulating, and with which no state has a right to interfere. But this power, which comprehends the use of and passage over the navigable waters of the several states, does by no means impair the right of the state government to legislate upon all subjects of internal police within their territorial limits, which is not forbidden by the Constitution of the United States, even although such legislation may indirectly and remotely affect commerce, provided it do not interfere with the regulations of Congress upon the same subject. Corfield v. Coryell (C. C. 1823) Fed. Cas. No. 3,230.

Interstate commerce, subject to regulation by Congress, includes not simply the buying and selling of goods, but also the means of their transportation, and of the transportation of persons engaged therein. Illinois v. Rock Island & P. R. Co. (C. C. 1896) 71 Fed. 753, 756.

Commerce between the several states means more than mere transportation of commodities, and comprises commercial intercourse in all of its phases. In re Bergen (C. C. 1900) 115 Fed. 339.

Commerce is the sale or exchange of commodities, but that which the law looks upon as the body of commerce is not restricted to specific acts of sale or exchange. It includes the intercourse—all the initiatory and intervening acts, instrumentalities, and dealings —that directly bring about the sale or exchange. U. S. v. Swift & Co. (C. C. 1903) 122 Fed. 529, decree modified Swift & Co. v. U. S. (1905) 25 Sup. Ct. 276, 196 U. S. 375, 49 L. Ed. 518.

Interstate commerce is the trading and trafficking in commodities between and amongst citizens of different states; it is transporting by common carriers passengers and property from one state into another state; the selling and buying of commodities by a citizen of one state to a citizen of another state, which are to be transported from the state of the seller to that of the buyer, or to another state and there resold or used; "citizen" including an individual firm or corporation. Howard v. Illinois Cent. R. Co. (C. C. 1907) 148 Fed. 997, affirmed (1908) 28 Sup. Ct. 141, 207 U. S. 463, 52 L. Ed. 297.

Commerce, within the meaning of this clause means commercial intercourse in all its branches. Snead v. Central of Georgia Ry. Co. (C. C. 1907) 151 Fed. 608.

Employés of persons or corporations engaged in commerce are instrumentalities of commerce, and a restrictive or benevolent regulation of those employés is within the power of Congress. Id.

Commerce undoubtedly is traffic, but is something more, it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches, and is regulated by prescribed rules for carrying on that intercourse. U. S. v. Scott (D. C. 1906) 148 Fed. 431.

"Interstate commerce" comprehends intercourse for the purposes of trade in any and all of its forms, including transportation, purchase, sale and exchange of commodities between the citizens of different states; and if any commercial transaction reaches an entirety in two or more states, and if the parties dealing with reference to that transaction deal from different states, then the whole transaction is a part of the interstate commerce of the United States, and subject to regulation by Congress under the Constitution. In re Charge to Grand Jury (D. C. 1907) 151 Fed. 834.

The commerce clause empowers Congress to regulate the adjuncts of interstate commerce, as well as such commerce itself. U. S. v. Adair (D. C. 1907) 152 Fed. 737, judgment reversed Adair v. U. S. (1908) 28 Sup. Ct. 277, 208 U. S. 161, 52 L. Ed. 436, 13 Ann. Cas. 764.

Commerce consists in intercourse and traffic, including in these terms navigation, and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of com-

modities. U. S. v. Westman (D. C. 1910) 182 Fed. 1017.

Commerce being intercourse, it is unimportant, in determining whether a transaction was interstate commerce, whether the negotiations were conducted by mail, by traveling salesmen, by telegraph, or by telephone. U. S. v. Tucker (D. C. 1911) 188 Fed. 741.

Every negotiation, initiatory and intervening act, contract, trade, and dealing between citizens of any state or territory, or the District of Columbia, with those of another political division of the United States, which contemplates and causes importation from one such division to another, whether it be of goods, persons, or information, is a transaction of interstate commerce. Id.

An investment company, which makes contracts upon which the other parties make monthly payments, and also makes loans to its contract holders secured by mortgage, although doing business in different states, held not engaged in interstate commerce, within the commerce clause. Standard Home Co. v. Davis (D. C. 1914) 217 Fed. 904.

The absolute power of Congress to regulate commerce, being without limit or extent, includes the power to regulate the use of all means and instrumentalities used in commerce, whether on sea, navigable rivers and lakes, in harbors or on land, irrespective of whether a State has attempted to regulate the same matter or not. (1899) 22 Op. Atty. Gen. 501, 646.

Commerce is not restricted to the purchase and sale of commodities, but includes also navigation, intercourse, and the reception, transportation, and delivery of passengers and freight by land and water, and also the means and instrumentalities used in such commerce. Id.

Commerce relates to trade; intercourse may be carried on without trade. Commerce, therefore, includes no intercourse but that which consists in trade or traffic, and certainly does not include jurisdiction. Caldwell v. State (Ala. 1832) 1 Stew. & P. 327.

The term "commerce," as employed in this clause, is not limited to an exchange of commodities only, but includes, as well, "intercourse" with foreign nations and between the states, and the term "intercourse" includes the transportation of passengers. People v. Raymond (1868) 34 Cal. 492.

The Idaho public utilities act held not violative of the commerce clause. Idaho Power & Light Co. v. Blomquist (Idaho, 1914) 141 P. 1083.

"Commerce," in a general sense, means an interchange or mutual change of goods, wares, products, or property of any kind between nations or individuals, either by barter or by purchase and sale, but in its constitutional sense it also means intercourse and navigation. Fuller v. Chicago & N. W. R. Co. (1871) 31 Iowa, 187.

"Commerce" is the interchange or mutual change of goods, productions, or property of any kind between nations or individuals, while "transportation" is the means by which commerce is carried on. Council Bluffs v. Kansas City, St. J. & C. B. R. Co. (1876) 45 Iowa, 338.

The natural flight of wild fowl from one point to another does not constitute "commerce" within the commerce clause of the federal Constitution, unless the word be expanded beyond any significance heretofore given it. State v. McCullagh (1915) 153 P. 557, 96 Kan. 786.

"Interstate commerce" within the exclusive jurisdiction of Congress, involves, as an essential and indispensable element, the transportation of property or intelligence from one state to another, embracing not only the property or intelligence so sent, but the physical agencies, as the railroad, express and telegraph companies engaged in the commerce, and their employés, as well as all persons who are directly connected as principals or agents in carrying on the business, except that as applied to intelligence it does not include all persons who write letters, but is confined to those persons, such as the postal authorities and employés of telegraph companies, through whose agency or instrumentality the intelligence desired to be sent is conveyed, and those who send or exchange intelligence as an essential part of their business and that directly results in the transportation of property. United States Fidelity & Guaranty Co. v. Commonwealth (Ky. 1910) 129 S. W. 314.

Defendant, a foreign corporation, operated a scheme to obtain commercial credits by publishing a list of attorneys throughout the United States, to promptly remit all moneys collected, and placed in the hands of subscribing business concerns throughout the United States. The attorneys paid defendant for advertisement or representation in the list, and also agreed to furnish defendant's business customers gratis credit reports direct concerning business houses in the vicinity of the attorney's residence with whom the business subscribers were contemplating contracts. These reports were sent through the mail irregularly and had no direct relation to the sale of goods to be transported in interstate commerce. Held, that the furnishing of such reports by defendant through its attorneys was not "interstate commerce," so as to relieve defendant from liability for a license tax under Ky. St. § 4224 (Russell's St. § 6157), providing that each corporation and its representatives in the state, engaging in reporting credits, shall pay a license tax of $100. Id.

"Commerce" is defined as "the exchange of merchandise on a large scale between different places or communities." In re Opinion of the Justices (1910) 91 N. E. 405, 204 Mass. 607.

The sending of means of education by correspondence through the mails is commerce. Marconi Wireless Telegraph Co. of America v. Commonwealth (1914) 106 N. E. 310, 218 Mass. 558.

Rafting logs is not engaging in commerce between the states, though incidentally connected with it. Tittabawassee Boom Co. v. Cunning (Mich. 1883) Howell, N. P. 82.

"Commerce" is a term of the largest import, including intercourse for the purpose of trade in any and all forms, including purchase, sale, and exchange of commodities between citizens of one country and citizens or subjects of other countries, and between citizens of different states. Imperial Curtain Co. v. Jacob (Mich. 1910) 127 N. W. 772, 17 Detroit Leg. N. 751.

"Commerce," from a legal standpoint, consists in the various agreements which have for their objects to facilitate the exchange of the products of the earth or industry of man, with intent to realize a profit. In a narrow sense, "it signifies any reciprocal agreement between two persons by which one delivers to the other a thing which the latter accepts, and for which he pays a consideration." As used in the federal constitution, it includes not only traffic, but intercourse and navigation. Crow v. State (1851) 14 Mo. 237.

"Commerce," as used in the commerce clause, includes traffic, or buying and selling, methods of intercourse, transportation, and transmission of information. Kansas City v. McDonald (Mo. 1915) 175 S. W. 917.

"Commerce" relates to dealings with foreign nations. "Trade" means mutual traffic among the citizens of a state or nation, or the buying, selling, or exchange of articles between members of the same community. People v. Fisher (N. Y. 1835) 14 Wend. 9, 28 Am. Dec. 501.

"Commerce," as used in this clause, involves trade and commercial relations and intercourse among citizens of different states or countries, and comprehends navigation between the United States and foreign countries, and the transportation by land or water of persons or property between the different states and in foreign countries constitutes interstate and foreign commerce. People ex rel. Freel v. Downs (1911) 136 N. Y. Supp. 440.

Act of bank in collecting draft for price of interstate shipment of whisky, held an act of interstate commerce, and not a violation of the laws of this state regulating the sale of intoxicating liquors. State v. Fisher (N. C. 1913) 77 S. E. 121.

The term "interstate commerce" includes instrumentalities and agencies by which it is conducted, and the power of Congress extends to the regulation of such instrumentalities, including the right to legislate for the welfare of persons operating them. Lloyd v. North Carolina R. Co. (1913) 78 S. E. 489, 162 N. C. 485.

"Commerce" means not only traffic, but also intercourse, between nations. State v. Foreman (1835) 16 Tenn. (8 Yerg.) 256.

A contract to furnish theatrical companies as agent to the owners of various theaters for a certain sum and a percentage of the amount paid the actors, by which complainant agreed to furnish such companies for defendant's theater, held not to involve interstate commerce. Interstate Amusement Co. v. Albert (1913) 161 S. W. 488, 128 Tenn. 417.

The power of Congress over interstate commerce extends to all agencies and instrumentalities through which it is carried on. Southern Ry. Co. v. Railroad Commission of Indiana (Ind. 1913) 100 N. E. 337; Freeman v. Powell (Tex. Civ. App. 1911) 144 S. W. 1033, writ of error denied Powell v. Freeman (Tex. Civ. App. 1912) 148 S. W. 290.

Commerce among the states comprehends intercourse for the purpose of trade in any and all its forms, including the transportation, purchase, sale, and exchange of commodities between the citizens of different states. State v. Peet (1908) 68 A. 661, 80 Vt. 449.

The common idea of commerce is reciprocal agreements by which one person delivers to another a material thing for money, which is a sale, or for another thing, which is an exchange. International Text-Book Co. v. Lynch (1908) 69 A. 541, 81 Vt. 101.

The word "commerce," as used in the federal Constitution, is a comprehensive term, and means more than traffic. Sperry & Hutchinson Co. v. Hill (W. Va. 1915) 86 S. E. 748.

R. S. Wis. 1898, § 1770b, as amended by Laws 1899, c. 351, § 27, Laws 1901, cc. 399, 434, Laws 1903, c. 124, and Laws 1905, c. 506, requires foreign corporations doing business in the state to take certain steps, and forbids any corporation which has not complied with the statute to transact business, acquire, hold, or dispose of property in the state, and provides that every contract made by or on behalf of any such corporation which has not complied with the statute, "affecting the personal liability thereof," or relating to property within the state, shall be void in its behalf. A resident of the state, by letter, employed a stockbroker residing in New York to purchase in New York shares of stock of a corporation foreign to Wisconsin, and transmit the same to Wisconsin, where the resident was to pay through the usual collection agents, and the broker fully performed in New York all the contract, except the act of delivering the stock certificates and collecting the payment. Held, that the

transaction constituted an act of interstate commerce. Catlin & Powell v. Schuppert (1907) 110 N. W. 818, 130 Wis. 642.

The word "commerce," as used in the federal Constitution, comprehends all of the intercourse between the parties necessarily or ordinarily involved in a commercial transaction with reference to merchantable commodities, etc. Loverin & Browne Co. v. Travis (Wis. 1908) 115 N. W. 829; F. A. Patrick & Co. v. Deschamp (1911) 129 N. W. 1096, 145 Wis. 224.

The regulation of the relation of master and servant, as to acts done in interstate commerce, as to the responsibility of the master for injuries to a servant, and as to limiting the hours of labor, is within the power conferred on Congress by the interstate commerce clause. State v. Chicago, M. & St. P. Ry. Co. (1908) 117 N. W. 686, 136 Wis. 407.

Commerce includes sale or barter, with incidents thereof, communication, and transportation of passengers or goods. Ruck v. Chicago, M. & St. P. Ry. Co. (1913) 140 N. W. 1074, 153 Wis. 158.

69. Navigation and shipping in general.—This power in congress extends to navigation carried on by vessels exclusively employed in transporting passengers, and to vessels propelled by steam or fire, as well as to other vessels. Gibbons v. Ogden (1824) 22 U. S. (9 Wheat.) 1, 6 L. Ed. 23.

The word "commerce" comprehends navigation, and a power to regulate navigation is as expressly conferred as if that term had been added. Id.

The power to regulate commerce includes the regulation of navigation, and the power to regulate navigation is the power to prescribe rules in conformity with which navigation must be carried on, and extends to persons who conduct it as well as to the instruments used. Cooley v. Board of Wardens of Port of Philadelphia (1851) 12 How. 299, 315, 13 L. Ed. 996.

A steamboat employed as a lighter and towboat, sometimes towing vessels beyond the outer bar of the bay and into the gulf of Mexico, several miles, is not engaged exclusively in domestic trade and commerce of the state, and so subject to state regulation by a law conflicting with the act of congress on the same subject. Foster v. Davenport (1859) 22 How. 244, 245, 16 L. Ed. 248.

Comp. St. § 7778, providing that no bill of sale, mortgage, hypothecation, or conveyance of any vessel of the United States shall be valid against any person other than the grantor or mortgagor, his heirs and devisees, and persons having actual notice thereof, unless such bill of sale, mortgage, hypothecation, or conveyance be recorded in the office of the collector of the customs when such vessel is registered or enrolled, is constitutional. White's Bank v. Smith (1868) 7 Wall. 646, 655, 19 L. Ed. 211.

A steamer employed in the transportation of goods on a river, within the state of Michigan, destined for other states, and goods brought from without the limits of Michigan and destined to places within that state, is engaged in commerce between the states, and, however limited that commerce is, so far as it goes it is subject to the regulation of congress. The Daniel Ball (1870) 77 U. S. (10 Wall.) 557, 19 L. Ed. 999.

While navigating the high seas, between ports of the same state, a vessel of the United States is, together with the business in which she is engaged, subject to the regulating power of congress. Lord v. Goodall, Nelson & Perkins S. S. Co. (1881) 102 U. S. 541, 26 L. Ed. 224.

Power to enact statute as to enrollment and licensing of vessel, see Wiggins Ferry Co. v. City of East St. Louis (1882) 2 Sup. Ct. 257, 107 U. S. 365, 27 L. Ed. 419.

Under its power to regulate commerce, congress had authority to pass the act of March 3, 1851, limiting the liability of owners of vessels. Providence & N. Y. S. S. Co. v. Hill Mfg. Co. (1883) 3 Sup. Ct. 379, 393, 109 U. S. 578, 27 L. Ed. 1038.

Any control or regulation by a state of the navigation of its waters is an encroachment upon the powers of Congress. Gloucester Ferry Co. v. Pennsylvania (1885) 5 Sup. Ct. 826, 114 U. S. 196, 29 L. Ed. 158.

The power to regulate commerce with foreign states and among the several states includes the power to prescribe the rule by which commerce is to be governed, is complete in itself and may be exercised to its utmost extent, and is limited only by the Constitution, and comprehends navigation within the limits of every state so far as such navigation is connected with interstate or foreign commerce. Scranton v. Wheeler (1900) 21 Sup. Ct. 48, 55, 179 U. S. 141, 45 L. Ed. 126.

The right of congress to regulate commerce involves the right to regulate navigation, and this, in turn, involves the use of submerged lands, in so far as such use is essential to the maintenance of the public highway; and hence the title of a riparian owner to such land is subject to the right of congress to occupy it, without compensation, for the erection of structures in aid of commerce between the states, and it is immaterial that such structures are placed in shallow water, near the shore, so as to interfere with the owner's access to deep water. Scranton v. Wheeler (1893) 57 Fed. 803, 6 C. C. A. 585, judgment reversed (1896) 16 Sup. Ct. 1206, 163 U. S. 703, 41 L. Ed. 318.

Act Feb. 4, 1887, § 20, as amended by Act June 29, 1906 (Comp. St. § 8592), under which common carriers of interstate commerce on water upon the Great Lakes may be required to adopt a uniform system of accounting, is a valid exercise of congressional power. Interstate Commerce Commission v. Goodrich Transit Co. (1912) 32 Sup. Ct. 436, 224 U. S. 194, 56 L. Ed. 729, reversing (Com. C. 1911) 190 Fed. 943.

Under the power to regulate commerce congress had power to enact the limited liability act. U. S. v. Hamburg-Amerikanische, etc., Gesellschaft (1914) 212 Fed. 40, 128 C. C. A. 496.

Power of congress to regulate commerce with foreign nations and among the several states includes the power to regulate navigation. The Wilson v. U. S. (C. C. 1820) Fed. Cas. No. 17,-846; The Chusan (C. C. 1843) Fed. Cas. No. 2,717.

The power of congress over the vessel is coextensive with that over the cargo. The Wilson v. U. S. (C. C. 1820) Fed. Cas. No. 17,846.

The navigation between different ports on a public river within the same state is within the power to regulate commerce among the states. Silliman v. Hudson River Bridge Co. (C. C. 1857) Fed. Cas. No. 12,851.

Congress has no authority to legislate in respect to damages done on land within the body of a state by a vessel upon public navigable waters. King v. American Transp. Co. (C. C. 1859) Fed. Cas. No. 7,787.

The provisions concerning registry are constitutional. Act July 29, 1850. Blanchard v. The Martha Washington (C. C. 1860) Fed. Cas. No. 1,513.

A steam tug employed in towing, on the Connecticut river, between its mouth and city of Hartford, and exclusively within the limits of the state of Connecticut, vessels engaged in interstate commerce, such tug not being engaged otherwise in commerce, is not within the provisions of Act June 8, 1864 (13 Stat. 120) § 4, in regard to inspection. The Farragut (C. C. 1868) Fed. Cas. No. 4,677.

It is not material that the vessels towed were engaged in interstate commerce. Id.

Torts perpetuated by vessels on the high seas are but an incident of commerce the regulation of which is conferred on Congress, and it can make a law which shall affect shipping, leaving to treaty or comity the application of the laws of foreign nations to their shipping, or may make laws which shall operate on its admiralty or other courts and include all vessels. The E. B. Ward (C. C. 1883) 16 Fed. 255, 261.

The word navigation does not mean the running of sawlogs down a river. Duluth Lumber Co. v. St. Louis Boom & Imp. Co. (C. C. 1883) 17 Fed. 419, 424.

The law respecting the enrollment and license of vessels is not an assertion by congress of its authority for the regulation of those instrumentalities of commerce which are primarily the legitimate subjects of regulation by the states. City of New York v. Independent Steamboat Co. (C. C. 1885) 22 Fed. 801, 802.

Act March 3, 1851 (embodied in R. S. §§ 4282–4289; Comp. St. §§ 8020–8027), prescribing the rule of limited liability for the benefit of the owners of ships and vessels, is valid when construed to refer only to maritime losses in respect to which relief can be given in a court of admiralty. Goodrich Transp. Co. v. Gagnon (C. C. 1888) 36 Fed. 123, 128.

Comp. St. §§ 7778, 7779, established a rule of priority between mortgages and conveyances recorded pursuant to their provisions. The right of Congress to regulate such priorities is derived from the commerce clause of the Constitution. The Gordon Campbell (C. C. 1904) 131 Fed. 963, 964.

The power to regulate commerce includes the power to pass laws governing wrecks of the sea. U. S. v. Craig (C. C. 1886) 28 Fed. 795, 797.

The power to regulate commerce includes the power to nationalize ships built and owned in the United States by registries and enrollments and the recording of the muniments of title of all American vessels. Id.

A grant of the bed of a navigable stream to a private owner leaves the stream subject to the public right of navigation and the control of Congress. Carver v. San Pedro, L. A. & S. L. R. Co. (C. C. 1906) 151 Fed. 334.

No act of or grant by an executive department of the United States can affect the right of the public to use the waters of a navigable stream for purposes of navigation, nor the power of Congress to control the same. Id.

Under its constitutional power to regulate commerce, Congress may lawfully impose conditions upon the granting of clearance to vessels as a means of enforcing immigration regulations. International Mercantile Marine Co. v. Stranahan (C. C. 1907) 155 Fed. 428, judgment affirmed Oceanic Steam Nav. Co. v. Stranahan (1909) 29 Sup. Ct. 671, 214 U. S. 320, 53 L. Ed. 1013, and International Mercantile Marine Co. v. Stranahan (1909) 29 Sup. Ct. 678, 214 U. S. 344, 53 L. Ed. 1024.

Comp. St. § 9917, is within the power of Congress so far as navigation comes within the provisions of interstate commerce or within the admiralty and maritime jurisdiction. U. S. v. Banister Realty Co. (C. C. 1907) 155 Fed. 583.

Congress has power to regulate the building and equipment of vessels in the United States, whether for foreign or interstate commerce. U. S. v.

Jackson (D. C. 1841) Fed. Cas. No. 15,458.

The navigation laws do not apply to the case of a vessel whose trips are confined to points inside one state and have no connection with any point outside that state. The Gretna Green (D. C. 1883) 20 Fed. 901.

Congress has power to regulate by law the navigation of boats and vessels floating in the navigable waters of the United States when engaged exclusively in the domestic commerce of the states. U. S. v. Burlington & Henderson Co. Ferry Co. (D. C. 1884) 21 Fed. 331.

The power of Congress to enact Act March 3, 1851, § 3 (R. S. § 4283, Comp. St. § 8021), is to be found only in this clause of the Constitution. To bring a vessel within the terms of said section, she must be engaged in foreign or interstate commerce. A tug engaged in towing into the waters and ports of other states vessels engaged in interstate commerce is as much engaged in such commerce as are the vessels themselves, and hence such a tug may limit its liability, under said section. In re Vessel Owners' Towing Co. (D. C. 1886) 26 Fed. 169, 170.

Act March 3, 1851, in limitation of liability, so far as applicable to marine torts or to other subjects of maritime jurisdiction, is within the constitutional power of congress, independent of its relation to foreign or interstate commerce. Such power is coextensive with the grant of the judicial power "to all cases of admiralty and maritime jurisdiction," and of all necessary legislative power in regulating the remedies under that jurisdiction. The Garden City (D. C. 1886) 26 Fed. 766, following In re Long Island North Shore Passenger and Freight Transp. Co. (D. C. 1881) 5 Fed. 599.

Act June 19, 1886, extending the benefits of limited liability legislation to "all vessels used on lakes and rivers or in inland navigation, including canal boats, barges, and lighters," is valid, in view of the power of congress to regulate commerce, because the law amended excepted from its operation inland navigation only and not internal commerce, as insisted, and the amendment extended the operation of the law, not to internal commerce, but to inland navigation. The Katie (D. C. 1889) 40 Fed. 480, 7 L. R. A. 55.

If internal commerce is affected, it is incidentally, merely. The purpose of the legislature being legitimate, and warranted by the constitution, it is wholly immaterial to the consideration of the validity of its action that somewhere it has a casual or contingent effect upon the domain of state legislation. Id.

The act of congress limiting the liability of shipowners in certain cases is not referable to that clause in the constitution giving power to regulate interstate commerce, but is a rule of admiralty procedure enacted under the clause granting admiralty jurisdiction, and therefore the district court has jurisdiction of a proceeding to limit the liability of the owners of a ship for a maritime tort, customarily employed within the navigable waters of a state. The Tolchester (D. C. 1890) 42 Fed. 180.

The Savannah being a navigable stream, the rights of the owner of an adjoining rice field in the ebb and flow of the tide are subordinate to the control of the government, for purposes of navigation; and, it having determined that the current shall be confined for the purpose of scouring and deepening the channel, an injury resulting from an elevation of the flow of the tide, which interferes with the drainage of the rice field, is damnum absque injuria. Mills v. U. S. (D. C. 1891) 46 Fed. 738, 12 L. R. A. 673.

Aside from the grant of power to regulate foreign and interstate commerce, the constitution contains no direct grant to congress of legislative power over the maritime law. The City of Norwalk (D. C. 1893) 55 Fed. 98, decree modified The Transfer No. 4 and The Car Float No. 16 (1894) 61 Fed. 364, 9 C. C. A. 521.

The owner of a vessel enrolled under the federal statutes, licensed for foreign and domestic trade, and cleared from the port where the license was issued, who took a cargo of potatoes from a point in Michigan to Milwaukee, where she exposed them for sale on the vessel, was engaged in interstate commerce under a valid coasting license. Ex parte Eaglesfield (D. C. 1910) 180 Fed. 558.

The regulation of commerce and navigation being entirely within the control of Congress, there is no authority for an executive department to make or enforce rules or regulations relative to the registry of vessels or kindred matters connected with such subjects. (1899) 22 Op. Atty. Gen. 566.

The constitutional power vested in congress to regulate commerce between the several states necessarily includes the power to regulate navigation, as one of the means by which commerce is carried on, and, where the navigation extends into the interior, is not arrested by the intervention of state boundaries, but the grant of this power to congress does not operate as an absolute prohibition to the states to legislate on the subject. Pilotage Com'rs v. The Cuba (1856) 28 Ala. 185.

Act July 29, 1850, requiring the transfer of a vessel to be recorded in the office of collector of customs where the vessel is registered or enrolled, is within the power of congress to regulate commerce. Foster v. Chamberlain (1867) 41 Ala. 158.

To determine what shall be evidence of title to vessels is within the power

of congress to "regulate commerce." So the act of July 29, 1850, as to recording mortgages, controls the state statute of frauds. Mitchell v. Steelman (1857) 8 Cal. 363.

In an action for lumber lost while being transported on the Savannah river, defendant sought to protect himself under Act 1851, which provides that the act shall not apply to the owner or owners of any canal boat, barge, or lighter, or any vessel of any description whatsoever, "used in rivers or inland navigation." Held, that the court properly refused to charge that, if the boat was lost while engaged in navigation in tide waters between Georgia and South Carolina, then such navigation is a part of the interstate commerce, and under the constitution is under the control of congress; that, if such facts existed, defendant under such act is only liable for the value of his interest in the boat and her freights, if he were not engaged in or conniving at the negligence which caused the loss; that, if there was a total loss of the vessel and cargo in the course of the voyage, no freights were earned, and defendant had no interest in the freights; and, if the vessel and cargo were a total loss during the voyage, defendant had no further interest in the vessel and freight, and is relieved from liability to plaintiff under such act. Plant v. Stovall (1869) 40 Ga. 85.

The power to regulate commerce with foreign nations and among the states includes the power to regulate navigation with foreign nations and among the states, and extends both to salt and fresh waters, and beyond as well as within the ebb and flow of tides. It is, however, restricted to such waters as can be employed in commerce between a state and foreign nations or some other state; it does not extend to those waters within a state from which a vessel cannot be navigated to a foreign port or to another state. Moor v. Veazie (1850) 31 Me. 360; Id., 32 Me. 343, 52 Am. Dec. 655.

The vessels employed upon Lake Erie and that chain of Great Lakes, are not employed in "inland navigation," within the meaning of the act of 1851, limiting the liability of shipowners. American Transp. Co. v. Moore (1858) 5 Mich. 368.

The limited liability act of congress, exempting shipowners from personal liability for injuries caused by the negligence of those in charge of their vessels, does not apply to boats navigating streams connecting the Great Lakes. Cuddy v. Horn (1881) 46 Mich. 596, 10 N. W. 32, 41 Am. Rep. 154.

Under the power to regulate commerce, etc., congress may regulate the sale, mortgage, etc., of United States vessels engaged in the interstate trade. Shaw v. McCandless (1858) 36 Miss. 296.

The act of congress for licensing vessels to be employed in the coasting trade was based upon the power to "regulate commerce." North River Steamboat Co. v. Livingston (N. Y. 1825) 3 Cow. 713.

The act of congress to limit the liability of shipowners is not applicable to vessels enrolled and licensed for the coasting trade, and engaged in the transportation of freight and passengers on the rivers and lakes. Chisholm v. Northern Transp. Co. (N. Y. 1872) 61 Barb. 363.

Though the power of Congress to regulate foreign and interstate commerce, extends to the regulation of navigation, it does not affect the rights of the people of the state, as the ultimate owners of the soil under the waters of a navigable river below high-water mark, as far up the river as the tide ebbs and flows; and R. S. § 3964 (Comp. St. § 7456), making railroads post roads, and R. S. § 5264 (Comp. St. § 10073), allowing telegraph companies to use materials from public lands, do not operate as an appropriation, for the promotion of interstate or foreign commerce, of such lands under water, over which a railroad and telegraph are constructed. Rumsey v. New York & N. E. R. Co. (1892) 63 Hun, 200, 17 N. Y. Supp. 672.

R. S. §§ 4282, 4289 (Comp. St. §§ 8020, 8027), relating to the limitation of liability of the owners of vessels "used in river or inland navigation," do not embrace the case of a vessel on a sound of limited area lying entirely within a state; Currituck Sound, N. C., for example. Woodhouse v. Cain (1886) 95 N. C. 113.

The commerce clause affords ample protection to the right of every citizen to free navigation of the Mississippi river, whether the current be in one state or another. State v. Muncie Pulp Co. (1907) 104 S. W. 437, 119 Tenn. 47.

70. Navigable waters.—For other decisions as to what are navigable waters of the United States generally, see Comp. St. § 9910, and notes thereunder.

The Ohio is a navigable stream, subject to the commercial power of congress, and the act of Virginia authorizing a bridge to be constructed so as to obstruct navigation affords no justification to the bridge company. Pennsylvania v. Wheeling & B. Bridge Co. (1851) 54 U. S. (13 How.) 518, 14 L. Ed. 249.

The power to regulate commerce comprehends control for that purpose, and to the extent necessary, of all the navigable waters of the United States which are accessible from a state other than those on which they lie; and includes necessarily the power to keep them open and free from any obstruction interposed by the states or otherwise, and it is for Congress to determine when the whole power shall be brought into activity, and as to the regulations and sanctions which shall

be provided. Gilman v. Philadelphia (1865) 3 Wall. 713, 724, 18 L. Ed. 96.

Navigable water of the United States distinguished from navigable water of the state. U. S. v. The Montello (1870) 11 Wall. 411, 414, 20 L. Ed. 191.

The power vested in the general government to regulate interstate and foreign commerce involves control of waters of the United States which are navigable in fact, so far as it may be necessary to insure their free navigation, when by themselves or their connection with other waters they form a continuous channel for commerce among the states or with foreign countries. Escanaba & L. M. Transp. Co. v. City of Chicago (1883) 2 Sup. Ct. 185, 188, 107 U. S. 678, 27 L. Ed. 442.

The Chicago river and its branches are navigable waters of the United States over which Congress may exercise control to the extent necessary to protect free navigation, but until Congress acts on the subject, the power of states over bridges across navigable streams is plenary, and an ordinance passed by the city, in exercise of its police powers, under its charter regulating the opening and closing of draws on bridges within its limits during certain hours of the day, does not violate this clause. Id.

The American river, in California, is a navigable water of the United States, and as such under the control of the general government, so far as may be necessary to insure its free navigation. Cardwell v. American River Bridge Co. (1885) 5 Sup. Ct. 423, 113 U. S. 205, 28 L. Ed. 959, affirming decree (C. C. 1884) 19 Fed. 562.

All navigable waters are under the control of the United States for the purpose of regulating and improving navigation, and, though the title to the shore and submerged soil is in the various states, and individual owners under them, it is always subject to the servitude in respect to navigation created in favor of the federal government by the Constitution. Gibson v. U. S. (1897) 17 Sup. Ct. 578, 579, 166 U. S. 269, 41 L. Ed. 996.

The term "navigable waters of the United States" refers to commerce of a substantial and permanent character to be conducted thereon; the power of congress to regulate such waters, while not expressly granted, is a power incidental to its powers under this clause. Leovy v. U. S. (1900) 20 Sup. Ct. 797, 801, 177 U. S. 621, 44 L. Ed. 914.

A pass or crevasse caused by the overflow of the Mississippi river forming a channel to the Gulf of Mexico through which small vessels laden with oysters for planting and a few cargoes of willows have passed held not navigable water of the United States, although existent for 60 years, where not used for interstate commerce, and where the gulf end of the pass had been closed. Hence a dam erected at the river bank for reclamation purposes was not an obstruction within the jurisdiction of the United States courts. Id.

Taking of sponges from land under water within state territory limits held not subject to congressional control. The Abby Dodge v. U. S. (1912) 32 Sup. Ct. 310, 312, 223 U. S. 166, 56 L. Ed. 390.

Every citizen has a right to the free navigation of the public waters of the United States, but the power of Congress to regulate commerce among the states comprehends the control for that purpose and to the extent necessary of all the navigable waters of the United States. Texarkana & Ft. S. Ry. Co. v. Parsons (1896) 74 Fed. 408, 410, 20 C. C. A. 481.

The United States has jurisdiction over navigable streams so far as may be necessary for commercial purposes. Jolly v. Terre Haute Drawbridge Co. (C. C. 1853) Fed. Cas. No. 7,441.

It is fundamental law throughout the United States that all navigable waters are common highways, forever free to the use of all citizens of the United States, without any tax, impost, or duty therefor. Leverich v. City of Mobile (C. C. 1867) 110 Fed. 170.

The power of congress to regulate commerce includes, for the purposes of commerce, control of all the navigable waters of the United States which are accessible from a state other than the one in which they lie; and for this purpose they are the waters of the nation, and subject to the legislation of congress in every particular affecting their navigability or use as instruments or means of commerce. Hatch v. Wallamet Iron-Bridge Co. (C. C. 1881) 6 Fed. 326.

Statutes passed by the states for their own uses, declaring small streams navigable, do not make them so within the meaning of any constitutional provision, treaty, or ordinance of the United States. Duluth Lumber Co. v. St. Louis Boom & Improvement Co. (C. C. 1883) 17 Fed. 419.

The act of February 14, 1859, admitting Oregon into the Union, which declares that the navigable waters therein shall be common highways, and forever free to the citizens of the United States, is not a compact, but is an absolute and valid regulation, which might have been enacted before or after the time of such admission. Wallamet Iron-Bridge Co. v. Hatch (C. C. 1884) 19 Fed. 347.

Land completely covered at low tide by the waters of the Chesapeake bay, within the limits of the state of Maryland, was, for purposes of navigation, given up to the United States upon the ratification of the federal constitution by the state, by virtue of the provision giving the federal government power to regulate commerce, and though the state by statute, granted such land to the owners of the adjacent dry land as

far as to the channel of the navigable waters, such grant was subject to the right of the United States to build lighthouses for commercial purposes, and the owner of the adjacent land is entitled to no compensation for damages resulting from the erection of such structures. Hill v. U. S. (C. C. 1889) 39 Fed. 172, judgment reversed (1893) 13 Sup. Ct. 1011, 149 U. S. 593, 37 L. Ed. 862.

The commerce clause includes control of the navigable waters of the United States so far as may be necessary to insure free navigation, by navigable waters, meaning those navigable in fact, and which by themselves, or by their connections, form a continuous channel for commerce with foreign countries or among the states. Rice v. Boss (C. C. 1891) 46 Fed. 211, 213.

To render a stream wholly within a state a navigable water of the United States, it must not only connect with some other waterway by means of which interstate or foreign commerce may be carried on, but must be a public highway having another terminus or landing, which is or may be used by the public. Manigault v. S. M. Ward & Co. (C. C. 1903) 123 Fed. 707, judgment affirmed Same v. Springs (1905) 26 Sup. Ct. 127, 199 U. S. 473, 50 L. Ed. 274.

Even a grant of the bed of a navigable stream to a private owner leaves the stream subject to the public right of navigation and control of Congress. Carver v. San Pedro, L. A. & S. L. R. Co. (C. C. 1906) 151 Fed. 334.

The term "navigable waters of the United States" applies: First, to all waters capable of sustaining or being used for interstate or foreign commerce, covering every part of any body of water, tidal or otherwise, any portion of which is capable of such use; and, second, to all waters under the admiralty and maritime jurisdiction of the United States and over which the District Court of the United States can exercise its peculiar admiralty jurisdiction. U. S. v. Banister Realty Co. (C. C. 1907) 155 Fed. 583.

The power of Congress to legislate with respect to the navigable waters of the United States does not rest alone upon the constitutional provision giving it power to regulate interstate commerce, nor alone upon the provision extending the judicial power of the United States to all cases of admiralty or maritime jurisdiction, which vests Congress with power to legislate on all matters necessary to carry into execution such judicial power, but may be sustained under either or both provisions, and the various acts relating to obstructions to navigation are within such power where such navigation comes within the provisions of interstate or foreign commerce, or within the admiralty and maritime jurisdiction. Id.

A grantee from the United States of land in Minnesota bounded by a stream navigable in fact, like the Mississippi river, where there is no reservation, takes the absolute title in fee to high-water mark, or at furthest to low-water mark, and also a right or title to the land under water between such boundary and the middle thread of the stream, which is proprietary and exclusive as to all others than the state or the general government, and as to them except as they may exercise their sovereign ownership for protecting or improving the public right of navigation. The riparian owner or his grantee has the exclusive right to reclaim, occupy, and use for any purpose not inconsistent with such public right such land under water. Hobart v. Hall (C. C. 1909) 174 Fed. 433, judgment affirmed Hall v. Hobart (1911) 186 Fed. 426, 108 C. C. A. 348.

A stream running into the sea, and in which the tide ebbs and flows, is "navigable water," and subject to the jurisdiction of the United States as far up as it is actually navigable for the purposes of interstate and foreign commerce. U. S. v. President, etc., of Jamaica & R. Turnpike Road (C. C. 1910) 183 F. 598, decree reversed (C. C. A. 1913) 204 Fed. 759.

The constitutional jurisdiction of the United States to legislate over navigable waters applies to the entire body of water where the tide ebbs and flows, over which water, or through the channels of which, interstate or foreign commerce might ordinarily or reasonably be transacted, or which is subject to the admiralty jurisdiction; and the power of the War Department over obstructions to such waters, conferred by Act March 3, 1899 (Comp. St. § 9910), is coextensive with such general jurisdiction. Id.

The St. Lawrence river, Lake Ontario, Niagara river, Lake Erie and Detroit river are waters of the United States, and Congress has the constitutional power to regulate commerce thereon. Williams v. Molther (C. C. 1911) 189 Fed. 700, decree reversed (1912) 198 Fed. 460, 117 C. C. A. 220.

Rivers are navigable waters of the United States, within the meaning of the acts of congress, in contradistinction from the navigable rivers of the states, when they form in their ordinary condition by themselves, or by uniting with other rivers, a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which commerce is conducted by water. U. S. v. Burlington & Henderson Co. Ferry Co. (D. C. 1884) 21 Fed. 331.

A lake or river which is completely within the limits of a state, without any navigable outlet to any other state or country, is a navigable water of the

state, not within the jurisdiction of the federal government. Id.

The power to regulate commerce among the several states comprehends the power to regulate the navigable waters of the United States on which such commerce may be, or is, carried; and, to this end, congress may make any regulation concerning such navigation, including the vessels engaged therein, as may be necessary and proper to secure and maintain the safety and convenience of the water way, which regulations are so far applicable to vessels engaged only in intrastate commerce thereon as to those engaged in interstate commerce. The City of Salem (D. C. 1889) 37 Fed. 846.

If the navigable waters of a state wholly within the state, and with no exterior water connection, are yet utilized under common control, management, or arrangement, in connection with railroads, for continuous carriage —in other words, for interstate commerce—for the purposes of such commerce they become public waters of the United States, and subject to congressional control under the commerce clause of the constitution, if not under the admiralty clause. The Katie (D. C. 1889) 40 Fed. 480, 489, 7 L. R. A. 55.

The Savannah river is a public, navigable stream, and the interstate voyages of a vessel are not subject to state legislation. Id.

Act March 3, 1899, §§ 13, 16 (Comp. St. §§ 9918, 9921), prohibiting the deposit of refuse matter in any navigable water of the United States, and making any vessel used in such illegal act liable for the pecuniary penalties imposed therefor, are within the constitutional powers of Congress, and to render a vessel subject to such penalties it is not essential that some person or corporation should have previously been convicted thereunder. The Scow No. 9 (D. C. 1907) 152 Fed. 548.

Comp. St. §§ 9918, 9921, were enacted in the exercise, for the public good, of the police powers inherent in the government, and a vessel so used is subject to such penalties, though the act was without the knowledge or intent of her owner and contrary to his general instructions. Scow No. 36 (1906) 144 Fed. 932, 75 C. C. A. 572.

The rights granted to the town of Huntington, on Long Island, by the charter of 1666, signed by Richard Nicoll, Governor General, by authority of James, Duke of York, later confirmed by other grants by authority of the sovereigns of England, so far as relates to navigable waters within the town, were subject to the general sovereignty and jurisdiction of the government under which the town existed, to which general jurisdiction the state of New York and the United States have legally succeeded, and the laws of the United States regulating navigation are applicable to and binding on all craft on that portion of Great South Bay within the town, the same as upon vessels on navigable waters elsewhere. The Stella B. (D. C. 1910) 183 Fed. 507.

Congress has supreme control of a navigable stream where the commerce thereon is interstate and foreign. Hagerta v. Mississippi River Power Co. (D. C. 1913) 202 Fed. 776, and cases cited as follows: U. S. v. Rio Grande (1899) 19 Sup. Ct. 770, 174 U. S. 690, 43 L. Ed. 1136; Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523; Philadelphia Co. v. Stimson (1912) 32 Sup. Ct. 340, 223 U. S. 605, 56 L. Ed. 570.

The authority of Congress to regulate interstate commerce includes the control of all the navigable waters of the United States which are accessible to another state from that in which they are. Overton v. U. S. (1909) 45 Ct. Cl. 17.

"The power to regulate commerce is one of the instances in which the Constitution operates proprio vigore, and its effect as to the navigable waters of the Union was to establish them as highways, open to the free and unrestricted use of all persons engaged in foreign or interstate commerce. To secure this great end was one of the inducements to the States to surrender control over their waters." (1886) 18 Op. Atty. Gen. 405.

"Whether, then, Congress has spoken or not spoken, the duty of the United States towards commerce in its several departments of traffic, intercourse, and navigation is equally imperative." Id.

The Klamath river where it flows through the Klamath Indian reservation, is a navigable stream, and the public have the right to fish there, and use it in any other way that does not amount to an interruption of, or an interference with, interstate or foreign commerce or navigation, or a violation of some law of the state of California. (1887) 19 Op. Atty. Gen. 35.

The cases illustrating the extension of the doctrine of navigable waters of the United States and the extension of the authority of the United States over said waters reviewed and discussed. (1891) 20 Op. Atty. Gen. 101.

The Chicago river and its branches are navigable waters of the United States, over which the commercial power of Congress may be exercised to the extent necessary to protect their free navigation, and it is immaterial that the stream was originally nonnavigable or artificially constructed, or wholly within one state, or practically controlled by one state or city. Id.

All waters are navigable waters of the United States where they form in their ordinary condition by themselves,

or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water. (1891) 20 Op. Atty. Gen. 101, citing The Daniel Ball (1870) 10 Wall. 557, 19 L. Ed. 999; The Montello (1870) 11 Wall. 411, 20 L. Ed. 191; Id. (1874) 20 Wall. 430, 22 L. Ed. 391; Cardwell v. American Bridge Co. (1885) 113 U. S. 205, 5 Sup. Ct. 423, 28 L. Ed. 959.

The power of Congress over navigable streams is supreme and grows out of the power to regulate commerce. (1896) 21 Op. Atty. Gen. 431.

The power of the United States to regulate commerce is general, absolute, and without limit, either as to the time, place, or detail of its exercise, except as to waters whose entire navigability for commerce is limited to the confines of a single state. (1899) 22 Op. Atty. Gen. 646.

Congress has no power, either directly or through an agent, to require or prohibit the doing of any act upon the navigable waters of the United States, unless such act may affect interstate or foreign commerce. (1909) 27 Op. Atty. Gen. 285.

Under the commerce clause, congress had power to pass the act of September 19, 1890, making it unlawful to modify the channel of any navigable waters of the United States without the consent of the secretary of war. City of Chicago v. Law (1893) 144 Ill. 569, 33 N. E. 855.

Raccoon creek, in Parke county, is not an interstate navigable stream, because it is only navigable for certain kinds of craft, certain distances within the state, and is not visited by vessels coming from and going to navigable waters of other states by continuous passage. Depew v. Board of Trustees of Wabash & E. Canal (1854) 5 Ind. 8.

The St. Joseph river is within the operation of the laws of congress in regard to navigable rivers, and therefore is a stream the navigation of which cannot be entirely prevented, nor seriously obstructed, by the state. St. Joseph County Com'rs v. Pidge (1854) 5 Ind. 13.

Under the commerce clause maritime jurisdiction over the nontidal navigable inland waters of this country, where they are susceptible of use for interstate traffic, is vested in the United States courts. Ryman Steamboat Line Co. v. Commonwealth (1907) 101 S. W. 403, 30 Ky. Law Rep. 1276, 10 L. R. A. (N. S.) 1187.

Navigable waters entirely within the limits of a state are subject to the same control by the federal government as those extending through or reaching beyond the limits of the state. Minnesota Canal & Power Co. v. Pratt (1907) 112 N. W. 395, 101 Minn. 197, 11 L. R. A. (N. S.) 105.

The use and control of waters lying within the geographical boundaries of the United States is not restrained by international comity, though they may be tributary to bodies of water which form a part of the boundary between the United States and Canada. Id.

Navigable rivers are subject to the control and regulation of the Secretary of War. Southwest Pennsylvania Pipe Lines v. Rodgers Sand Co. (1910) 43 Pa. Super. Ct. 524.

Under the commerce clause of the federal Constitution, Congress has charge of all navigable waters in the United States. In re Southern Wisconsin Power Co. (1909) 122 N. W. 801, 140 Wis. 245; Appeal of Black Hawk Land Co. (1909) 122 N. W. 801, 140 Wis. 245; Appeal of Whitnall (1909) 122 N. W. 809, 140 Wis. 265.

71. —— Compact between states as affecting powers of congress.—The compact between the states of Virginia and Kentucky, made at the time the latter state was admitted into the Union, and providing that the navigation of the Ohio river within their boundaries should be free and common to the citizens of the United States, cannot operate as a restriction upon the power of congress, under the constitution, to regulate commerce between the several states. Pennsylvania v. Wheeling Bridge Co. (1855) 59 U. S. (18 How.) 421, 15 L. Ed. 435.

The compact between South Carolina and Georgia, made in 1787, by which it was agreed that the boundary between the two states should be the northern branch or stream of the Savannah river, and that the navigation of the river along a specified channel should forever be equally free to the citizens of both states, and exempt from hindrance, interruption, or molestation attempted to be enforced by one state on the citizens of the other, has no effect upon the subsequent constitutional provision that congress shall have power to regulate commerce with foreign nations and among the several states. Congress has the same power over the Savannah river that it has over the navigable waters of the United States. South Carolina v. Georgia (1876) 93 U. S. 4, 9, 23 L. Ed. 782.

72. Improvement of navigable waters.—Under the power to regulate commerce, Congress may establish lighthouses, build wharves, improve harbors, etc. The Legal Tender Cases (1870) 12 Wall. 457, 537, 20 L. Ed. 287.

The constitutional power of congress to "regulate commerce" between the states includes authority to regulate navigation in aid of commerce, and to make improvements in navigable waters. And this authority is not to be so narrowly construed as that congress cannot direct the construction of an im-

provement in a navigable stream, because, in the particular spot where it stands, it may obstruct the flow of the stream. South Carolina v. Georgia (1876) 93 U. S. 4, 23 L. Ed. 782.

The right to regulate commerce includes the right to regulate and improve navigable rivers. Id.

In improving the navigation of a river, Congress may close one of its channels and compel navigation to use the other. Id.

The liability of the United States, under the 5th Amendment to make just compensation for an appropriation of land for public use, is not defeated because such land was taken by the government in the exercise of its power to improve navigation. U. S. v. Lynah (1903) 23 Sup. Ct. 349, 357, 188 U. S. 445, 47 L. Ed. 539.

The acts of congress making appropriations for the improvement of a river do not prevent the construction under state authority of booms, dams, piers, or bridges upon the river. U. S. v. Bellingham Bay Boom Co. (1897) 81 Fed. 658, 661, 26 C. C. A. 547.

An act authorizing the construction of an apron of planked timber over the crest of the falls of St. Anthony, in the Mississippi river, under the direction of the secretary of war, to protect the rock and prevent the washing away of the underlying soft sandstone, is within the constitutional jurisdiction of congress. U. S. v. Mississippi & R. R. Boom Co. (C. C. 1880) 3 Fed. 548.

The power to regulate commerce extends to the erection of light-houses, the location of beacons and the removal of obstructions to navigation on the navigable waters of the United States. U. S. v. Craig (C. C. 1886) 28 Fed. 795, 797.

In ejectment for the site of a lighthouse in Patapsco river, erected by the United States as a necessary aid to navigation, plaintiff claimed under a grant from Maryland of the submerged soil on which the lighthouse stood, and alleged that it had not been condemned, nor any compensation paid or tendered for it, and that he had, as riparian owner of the neighboring shore, the right to improve out into the river over the lighthouse site. Held, that plaintiff's interest in the submerged soil at the bottom of the river was subject to the paramount right of the public to use the river for navigation, and of the United States to erect necessary aids to navigation; and that plaintiff's right to improve out into the river, until actually availed of, was subject to the right of the United States to use the soil under the water in aid of navigation without the plaintiff's consent, and without compensation. Hawkins Point Lighthouse Case (C. C. 1889) 39 Fed. 77, judgment reversed Chappell v. Waterworth (1894) 15 Sup. Ct. 34, 155 U. S. 102, 39 L. Ed. 85.

The United States in constructing, by authority of congress, a necessary lighthouse on soil under the water of the river, was exercising a right in aid of the public right of navigation, to which the plaintiff's private ownership in the submerged soil, was necessarily subservient. Id.

The right of the government to improve the navigation of a navigable river is paramount, and as against the exercise of that right a private corporation has no right to obstruct navigation by encroachment on the navigable part of a river. Paine Lumber Co. v. U. S. (C. C. 1893) 55 Fed. 854, 867.

Congress has constitutional power to regulate and improve the harbors and navigable waters of the United States, which power carries with it the right to deposit the material removed in making the improvements in any other part of the harbor or navigable waters within its control. Southern Pac. Co. v. Western Pac. Ry. Co. (C. C. 1906) 144 Fed. 160, decree reversed Western Pac. Ry. Co. v. Southern Pac. Co. (1907) 151 Fed. 376, 80 C. C. A. 606.

The power to control and improve navigable rivers is derived from the Constitution. Bedford v. U. S. (1901) 36 Ct. Cl. 474.

The United States has the right, with a view to the improvement of the navigation of the James River, Va., as provided by the act of March 3, 1881 (21 Stat. 474), to place a wing dam in the river in front of the land of a riparian owner who forbids such construction above the line of low water, and such right extends to the limit of high water —i. e., the line of the water at ordinary high tide. (1880) 16 Op. Atty. Gen. 479, 534; (1881) 17 Op. Atty. Gen. 109.

The fact that a piece of land within the course of a river becomes dry in consequence of its improvement does not impair the original right of the United States to deal therewith or raise any question of eminent domain; such lands being held by the owners subject to the higher rights and duties of the United States in regard to navigation. (1884) 18 Op. Atty. Gen. 64.

The right of the United States to occupy and use soil within the bed of a river for the improvement of its navigation affirmed. Id.

Congress has power to improve the navigation of the Ohio river, and for that purpose may actually take such property as is requisite, and may cause the abatement and prostration of all structures which in its judgment, interfere with its plan of improvement. (1899) 22 Op. Atty. Gen. 343.

The United States may establish aids to navigation on submarine sites under navigable waters of Porto Rico without cession of jurisdiction having first been made by Porto Rico to the United States. (1904) 25 Op. Atty. Gen. 166.

Congress can, under the commerce clause by legislative enactment, authorize the Canadian government to oc-

cupy the land for the construction of a dam in aid of navigation of the Rainy river, which river is the boundary between Minnesota and Ontario, and may also authorize the condemnation of property for that purpose, if necessary. (1909) 27 Op. Atty. Gen. 327, 330. The Canadian government might undertake the construction of the portion of the dam on the American side of the river through a corporation organized under the laws of Minnesota; said construction having been first properly authorized by Congress. Id. The dam may also be constructed under an agreement between Great Britain and the state of Minnesota, to which Congress shall have given its consent. Id.

The United States has authority to dredge land under navigable waters for the purpose of improving navigation without compensation to one to whom it was leased for oyster culture. Lewis Bluepoint Oyster Cultivation Co. v. Briggs (1908) 110 N. Y. Supp. 37, 58 Misc. Rep. 55.

The public "right of navigation" includes the government's right to facilitate and improve navigation by the erection of beacons, the removal of obstructions, the cutting and deepening of channels, etc., which right is vested in the national government by the commerce clause of the federal Constitution. Lewis Bluepoint Oyster Cultivation Co. v. Briggs (1908) 114 N. Y. Supp. 313, 129 App. Div. 574, affirming judgment Lewis Bluepoint Cultivation Co. v. Briggs (1908) 110 N. Y. Supp. 37, 58 Misc. Rep. 55.

73. Obstructions of navigation.—Congress has absolute power, in the interests of interstate and foreign commerce, over the navigable waters of the United States, and may declare what may or may not constitute obstructions thereto. South Carolina v. Georgia (1876) 93 U. S. 4, 13, 23 L. Ed. 782; Brown v. U. S. (C. C. 1897) 81 Fed. 55, 57; U. S. v. North Bloomfield Gravel-Min. Co. (C. C. 1897) 81 Fed. 243.

A pass or crevasse caused by the overflow of the Mississippi river making a channel to the gulf through which a few fisherman had occasionally gone with small vessels carrying oysters for planting, and through which one or two cargoes of timber may have passed, but which had not been used for any purpose of interstate commerce, and the gulf end of which became closed, did not constitute a navigable water of the United States, so that a dam erected therein to reclaim overflowed lands was not an obstruction. Leovy v. U. S. (1900) 20 Sup. Ct. 797, 798, 177 U. S. 621, 44 L. Ed. 914.

The act of March 1, 1893 (incorporated in Comp. St. § 10004 et seq.), regulating hydraulic mining in California, to the end that the navigable streams of the state shall not be obstructed, is within the constitutional powers of congress to regulate commerce, which includes navigation. North Bloomfield Gravel Min. Co. v. U. S. (1898) 88 Fed. 664, 32 C. C. A. 84, affirming decree U. S. v. North Bloomfield Gravel Min. Co. (C. C. 1897) 81 Fed. 243.

That an outlet of the Mississippi river resulted from a break or crevasse in the natural channel does not warrant its closing by the state or local authorities without consent of the United States, where it has been open and navigable for over 60 years, and during such time has been a commercial highway. Leovy v. U. S. (1899) 92 Fed. 344, 34 C. C. A. 392.

Any permit by congress of authority to maintain a crib in navigable waters is subject to the paramount rights of commerce to use navigable waterways with needful warnings to guard against obstructions placed therein. Erie & Western Transp. Co. v. City of Chicago (1910) 178 Fed. 42, 101 C. C. A. 170, certiorari denied (1910) 30 Sup. Ct. 574, 216 U. S. 620, 54 L. Ed. 641.

Under the power to regulate commerce, congress have power to prevent the obstruction of any navigable river which is a means of commerce between states. Works v. Junction R. R. (C. C. 1853) Fed. Cas. No. 18,046.

Where there is an obstruction to commerce which operates to the irreparable injury of an individual, or of the United States, the federal circuit court may act to prevent the injury. U. S. v. Railroad Bridge Co. (C. C. 1855) Fed. Cas. No. 16,114.

Congress has no power, even by express statute, to authorize a public nuisance, destroying or materially obstructing the navigability and navigation of navigable streams within a state, for purposes wholly unconnected with commerce or post roads. Its power over such streams is limited to the regulation of commerce and establishing post roads, and it cannot authorize the navigability of a navigable stream to be totally or partially destroyed for purposes having no connection with, or tendency to benefit, the operations of commerce or the carrying of the mails. Woodruff v. North Bloomfield Gravel Min. Co. (C. C. 1884) 18 Fed. 753.

Congress has power to legislate with reference to obstructions to navigation within the provisions of interstate commerce or the admiralty and maritime jurisdiction of the United States. U. S. v. Banister Realty Co. (C. C. 1907) 155 Fed. 583.

The constitutional jurisdiction of the United States to legislate over navigable waters applies to the entire body of water where the tide ebbs and flows, over which water, or through the channels of which, interstate or foreign commerce might ordinarily or reasonably be transacted, or which is subject to the admiralty jurisdiction; and the power of the War Department over obstructions to such waters, conferred

by Act March 3, 1899 (Comp. St. § 9910), is coextensive with such general jurisdiction. U. S. v. President, etc., of Jamaica & R. Turnpike Road (C. C. 1910) 183 Fed. 598, decree reversed (C. C. A. 1913) 204 Fed. 759.

The power conferred on Congress by the Constitution to regulate commerce with foreign nations and among the several states includes the power to determine what shall or shall not be deemed in the judgment of the law an obstruction to navigation in any waterway used in carrying on such commerce, and, such power being without any limitation as to the means or manner in which it shall be exercised, Congress may pass legislation requiring the removal of obstructions and commit the enforcement of such law to one of the administrative departments whenever such department shall determine the fact that an obstruction exists in violation of the law. U. S. v. Union Bridge Co. (D. C. 1906) 143 Fed. 377, judgment affirmed Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364. 51 L. Ed. 523.

Congress has full power to authorize a corporation to build a dam across the Mississippi river with a lock to facilitate the passage of rapids by vessels and to permit it to use the water power created thereby for its own profit as compensation. Hagerla v. Mississippi River Power Co. (D. C. 1913) 202 Fed. 776.

The power of Congress to declare what is an obstruction and to remove it from a navigable stream is well settled. (1896) 21 Op. Atty. Gen. 431.

Congress is not required to consider each case of alleged obstruction to navigation and determine the facts and declare that an obstruction exists, but it may generally define the offense and leave the facts to be determined by a court or special tribunal. Id.

Under the power conferred upon Congress by the Constitution to regulate commerce, the United States has the right to control all structures and works which interfere in any manner with the navigable capacity of the waters of the United States which, either by themselves or in connection with other waters, form channels for interstate commerce. (1899) 22 Op. Atty. Gen. 332.

In passing upon the question whether or not permission shall be given for the erection of a dolphin off the coast of Santa Barbara, Cal., the Chief of Engineers and the Secretary of the Treasury should not consider the incidental injury to the bathing beach or the impairment of bathing facilities in that vicinity, or any other similar reason not having direct relation to the navigable capacity of the waters and their use for interstate and foreign commerce. Such considerations should not prevent the approval of the plan, provided it would otherwise have their approval. (1909) 27 Op. Atty. Gen. 285.

Neither the state legislature nor congress can authorize the erection of obstructions in any navigable stream within the state. Cox v. State (Ind. 1833) 3 Blackf. 193.

The legislature, with the sanction of Congress, may authorize the construction of a dam across the Mississippi river, and Congress may impose on the right granted such restrictions and conditions, as to the kind of dam and manner of construction, as may be deemed best to profit the interest of those engaged in navigating the river in floating logs or otherwise. St. Cloud Water Power & Mill Co. v. Mississippi & R. R. Boom Co. (1890) 43 Minn. 380, 45 N. W. 714.

Under this clause congress has full and exclusive jurisdiction, in the interest of commerce, over navigation, and has power to authorize the obstruction, and even the closing, of the navigation of a tide water channel. Frost v. Washington County R. Co. (1901) 51 A. 806, 96 Me. 76, 59 L. R. A. 68.

Under the provision of the federal constitution giving congress power "to regulate commerce," the jurisdiction of the United States over navigable waters is paramount to the title of the state to the land under the water, and therefore the ownership of such land does not include the right to erect a structure which interferes with navigation. Jencks v. Miller (1896) 40 N. Y. Supp. 1088, 17 Misc. Rep. 461, reversed (1897) 43 N. Y. Supp. 927, 14 App. Div. 474.

A dam in a stream which was not before navigable at the place where the dam is constructed cannot be said to be an impediment to navigation. Hall v. Lacey (Pa. 1859) 3 Grant, Cas. 264.

The United States may, with the consent of the state, authorize individuals to erect structures in the navigable waters of the state. Wilson v. Oregon-Washington R. & Navigation Co. (Wash. 1912) 127 P. 847.

74. Seamen.—Congress was not without power to provide by Act Dec. 21, 1898 (Comp. St. § 8323), that the provisions of that section, making it a misdemeanor to pay any seamen wages in advance, and declaring that such payment shall not absolve the vessel or its master or owner from full payment of wages actually earned, should extend to seamen shipping in an American port on a foreign vessel engaged in interstate commerce. Patterson v. The Eudora (1903) 23 Sup. Ct. 821, 822, 190 U. S. 169, 47 L. Ed. 1002.

The restriction on contracts of seamen engaged in interstate and foreign commerce, by Act Dec. 21, 1898, § 24 (Comp. St. § 8323), forbidding payment of wages in advance, held a valid exercise of the power of congress to regulate commerce. Id.

Congress may control and govern seamen of American vessels. U. S. v. Craig (C. C. 1886) 28 Fed. 795, 797.

A foreign vessel is a part of the territory of the country to which she belongs, and, though she is subject to the laws of the United States in certain respects while in our ports, congress has no power to control her domestic affairs, such as the terms on which she ships her crew, or the time or manner of the payment of their wages, which are matters that properly concern the ship and crew alone, subject to the law of her flag. The Eudora (D. C. 1901) 110 Fed. 430, decree reversed (1903) 125 Fed. 1002, 60 C. C. A. 687.

The provision of Act Dec. 21, 1898, § 24 (Comp. St. § 8323), relating to payment of seamen's wages in advance, which expressly makes its requirements as to the shipping of seamen applicable "as well to foreign vessels as to vessels of the United States," provided there is no treaty which conflicts, is within the power of Congress, and is valid and effective. Decree The Troop (D. C. 1902) 117 Fed. 557, affirmed Kenney v. Blake (1903) 125 Fed. 672, 60 C. C. A. 362.

The constitution of the United States gives congress power to enact that seamen who desert the merchant service before the expiration of their contract may be committed by a justice of the peace, and detained in jail, until the vessel is ready to proceed to sea or the captain demands their discharge. Ex parte Pool (1821) 2 Va. Cas. 276.

75. Pilots.—The power to regulate commerce includes the power to adopt pilotage laws. U. S. v. Craig (C. C. 1886) 28 Fed. 795, 797; Cisco v. Roberts (1860) 19 N. Y. Super. Ct. (6 Bosw.) 494.

A regulation of pilots is a regulation of commerce, within the grant of power to congress in the constitution of the United States. Cooley v. Wardens of Port of Philadelphia (1851) 53 U. S. (12 How.) 299, 13 L. Ed. 996.

The power of Congress to regulate commerce is without limitation and extends to all the subjects of commerce, and to all persons engaged in it, and embraces traffic, navigation, and intercourse, and the whole subject of pilots and pilotage, but the constitution does not in terms exclude the exercise of any authority by the states to regulate pilots, and the states have authority to regulate the subject, in the absence of congressional legislation. Pacific Mail Co. v. Joliffe (1864) 2 Wall. 450, 459, 17 L. Ed. 805.

Acts Aug. 7, 1789, March 2, 1837, Aug. 1852, June 8, 1864, July 13, 1866, and July 25, 1866, and Act Feb. 25, 1867, regulating pilotage, exert and exercise the plenary power of Congress over the subject. In re McNiel (1871) 13 Wall. 236, 241, 20 L. Ed. 624.

The adoption by congress of state laws regulating pilotage renders them enforceable, though they are regulations of commerce. Wilson v. McNamee (1880) 102 U. S. 572, 574, 26 L. Ed. 234.

The legislation of congress prescribing the qualifications for pilots and engineers of steam vessels engaged in the coasting trade navigating the inland waters of the United States while engaged in interstate commerce is justified on the ground that it is incident to the power to regulate interstate commerce. Smith v. Alabama (1888) 8 Sup. Ct. 564, 569, 124 U. S. 465, 31 L. Ed. 508.

Congress may regulate commerce on the waters of the United States and restrict the right to act as pilot on steamers to persons obtaining a license on proving experience. Williams v. Molther (1912) 198 Fed. 460, 117 C. C. A. 220.

The rates of pilotage are enacted by a power originally within the states, and not by that conferred by the United States. The Chase (D. C. 1882) 14 Fed. 854.

76. Ports, harbors, and wharves.—Under the power to regulate commerce, Congress may establish lighthouses, build wharves, improve harbors, etc. The Legal Tender Cases (1870) 12 Wall. 457, 537, 20 L. Ed. 287.

Lawful authority exists for the protection of harbor improvement works from pillage or appropriation by individuals or corporations. (1853) 6 Op. Atty. Gen. 172.

Congress has the power to establish harbor lines or modify existing ones in navigable waters within the limits of a state, although such state has already established such harbor lines. (1899) 22 Op. Atty. Gen. 501.

Congress has power to regulate and improve the harbors of the navigable waters of the United States, and this carries with it the right to deposit the material removed in making the improvements in any other part of the harbor or navigable waters or other place within its control. (1899) 22 Op. Atty. Gen. 646.

The United States has authority to make a contract for the removal of rock from a harbor. Benner v. Atlantic Dredging Co. (1892) 134 N. Y. 156, 31 N. E. 328.

The fact that the government permits a structure in some degree interfering with navigation of an inland harbor does not work a surrender of the government's authority to prevent other obstructions on the same spot. City of Milwaukee v. Gimbel Bros. (1906) 110 N. W. 7, 130 Wis. 31.

77. Canals.—Congress has power to construct the Panama Canal in the territory acquired by the treaty of Nov. 18, 1903 (33 Stat. 2234), with the Republic of Panama. Wilson v. Shaw (1907)

27 Sup. Ct. 233, 235, 204 U. S. 24, 51 L. Ed. 351, affirming decree (1905) 25 App. D. C. 510.

Canals being artificial waterways or means of commercial transportation, as well as natural lakes and rivers, the same principles may be applied to them that are applied to bridges, turnpikes, streets, and railroads. (1899) 22 Op. Atty. Gen. 332.

78. Ferries.—The authority to establish and regulate ferries is not within the power to regulate foreign and interstate commerce. Conway v. Taylor (1861) 1 Black, 603, 633, 17 L. Ed. 191.

It is within the maritime powers of Congress to impose regulations on steam ferryboats for the protection of their passengers and crews, although they are operated wholly within a state, where they navigate waters of the United States which are common highways of commerce. The Nassau (1911) 188 Fed. 46, 110 C. C. A. 184, reversing judgment (D. C. 1910) 182 Fed. 696, writ of error denied City of New York v. U. S. (1911) 32 Sup. Ct. 524, 223 U. S. 722, 56 L. Ed. 630.

Steam ferryboats used between two cities in different states are subject to admiralty jurisdiction, as comprising commerce among the states. The Cheeseman v. Two Ferryboats (D. C. 1870) Fed. Cas. No. 2,633.

A municipal ferryboat plying entirely within the boundaries of a state, but in navigable water, held subject to federal statutes. The Nassau (D. C. 1910) 182 Fed. 696, reversed (1911) 188 Fed. 46, 110 C. C. A. 184, writ of error denied (1911) 32 Sup. Ct. 524, 223 U. S. 722, 56 L. Ed. 630.

Under the power to regulate commerce, congress cannot interfere with the ferries of a state, except so far as they are used for carrying on the coasting trade; nor with navigation on canals constructed by a state, or upon inland lakes and rivers. North River Steamboat Co. v. Livingston (N. Y. 1825) 3 Cow. 713, 3 Wheeler's Cr. Cas. 483.

79. Bridges.—10 Stat. 112, §§ 6, 7, declaring a bridge to be a lawful structure, after a decree of the supreme court of the United States had directed it to be abated as a nuisance, is within the power of congress to regulate commerce, and it is not void as annulling the decree of the court. Pennsylvania v. Wheeling & B. Bridge Co. (1855) 59 U. S. (18 How.) 421, 15 L. Ed. 435.

The regulation of commerce includes intercourse and navigation and the power to determine what shall or shall not be deemed an obstruction to navigation, and Act Aug. 31, 1852, declaring bridges over the Ohio river to be lawful structures and requiring the officers and crews of vessels navigating the river to regulate their vessels so as not to interfere with the elevation and construction of the bridges, is a constitutional power to regulate commerce. Id.

In the exercise of its power to regulate commerce, congress may authorize the construction of a bridge over a navigable river; and it may itself approve the plan of construction, or devolve that duty upon the secretary of war. Miller v. City of New York (C. C. 1880) 10 Fed. 513, decree affirmed (1883) 3 Sup. Ct. 228, 109 U. S. 385, 27 L. Ed. 971; People v. Kelly (1879) 76 N. Y. 475.

The Ohio river is a navigable stream subject to the commercial power of Congress, and a state law authorizing the erection of a bridge obstructing navigation affords no justification to the bridge company. Pennsylvania v. Wheeling & Belmont Bridge Co. (1851) 13 How. 518, 565, 14 L. Ed. 249.

Congress has the constitutional power to legalize a bridge. In re Clinton Bridge (1870) 77 U. S. (10 Wall.) 454, 19 L. Ed. 969; Liverpool Ins. Co. v. Massachusetts (1870) 77 U. S. (10 Wall.) 566, 19 L. Ed. 1029.

An act of congress which declares that a designated bridge, already existing, "shall be a lawful structure, and shall be recognized and known as a post route," operates to legalize the bridge as then constructed. The words mean that the bridge, as built, shall have the sanction of law. In re Clinton Bridge (1870) 77 U. S. (10 Wall.) 454, 19 L. Ed. 969.

The paramount power of locating bridges that affect the navigation of the navigable waters of the United States is in congress. It comes from the power to regulate commerce with foreign nations and among the states. Newport & C. Bridge Co. v. U. S. (1881) 105 U. S. 470, 26 L. Ed. 1143.

Congress may, in direct terms, declare absolutely, or on conditions, that a bridge of a particular height shall not be deemed such an obstruction as to impair the free navigation of a navigable water. Miller v. New York (1883) 3 Sup. Ct. 228, 233, 109 U. S. 385, 27 L. Ed. 971.

Act July 11, 1890, c. 669, incorporating a bridge company, and authorizing it to construct a bridge and approaches across the Hudson river at the city of New York, "in order to facilitate interstate commerce," and providing for the condemnation of lands for the construction and maintenance of the bridge and its approaches, and for just compensation to the owners, is not unconstitutional in conferring the right of eminent domain on the company. Luxton v. North River Bridge Co. (1894) 14 Sup. Ct. 891, 153 U. S. 525, 38 L. Ed. 808.

Congress has power, directly or through a corporation created for the purpose, to construct bridges over navigable waters between states, for the accommodation of interstate commerce by land. Id.

A state has no power to fix tolls on a bridge connecting it with another state, thereby regulating charges on interstate commerce, without the assent of congress or the concurrence of such other state. Mr. Chief Justice Fuller, Mr. Justice Field, Mr. Justice Gray, and Mr. Justice White concurring, on the ground that concurrent acts of the states incorporating the bridge company and authorizing it to fix tolls constituted a contract between the corporation and both states which could not be altered by one state without consent of the other. Covington & C. Bridge Co. v. Kentucky (1894) 14 Sup. Ct. 1087, 1093, 154 U. S. 204, 38 L. Ed. 962, reversing (Ky. 1893) 22 S. W. 851; Covington & C. El. Railroad & Transfer Bridge Co. v. Same (1894) 14 Sup. Ct. 1094, 154 U. S. 224, 38 L. Ed. 970.

Traffic over a bridge across a river which forms the boundary between two states is interstate commerce. Covington & C. Bridge Co. v. Kentucky (1894) 14 Sup. Ct. 1087, 1092, 154 U. S. 204, 34 L. Ed. 962.

A bill for injunction by a railroad company which has lawfully erected a bridge across a navigable river, with a draw of ample width, against a navigation company, for towing barges through in such a negligent manner as to endanger the bridge, does not ask relief in the nature of a regulation of commerce, such as can only be prescribed by congress. Texas & P. Ry. Co. v. Interstate Transp. Co. (1895) 15 Sup. Ct. 228, 230, 155 U. S. 585, 39 L. Ed. 271, modifying decree (C. C. 1891) 45 Fed. 5.

A bridge over an interstate waterway, though erected under the sanction of a state, and not an illegal structure, or an unreasonable obstruction to navigation in the condition of commerce and navigation when erected, must be taken as having been constructed with knowledge of the paramount power of Congress to regulate commerce among the states, and subject to the condition or possibility that Congress might, at some time after its construction, and for the protection or benefit of the public, exert its constitutional power to protect free navigation as it then was against unreasonable obstructions. President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 216 U. S. 177, 54 L. Ed. 435, affirming judgment U. S. v. Monongahela Bridge Co. (D. C. 1908) 160 Fed. 712.

The United States has power to confer authority on a municipal corporation to build and maintain an interstate bridge over a navigable stream, and to that end to condemn land for approaches in another state. Latinette v. City of St. Louis (1912) 201 Fed. 676, 120 C. C. A. 638.

The construction of a bridge across the Hudson at Albany, in accordance with Act N. Y. April 9, 1856, cannot be enjoined by a federal court, unless the act is repugnant to the constitution of the United States, or unless the bridge, when erected, would abridge complainant's rights of navigation. Silliman v. Hudson River Bridge Co. (C. C. 1859) Fed. Cas. No. 12,852.

Congress has power to authorize, as a regulation of commerce, the building of a bridge across a navigable stream. In re Clinton Bridge (C. C. 1867) Fed. Cas. No. 2,900; Miller v. New York (C. C. 1876) Fed. Cas. No. 9,585.

Congress has authority to regulate or prohibit the construction of bridges across the Mississippi. U. S. v. Milwaukee & St. P. Ry. Co. (C. C. 1873) Fed. Cas. No. 15,778.

The United States may prevent the construction of bridges across the Mississippi river otherwise than as prescribed by congress, and the federal courts have jurisdiction for that purpose. Id.

Congress can lawfully confer upon a private corporation the capacity to occupy navigable waters within a state, and appropriate the soil under them, upon acquiring the rights of the owners, in order to construct a bridge over such waters for the purposes of interstate commerce, without the consent and notwithstanding the protest of the state. Decker v. Baltimore & N. Y. R. Co. (C. C. 1887) 30 Fed. 723; Pennsylvania Ry. Co. v. Baltimore & N. Y. Ry. Co. (C. C. 1888) 37 Fed. 129, following Decker v. Railroad Co. (C. C. 1887) 30 Fed. 723.

Act June 16, 1886, authorizing the S. I. R. T. Co., a corporation of New York, and the B. & N. Y. R. Co., a corporation of New Jersey, or either of them, to construct and maintain a railroad bridge across Staten Island Sound, known as "Arthur Kill," and establishing "the same as a post road," is within the power "to regulate commerce," vested in congress; it being competent for congress, under that grant of power, to open up commercial communication between different states, by land as well as by water. Stockton v. Baltimore & N. Y. R. Co. (C. C. 1887) 32 Fed. 9.

The privilege may be exercised without the consent or concurrence of the states in which the structure is authorized by the act to be placed. Id.

Such a grant is of the mere use of the soil needed for the structure, and not an assumption of exclusive jurisdiction over such territory. Cession of the soil by the state in which the land lies is, therefore, not necessary to the exercise of the privilege. Id.

Where a private canal constructed and used as a cut-off to take the place commercially of the tortuous channel of a navigable stream has been abandoned, and its uses for such purpose entirely destroyed by the owner of the rights therein, the rights of the public revert to the original channel of the stream, and under Act March 3, 1899 (Comp. St. § 9910), the United States may maintain a suit to enjoin the obstruction of such channel by a bridge. U. S. v. President, etc., of Jamaica &

R. Turnpike Road (C. C. 1910) 183 Fed. 598, decree reversed (C. C. A. 1913) 204 Fed. 759.

The act of June 16, 1886, authorizing the S. I. Rapid-Transit Co., a corporation of New York, and the B. & N. Y. R. Co., a corporation of New Jersey, or either of them, to construct and maintain a railroad bridge across the Staten Island Sound, known as "Arthur Kill," and establishing "the same as a post-road," is within the power "to regulate commerce," vested in congress by the constitution of the United States; it being competent for congress, under that grant of power, to open up commercial communication between different states, by land as well as by water. Stockton v. Baltimore & N. Y. R. Co. (C. C. 1887) 32 Fed. 9.

Where a corporation incorporated by the legislatures of Canada and New York for the purpose of building a bridge constructs it in part over public navigable waters of the United States, it seems that congress, under the power conferred upon it by the constitution to regulate commerce, has the right to prescribe what compensation it shall charge for its use. Canada Southern Ry. Co. v. International Bridge Co. (D. C. 1881) 8 Fed. 190.

The authority given to the Secretary of War by Act March 3, 1899, § 18 (Comp. St. § 9970), to order the alteration or removal of a bridge found to be an unreasonable obstruction to the navigation of any of the navigable waterways of the United States, is within the constitutional powers of Congress, and the determination of the Secretary in the due exercise of such authority that a bridge is such an obstruction is conclusive. U. S. v. Union Bridge Co. (D. C. 1906) 143 Fed. 377, judgment affirmed Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523; U. S. v. Monongahela Bridge Co. (D. C. 1908) 160 Fed. 712, judgment affirmed President, etc., of Monongahela Bridge Co. v. U. S. (1910) 30 Sup. Ct. 356, 216 U. S. 177, 54 L. Ed. 435.

Act March 3, 1899, § 18 (Comp. St. § 9970), which provides that on a determination by the Secretary of War that any bridge "now constructed or which may hereafter be constructed over any of the navigable waterways of the United States is an unreasonable obstruction to the free navigation of such waters," after notice to the parties interested, he shall require the same to be altered so as to render navigation through or under it reasonably free, and making the willful failure to obey such order a misdemeanor, is within the power of Congress. U. S. v. Union Bridge Co. (D. C. 1906) 143 Fed. 377, judgment affirmed Union Bridge Co. v. U. S. (1907) 27 Sup. Ct. 367, 204 U. S. 364, 51 L. Ed. 523.

The right of the United States to require the removal or alteration of a bridge as an obstruction to navigation of an interstate waterway is not affected by the fact that it made no objection when the bridge was built, or that it was built under authority from the state, nor do such facts render the government liable to compensate the owner for his loss, where the consent of Congress was not asked; the owner being chargeable with notice of its power over such waters and its right to exercise the same at any time. Id.

The Mississippi River in Minnesota, both above and below the Falls of St. Anthony, is a navigable river, not wholly within the limits of any particular state, and cannot be bridged without the permission of the United States. (1892) 20 Op. Atty. Gen. 488; (1892) 20 Op. Atty. Gen. 492; (1896) 21 Op. Atty. Gen. 293; (1898) 22 Op. Atty. Gen. 52.

The Secretary of War would not be prohibited from approving the plan and location of a bridge across boundary waters if acts of authorization were passed by the legislatures of the states interested. (1899) 22 Op. Atty. Gen. 332.

The Hudson Highland Bridge & Railway Company, a corporation created by the legislature of the state of New York, with authority to construct a bridge across the Hudson river between two points in the state of New York, cannot lawfully build such bridge without first obtaining the consent of Congress, as required by section 9 of the act of March 3, 1899 (30 Stat. 1155). (1906) 25 Op. Atty. Gen. 601.

The county court accepted a report of the county commissioners laying out a highway which passed through a cove or creek setting in from the river Thames, where at all times the tide ebbs and flows, but which is not navigable for any useful purpose connected with trade or agriculture, except by scows, or other flat-bottom vessels, and the passage of which up and down said cove would not be materially obstructed by a bridge placed across the same, on the line of said highway. Held, that the laying out of said highway was not objectionable as an obstruction of interstate commerce. Groton v. Hurlburt (1852) 22 Conn. 178.

Only the United States government can raise the question that a contract providing for the construction of a bridge across a navigable stream is in violation of the federal statute requiring the consent of the Secretary of War to the erection of such a bridge. People v. Board of Sup'rs of Whiteside County (1905) 122 Ill. App. 40.

A grant by congress to a railroad company of the privilege of erecting a bridge on a navigable river between two states is in exercise of its power to regulate commerce between the states. Winifrede Coal Co. v. Central Railway & Bridge Co. (Ohio Com. Pl. 1890) 24 Wkly. Law Bul. 173.

In the exercise of its power to regulate commerce, congress may restrain

state action authorizing constructions upon navigable rivers; but congress cannot declare bridges erected by state authority, in the absence of conflicting legislation of congress, to be nuisances. Dover v. Portsmouth Bridge (1845) 17 N. H. 200.

Congress may authorize the construction over a navigable river of a bridge which will interfere with the navigation thereof. People v. Kelly (1879) 76 N. Y. 475.

An act of congress authorizing the erection of a bridge over navigable waters may lawfully devolve upon the secretary of war the duty of determining, from a plan of the proposed bridge, to be submitted by the bridge company, whether or not it conforms to a condition in the act that the navigation of the river shall not be injured; there being an express reservation to congress of power to amend or repeal the act. Id.

80. Railroads—In general.—Congress has authority, in the exercise of its power to regulate commerce among the several states, to construct, or authorize individuals or corporations to construct, railroads across the states and territories of the United States. California v. Central Pac. R. Co. (1888) 8 Sup. Ct. 1073, 1080, 127 U. S. 1, 32 L. Ed. 150.

A railroad company which has become a link in a through line of road, over which, as part of its business, freight and passengers are carried into and out of a state, is engaged in interstate commerce. Norfolk & W. R. Co. v. Pennsylvania (1890) 10 Sup. Ct. 958, 960, 136 U. S. 114, 34 L. Ed. 394.

In exercising the power of eminent domain, congress has the right to grant a railroad right of way through lands owned by an Indian nation, where the road will have relation to interstate commerce. Cherokee Nation v. Southern Kan. R. Co. (1890) 10 Sup. Ct. 965, 971, 135 U. S. 641, 34 L. Ed. 295.

Commerce between the states is a matter of national regulation, and Congress has legislated in respect to such commerce by the Interstate Commerce Act and by the act requiring the use of automatic couplers on freight cars. Baltimore & O. R. Co. v. Baugh (1893) 13 Sup. Ct. 914, 918, 149 U. S. 368, 37 L. Ed. 772.

The state of Wisconsin, at least after it had given its consent to the Northern Pacific Railroad Company to enter its territory and construct its road (Act April 10, 1865), could not, by the decisions of its courts, transform that corporation, which was formed by national legislation for national purposes and interstate commerce, into one of a local character, with rights and powers restricted by views of policy applicable to state corporations. Roberts v. Northern Pac. R. Co. (1895) 15 Sup. Ct. 756, 158 U. S. 1, 39 L. Ed. 873, affirming decree Northern Pac. R. Co. v. Roberts (C. C. 1890) 42 Fed. 734.

Carriers engaged in interstate and intrastate commerce are subject to the regulation of congress in so far as they are engaged in interstate commerce, and to the regulation of the states so far as they are engaged in intrastate commerce. Missouri Pac. R. Co. v. Larabee Flour Mills Co. (1909) 29 Sup. Ct. 214, 217, 211 U. S. 612, 53 L. Ed. 352.

Commerce, in the constitutional sense, includes the instrumentalities by which commerce is carried on, and extends to the coal cars owned by a railway company engaged in interstate commerce, in which it receives from the tipple of the coal mines along its line coal purchased by it and used solely for its own fuel purposes. Interstate Commerce Commission v. Illinois Cent. R. Co. (1910) 30 Sup. Ct. 155, 215 U. S. 452, 54 L. Ed. 280, reversing decree Chicago & A. R. Co. v. Interstate Commerce Commission (C. C. 1908) 173 Fed. 930; Same v. Chicago & A. R. Co. (1910) 30 Sup. Ct. 163, 215 U. S. 479, 54 L. Ed. 291.

Congress, in the exercise of its power over interstate commerce, may regulate the relations of railway carriers and their employés while both are engaged in such commerce, subject always to the limitations prescribed in the federal Constitution, and to the qualification that the particulars in which those relations are regulated must have a real or substantial connection with the interstate commerce in which the carriers and employés are engaged. Mondou v. New York, N. H. & H. R. Co. (1912) 32 Sup. Ct. 169, 173, 223 U. S. 1, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44, reversing judgment (1909) 73 Atl. 762, 82 Conn. 373.

The several state railway corporations incorporated into the Pacific Railroad system by the act chartering the Union Pacific Railroad Company, approved July 12, 1862, and which were authorized to construct branches, and received aid from the United States, are subject to the terms and conditions imposed by said act of congress. Western Union Tel. Co. v. Union Pac. Ry. Co. (C. C. 1880) 3 Fed. 1.

The government, being the creator of the Union Pacific Railway Company, and a large contributor to its finances, and having a pecuniary interest in its successful management, has full supervisory power over it, and may make and enforce through the courts reasonable regulations not interfering with vested rights. U. S. v. Western Union Tel. Co. (C. C. 1892) 50 Fed. 28, decree reversed Union Pac. Ry. Co. v. U. S. (1894) 59 Fed. 813, 8 C. C. A. 282.

Congress has power to regulate the relation of master and servant of carriers by rail engaged in interstate commerce if limited to employés engaged in such service. Watson v. St. Louis, I. M. & S. Ry. Co. (C. C. 1909) 169 Fed. 942, judgment affirmed St. Louis, I. M.

& S. R. Co. v. Watson (1912) 32 Sup. Ct. 583, 223 U. S. 745, 56 L. Ed. 639.

R. S. § 5258 (Comp. St. § 10058), was passed by congress under this clause for the purpose of securing interstate commerce against obstacles even if attempted by state action, and authorizes continuous lines of railroads from one state to another. The St. Louis (D. C. 1891) 48 Fed. 312, 313.

A railroad company, by engaging in interstate commerce, does not thereby submit all its business concerns to the regulating power of Congress. U. S. v. Erie R. Co. (D. C. 1909) 166 Fed. 352.

The construction and operation of a railroad wholly within a state is subject to the laws of such state, though it is so connected as to form practically a through line of railroad from a point in the state to a point outside of the state. Wabash R. Co. v. West Side Belt R. Co. (D. C. 1912) 197 Fed. 442.

In the case of railroads, the tracks, terminals, switches, stations, cars, engines, appliances, and the methods of operation are all, when employed as component parts of a general system engaged in interstate traffic, instrumentalities of interstate commerce, within the scope of congressional legislation. McNamara v. Washington Terminal Co. (1911) 37 App. D. C. 384.

It is not necessary that a railroad should actually own cars in order to be a common carrier engaged in interstate commerce; but it is sufficient if it owns and controls one of the instrumentalities essential in carrying on trade and commerce between different points. Id.

The Washington Terminal Company, which exclusively manages, operates, and controls all steam railroad passenger traffic entering into and leaving the city of Washington, while within the zone occupied by its station and tracks, is engaged in interstate commerce. Id.

A dead engine, which was being hauled by an interstate train from one state to another, is an instrumentality of interstate commerce. Atlantic Coast Line R. Co. v. Jones (1913) 63 So. 693, 9 Ala. App. 499.

Under Laws Fla. 1899, c. 4700, providing for the organization and powers of the board of railroad commissioners, a railroad operated from a point in Florida to a point in another state is, in so far as the road is located in Florida, and in so far as its business is confined to traffic in Florida, subject to the regulation, control, and supervision of the railroad commissioners. State v. Jacksonville Terminal Co. (1900) 27 So. 225, 41 Fla. 377.

A carrier picked up empties from connecting carriers, hauled them to a gravel quarry, and returned them when loaded; both the point of connection with such other carriers and the quarry being in the same state. It furnished no equipment, and there was nothing to show that it issued bills of lading to destination points, or that it was in any way liable for, or concerned in the movement of, the cars after delivery to the connecting carriers, and the rate charged was a fixed sum per car. Held, that the service, being confined to the handling of cars between two points in the same state, was not interstate commerce, so as to render void an order of the State Railroad Commission reducing the charge therefor. Chicago, I. & L. Ry. Co. v. Railroad Commission of Indiana (Ind. 1909) 87 N. E. 1030.

Acts Ind. 1909, c. 34, § 4, prohibiting assignments of wages by a married man without his wife's consent, is not invalid as a regulation of interstate commerce when applied to an assignment of an employé of an interstate railroad, of part of his wages for the purchase of a watch which he was required by the company's regulations to carry. Cleveland, C., C. & St. L. Ry. Co. v. Marshall (Ind. 1914) 105 N. E. 570.

The fact that a railroad corporation is engaged in interstate commerce does not exempt it from control by the state in respect to all business done therein not directly connected with traffic between the states. McGuire v. Chicago, B. & Q. R. Co. (1906) 108 N. W. 902, 131 Iowa, 340.

That an interstate railroad, after hauling coal between two points within the state, used thereafter a portion thereof for fuel on engines running into other states, did not cause it to be engaged in interstate traffic. Barker v. Kansas City, M. & O. Ry. Co. (1915) 146 P. 358, 94 Kan. 176.

A railroad corporation whose tracks lay wholly within a certain state did not, by leasing its tracks to a railroad corporation engaged in interstate commerce, itself engage in interstate commerce. Zachary v. North Carolina R. Co. (1911) 72 S. E. 858, 156 N. C. 496.

Although a railway corporation has power to operate its trains within one state, where it by contract operates the trains of another railroad which originate outside the state, the operation of such trains is "interstate commerce." Missouri, K. & T. Ry. Co. of Texas v. State (Tex. 1916) 181 S. W. 721.

Since bookkeeping by railroads engaged in both interstate and intrastate commerce does not of itself constitute commerce, the delegation to Congress of the exclusive right to regulate interstate commerce does not preclude the state from prescribing a system of bookkeeping to be followed by railroads within the state for the purpose of apportioning expenses between freight and passenger traffic, and between intrastate and interstate commerce, to afford a basis for the establishment of intrastate rates. Railroad Commission of Texas v. Texas & P. Ry. Co. (Tex. Civ. App. 1911) 140 S. W. 829.

81. —— **Hours of service of employés.** —Congress, in the exercise of its power

over commerce, could enact the provisions of Act March 4, 1907 (Comp. St. § 8677 et seq.), restricting the hours of labor of railway employés who are connected with the movement of trains in interstate or foreign commerce. Baltimore & O. R. Co. v. Interstate Commerce Commission (1911) 31 Sup. Ct. 621, 625, 221 U. S. 612, 55 L. Ed. 878; U. S. v. Grand Rapids & I. Ry. Co. (1915) 224 Fed. 667, 140 C. C. A. 177; U. S. v. Kansas City Southern Ry. Co. (D. C. 1911) 189 Fed. 471; U. S. v. St. Louis Southwestern Ry. Co. of Texas (D. C. 1911) 189 Fed. 954, judgment affirmed St. Louis Southwestern R. Co. of Texas v. U. S. (1912) 199 Fed. 990, 117 C. C. A. 666; St. Louis, I. M. & S. R. Co. v. McWhirter (1911) 140 S. W. 672, 145 Ky. 427; State v. Chicago, M. & St. P. Ry. Co. (1908) 117 N. W. 686, 136 Wis. 407.

82. —— **Liability for injuries to employés.**—Act June 11, 1906, c. 3073, 34 Stat. 232, "relating to the liability of common carriers * * * engaged in commerce between the states * * * to their employés," as stated in its title, and which makes every such carrier liable to any employé or his personal representative for all damages which may result from the negligence of any of its officers, agents, or employés, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, ways, or works, is void as including in its operation employés not engaged in interstate commerce, and hence as not within the constitutional power of Congress. Howard v. Illinois Cent. R. Co. (1908) 28 Sup. Ct. 141, 207 U. S. 463, 52 L. Ed. 297, affirming judgment (C. C. 1907) 147 Fed. 997. CONTRA, Spain v. St. Louis & S. F. R. Co. (C. C. 1907) 151 Fed. 522; Shead v. Central of Georgia Ry. Co. (C. C. 1907) 151 Fed. 608; Kelley v. Great Northern Ry. Co. (C. C. 1907) 152 Fed. 211; Zikos v. Oregon R. & Nav. Co. (C. C. 1910) 179 Fed. 893.

Congress may prescribe, as between an interstate carrier and such of its employés as are engaged in interstate commerce, that the carrier shall be liable for the death or injury of any such employé while so engaged which may result from the negligence of a fellow servant. Howard v. Illinois Cent. R. Co. (1908) 28 Sup. Ct. 141, 207 U. S. 463, 52 L. Ed. 297, affirming judgments (C. C. 1906) 148 Fed. 986, and (C. C. 1907) 148 Fed. 997.

The invalidity, so far as interstate commerce is concerned, of the provisions of Employers' Liability Act June 11, 1906, does not invalidate such of its provisions as attempt to regulate commerce within the District of Columbia and the territories. El Paso & N. E. R. Co. v. Gutierrez (1909) 30 Sup. Ct. 21, 25, 215 U. S. 87, 54 L. Ed. 106.

Congress, in the exercise of its power over interstate commerce, may regulate the relations of railway carriers and their employés while both are engaged in such commerce, subject always to the limitations prescribed in the federal Constitution, and to the qualification that the particulars in which those relations are regulated must have a real or substantial connection with the interstate commerce in which the carriers and employés are engaged. Mondou v. New York, N. H. & H. R. Co. (1912) 32 Sup. Ct. 169, 223 U. S. 1, 56 L. Ed. 327, 38 L. R. A. (N. S.) 44, reversing judgment (1909) 73 A. 762, 82 Conn. 373.

Congress did not exceed its power to regulate the relations of interstate railway carriers and their employés engaged in interstate commerce by enacting Employers' Liability Act April 22, 1908 (Comp. St. § 8657 et seq.), which abrogates the fellow servant rule, extends the carrier's liability to cases of death, and restricts the defenses of contributory negligence and assumption of risk, since no one has any vested right in any rule of the common law, and the natural tendency of such changes is to promote the safety of the employés and to advance the commerce in which they are engaged. Id.

The power of Congress, under the commerce clause, to regulate the liability of an interstate railway carrier for the death or injury of an employé engaged in interstate commerce, which may result from the negligence of a fellow servant, is not exceeded by the enactment of that act, although that act embraces instances where the causal negligence is that of an employé engaged in intrastate commerce. Id.

Congress had power to enforce regulations prescribed by Employers' Liability Act April 22, 1908, § 5 (Comp. St. § 8661), by preventing acceptance of benefits in a railway relief department from operating as a bar to recovery of damages for injury or death of an employé. Philadelphia, B. & W. R. Co. v. Schubert (1912) 32 Sup. Ct. 589, 224 U. S. 603, 56 L. Ed. 911, affirming judgment (1911) 36 App. D. C. 565.

Construing condemnation in that section of any contract or regulation intended to enable a common carrier to exempt himself from liability under the act, as embracing an existing agreement under contract of membership in a relief department, does not render the section invalid, as such agreement must be regarded as made subject to the possibility that Congress might so regulate commerce as to render the agreement unenforceable. Id.

Instances where the causal negligence is that of a fellow servant engaged in intrastate commerce are embraced by Employers' Liability Act April 22, 1908 (Comp. St. § 8657 et seq.). Pedersen v. Delaware, L. & W.

R. Co. (1913) 33 Sup. Ct. 648, 229 U. S. 146, 57 L. Ed. 1125, reversing judgment (1912) 197 Fed. 537, 117 C. C. A. 33.

An employé of an interstate railway carrier, killed while carrying material to repair a bridge used in both interstate and intrastate commerce, was employed in interstate commerce within that act. Id.

A yard clerk killed in the railway yards while meeting an incoming interstate freight train was employed in interstate commerce within Employers' Liability Act April 22, 1908 (Comp. St. § 8657 et seq.). St. Louis, S. F. & T. R. Co. v. Seale (1913) 33 Sup. Ct. 651, 229 U. S. 156, 57 L. Ed. 1129, reversing judgment (Tex. Civ. App. 1912) 148 S. W. 1099.

The lessor of an intrastate railway to an interstate railway carrier is, through its lessee, a common carrier engaged in interstate commerce, within the Employers' Liability Act 1908 (Comp. St. § 8657 et seq.), where it is responsible for the negligence of its lessee. North Carolina R. Co. v. Zachary (1914) 34 Sup. Ct. 305, 232 U. S. 248, 58 L. Ed. 591, reversing judgment Zachary v. North Carolina R. Co. (1911) 72 S. E. 858, 156 N. C. 496.

The hauling of empty cars from one state to another is interstate commerce within the act. Id.

Employers' Liability Act April 22, 1908 (Comp. St. § 8657 et seq.), which applies only to the relations between railroad companies engaged in interstate commerce and their employés in such commerce is not unconstitutional as not within the power of Congress under the commerce clause. St. Louis, I. M. & S. Ry. Co. v. Conley (1911) 187 Fed. 949, 110 C. C. A. 97.

The liability of a common carrier to its employés for personal injuries is not commerce, and the regulation of such liability with respect to carriers engaged in interstate commerce is not within the power of Congress under the interstate commerce clause. Howard v. Illinois Cent. R. Co. (C. C. 1907) 148 Fed. 997, judgment affirmed (1908) 28 Sup. Ct. 141, 207 U. S. 463, 52 L. Ed. 297.

Congress has the power, under the commerce clause, to regulate the liability of a common carrier to its employés for personal injuries received while engaged in interstate transportation. Spain v. St. Louis & S. F. R. Co. (C. C. 1907) 151 Fed. 522.

It has the power, under the commerce clause, to legislate for the safety and protection of employés engaged in interstate commerce, whether the transportation be on water or on land. Id.

The power of Congress to regulate interstate commerce being legitimate and expressly relating to employés engaged in interstate or foreign commerce, it is immaterial to the validity of Employers' Liability Act June 11, 1906, c. 3073, 34 Stat. 232, that somewhere in its operation it may have a contingent effect on the domain of state legislation. Snead v. Central of Georgia Ry. Co. (C. C. 1907) 151 Fed. 608.

Where a corporation or person engages in interstate or foreign commerce, eo instante the men who control it and the employés become subject to the legitimate means which Congress may select for its regulation. Id.

Employers' Liability Act June 11, 1906, c. 3073, 34 Stat. 232, making interstate carriers liable for injuries to employés, notwithstanding the latter's negligence, if the carrier's negligence was gross in comparison with that of the employé, is not unconstitutional as not within the power conferred by the commerce clause. Plummer v. Northern Pac. Ry. Co. (C. C. 1907) 152 Fed. 206.

The liability of common carriers for injuries to employés growing out of their negligence or the negligence of other employés is a proper subject for governmental regulation, and Congress has the power, whenever it chooses to exercise it, to make regulations on that subject within its field of control, namely, interstate and foreign commerce, similar to those the state Legislatures may make in their field. Kelley v. Great Northern Ry. Co. (C. C. 1907) 152 Fed. 211.

Act June 11, 1906, c. 3073, 34 Stat. 232, fixing the liability of common carriers engaged in interstate commerce for injuries or death of their employés caused by their negligence, is a regulation of commerce between the states or with foreign nations within the commerce clause. Id.

Authority for the enactment of Railroad Employers' Liability Act April 22, 1908, c. 149, is found in this clause, and Congress merely undertakes by the act to regulate the relations of employers and employés engaged in interstate commerce by railroad. Fulgham v. Midland Valley R. Co. (C. C. 1909) 167 Fed. 660, reversed (1910) 181 Fed. 91, 104 C. C. A. 151.

Employers' Liability Act April 22, 1908 (Comp. St. § 8657 et seq.), is a valid exercise of powers granted by the commerce clause as it is confined to common carriers by rail engaged in interstate commerce, and the fact that the act is not limited to injuries caused by the negligence of a fellow servant who is at the time engaged in interstate employment does not make the act, or that part of it abolishing the fellow-servant rule, unconstitutional. Watson v. St. Louis, I. M. & S. Ry. Co. (C. C. 1909) 169 Fed. 942, judgment affirmed St. Louis, I. M. & S. R. Co. v. Watson (1912) 32 Sup. Ct. 533, 223 U. S. 745, 56 L. Ed. 639.

Congress has authority under its con-

stitutional power to regulate interstate commerce to prescribe rules of liability as between an interstate carrier and its employés in such commerce in cases of injury to the employés while actually engaged in such commerce. Zikos v. Oregon R. & Nav. Co. (C. C. 1910) 179 Fed. 893.

Employers' Liability Act April 22, 1908 (Comp. St. § 8657 et seq.), held constitutional. Cain v. Southern Ry. Co. (C. C. 1911) 199 Fed. 211.

The power of Congress to regulate the relation of employer and employé or of employés as between themselves, as is done by Employers' Liability Act 1908 (Comp. St. § 8657, et seq.), is limited to employers engaged in interstate commerce and to their employés employed in such commerce. Lamphere v. Oregon R. & Navigation Co. (C. C. 1911) 193 Fed. 248, reversed (1912) 196 Fed. 336, 116 C. C. A. 156, 47 L. R. A. (N. S.) 1.

Employers' Liability Act June 11, 1906, c. 3073, 34 Stat. 232, relating to the liability of common carriers engaged in commerce between the states, and between the states and foreign nations, to their employés, is within the constitutional power of Congress to regulate interstate and foreign commerce, and applies to carriers engaged in foreign commerce by sea, making such a carrier liable for an injury to an employé resulting from the negligence of his fellow servants. Lancer v. Anchor Line (D. C. 1907) 155 Fed. 433.

An employé of a railroad company engaged in interstate commerce does not, merely because he is such employé, sustain the same relation to interstate commerce as a car used on a railroad engaged in interstate commerce sustains to interstate commerce on that road, and the federal government has no authority over an employé of a railroad engaged in interstate commerce where the employé himself is not engaged in the work of interstate commerce. U. S. v. Wheeling & L. E. R. Co. (D. C. 1908) 167 Fed. 198.

Congress, by enacting the federal Employers' Liability Act (Comp. St. § 8657 et seq.), exercised its power under the interstate commerce clause so far as the act creates a liability. Kelly's Adm'x v. Chesapeake & O. Ry. Co. (D. C. 1912) 201 Fed. 602.

A railroad special watchman held to have been employed in interstate commerce when he received his injuries, and not entitled to recover under the state Workmen's Compensation Act. Smith v. Industrial Accident Commission of California (1915) 147 P. 600, 26 Cal. App. 560.

A railroad employé, killed while repairing a switch engine temporarily withdrawn from service, and used both for intrastate and interstate commerce, held "engaged in interstate commerce" within Employers' Liability Act 1908 (Comp. St. § 8657 et seq.). Southern Pac. Co. v. Pillsbury (1915) 151 Pac. 277, 170 Cal. 782.

Where a railroad employs a servant to work a part of his time on a train engaged in interstate commerce and a part of the time on the train doing local service, and he is hurt while doing the local work, the transaction is governed by the law of the state where the injury occurs, and not by Employer's Liability Act April 22, 1908 (Comp. St. § 8657 et seq.). Southern Ry. Co. v. Murphy (Ga. App. 1911) 70 S. E. 972.

Whether an action for injuries to or death of a railroad employé depends on the Employer's Liability Act 1908 (Comp. St. § 8657 et seq.), or the state law depends on whether the injuries were sustained while the carrier was engaged and the employé was employed in interstate commerce. Louisville & N. R. Co. v. Strange's Adm'x (Ky. 1913) 161 S. W. 239.

Railroad fireman on switching engine attached to intrastate car preliminary to handling an interstate car held not "engaged in interstate commerce," so that there might be a recovery under the state law. Louisville & N. R. Co. v. Parker's Adm'r (1915) 177 S. W. 465, 165 Ky. 658.

The mere fact that a railroad is engaged in interstate commerce does not bring within the protection of the federal Employers' Liability Act 1908 (Comp. St. § 8657 et seq.) an employé not actually engaged in interstate commerce. Gordon v. New Orleans Great Northern R. Co. (La. 1914) 64 So. 1014.

Employer's Liability Act April 22, 1908 (Comp. St. § 8657 et seq.), held only applicable to injuries happening when both the carrier and the employé injured are engaged in interstate commerce. Pierson v. New York, S. & W. R. Co. (N. J. 1912) 85 A. 233.

83. —— **Safety appliances.**—A freight car loaded with interstate freight, and placed on a side track in the railway yard at destination, to await simple repairs to the automatic coupler, is used in moving interstate commerce within the meaning of Safety Appliance Act March 2, 1893 (Comp. St. § 8606), when a coupling with another car is thereafter attempted by the carrier's order during the course of switching operations. Delk v. St. Louis & S. F. R. Co. (1911) 31 Sup. Ct. 617, 220 U. S. 580, 55 L. Ed. 590, reversing judgment St. Louis & S. F. R. Co. v. Delk (1908) 158 Fed. 931, 86 C. C. A. 95, 14 Ann. Cas. 233.

Congress had the power, under the commerce clause to require, as it did in Safety Appliance Act March 2, 1893, as amended by Act March 2, 1903 (Comp. St. § 8613), that all locomotives, cars, and similar vehicles used on any railway engaged in interstate

commerce shall be equipped with certain designated safety appliances, regardless of whether such vehicles are used in moving intrastate or interstate traffic. Southern R. Co. v. U. S. (1911) 32 Sup. Ct. 2, 222 U. S. 20, 56 L. Ed. 72, affirming judgment U. S. v. Southern R. Co. (D. C. 1908) 164 Fed. 347.

Cars used in moving intrastate traffic on a railway which is a highway of interstate commerce are comprehended by the provisions thereof, declaring, inter alia, that its provisions and requirements shall "apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce, and in the territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith." Id.

Congress may prohibit, as is done by the Safety Appliance Act (Comp. St. § 8605 et seq.), the movement of a defective car, unless necessary to move it to a repair shop, though the movement is not an act of interstate commerce. Texas & P. Ry. Co. v. Rigsby (1915) 222 Fed. 221, 138 C. C. A. 51.

Safety Appliance Act March 2, 1893 (Comp. St. § 8605 et seq.), governing railways is constitutional. Chicago, R. I. & P. Ry. Co. v. Brown (1911) 185 Fed. 80, 107 C. C. A. 300, judgment affirmed (1913) 33 Sup. Ct. 840, 229 U. S. 317, 57 L. Ed. 1204.

A private switch track leading to a mill over which a railroad company uniformly operated cars engaged in interstate commerce held a railroad on which the transportation of interstate commerce was subject to the Safety Appliance Act. Gray v. Louisville & N. R. Co. (C. C. 1912) 197 Fed. 874.

All of the cars used by a railroad engaged in interstate commerce in the natural course of their use are instrumentalities of interstate commerce, and, whether they carry interstate traffic or are hauled in a train which contains interstate traffic, they are within the legislative power of Congress, and Congress may provide for the safety of employés as has been done by Safety Appliance Act 1893. U. S. v. Wheeling & L. E. R. Co. (D. C. 1908) 167 Fed. 198.

84. Telegraphs and telephones.—Communication or intercourse by telegraphic message between persons in different states is interstate commerce. Western Union Tel. Co. v. James (1896) 16 Sup. Ct. 934, 935, 162 U. S. 650, 40 L. Ed. 1105; Postal Telegraph-Cable Co. v. City of Mobile (C. C. 1909) 179 Fed. 955; Reed v. Western Union Tel. Co. (1894) 56 Mo. App. 168; Western Union Telegraph Co. v. Atlantic & Pacific States Telegraph Co. (1869) 5 Nev. 102.

Under the powers conferred on congress to regulate commerce and to establish post offices and post roads, Act July 24, 1866, securing to the government the use of telegraph lines for postal, military, and other purposes, so far as it declares that the erection of telegraph lines shall, as against state interference, be free to all who accept its terms, is a constitutional regulation of commercial intercourse among the states. Pensacola Tel. Co. v. Western Union Tel. Co. (1877) 96 U. S. 1, 24 L. Ed. 708.

A telegraph company which accepts the provisions of R. S. tit. 65 (Comp. St. tit. 65), is an instrument of foreign and interstate commerce and a government agent for the transmission of messages on public business, and a state law levying a tax on every message, so far as it applies to messages sent out of the state or those pertaining to government business, is unconstitutional. Tel. Co. v. Texas (1881) 105 U. S. 460, 466, 26 L. Ed. 1067.

Telegraphic communications are commerce, and if carried on between different states are interstate commerce, and any state regulations imposing a tax on the occupation or business, or requiring a license to prosecute the business, are unconstitutional, but the property of a telegraph company situated within a state may be taxed by the state as all other property is taxed. Leloup v. Port of Mobile (1888) 8 Sup. Ct. 1380, 1382, 127 U. S. 640, 32 L. Ed. 311.

Act July 24, 1866 (embodied in R. S. § 5263 et seq.), relating to telegraphs, is a legitimate regulation of commercial intercourse among the states. Id.

Act July 24, 1866 (Comp. St. § 10072), giving telegraph companies the right against arbitrary interference by the state to construct their lines over the military or post roads of the United States, did not exceed powers of Congress under the commerce clause. Town of Essex v. New England Tel. Co. of Massachusetts (1915) 36 Sup. Ct. 102.

Telephone companies, like telegraph companies, are important agencies in the transaction of interstate commerce, and neither a state nor an Indian nation has power to grant to one company an exclusive right to maintain telephone lines within its territory. Such a grant, being void ab initio, cannot be invoked to prevent the construction and maintenance of lines by other companies or persons, although they are not interstate, but merely local. Muskogee Nat. Tel. Co. v. Hall (1902) 118 Fed. 382, 55 C. C. A. 208.

Congress has constitutional power to grant to telegraph companies organized under state laws the right to construct and use lines of telegraph along any of the military or post roads of the United States. Pensacola Tel. Co. v. Western Union Tel. Co. (C. C. 1875) Fed. Cas. No. 10,960.

The power to regulate commerce extends to the erection and control of telegraph lines. U. S. v. Craig (C. C. 1886) 28 Fed. 795, 797.

Telegraphs are instruments of interstate commerce, and, as lines in the city of St. Louis are used to transmit messages to all parts of the United States, neither the state nor the city can impose a privilege or license tax on defendant. City of St. Louis v. Western Union Tel. Co. (C. C. 1889) 39 Fed. 59, judgment reversed (1893) 13 Sup. Ct. 485, 148 U. S. 92, 37 L. Ed. 380.

Communication by telegraph or telephone between points in different states is "interstate commerce." Sunset Telephone & Telegraph Co. v. City of Eureka (C. C. 1902) 172 Fed. 755.

Consideration of the legal effect of certain provisions of a bill (Act March 3, 1857, c. 95) entitled "An act to expedite telegraphic communication for the uses of the government." (1857) 8 Op. Atty. Gen. 512.

An oceanic-telegraph cable, which has its terminus upon the territory of the United States, comes within the regulating power of Congress. (1867) 12 Op. Atty. Gen. 337.

It is doubtful whether Congress has power over the subject-matter of intercourse by telegraph strictly within the limits of a state, or extending through two or more states, having its termini within the territory of the United States. Id.

It seems that Congress has not the power to regulate the charges upon a railroad; and for the same reason it cannot have that power over telegraphic communication within the limits of the United States. Id.

As to foreign commerce a state has no regulating power, as it is altogether and exclusively a matter of federal legislation, and the telegraph, when used as a vehicle of intercourse with foreign nations, has been claimed by Congress to be within the power to regulate commerce. Id.

Congress may prescribe the rules upon which oceanic telegraphs, connecting the United States with foreign countries, shall be operated, and fix for them a tariff of charges. Id.

The legislation of Congress on the subject of interoceanic telegraph communication declares it to be a subject-matter of national concern and commercial intercourse. Id.

The establishment of telegraphic lines connecting the United States with other countries properly falls under the regulative power of Congress; but that body has as yet made no general regulations on the subject. (1872) 14 Op. Atty. Gen. 63.

The transmission of messages by wireless telegraphy is commerce, and the power of the United States to regulate commerce and to preserve the territorial integrity of this country does not depend upon the means employed, but upon the end attained. (1902) 24 Op. Atty. Gen. 100.

The United States have power, either alone or in cooperation with other countries, to impose conditions upon the operation of any wireless telegraph system which conveys messages to or from the United States. Id.

Intercourse by telegraph is commercial intercourse, and, where it extends beyond the state, is interstate and subject to the control of Congress. Western Union Telegraph Co. v. Pendleton (1884) 95 Ind. 12, 48 Am. Rep. 692.

Where a message was filed for transmission between points within the state, but was routed by way of a city in another state, and negligently delayed, it did not thereby become a subject of interstate commerce, so as to relieve the company from liability for a penalty for delay imposed by Burns' Ind. Ann. St. 1908, §§ 5780, 5781. Western Union Telegraph Co. v. Taylor (Ind. App. 1914) 104 N. E. 771.

Communication by telegram is "commerce" within the regulation of federal authority in so far as it involves transmission of messages from one state to another, but is subject also to state regulation in so far as it concerns transmission of messages wholly intrastate. Postal Telegraph-Cable Co. v. State (1909) 73 A. 679, 110 Md. 608.

Laws Mo. 1907, p. 332, regulating the hours for service of telegraph operators and train dispatchers, in so far as it applies to interstate traffic, is unconstitutional and void. State v. Missouri Pac. Ry. Co. (1908) 111 S. W. 500, 212 Mo. 658.

A telegraph company which has accepted the provisions of Act July 24, 1866 (Comp. St. §§ 10073, 10075), granting to telegraph companies, which should accept the provisions of the act, rights of way over public domain, etc., and timber and other materials for construction work on condition that government communications should be given priority in transmission, that the rates for government business be fixed by the Postmaster General, and that the government might purchase all the lines and property of any consenting company, becomes an agency of the federal government for the transaction of its postal business, and an instrumentality of interstate and foreign commerce. State v. Western Union Telegraph Co. (1911) 117 P. 93, 43 Mont. 445.

Comp. St. § 10072, giving to any telegraph company the right to construct, etc., telegraph lines on the public lands of the United States, etc., upon evidence of acceptance of its terms under specified restrictions, etc., is a regulation of commerce, within the meaning of that clause of the United States constitution which declares that congress has power to "regulate commerce," etc., "among the several states," and supersedes state legislation upon the subject. Western Union Telegraph Co. v. Atlantic & Pacific

States Telegraph Co. (1869) 5 Nev. 102.

Where a foreign telegraph company operates a system of lines extending throughout the several states, and has accepted the conditions and privileges conferred by Act July 24, 1866, entitled "An act to aid in the construction of telegraph lines and to secure to the government the use of the same for military purposes," it is a corporation engaged in interstate commerce. Postal Tel. Cable Co. v. City of Richmond (1901) 37 S. E. 789, 3 Va. Sup. Ct. Rep. 39, 99 Va. 102, 86 Am. St. Rep. 877.

85. **Imports and exports.**—The power vested in congress to regulate commerce with foreign nations and among the several states protects property transported as an article of commerce from foreign countries or among the states from interfering state legislation until it has been mingled with, and become a part of, the general property of the country, and protects it after it has entered a state from any burdens imposed by reason of its foreign origin. Welton v. Missouri (1875) 91 U. S. 275, 23 L. Ed. 347.

Congress could validly prohibit by Act June 20, 1906 (Comp. St. § 8866), the landing in the United States of sponges taken between certain dates outside of state waters. The Abby Dodge v. U. S. (1912) 32 Sup. Ct. 310, 313, 223 U. S. 166, 56 L. Ed. 390.

Act July 31, 1912, § 1 (Comp. St. § 10416), making it unlawful to bring into the United States any film of any prize fight for purposes of public exhibition, is not beyond the powers of Congress under the commerce clause. Weber v. Freed (1915) 36 Sup. Ct. 131.

The prohibition of Act Feb. 9, 1909, § 2 (Comp. St. § 8801), against receiving or concealing opium, knowing it to have been unlawfully imported, is a valid exercise of the power to regulate foreign commerce. Steinfeldt v. U. S. (1915) 219 Fed. 879, 135 C. C. A. 549.

The power to regulate commerce extends to the power to offer bounties by discriminating duties and by special preferences and privileges. U. S. v. Craig (C. C. 1886) 28 Fed. 795, 797.

The power to regulate commerce extends to the designation of ports of entry and delivery. Id.

The order of the Department of Agriculture of April 26, 1904 (Bureau of Animal Industry Order No. 124), prohibiting the importation of hay and straw from continental Europe as a means of preventing the introduction of foot and mouth disease among cattle in the United States, is a regulation of commerce with foreign nations and an exercise of legislative power, and therefore void. (1904) 25 Op. Atty. Gen. 249.

Where plaintiff, a foreign corporation, bought lumber, to be delivered to a vessel in the state and there inspected and paid for, that plaintiff intended to export it to a foreign country did not render the transaction one in foreign commerce to which a state law regulating corporations would not apply. Brunner v. Mobile-Gulfport Lumber Co. (Ala. 1914) 66 So. 438.

86. **Trusts and trade associations.**—See, also, Comp. St. § 8820, et seq., and notes thereunder.

The anti-trust law (Comp. St. § 8820 et seq.), construed as applying only to contracts whose direct and immediate effect is a restraint upon interstate commerce, and not to such as are made to promote legitimate business, though they may indirectly or incidentally affect such commerce, is a legitimate exercise by congress of its power to regulate interstate commerce. U. S. v. Joint-Traffic Ass'n (1898) 19 Sup. Ct. 25, 29, 171 U. S. 505, 43 L. Ed. 259, reversing judgment (C. C. 1896) 76 Fed. 895, which was affirmed (1897) 89 Fed. 1020, 32 C. C. A. 491.

The rules and regulations of a live stock exchange, whose members are commission merchants, relating to the conduct of the business of such members in buying or selling stock for others in a given market, and fixing their charges for such services, are not agreements affecting interstate commerce, within the meaning of the anti-trust law, having no direct or necessary relation to such commerce, though some of the sales themselves may constitute interstate commerce, and the cost of such transactions may be indirectly and incidentally affected by such regulations. Hopkins v. U. S. (1898) 19 Sup. Ct. 40, 171 U. S. 578, 43 L. Ed. 290, reversing order (C. C. 1897) 82 Fed. 529.

By-laws of such a stock exchange limiting the number of persons who may be employed by any member to solicit the consignment to him of stock shipped to that market, or prohibiting members from sending prepaid telegrams giving market quotations, are but regulations or agreements relating to their business, and are not in restraint of interstate commerce. Id.

Congress did not exceed its power under the commerce clause of the federal Constitution in enacting Anti-Trust Act July 2, 1890 (Comp. St. § 8820 et seq.), declaring illegal every combination or conspiracy in restraint of interstate commerce, and forbidding attempts to monopolize such commerce or any part of it, although such statute is construed to embrace a combination of stockholders of two competing interstate railway companies to form a stockholding corporation which should acquire, in exchange for its own capital stock, a controlling interest in the capital stock of each of such railway companies. Northern Securities Co. v. U. S. (1904) 24 Sup. Ct. 436, 455, 193 U. S. 197, 48 L. Ed. 679, affirming decree U. S. v. Northern Securities Co. (C. C. 1903) 120 Fed. 721.

A combination of independent meat

dealers, in aid of an attempt to monopolize commerce in fresh meat among the states, to restrict the competition of their respective agents when purchasing stock for them in the stockyards, is an interference with interstate commerce, forbidden by Act July 2, 1890 (Comp. St. § 8820 et seq.), to protect trade and commerce against unlawful restraints and monopolies, where such dealers and their slaughtering establishments are largely in different states from those of the stockyards, and the sellers of the cattle largely in different states from either. Swift & Co. v. U. S. (1905) 25 S. Ct. 276, 196 U. S. 375, 49 L. Ed. 518, modifying decree U. S. v. Swift & Co. (C. C. 1903) 122 Fed. 529.

There is no such connection between interstate commerce and membership in a labor organization as to authorize congress, by Act June 1, 1898, c. 370, § 10, 30 Stat. 424, to make it a crime against the United States for an agent or officer of an interstate carrier, having full authority in the premises from his principal, to discharge an employé from service to such carrier because of such membership on his part. Adair v. U. S. (1908) 28 S. Ct. 277, 208 U. S. 161, 52 L. Ed. 436, 13 Ann. Cas. 764, reversing judgment U. S. v. Adair (D. C. 1907) 152 Fed. 737.

The prohibitions of Anti-Trust Act July 2, 1890, §§ 1, 2 (Comp. St. §§ 8820, 8821), against restraints or monopolization of trade or commerce, do not exceed the authority of Congress to regulate commerce, as applied to undue restraints of interstate or foreign commerce in petroleum and its products, by contract, combination, or conspiracy, or monopolization, or attempts to monopolize any part of such commerce. Standard Oil Co. of New Jersey v. U. S. (1911) 31 S. Ct. 502, 221 U. S. 1, 55 L. Ed. 619, 34 L. R. A. (N. S.) 834, Ann. Cas. 1912D, 734, affirming judgment U. S. v. Standard Oil Co. of New Jersey (C. C. 1909) 173 Fed. 177.

Congress in the exercise of the power to regulate interstate and foreign commerce may prevent interference by the states with the freedom of interstate commerce, and may likewise prohibit individuals by contract or otherwise from impeding the free flow of interstate and foreign trade and in the exercise of this right Congress may, as it has done by the anti-trust act of 1890, prohibit all contracts in restraint of trade. Chesapeake & O. Fuel Co. v. U. S. (1902) 115 Fed. 610, 53 C. C. A. 256.

The anti-trust act of July 2, 1890 (Comp. St. § 8820 et seq.), is, aside from the territories and the District of Columbia, enacted under the power conferred by this clause, and the act is limited only to interstate and foreign commerce. Bigelow v. Calumet & Hecla Mining Co. (1909) 167 Fed. 721, 94 C. C. A. 13.

The right of free commerce permits broad legislation and the anti-trust act is valid. U. S. v. Patterson (C. C. 1893) 55 Fed. 605, 638.

87. Transportation—Goods and merchandise in general.—Transportation of freight and passengers from one state to another, or through more than one state, either by land or water, is interstate commerce. In re State Freight Tax (1872) 82 U. S. (15 Wall.) 232, 21 L. Ed. 146; Wabash, St. L. & P. Ry. Co. v. Illinois (1886) 118 U. S. 557, 7 Sup. Ct. 4, 30 L. Ed. 244; Sweatt v. Boston, H. & E. R. Co. (C. C. 1871) Fed. Cas. No. 13,684; Pullman Southern Car Co. v. Nolan (C. C. 1884) 22 Fed. 276 (decree affirmed State of Tennessee v. Pullman Southern Car Co. [1886] 6 Sup. Ct. 643, 117 U. S. 51, 29 L. Ed. 791); Mobile & O. R. Co. v. Sessions (C. C. 1886) 28 Fed. 592; Fry v. State (1878) 63 Ind. 552, 30 Am. Rep. 238; State v. Carrigan (1876) 39 N. J. Law (10 Vroom) 35; Steam Co. v. Livingston (N. Y. 1825) 3 Cow. 713; Southern Pac. Ry. Co. v. Haas (Tex. Sup. 1891) 17 S. W. 600; American Starch Co. v. Bateman (Tex. Civ. App. 1893) 22 S. W. 771.

Transportation of freight or of the subjects of commerce is a constituent of commerce itself. State Freight Tax Case (1872) 15 Wall. 232, 275, 21 L. Ed. 146.

Transportation for others, as an independent business, is commerce, irrespective of the purpose to sell or retain the goods which the owner may entertain with regard to them after they shall have been delivered. Hanley v. Kansas City Southern R. Co. (1903) 23 Sup. Ct. 214, 215, 187 U. S. 617, 47 L. Ed. 333.

A shipment of lumber destined by the purchaser for export, made by the seller under a local bill of lading from an interior point in Texas to a Texas Gulf port, at which the lumber was unloaded without delay by the purchaser's order into slips or docks, in reach of ship's tackle, and was then loaded into chartered ships, by which it was carried to foreign ports,—such shipment not being an isolated one, but typical of many others,—constitutes foreign commerce, and as such is governed by the tariffs on file with the Interstate Commerce Commission to the exclusion of the rates established by the state railroad commission, although the seller had no connection with the lumber after it reached the railway terminus, and had no concern with its destination after it came into the hands of the purchaser, and no knowledge thereof, and although the lumber had no definite foreign destination at the time of the initial shipment. Texas & N. O. R. Co. v. Sabine Tram Co. (1913) 33 Sup. Ct. 229, 227 U. S. 111, 57 L. Ed. 442.

Transportation of property is commerce. U. S. v. Southern Ry. Co. (D. C. 1908) 164 Fed. 347, judgment affirm-

ed Southern R. Co. v. U. S. (1911) 32 Sup. Ct. 2, 222 U. S. 20, 56 L. Ed. 72.

Transportation between two points in Los Angeles county over a route passing outside the territorial limits of the state and over the high seas held not commerce with foreign nations, within Const. art. 1, § 8, so as to prevent the regulation of such transportation by the State Railroad Commission. Wilmington Transp. Co. v. Railroad Commission of California (1913) 137 P. 1153, 166 Cal. 741.

Transportation for others as an independent business is "commerce," irrespective of the purpose of it. State v. Atlantic Coast Line R. Co. (1908) 47 So. 969, 56 Fla. 617.

The power of congress over commerce is confined to the period of time during which the act of importation is going on. When the act of importation and exportation into the mass of property of a state is fully accomplished, the power of congress ceases. People v. Huntington (1846) 4 N. Y. Leg. Obs. 187.

88. —— Interstate or intrastate commerce in general.—The intention or purpose of the owners of an interstate shipment of a car load of grain to forward such car from the original terminal point to another point in the same state does not make the shipment between such two points, when performed by a connecting carrier to which the car was delivered by the original terminal carrier in obedience to the instructions of the owner, an interstate one, and, as such, exempt from the regulations of the state railroad commission. Gulf, C. & S. F. Ry. Co. v. State of Texas (1907) 27 Sup. Ct. 360, 204 U. S. 403, 51 L. Ed. 540, affirming judgment (1904) 78 S. W. 495, 97 Tex. 274.

A shipment of lumber for export, under a local bill of lading to a Texas Gulf port, held foreign commerce governed by the tariffs on file with the Interstate Commerce Commission. Texas & N. O. R. Co. v. Sabine Tram Co. (1913) 33 Sup. Ct. 229, 227 U. S. 111, 57 L. Ed. 442, reversing judgment (Tex. Civ. App. 1909) 121 S. W. 256.

A carrier receiving property for transportation from a point in one state to a point in another, is within Carmack Amendment June 29, 1906, § 7, to Interstate Commerce Act Feb. 4, 1887, § 20 (Comp. St. § 8563), making it liable for loss en route, notwithstanding stipulation to the contrary, where it accepts such shipment over route selected by shipper, as to which the carrier has no established through rate. Norfolk & W. R. Co. v. Dixie Tobacco Co. (1913) 33 Sup. Ct. 609, 228 U. S. 593, 57 L. Ed. 980, affirming judgment (1911) 69 S. E. 1106, 111 Va. 813.

Forbidding a railroad to transport in interstate commerce an article purchased by it for its private business, as is done by Hepburn Act June 29, 1906 (Comp. St. § 8563 [6]), is a valid exercise of the power to regulate commerce. Delaware, L. & W. R. Co. v. U. S. (1913) 34 Sup. Ct. 65, 231 U. S. 363, 58 L. Ed. 269.

The reshipment by the consignee to other points within the state of coal consigned to it on interstate shipments to a distributing point in the state, though made in cars in which the coal is received, does not place such reshipments outside the pale of state regulation, where the consignee paid the freight to the point of reshipment to the initial carrier. Chicago, M. & St. P. Ry. Co. v. State of Iowa (1914) 34 Sup. Ct. 592, 233 U. S. 334, 58 L. Ed. 988, affirming judgment State v. Chicago, M. & St. P. Ry. Co. (1911) 130 N. W. 802, 152 Iowa, 317.

An order of the State Railroad Commission, requiring railroad company to accept without unloading and reloading into its own cars coal in car load lots in cars of other railroads by which the coal had been brought into the state, is not an interference with interstate commerce, where transportation at point of reshipment is purely intrastate service. Id.

Car loads of coal shipped from one state into another remain subjects of interstate commerce until delivery to the consignee. Southern Ry. Co. v. Greensboro Ice & Coal Co. (C. C. A. 1904) 134 Fed. 82, decree modified McNeill v. Southern Ry. Co. (1906) 26 Sup. Ct. 722, 202 U. S. 543, 50 L. Ed. 1142.

The importation into one state from another is the test of interstate commerce. U. S. v. Colorado & N. W. R. Co. (1907) 157 Fed. 321, 85 C. C. A. 27, 15 L. R. A. (N. S.) 167, 13 Ann. Cas. 893, writ of certiorari denied Colorado & N. W. R. Co. v. U. S. (1908) 28 Sup. Ct. 570, 209 U. S. 544, 52 L. Ed. 919.

Every part of every transportation of articles of commerce in a continuous passage from a commencement in one state to a prescribed destination in another is a transaction of interstate commerce. Id.

A shipment of explosives in interstate or foreign commerce while in course of transportation is subject exclusively to the regulations prescribed by the Interstate Commerce Commission, and state or local laws have no application to it. Actiesselskabet Ingrid v. Central R. Co. of New Jersey (C. C. A. 1914) 216 Fed. 72, affirming decree The Ingrid (D. C. 1912) 195 Fed. 596, and rehearing denied (1914) 216 Fed. 991.

Transportation of freight from one state to another, or through more than one state, either by land or water, is interstate commerce. Sweatt v. Boston, H. & E. R. Co. (C. C. 1871) Fed. Cas. No. 13,684.

Quære, whether a carriage of freight out of a state into another, not being a mere transit through the state, is interstate commerce, so that the carriage

within the state is beyond its power of regulation. Bondholders v. Railroad Com'rs (C. C. 1874) Fed. Cas. No. 1,-625.

The shipment of merchandise from one state to another is interstate commerce, and any requirement of a state statute in respect of such commerce in conflict with the requirements of the interstate commerce act is invalid. State of Indiana v. Pullman Palace Car Co. (C. C. 1883) 16 Fed. 193; Kaeiser v. Illinois Cent. R. Co. (C. C. 1883) 18 Fed. 151; Baird v. St. Louis, I. M. & S. Ry. Co. (C. C. 1890) 41 Fed. 592.

The transportation of goods, wares, and merchandise from one state to another constitutes commerce among the several states, and a regulation thereof by the railroad commission of the state of Mississippi, under Act March 11, 1884, is unconstitutional. Mobile & O. R. Co. v. Sessions (C. C. 1886) 28 Fed. 592.

The transportation of property from one state to another is interstate commerce, whether the carriers engaged in moving it, or the vehicles on which it is borne, cross the line of the state or not. Ex parte Koehler (C. C, 1887) 30 Fed. 867.

Orange growers in Florida shipped their fruit from one point in that state to another point in the same state, consigned to their agent at the latter point, for reshipment, who immediately forwarded them to their destination in another state. Held, that the shipment from the growers to the forwarding agent was interstate commerce, not subject to the control of the Florida Railway Commission. Cutting v. Florida Ry. & Nav. Co. (C. C. 1891) 46 Fed. 641, following The Daniel Ball (1870) 10 Wall. 557, 19 L. Ed. 999.

All business which originates out of, comes into, and is laid down in a state and all business which originates out of, passes through, and is delivered outside the state is interstate, while all business picked up, carried, and delivered wholly within a state is intrastate. Southern Pac. Co. v. Bartine (C. C. 1909) 170 Fed. 725.

A delivery to a carrier for transportation from one state to another is the beginning of interstate commerce within the power of congress to regulate. U. S. v. Smith (D. C. 1902) 115 Fed. 423.

If merchandise is consigned from one point in a state to another point in the same state, but is, during transit, carried through a portion of another state, the transaction constitutes "interstate commerce." U. S. v. Erie R. Co. (D. C. 1909) 166 Fed. 352.

A contract for the transportation of freight from one state to another relates to interstate commerce, and is subject to federal regulation. Central of Georgia Ry. Co. v. Sims (Ala. 1910) 53 So. 826.

To bring a transportation of freight within the control of a state as a part of its domestic commerce, the subject transported must be for the entire distance carried under the exclusive jurisdiction of the state. St. Louis & S. F. R. Co. v. State (Ark. 1908) 113 S. W. 203.

A commodity does not become an object of interstate commerce simply because the owner intends to sell it in another state, or prepares it for such sale, but only when it is entered with and delivered to the carrier for transportation to the other state. Chapman & Dewey Land Co. v. Jonesboro, L. C. & E. R. Co. (Ark. 1911) 133 S. W. 1119.

The intention of the consignee as to the future disposition of his property by shipping it over another line under a new bill of lading into another state cannot change an intrastate shipment to an interstate shipment so as to deprive it of the protection of rule 36 of the Railroad Commission of Georgia, requiring carriers in the conduct of their intrastate business to afford all persons equal facilities without unjust discrimination. Augusta Brokerage Co. v. Central of Georgia Ry. Co. (1908) 62 S. E. 996, 5 Ga. App. 187.

If the places from which and to which property is carried, and the line over which it is carried, are within the state, the commerce is domestic, and subject to state control. Luken v. Lake Shore & M. S. Ry. Co. (1911) 94 N. E. 175, 248 Ill. 377.

Transportation of commercial commodities from state to state is interstate commerce, and the state Legislatures can neither burden nor restrict it. State v. Indiana & O. Oil, Gas & Mining Co. (1889) 22 N. E. 778, 120 Ind. 575, 6 L. R. A. 579.

Where an interstate shipment of goods is made, wherein it is the contemplation that delivery will be made to the consignee, instead of being delivered at a warehouse, the goods continue a subject of interstate commerce until they are so delivered. State v. Adams Express Co. (Ind. 1908) 85 N. E. 337, rehearing denied (1908) 85 N. E. 966.

An interstate contract of shipment, entered into by a common carrier, is an entire contract, and the laws of the state wherein it is made, so far as they attempt to regulate interstate commerce, do not enter into it as a part of the contract, being repugnant to the federal constitution. Carton v. Illinois Cent. R. Co. (1882) 59 Iowa, 148, 13 N. W. 67.

A carload of goods and live stock, consigned from a point in Oklahoma to a point in Kansas, is a shipment in interstate commerce, though the destination is altered en route. So, where goods and live stock were shipped from a point in Oklahoma to a point in Kansas, and the destination was changed to another point in Kansas, the entire transaction was governed by the interstate commerce regulations permitting

a carrier to limit its liability. Kirby v. Union Pac. R. Co. (1915) 146 P. 1183, 94 Kan. 485.

A shipment consigned to a point in another state constitutes "interstate commerce," though actual delivery is made before crossing the state line. Stockton Elevator & Shipping Ass'n v. Missouri Pac. Ry. Co. (Kan. 1916) 154 P. 1126.

Shipment of goods from point in Tennessee to point in Kentucky is an interstate commerce shipment regulated by the federal statutes. Louisville & N. R. Co. v. Coquillard Wagon Works' Assignees (1912) 144 S. W. 1080, 147 Ky. 530.

Property held by a carrier in its warehouse after a refusal of the consignee to accept, without any notice to the consignor, must be considered as still in interstate commerce for the purpose of determining liability for its destruction. Nashville, C. & St. L. Ry. Co. v. Dreyfuss-Weil Co. (1912) 150 S. W. 321, 150 Ky. 333.

Where a shipment from one point to another, both within the state, in the course of transportation passed through another state, it was an interstate shipment. Louisville & N. R. Co. v. Allen (1913) 153 S. W. 198, 152 Ky. 145, petition for rehearing overruled (1913) 154 S. W. 371, 152 Ky. 837.

Goods delivered to a common carrier at a point without the state consigned to a purchaser at his residence within the state are exempt from state regulations during the course of transportation. City of Newport v. Wagner (Ky. 1916) 182 S. W. 834.

Where property is received for transportation from one state to another, the shipment is an interstate one, and is not governed by state statutes. Berry Coal & Coke Co. v. Chicago, P. & St. L. Ry. Co. (1906) 92 S. W. 714, 116 Mo. App. 214.

Where the shipment contract read from a point in Missouri to "Kansas City," the fact that it failed to show whether the destination was Kansas City in Kansas or in Missouri did not preclude the shipment from being an interstate one. Potter v. Kansas City Southern Ry. Co. (1915) 172 S. W. 1153, 187 Mo. App. 56.

Produce does not become a matter of interstate commerce until delivered to the carrier to be transported out of the state to the state of its destination, or until it has started on its ultimate transportation to that state. State v. Missouri Pac. Ry. Co. (Neb. 1908) 115 N. W. 614.

A steamer licensed for the coasting trade took goods at New York, consigned to a port in another state, at which place she stopped, delivered the goods, and proceeded on the Hudson river to other ports in New York. Held that, since the vessel was engaged in interstate commerce, her voyage was not a violation of the act granting to the plaintiffs an exclusive right to navigate the waters of New York with steamboats. North River Steamboat Co. v. Livingston (N. Y. 1824) 1 Hopk. Ch. 170.

The transportation of goods from one state into or through another state constitutes interstate commerce, which is under the exclusive control of Congress, and cannot be interfered with by a state, except with the consent of Congress. People v. Fargo (1910) 122 N. Y. Supp. 553, 137 App. Div. 727.

Revisal N. C. 1905, § 2633, requiring a carrier to inform the consignee of the freight charges and to deliver the freight on tender or payment subject to a penalty for failure to do so, is not invalid as interfering with interstate commerce, failure to deliver freight not being interstate commerce. Hockfield v. Southern Ry. Co. (1909) 64 S. E. 181, 150 N. C. 419, 134 Am. St. Rep. 945.

Revisal N. C. 1905, § 2631, imposing a penalty on carriers for refusal to accept shipments of freight, is not invalid as applying to interstate commerce, as the penalty is incurred by the violation of a common-law duty to accept freight whenever tendered, which is an act done entirely within the state and no part of the act of transportation. Burlington Lumber Co. v. Southern Ry. Co. (1910) 67 S. E. 167, 152 N. C. 70.

"Interstate commerce" does not begin until the freight has been shipped or started for transportation from one state to another. Reid v. Southern Ry. Co. (1910) 69 S. E. 618, 153 N. C. 490.

When goods are shipped from one state into another and upon arrival at their destination remain in the cars placed upon public sidings, they continue a part of the interstate commerce transaction until unloaded. Pennsylvania R. Co. v. M. O. Coggins Co. (1909) 38 Pa. Super. Ct. 129.

The interstate commerce clause does not apply to shipments wholly within the state, though the carrier over whose lines the shipment is made is engaged in interstate commerce. McCutchen v. Atlantic Coast Line R. Co. (1908) 61 S. E. 1108, 81 S. C. 71.

Act S. C. March 25, 1904 (24 St. at Large, p. 671), as amended by Act Feb. 15, 1907 (26 St. at Large, p. 490), providing for a penalty for delay in the transportation of freight, has no application to interstate shipments. Moore v. Atlantic Coast Line R. Co. (1910) 67 S. E. 11, 85 S. C. 19.

A provision in the charter of a corporation chartered by a state that in the transportation of freight it shall be subject to the laws applicable to common carriers does not render the corporation, when engaged in interstate commerce, subject to state control. Houston Direct Nav. Co. v. Insurance Co. of North America (1895) 89 Tex. 1, 32 S. W. 889, 30 L. R. A. 713, reversing (Civ. App. 1895) 31 S. W. 560.

The power of congress to regulate interstate commerce extends to the necessary switching of cars and delivery at terminal points; and an action to recover penalties imposed by a state statute upon carriers for discrimination between individuals in regard to terminal facilities cannot be maintained with respect to freight brought from another state, as that matter is covered by a federal statute. Fielder v. Missouri, K. & T. Ry. Co. of Texas (Tex. Civ. App. 1897) 42 S. W. 362, affirmed (1898) 46 S. W. 633, 92 Tex. 176.

Where freight is delivered to a carrier to be transported on a continuous trip to a point outside the state, the character of interstate commerce attaches thereto, whatever the form of the bill of lading, so that it is not subject to regulations of the state railroad commission. State v. International & G. N. R. Co. (1903) 71 S. W. 994, 31 Tex. Civ. App. 219.

R. S. Tex. 1895, art. 4574, provides a penalty for unjust discrimination by a railroad between shippers, and one of the rules of the railroad commission requires that cotton not being shipped beyond the state shall be stopped at the first compress for compression. Held, in an action against a railroad under the statute, that where one concentrates his foreign shipments at some point within the state, and there classifies them preparatory to their final destination, and some cotton is substituted at that point for that shipped from a certain point to such classification point, such substitution and classification do not render the shipment a local one, which should have been compressed at the first compress. State v. San Antonio & A. P. Ry. Co. (1903) 73 S. W. 572, 32 Tex. Civ. App. 58.

A train consisting of empty freight cars being prepared, and taken to a point without the state, for the purpose of transporting coal within the state from such point, is not engaged in interstate commerce. Norfolk & W. R. Co. v. Commonwealth (1896) 93 Va. 749, 24 S. E. 837.

In determining whether a service in the transportation of freight from a point in one state to an unloading point in another is interstate commerce, the circumstances of a through tariff rate, a through bill of lading, and continuity of ownership and consignee are evidentiary, but not controlling. Duluth-Superior Milling Co. v. Northern Pac. Ry. Co. (1913) 140 N. W. 1105, 152 Wis. 528.

Between the point of delivery of freight for transportation and the point for discharge, there may be changes of ownership and of consignees, successive bills of lading, or no bill for some section of the transit, and the freight yet be of interstate commerce throughout. Id.

If a car of freight is started from a point without to a point within the state, and the bill of lading does not expressly call for delivery at an unloading point, but the custom is to place cars at a terminus within the delivery point to be removed to an unloading point determined after arrival, the presumption is that the shipper proposed in the beginning that the freight should go beyond the terminus to the place of unloading, and the whole is a unit as to interstate or intrastate service. Id.

If freight is started from a point without to a point within the state, and the bill of lading does not call for delivery at an unloading point, the temporary place of stoppage, though satisfying the literal call of the bill of lading, marks only the end of that part of the entire transit, where continuance to the unloading point is required to be over another line. Id.

Where property is delivered to a carrier in one state to be transported to an unloading point in another state, it is a matter of interstate commerce till unloaded at the terminus of the service sought or tendered for unloading. Id.

It is the character of the service required and rendered, not the manner of its accomplishment, which determines interstate character, and the service impresses the subject of the transit at the start, and delivery at the unloading point removes such impress. Id.

89. —— Connecting carriers.—A state railroad corporation, when it voluntarily engages in interstate commerce, by making an arrangement for a continuous carriage of goods, becomes subject, so far as such traffic is concerned, to the provisions of the interstate commerce law. Interstate Commerce Commission v. Detroit, G. H. & M. Ry. Co. (1897) 17 Sup. Ct. 986, 167 U. S. 633, 42 L. Ed. 306, affirming decree (1896) 74 Fed. 803, 21 C. C. A. 103.

Railroads which share in an agreed rate on traffic to a certain point, and in a precisely equal rate on traffic to an intermediate point, although on traffic to this point there is added an amount equal to the local rate from that point to the end of the longer haul, which additional exaction is received by the local road alone, are to be regarded as constituting a continuous line, subject to the act to regulate commerce. (Comp. St. § 8563 et seq.) Louisville & N. R. Co. v. Behlmer (1900) 20 Sup. Ct. 209, 175 U. S. 648, 44 L. Ed. 309, reversing decree Behlmer v. Louisville & N. R. Co. (1897) 83 Fed. 898, 28 C. C. A. 229.

The intention or purpose of the owners of an interstate shipment of a car load of grain to forward such car from the original terminal point to another point in the same state does not make the shipment between such two points, when performed by a connecting carrier to which the car was delivered by the original terminal carrier in obedience to the instructions of the owner,

an interstate one, and, as such, exempt from the regulations of the state railroad commission. Gulf, C. & S. F. Ry. Co. v. Texas (1907) 27 Sup. Ct. 360, 204 U. S. 403, 51 L. Ed. 540, affirming judgment (1904) 78 S. W. 495, 97 Tex. 274.

Congress could properly enact, as a regulation of commerce, so much of the Hepburn Act June 29, 1906 (Comp. St. § 8563 [6]), as forbids a carrier from transporting articles or commodities in interstate commerce when they have been manufactured, mined, or produced by the carrier, or under its authority, and, at the time of transportation, such carrier has not, in good faith, before the act of transportation, dissociated itself therefrom, or when the carrier owns the article or commodity to be transported, in whole or in part, or when the carrier, at the time of transportation, has an interest therein, direct or indirect, in a legal or equitable sense, although, by existing state legislation, such carrier may have a lawful right of ownership of or association with the articles or commodities upon which these provisions operate. U. S. v. Delaware & Hudson Co. (1909) 29 Sup. Ct. 527, 539, 213 U. S. 366, 53 L. Ed. 836, reversing judgment and decree (C. C. 1908) 164 Fed. 215.

The imposition upon an interstate carrier voluntarily receiving property for transportation from a point in one state to a point in another state, of liability to the holder of the bill of lading for a loss anywhere en route, with a right of recovery over against the carrier actually causing the loss which is made by Act Feb. 4, 1887, § 20, as amended by Act June 29, 1906, § 7 (Comp. St. § 8592), in spite of any agreement or stipulation limiting liability to its own line, is a valid regulation of interstate commerce. Atlantic Coast Line R. Co. v. Riverside Mills (1911) 31 S. Ct. 164, 219 U. S. 186, 55 L. Ed. 167, affirming judgment Riverside Mills v. Atlantic Coast Line R. Co. (C. C. 1909) 168 Fed. 990; Louisville & N. R. Co. v. Scott (1911) 31 S. Ct. 171, 219 U. S. 209, 55 L. Ed. 183, affirming judgment (1909) 118 S. W. 990, 133 Ky. 724.

Act Feb. 4, 1887, § 20, as amended by Act June 29, 1906, § 7 (Comp. St. § 8592), regulating liability of connecting carrier, is a valid regulation of interstate commerce. Galveston, H. & S. A. Ry. Co. v. Wallace (1912) 32 Sup. Ct. 205, 223 U. S. 481, 56 L. Ed. 516, affirming judgment (Civ. App. 1909) 117 S. W. 169, and Same v. Crow (Civ. App. 1909) Id. 170.

The reshipment by the consignee to other points within the state of coal consigned to it on interstate shipments to a distributing point within the state, although such reshipments are in the cars in which the coal was received, does not establish such continuity of transportation as to place such reshipments outside the pale of state regulation, where the consignee paid the freight to the point of reshipment to the initial carrier, which placed the cars on an interchange track, where they were held by the consignee until sales were made, when bills of lading were tendered to another railway company for the further transportation. Chicago, M. & St. P. Ry. Co. v. Iowa (1914) 34 Sup. Ct. 592, 233 U. S. 334, 58 L. Ed. 988.

An order of a state railroad commission requiring a railway company to accept without unloading and reloading into its own cars reshipments of coal in carload lots when tendered in the cars of other railway companies by which the coal had been brought into the state does not interfere with interstate commerce where there is such a termination of the interstate transportation at the point of reshipment that the further transportation is a purely intrastate service. Id.

Every carrier who transports goods through any part of a continuous passage in the state to a point in another state is engaged in interstate commerce, whether the goods are carried upon through bills of lading or rebilled by the several carriers. U. S. v. Colorado & N. W. R. Co. (1907) 157 Fed. 321, 85 C. C. A. 27, 15 L. R. A. (N. S.) 167, 13 Ann. Cas. 893, writ of certiorari denied Colorado & N. W. R. Co. v. U. S. (1908) 28 Sup. Ct. 570, 209 U. S. 544, 52 L. Ed. 919.

The transportation of goods to a point without the state is interstate commerce, and beyond the power of the state to regulate; it can make no difference in principle or result that the goods so shipped are carried over different lines of transportation within the state before passing beyond its limits, the intent or purpose of the shipper concerning the destination of the goods at the time of shipment being the determining factor. Ex parte Koehler (C. C. 1885) 25 Fed. 73, 76.

Where an express company takes packages of merchandise coming from other states at a railroad or steamer terminal, and transports them by wagon through the streets and avenues of New York to the addressees, such local transportation of interstate packages constitutes interstate commerce, and is therefore within the exclusive jurisdiction of the federal government. Barrett v. City of New York (C. C. 1910) 183 Fed. 793.

The initial carrier of an interstate shipment is subject to federal regulation, and hence may not limit its liability to loss or damage occurring on its own line, but is responsible for any loss or injury caused by it or any connecting carrier. Atlantic Coast Line R. Co. v. Ward (Ala. App. 1912) 58 So. 677.

Interstate Commerce Act Feb. 4,

1887, § 20, as amended by Hepburn Act June 29, 1906 (Comp. St. § 8592 [11]), giving a right of action against an initial carrier for negligence of connecting carriers in interstate shipments, notwithstanding any provision in the contract of carriage to the contrary, is within the power conferred on Congress to regulate commerce. St. Louis & S. F. R. Co. v. Heyser (Ark. 1910) 130 S. W. 562.

The fact that the owner of merchandise offered a carrier for transportation from one point to another in the same state intends to have it further transported by a second carrier into another state, does not make such first transportation interstate commerce rather than intrastate commerce, even though the first carrier may be informed of the ultimate destination, so as to deprive such first transportation of the protection of rule 36 of the Railroad Commission of Georgia, requiring carriers in the conduct of their intrastate business to afford all persons equal facilities without unjust discrimination. Augusta Brokerage Co. v. Central of Georgia Ry. Co. (1908) 62 S. E. 996, 5 Ga. App. 187.

Act June 29, 1906 (Comp. St. § 8592), making a carrier receiving an interstate shipment liable for any loss caused by itself or by a connecting carrier, and all contracts, receipts, or rules by which it attempts to relieve itself of such liability shall be void, is by Const. Ga. art. 12, § 1, par. 1, a law of general operation in the state, and the courts must give it effect as such. Southern Pac. Co. v. Crenshaw Bros. (1909) 63 S. E. 865, 5 Ga. App. 675.

The right to contract is held by an individual or corporation, subject to such reasonable regulations, restrictions, and provisions as Congress may legitimately, under the Constitution, impose upon it; and under the commerce clause, and article 1, § 8, last clause, giving Congress power to make all laws necessary for carrying into execution the powers granted, Congress can provide that a carrier engaged in interstate commerce shall furnish the shipper a bill of lading to destination of the shipment, and shall be liable for damages to the shipment, caused by any carrier over whose line the shipment passes from its delivery to the initial shipper until its delivery to the assignee at the point of final delivery; and Interstate Commerce Act Feb. 4, 1887, § 20, as added by Act June 29, 1906, § 7 (Comp. St. § 8592), so providing, is not violative of Const. Amend. 5, providing that no person shall be deprived of life, liberty, or property without due process of law. Fry v. Southern Pac. Co. (1911) 93 N. E. 906, 247 Ill. 564.

A contract of shipment from a point in Iowa to a point in Wisconsin, providing that the responsibility on the carrier shall cease with delivery of the goods at another point in Iowa to a connecting line, is a contract to be wholly performed within Iowa. Heiserman v. Burlington, C. R. & N. Ry. Co. (1884) 63 Iowa, 732, 18 N. W. 903.

A wholesale coal dealer in Iowa procured shipment of coal from Illinois to himself as consignee. The coal was there held until sales were made, when he paid the freight to the initial carrier, and had the cars placed on the interchange track, and tendered a written billing of the coal to carriers for shipment to other points. Held, that there was a delivery of the coal to the wholesaler at his place of business, and the transportation of the coal under another billing was intrastate transportation governed by the laws of Iowa. State v. Chicago, M. & St. P. Ry. Co. (Iowa, 1911) 130 N. W. 802.

Freight received in Kansas for transportation over the receiving and connecting line on a through bill of lading and by a continuous trip to a point beyond the state is interstate commerce. Missouri, K. & T. Ry. Co. v. New Era Milling Co. (1909) 101 P. 1011, 80 Kan. 141.

The final link in an interstate shipment may be through a carrier wholly within the terminal state, and such carrier may be another railroad or a horse and wagon. Commonwealth v. People's Express Co. (1909) 88 N. E. 420, 201 Mass. 564.

Act June 29, 1906, § 7 (Comp. St. § 8592), making the initial carrier liable for injuries to an interstate shipment caused by it, or any connecting carrier, and prohibiting the contract exempting it from such liability, is constitutional. Dodge v. Chicago, St. P., M. & O. Ry. Co. (1910) 126 N. W. 627, 111 Minn. 123.

All carriers participating in the transportation of merchandise from one state to another are engaged in interstate commerce, without reference to the bill of lading, and though no traffic arrangement existed between them no matter how the transportation was carried out or the freight paid. American Express Co. v. Miller (Miss. 1913) 61 So. 306.

A shipment by one carrier between two points in a state, and by another carrier into another state, held, while transported by the first carrier, an intrastate shipment. Kolkmeyer v. Chicago & A. R. Co. (Mo. App. 1914) 182 S. W. 794.

Where goods received for transportation from a point outside the state to an intrastate point were missent, and the carrier rebilled the goods from a point in the state to the point of destination over the line of another carrier, which received and transported the goods, the transportation by the latter carrier was not an interstate

shipment. Hockfield v. Southern Ry. Co. (1909) 64 S. E. 181, 150 N. C. 419.

Through transportation carried on in a state by virtue of contracts with connecting railroad companies is not interstate commerce in the sense in which the commercial clause of the federal constitution is to be interpreted, when its immunity is invoked by a body of persons so engaged. Norfolk & W. R. Co. v. Commonwealth (1886) 114 Pa. 256, 6 Atl. 45.

24 St. at Large, S. C. p. 1, which makes each carrier the agent of its connecting carrier from whom it receives freight, and makes each liable for any freight lost, damaged, or destroyed by the connecting carrier infringes the interstate commerce clause. Venning v. Atlantic Coast Line R. Co. (1907) 58 S. E. 983, 78 S. C. 42, 12 L. R. A. (N. S.) 1217.

Where it was not shown that the routing of freight shipped over several roads so as to take it out of the state for a part of the route was usual or necessary, it would be treated as an intrastate shipment, so that the agent of the terminal carrier was the agent of the initial carrier for the purpose of receiving a claim for loss filed with it under Act S. C. May 13, 1903 (24 St. at Large, p. 1). Harter v. Charleston & W. C. Ry. Co. (1910) 67 S. E. 290, 85 S. C. 192.

A common carrier transporting freight under contract for its shipment from one point to another in the same state, for delivery on arrival at the latter point to another carrier for transportation out of the state, is engaged in interstate commerce, and is not subject to the state railway commission regulations. State v. Gulf, C. & S. F. Ry. Co. (Tex. Civ. App. 1898) 44 S. W. 542.

Act June 29, 1906, § 7 (Comp. St. § 8592), making a common carrier liable for any loss or injury to interstate shipments caused by it or any connecting carrier, and that no contract shall exempt such common carrier from such liability, does not interfere with the rights of a state, and is valid. Galveston, H. & S. A. Ry. Co. v. F. A. Piper Co. (Tex. Civ. App. 1909) 115 S. W. 107.

Plaintiff's shipment over defendant's line was intrastate commerce, and so subject to the rates fixed by the Texas Railroad Commission, where defendant's contract of carriage was only from V. to E., both in Texas, and the shipment was by the contract consigned to plaintiff at E., where it was delivered to it, and under its direction set over on the tracks of another railroad company; nothing being said between plaintiff and the conductor of the train as to the purpose of the cars being set over there, and defendant having given no further instructions as to the movement of the shipment, and it having afterwards been forwarded to a point out of the state under a new contract between plaintiff and the other railroad company over its line. Wood, Hagenbarth Cattle Co. v. Galveston, H. & S. A. Ry. Co. (Tex. Civ. App. 1910) 130 S. W. 857.

A shipment from point in the state to point in sister state is interstate shipment, though initial carrier obligated itself to transport wholly in the state. Galveston, H. & S. A. Ry. Co. v. Carmack (Tex. Civ. App. 1915) 176 S. W. 158.

An ordinance of Portsmouth, Va., imposing a license tax on express companies engaged in transporting packages, etc., to other points in the state, does not violate the provision which gives Congress power to regulate interstate commerce, as to an express company whose intrastate shipments are carried by boat to Washington, D. C., and transferred there to trains. United States Express Co. v. City of Portsmouth (1913) 77 S. E. 506, 114 Va. 732.

90. —— Transportation outside of state in shipping between points therein.—The shipment from one point in a state to another point in the same state is interstate commerce, where the goods in transit pass through another state. Hardwick Farmers' Elevator Co. v. Chicago, R. I. & P. Ry. Co. (1910) 124 N. W. 819, 110 Minn. 25; Gray v. Minneapolis & St. L. R. Co. (Minn. 1910) 124 N. W. 1100; Mires v. St. Louis & S. F. R. Co. (Mo. App. 1908) 114 S. W. 1052; Lynch v. New York Cent. & H. R. R. Co. (Co. Ct. 1915) 153 N. Y. Supp. 633, 89 Misc. Rep. 472 (judgment affirmed [Sup. 1916] 156 N. Y. S. 1131); Wichita Falls & W. Ry. Co. of Texas v. Asher (Tex. Civ. App. 1914) 171 S. W. 1114.

The continuous transportation of freight from a point within the state to another point within the state, over a line of railway partly within the state and partly within another state, is not interstate commerce, within this clause. Lehigh Val. R. Co. v. Pennsylvania (1892) 145 U. S. 192, 12 Sup. Ct. 806, 809, 36 L. Ed. 672 (affirming [1888] 17 Atl. 179, and [1889] 129 Pa. 308, 18 Atl. 125); Campbell v. Chicago, M. & St. P. Ry. Co. (1892) 86 Iowa, 587, 53 N. W. 351, 17 L. R. A. 443.

The railroad commission of Arkansas cannot, without violating the commerce clause, fix and enforce rates for the continuous transportation of goods between two points within the state of Arkansas, where a large part of the route is outside of the state, through the Indian Territory of Texas. Hanley v. Kansas City S. Ry. Co. (1903) 23 Sup. Ct. 214, 187 U. S. 617, 47 L. Ed. 333, affirming decree Kansas City S. Ry. Co. v. Board of R. Com'rs of Arkansas (C. C. 1901) 106 Fed. 353.

Annual privilege tax levied by city on business of express company, excluding interstate business, is not invalid because transportation is over a route for a short distance passing out of the

state. Ewing v. City of Leavenworth (1913) 33 Sup. Ct. 157, 226 U. S. 464, 57 L. Ed. 303, affirming judgment City of Leavenworth v. Ewing (1909) 101 P. 664, 80 Kan. 58.

A shipment of grain over a single railroad between two points, both within the same state, is not an interstate shipment, so as to bring it within the terms of the interstate commerce act, and authorize a federal court to compel such shipment, by mandamus, at the same rates charged other shippers of a like commodity, because the line of road between the two terminal points passes through other states; nor is it rendered an interstate shipment by the fact that the grain was received at the initial point from a carrier by which it was transported from a point in another state, and was there stored in an elevator for further shipment, where it was not taken by the first carrier under a through bill of lading. U. S. v. Lehigh Val. R. Co. (D. C. 1902) 115 Fed. 373.

A continuous transportation of freight between points within a state is "interstate commerce," free from the interference of the state, where a part of the route is outside of the state because of the unsafe condition of a bridge forming a part of the line of road in the state between such points. St. Louis & S. F. R. Co. v. State (Ark. 1908) 113 S. W. 203.

"Interstate commerce," as that term is understood with reference to the provision of the federal Constitution, consists of intercourse and traffic between citizens of the states, including the transportation of persons and property between points in different states. It applies to all commerce crossing the state line, regardless of the distance of the point from which it comes or to which it is bound, before or after crossing such line; nor is it material, as applied to a particular carrier, that the whole line is within the state, if the transportation by the carrier is a part of one continuous journey from one state to another under one continuous contract of carriage. State v. Illinois Cent. R. Co. (1910) 92 N. E. 814, 246 Ill. 188.

Where a railroad runs for a portion of the distance between two stations in the state of Kansas, and for a great portion of the distance beyond the boundaries of the state, and again returns into Kansas, in conveying freight over such route between such stations the railroad company is engaged in interstate commerce. Patterson v. Missouri Pac. Ry. Co. (Kan. 1908) 94 P. 138.

Carriage of shipments by an express company from one point in the state to another point in the state does not constitute interstate commerce, even where the shipments are forwarded over a line of railroad that for a part of its route lies outside the state. State v. United States Express Co. (1911) 131 N. W. 489, 114 Minn. 346.

When a commodity has been delivered to a common carrier to be transported continuously to a point outside the state where received, it is thenceforward interstate commerce, whether the shipment be made on a through bill of lading or upon a bill issued for transportation between intrastate points. Bailey v. Missouri Pac. Ry. Co. (1914) 171 S. W. 44, 184 Mo. App. 457.

A shipment of freight from one point in the state to another point therein by way of a town outside the state, is interstate shipment and is not governed by Revisal N. C. § 1905, § 2632, imposing a penalty on a carrier for its failure to transport freight within a reasonable time. Shelby Ice & Fuel Co. v. Southern Ry. Co. (1908) 60 S. E. 723, 147 N. C. 61.

A shipment between points in the same state held to constitute interstate commerce where a part of the route led through another state, and hence was not subject to Act S. C. Feb. 15, 1907 (25 St. at Large, p. 490), providing penalties for delay. Traynham v. Charleston & W. C. Ry. Co. (1912) 75 S. E. 381, 92 S. C. 43, reversing judgment on rehearing (1911) 71 S. E. 813.

91. —— **Lottery tickets.**—The carriage of lottery tickets from one state to another by an express company engaged in carrying freight and packages from state to state is interstate commerce, which Congress, under its power to regulate, may prohibit by making it an offense against the United States to cause such tickets so to be carried. Champion v. Ames (1903) 23 Sup. Ct. 321, 326, 188 U. S. 321, 47 L. Ed. 492.

92. —— **Foods, drugs, and liquors.**—The agreement of the local agent of an express company to hold for a few days a C. O. D. interstate shipment of intoxicating liquors, to suit the convenience of the consignee in paying for such liquor and taking it away, does not destroy the character of the transaction as interstate commerce, so as to render the express company amenable to prosecution for violating a state local option law. Adams Express Co. v. Commonwealth of Kentucky (1907) 27 Sup. Ct. 606, 206 U. S. 129, 51 L. Ed. 987 (reversing judgment [1905] 87 S. W. 1111, 27 Ky. Law Rep. 1096); Id. (1907) 27 Sup. Ct. 608, 206 U. S. 138, 51 L. Ed. 992 (reversing judgment [1906] 92 S. W. 932, 29 Ky. Law Rep. 224, 5 L. R. A. [N. S.] 630); American Express Co. v. Same (1907) 27 Sup. Ct. 609, 206 U. S. 139, 51 L. Ed. 993 (reversing judgment [1906] 97 S. W. 807, 30 Ky. Law Rep. 207); Adams Express Co. v. Commonwealth (1907) 103 S. W. 353, 31 Ky. Law Rep. 811–813.

Pure Food and Drugs Act June 30, 1906 (Comp. St. § 8717 et seq.), is constitutional. Shawnee Milling Co. v. Temple (C. C. 1910) 179 Fed. 517;

U. S. v. 74 Cases of Grape Juice (D. C. 1910) 181 Fed. 629; U. S. v. Sweet Valley Wine Co. (D. C. 1913) 208 Fed. 85.

Webb-Kenyon Act, March 1, 1913 (Comp. St. § 8739), is constitutional. U. S. v. Oregon-Washington R. & Nav. Co. (D. C. 1913) 210 Fed. 378; State v. Van Winkle (Del. Gen. Sess. 1913) 88 A. 807, 4 Boyce, 405.

Though liquor may be obnoxious and hurtful, it is a recognized article of commerce, and the act of sending the same from one state into another is interstate commerce, the regulation of which is committed to Congress, and a state law denying the right or substantially interfering with the same, is invalid. Adams Exp. Co. v. Kentucky (1909) 29 Sup. Ct. 633, 634, 214 U. S. 218, 53 L. Ed. 972.

The fact that frozen eggs, against which a libel was instituted, had been shipped from one state to another, consigned by the shipper to itself, did not indicate that they had not been transported in interstate commerce. U. S. v. 300 Cans of Frozen Eggs (1911) 189 Fed. 351, 111 C. C. A. 83.

The traffic in liquors from state to state is interstate commerce and as such within the control of Congress, though generally the control of the liquor traffic is within the police power of the states. United States Express Co. v. Friedman (1911) 191 Fed. 673, 681, 112 C. C. A. 219.

Wilson Act Aug. 8, 1890 (Comp. St. § 8738), which provides that intoxicating liquors when shipped from one state to another "shall, upon arrival, be subject to the operation and effect of the laws of such state," is a legitimate exercise of the power to regulate interstate commerce. In re Van Vliet (C. C. 1890) 43 Fed. 761, 10 L. R. A. 451.

Intoxicating liquors are a lawful subject of interstate commerce, and the right to send the same from one state into another pertains to interstate commerce, and a state statute which, in the absence of congressional sanction, denies the right, or substantially interferes with or hampers the same, is void. In re Bergen (C. C. 1900) 115 Fed. 339.

Intoxicating liquors lawfully sold in good faith in one state may be lawfully delivered to the purchaser in another state, and the carrier and means employed in such carriage are entitled to protection from interference by the state authorities as instruments of interstate commerce. Kansas City Breweries Co. v. Trickett (C. C. 1907) 195 Fed. 840.

Pure Food and Drugs Act June 30, 1906 (Comp. St. § 8717 et seq.), prohibiting transportation in interstate commerce of food so treated that its inferiority is concealed or containing poisonous ingredients rendering it injurious to health, was not an exercise of police power within the exclusive jurisdiction of states, but was a proper regulation of interstate commerce. Shawnee Milling Co. v. Temple (C. C. 1910) 179 Fed. 517.

Where complainants, liquor dealers in Missouri, received orders for liquor by mail from customers in Oklahoma and delivered the liquor to carriers in Missouri for transportation to the purchasers receiving a bill of lading which was thereupon forwarded to a bank or other collecting agent in the place where the customer resided, who collected the purchase price and then delivered the bill of lading to the purchaser, who obtained the liquor from the carrier, such transaction constituted a sale of liquor in Missouri, and the transportation thereof interstate commerce, and was not therefore a violation of the Oklahoma prohibitory law. Danciger v. Stone (C. C. 1910) 188 Fed. 510.

Congress, in enacting Food and Drugs Act June 30, 1906, § 2, exercised to the fullest limit its power under this clause. U. S. Sixty-Five Casks Liquid Extracts (D. C. 1909) 170 Fed. 449, affirmed (1910) 175 Fed. 1022, 99 C. C. A. 667.

Pure Food and Drugs Act June 30, 1906 (Comp. St. § 8718), prohibiting the transportation of adulterated and misbranded food in interstate commerce, is not unconstitutional as an attempted exercise by Congress of police power belonging to the states. U. S. v. 420 Sacks of Flour (D. C. 1910) 180 Fed. 518.

Potatoes brought from one state to another on a vessel remained an import until sold and delivered on the deck. Ex parte Eaglesfield (D. C. 1910) 180 Fed. 558.

Congress can prohibit interstate commerce of any fundamentally objectionable business such as adulterated or misbranded articles of food or drugs. U. S. v. 74 Cases of Grape Juice (D. C. 1910) 181 Fed. 629.

An act of a state regulating or prohibiting the interstate transportation of intoxicating liquors into local option territory, adopted in good faith to make more effective its laws against sales in such territory, where such transportation is substantially connected with the forbidden sale, and is also prohibited by an act of Congress, is valid under both the state and federal Constitutions. State v. Grier (Del. Gen. Sess. 1913) 88 A. 579.

A state legislature has no power to deprive a citizen or resident of the state of his rights to have liquor shipped from another state for his personal use, nor to receive such liquor and remove the same from the express or railway office to his own home or place of business. State v. Wignall (Iowa, 1910) 128 N. W. 935.

Where several residents of a state ordered liquor from another state at the same time, and defendant received the liquor from the railroad station in

the state and gratuitously transported it inland to the purchasers as their agents, defendant was not engaged in interstate commerce. Id.

Code Iowa 1897, § 2419, provides that, if any common carrier or person shall transport or convey to any person within the state any intoxicating liquors without first having obtained a certificate from the clerk of the court showing that the consignee is a permit holder, such carrier or person, on conviction, shall be fined, etc. Held, that such section is not unconstitutional as interfering with interstate commerce. Id.

That the Legislature may not prevent a resident from himself getting intoxicating liquor imported from another state from the station and carrying it to his home for his personal use does not prevent the Legislature from prohibiting the transportation of such liquor from the railroad carrier to his home by means of an employé. Id.

A shipment of a case of beer from another state into a local option territory in this state is interstate commerce, and is not subject to the control of the prohibition statute in force where received. Commonwealth v. Illinois Cent. R. Co. (1907) 101 S. W. 894, 31 Ky. Law Rep. 99.

Where an express company carried whisky shipped in the regular course of business from points without the state to points within, and delivered it in a local option district, it was engaged in interstate commerce, and was not subject to prosecution for violating the state law regulating the sale of liquors. Commonwealth v. Southern Express Co. (1907) 103 S. W. 339, 31 Ky. Law Rep. 813.

Ky. St. § 1306 (Russell's St. § 3633), prohibiting the selling or giving away of intoxicating liquors to minors, is unconstitutional, as a regulation of interstate commerce, when applied to a sale by a nonresident, who, pursuant to an order from the prosecutor, sent from Kentucky by mail to the nonresident in a sister state, with a check for the price, delivered the liquor to a carrier in the sister state for transportation to prosecutor, and where accused, as the agent of the carrier, delivered the liquor in Kentucky in due course of business. Commonwealth v. McKinney (1910) 131 S. W. 497, 140 Ky. 657.

Where intoxicating liquor was shipped from without the state to a resident of a local option district, and a common carrier operating wholly within the state received the liquor outside of the district, paid the charges for carriage to that point, delivered it to the resident of the local option district, and there collected his charges and those advanced, the carriage was an interstate commerce transaction; and the carrier was not guilty under Ky. St. § 2569a (Russell's St. § 3641), making the bringing of liquor for hire into local option territory an offense. Commonwealth v. Scott (1911) 133 S. W. 766, 141 Ky. 702.

The commerce clause attaches to lawful shipments of liquor, and courts will not presume, in the absence of proof, that a record of interstate liquor shipments kept as required by Ky. St. 1915, § 2569b, subsec. 3, contains a record of unlawful shipments. Commonwealth v. White (Ky. 1915) 179 S. W. 469.

R. S. Me. 1883, c. 27, § 31, as amended by R. S. Me. 1903, c. 29, § 39, declaring that no person shall knowingly bring into the state any intoxicating liquors with intent to sell the same, is unconstitutional so far as it applies to interstate commerce. State v. Intoxicating Liquors (1906) 64 A. 812, 101 Me. 430.

An express company contracted with certain consignors to transport a box of liquors from Kentucky to a town in Maine. The liquors were intended for unlawful sale in Maine, and the shipment was C. O. D. The liquors were seized by a search warrant while in the office of the express company. Held, that the transportation of the liquor from the express company's office to the place of business of the consignee was a part of a continuous interstate shipment, and the package was protected from the operation of the state laws until delivered at its place of ultimate destination, and such seizure was unauthorized. Id.

Intoxicating liquors were shipped from Massachusetts to Maine by a continuous way bill by way of Canada. The car, when it arrived at its destination, was left on the "team track" about an hour after its arrival, and about ten minutes thereafter the liquors were seized. The team track was about 20 rods from claimant's freight station. In the ordinary course of business, within two or three days the liquors would have been unloaded from a car onto a team of the consignee, but if no one called, they would have been taken to the freight house of the claimant. The car which was sealed had been opened by claimant's servants, and other merchandise had been taken out, but the liquors had not been removed. Held, that it was the duty of the carrier to transport the freight to its freight house and there remove it from the car and the transportation was incomplete and the liquors were not subject to seizure in contravention of the interstate commerce clause. State v. Intoxicating Liquors (1906) 66 A. 393, 102 Me. 206.

Intoxicating liquors while being transported from state to state are within the protection of the interstate commerce clause. State v. Intoxicating Liquors (1907) 67 A. 312, 102 Me. 206.

Under Act June 30, 1906 (Comp. St. § 8718), known as the "Pure Food Law," misbranded and adulterated intoxicating liquors are forbidden trans-

portation into any state from another state or foreign country, and hence are removed from the protection of the commerce clause. State v. Intoxicating Liquors (1908) 71 A. 758, 104 Me. 502.

Where merchandise was brought from another state by a common carrier, its delivery to the consignee subjects it to the laws of the state, free from the commerce clause. State v. Intoxicating Liquors (Me. 1909) 76 A. 265.

Pure intoxicating liquors, brought into the state from another state by an interstate common carrier, are not liable to forfeiture under the state laws until they have come into possession of the consignee. State v. Intoxicating Liquors (Me. 1909) 76 A. 267.

Under Pure Food and Drugs Act June 30, 1906 (Comp. St. § 8718), forbidding the introduction of misbranded or adulterated liquors into one state from another, such liquors are removed from the operation of the commerce clause, and become subject to the laws of the state upon arrival within its territory and before delivery to the consignee. State v. Intoxicating Liquors (Me. 1909) 76 A. 268.

The transportation of oysters out of one state into another is "commerce" within the meaning of this clause. D. E. Foote & Co. v. Clagett (Md. 1911) 81 A. 511.

Congress has power to enact regulations to prevent the transportation of unhealthy or diseased food products in interstate commerce. Commonwealth v. Moore (1913) 100 N. E. 1071, 214 Mass. 19.

Shipments of liquor from Louisiana to Vicksburg, and thence to destination in this state, held interstate commerce; and hence defendant express company could not refuse to receive the liquor in Vicksburg and transport the same to destination, because of Code Miss. 1906, § 1771, making persons assisting in the sale of liquors in a prohibited district guilty of a misdemeanor. American Express Co. v. Miller (1913) 61 So. 306, 104 Miss. 247, 45 L. R. A. (N. S.) 120.

In a prosecution for having in possession adulterated skim milk, with intent to sell and offer and expose for sale, in violation of St. Louis City Ordinance No. 24,297, proof that all defendant's milk was brought into the city by railway, and that it was all purchased in and shipped from Illinois, without any evidence showing that when the offense was charged to have been committed the shipment of the milk had not terminated, and that it had not become a part of the commerce of the state, was insufficient to entitle defendant to an acquittal on the ground that the milk which he possessed with intent to offer for sale was not subject to the ordinance, because within the protection of the federal law and Constitution relating to interstate commerce. City of St. Louis v. Niehaus (Mo. 1911) 139 S. W. 450.

When the interstate shipment of liquor is made through a carrier, the state law relating to the possession and sale of liquor cannot attach thereto, unless it affirmatively appears that the shipment, or such portion thereof as is sought to be confiscated under the state law, has been delivered to the consignee or its agent by the interstate carrier or its agent. St. Louis & S. F. R. Co. v. State (Okl. 1910) 109 P. 230.

Where liquor was shipped from Louisville to a town in Oklahoma, and was placed by the employés of the interstate carrier in a car used for storage purposes, and was seized by state officers, the whisky being still in the hands of the interstate carrier, the state law had not attached to it. Id.

Where liquors shipped from without the state to a consignee in the state have been received by the latter from the railroad company at his place of business and there deposited, it is no longer an interstate shipment, and, on violation of the prohibitory law as to such liquor, the consignee becomes subject to prosecution. Billingsley v. State (1910) 113 P. 241, 4 Okl. Cr. 597.

The state courts cannot enjoin interstate carriers from receiving at points without the state for transportation to consignees within the state shipments of intoxicating liquors to persons whom they know intend to use said liquors in violation of the laws of the state, including persons who pay a special liquor tax required by the United States of liquor dealers, though they may know that the consignee does not intend said liquor for his own use, but to be used in violation of the laws of the state. Gulf, C. & S. F. Ry. Co. v. State (1911) 116 P. 176, 28 Okl. 754.

One conveying liquor shipped in interstate commerce from the railroad depot to the home of the consignee held engaged in interstate commerce and not subject to state law prohibiting the conveying of intoxicating liquor. Sheppard v. State (Okl. Cr. App. 1912) 126 P. 267.

An interstate shipment of intoxicating liquors cannot be legally seized or confiscated under the state law while it retains its interstate character. Robertson v. State (Okl. 1915) 149 P. 194.

While the state may regulate the intrastate shipment of intoxicating liquors, it cannot regulate the interstate shipment of such liquors. Id.

Acts W. Va. 1903, c. 40, § 1, relating to shipment and sale of intoxicating liquors contrary to law, and providing a penalty therefor, is inapplicable to interstate shipments. State v. Kenney (1907) 57 S. E. 823, 62 W. Va. 284.

Where an agent of an express company accepts spirituous liquor in an-

other state for delivery to a consignee in the state C. O. D., and the liquor is delivered and the money collected, the express company is not within the act relating to shipment and sale of intoxicating liquors; it being an interstate shipment. State v. United States Express Co. (W. Va. 1908) 60 S. E. 144.

93. —— **Oil and natural gas.**—The amendment of section 1 of the Interstate Commerce Act by Act June 29, 1906, § 1 (Comp. St. § 8563), imposing on corporations operating pipe lines for the transportation of oil as a part of their private business the status of common carriers, is invalid, as beyond the powers conferred by the commerce clause. Prairie Oil & Gas Co. v. U. S. (Com. C. 1913) 204 Fed. 798.

It is not interstate commerce to sell natural gas in Kansas, where the gas is produced in both Kansas and Oklahoma and so commingled in pipe lines that it cannot be distinguished and is thereafter conveyed throughout the state and sold to consumers. State v. Flannelly (Kan. 1915) 152 P. 22.

94. —— **Animals.**—The regulation of the transportation of cattle from state to state is within the power of congress. Reid v. Colorado (1902) 23 Sup. Ct. 92, 95, 187 U. S. 137, 47 L. Ed. 108.

R. S. § 4386, relating to the transportation of animals from one state to another, by rail or by water, was, so far as it went, a regulation of commerce and carriage by water within the power of Congress to enact. Goodrich Transit Co. v. Interstate Commerce Commission (Com. C. 1911) 190 Fed. 943, reversed (1912) 32 Sup. Ct. 436, 224 U. S. 194, 56 L. Ed. 729.

Where hogs purchased by local agents were forwarded to one central point and were there sorted, most being shipped to foreign states, the first shipment was not an interstate shipment, but merely local, and did not become interstate until the hogs were accepted for shipment outside the state. Central Trust Co. of Illinois v. Chicago, R. I. & P. Ry. Co. (Iowa, 1912) 135 N. W. 721.

Where hogs purchased for interstate shipment were assembled at a central point in the state and there loaded into different cars, the shipment was an interstate one despite the reloading. Id.

Laws Kan. 1907, c. 276, requiring carriers to transport live stock within the state at a speed not less than 15 miles per hour unless unavoidably prevented, does not apply to interstate commerce, and a shipment of live stock between points in the state which passes for a short distance over territory of another state is interstate commerce, and noncompliance with the act in such a shipment affords no ground for recovery against the carrier. Leibengood v. Missouri, K. & T. Ry. Co. (1910) 109 P. 988, 83 Kan. 25.

A carload of goods and live stock, consigned from a point in Oklahoma to a point in Kansas, is a shipment in interstate commerce, though the destination is altered en route. So, where goods and live stock were shipped from a point in Oklahoma to a point in Kansas, and the destination was changed to another point in Kansas, the entire transaction was governed by the interstate commerce regulations permitting a carrier to limit its liability. Kirby v. Union Pac. R. Co. (1915) 146 Pac. 1183, 94 Kan. 485.

Where, after the arrival of stock in the carrier's "break-up" yards, at the point of destination, the shipper demanded that the stock be delivered in the car to a connecting carrier, with whose road the initial carrier had physical connection, for shipment to another point within the state, such reshipment did not constitute interstate commerce, though the original shipment was from a point without the state. Louisville & N. R. Co. v. Central Stockyards Co. (1906) 97 S. W. 778, 30 Ky. Law Rep. 18.

A contract made in Illinois for shipment of animals to a point in Kentucky held an interstate contract. Howard & Callahan v. Illinois Cent. R. Co. (1914) 171 S. W. 442, 161 Ky. 783.

Plaintiffs, as dealers in cattle, were accustomed to receive shipments of cattle every Wednesday, which on the following day were sold to local buyers, or exported, as the case might be. Held, that the cattle so purchased with intent to export the same to another state or to foreign countries are not property in transit, within the provisions of the commerce clause. Myers v. Baltimore County Com'rs (1896) 83 Md. 385, 35 Atl. 144.

A shipment between two points in Missouri is not converted into a transaction of interstate commerce because the freight was unloaded in stockyards extending into another state, and the office of the consignee was located in the latter state. Scammon v. Kansas City, St. J. & C. B. Ry. Co. (1890) 41 Mo. App. 194.

A shipment of stock from a Missouri point to the unloading chutes in that part of the yards of the Kansas City Stockyards Company which is in Kansas held, an "interstate shipment," though the unloaded stock was driven back into the Missouri part of the yards. Deardoff v. Chicago, B. & Q. Ry. Co. (Mo. 1914) 172 S. W. 333.

A through shipment of cattle from a point in Missouri into Kansas, back into Missouri, and then again into Kansas, where the cattle are unloaded, constitutes an interstate shipment. Potter v.

Kansas City Southern Ry. Co. (1915) 172 S. W. 1153, 187 Mo. App. 56.

Plaintiff, desiring to ship sheep from S., in Oregon, to R., in Wyoming, inquired of the local agent at S. the amount of the through rate to R., but, being dissatisfied, obtained a quotation showing the charges from S. to B. in Oregon and from B. to R. After the sheep were loaded, the agent notified plaintiff that it could not carry them under the last quoted rate, but that plaintiff must pay the rate originally quoted, which was, in fact, the regular tariff rate, and the sheep were transported in the same car from S. to R. without being in any manner transferred at B. Held, that it was an interstate shipment. Baldwin Sheep & Land Co. v. Columbia Southern Ry. Co. (Or. 1911) 114 P. 469.

Defendant undertook to transport cattle and ponies over its line from Marathon Station, Tex., to El Paso, Tex. The cattle and horses were delivered to plaintiff's agent and unloaded at the Union Stockyards at El Paso. Some of them were driven to plaintiff's ranch in El Paso county, and the remainder shipped to New Mexico over another line under new contracts. Defendant charged freight in excess of the amount prescribed by the Railroad Commission of Texas, and had no connection with the shipment after delivering them to plaintiff, or with the reshipment, but refused to make a through shipment. Held, that defendant was liable for the excess charge, as the shipment was intrastate so far as defendant was concerned. Galveston, H. & S. A. Ry. Co. v. J. H. Nations Meat & Supply Co. (Tex. Civ. App. 1911) 136 S. W. 833.

A shipment of live stock from one point in Texas to another point in Texas over the lines of various carriers receiving the shipment in points in Texas is an interstate shipment. St. Louis, B. & M. Ry. Co. v. True Bros. (Tex. Civ. App. 1911) 140 S. W. 837.

If, when a shipment originated its final destination was without the state, and it moved thereto in a continuous and uninterrupted journey, without delivery to the consignee within the state, it was an interstate shipment. Galveston, H. & S. A. Ry. Co. v. Wood, Hagenbarth Cattle Co. (Tex. 1912) 146 S. W. 538, affirming judgment Wood, Hagenbarth Cattle Co. v. Galveston, H. & S. A. Ry. Co. (Tex. Civ. App. 1910) 130 S. W. 857.

All of the carriers engaged in an interstate shipment need not be parties to a contract of shipment for the entire route, in order to make the shipment interstate. Id.

If a shipment of cattle was delivered to the consignee within the state, it was an intrastate shipment, though the shipper intended, at the time of shipment, that it should ultimately be transported to a point outside the state. Id.

Where cattle were shipped to E., within the state, on a local bill of lading, not removed from the cars, and the shipper's agent directed that they be set over on the track of a connecting carrier, and they were then forwarded to a point without the state, there was no delivery to the shipper at E., so as to prevent the shipment from being an interstate shipment. Id.

Where cattle owned by a resident of Texas were driven across the state line and herded into pens in New Mexico, held, that the shipment constituted "interstate commerce," though the cattle were consigned to a point in Texas. Pecos & N. T. Ry. Co. v. Stinson (Tex. Civ. App. 1915) 181 S. W. 526.

95. —— **Charges.**—The railroad commission of Arkansas cannot, without violating the commerce clause, fix and enforce rates for the continuous transportation of goods between two points within the state of Arkansas, where a large part of the route is outside of the state, through the Indian Territory or Texas. Hanley v. Kansas City Southern R. Co. (1903) 23 Sup. Ct. 214, 215, 187 U. S. 617, 47 L. Ed. 333, affirming decree Kansas City S. Ry. Co. v. Board of R. Com'rs of Arkansas (C. C. 1901) 106 Fed. 353.

An unconstitutional attempt to regulate interstate commerce is made by the Ohio railroad commission establishing a freight rate on "lake-cargo coal" billed from Ohio coal fields to Ohio ports on Lake Erie, applicable only to such coal as is placed on vessels at those ports for carriage to points outside the state. Railroad Commission of Ohio v. Worthington (1912) 32 Sup. Ct. 653, 654, 225 U. S. 101, 56 L. Ed. 1004, affirming decree (1911) 187 Fed. 965, 110 C. C. A. 85.

The facts considered, and held, that the unavoidable effect of the general and sweeping reductions of intrastate rates in Minnesota, made by the acts and orders considered, was and is substantially to burden, directly to regulate, and to discriminate against the interstate commerce of the defendant companies, and to create undue and unjust discriminations between localities in Minnesota and those in other states, in violation of the commerce clause. Shepard v. Northern Pac. R. Co. (C. C. 1911) 184 Fed. 765, decree modified Simpson v. Shepard (1913) 33 Sup. Ct. 729, 230 U. S. 352, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151, Ann. Cas. 1916A, 18.

Shipment of freight under local bills of lading from interior points in Louisiana to New Orleans, to be delivered to the shipper's or consignee's order, but intended for export, held foreign commerce, governed as to the intrastate transportation by the tariffs on file with the Interstate Commerce Commission. Railroad Commission of Louisiana v. Texas & P. Ry. Co. (1913) 33 Sup. Ct. 837, 229 U. S. 336, 57 L. Ed.

1215, affirming decree (1911) 184 Fed. 989, 106 C. C. A. 666.

Railroad service known as "switching" is local, and the charge made for it is not a part of the through rate fixed beforehand, and has no reference to interstate shipment, but may be regulated by a commission appointed under a state act by virtue of the police power of the state. Chicago, M. & St. P. Ry. Co. v. Becker (C. C. 1887) 32 Fed. 849.

A state has no power by statute to regulate rates upon traffic between different states. Sheldon v. Wabash R. Co. (C. C. 1900) 105 Fed. 785.

The constitutional power of Congress to regulate commerce among the several states includes the power to regulate freight rates by requiring that they shall be uniform to all shippers, and in construing statutes enacted to that end freight rates should be construed to mean the net cost to the shipper, of the transportation of his property, and such regulations may lawfully apply, not only to common carriers, but to all persons and corporations occupying such relation to transportation that the conduct of their business may operate to impair uniformity of rates. Interstate Commerce Commission v. Reichmann (C. C. 1906) 145 Fed. 235.

Congress has the right to regulate the charges for the transportation of freight or passengers by interstate carriers. Portland Ry., Light & Power Co. v. Portland (D. C. 1912) 201 Fed. 119.

Where a shipper shipped goods from a point without the state to a point within the state, and from that point without unloading or opening the car to another point within the state to which he originally intended to ship them, the entire shipment is an interstate shipment, so that he is not entitled to the rate fixed by the state railway commission between the points within the state, especially in view of the provision of the federal Interstate Commerce Act, making it unlawful for any carrier to prevent by carriage in different cars or by other means, the carriage of freights from being continuous, unless the interruption was for some necessary purpose and not intended to evade the provisions of the act. Porter v. St. Louis Southwestern Ry. Co. (1906) 95 S. W. 453, 78 Ark. 182.

Under an order of the Railroad Commission fixing the freight rate on rough lumber moving on railroads wholly within the state, subject to the condition that the manufactured product should be reshipped over the same line, and fixing a minimum proportion of the tonnage of out-bound manufactured product to the tonnage of in-bound rough material, a shipment of rough lumber within the state with the understanding that it should be manufactured into the finished product, and then shipped out over the line of the same carrier to undetermined points beyond the state, is not a continuous shipment to the final destination out of the state, and the order affecting rates on the shipment within the state is not a regulation of interstate commerce. Chapman & Dewey Land Co. v. Jonesboro, L. C. & E. R. Co. (Ark. 1911) 133 S. W. 1119.

In proceedings before the Railroad Commission to fix local freight rates on coal, the fact that the coal handled by the petitioner is interstate traffic does not affect the jurisdiction of the commission to fix rates, since the matter in controversy is the local rate and not a particular shipment. Southern Ry. Co. v. Hunt (Ind. App. 1908) 83 N. E. 721.

Where freight is received in Kansas to be transported over its own and connecting line to a point beyond the state, and the rate charged is the aggregate of the local rates of the two lines, and the connecting line had previously adopted and filed with the interstate commerce commission a tariff under which its proportion of the charge on the through shipment was collected, and there is a claim that the charge is excessive, the shipper's redress must be through the Interstate Commerce Commission and not in a state court. Missouri, K. & T. Ry. Co. v. New Era Milling Co. (1909) 101 P. 1011, 80 Kan. 141.

Where defendant railway company, which had, in accordance with the federal statutes, published its rate for interstate traffic, and filed this rate with the Interstate Commerce Commission and the State Railroad Commission, joined with other carriers in transporting marble, consigned to plaintiff, from Vermont to Kentucky, the shipment was interstate commerce, and subject to the freight rates fixed for interstate commerce, and not the local rates fixed by the State Railroad Commission, though defendant had no agreement with the initial carriers that it would constitute a part of a through line for interstate commerce from Vermont to Kentucky. Corcoran v. Louisville & N. R. Co. (1907) 101 S. W. 1185, 31 Ky. Law Rep. 197.

Shipments f. o. b. Louisville, originating at another point in Kentucky, of ties, held governed by intrastate, and not interstate rates, though the shipments were made in care of nonresident officials of the purchasing companies, and the ties were forwarded to other states without unloading. Louisville & N. R. Co. v. Ohio Valley Tie Co. (1912) 147 S. W. 421, 148 Ky. 718.

Rule 10 of the Mississippi Railroad Commission for a charge of $1 per day for each car which is delayed in transit does not apply to an interstate shipment from a point within the state which was delayed at a point outside the state. Yazoo & M. V. R. Co. v. H. J. & W. McGraw (Miss. 1913) 63 So. 277.

No common carrier doing an inter-

state business derives its right to charge tolls or fares for interstate transportation or for services therefor or in connection therewith from the state, but from the federal government; hence the state has no power or authority to forfeit such right or franchise, or to oust any such common carrier from the exercise of any such right. State ex inf. Crow v. Atchison, T. & S. F. Ry. Co. (1903) 176 Mo. 687, 75 S. W. 776, 63 L. R. A. 761; State ex inf. Attorney General v. St. Louis, K. C. & C. Ry. Co. (1903) 176 Mo. 718, 75 S. W. 888; Same v. Missouri Pac. Ry. Co. (1903) 176 Mo. 721, 75 S. W. 888.

The allowance by railroad companies of certain charges as elevator charges to terminal elevators on shipments of grain from points in the state to points without the state is an incident of interstate commerce, and the state Supreme Court has no jurisdiction to limit or control the same. State v. Omaha Elevator Co. (Neb. 1906) 110 N. W. 874.

A state has no power to prescribe that a consignee, who has received a car the property of a common carrier of another state containing goods which have been consigned from another state, shall have practically three days of free time within which to unload the car and shall, if he wishes, have the right to retain the car, while standing upon the public sidings of the final carrier, for an indefinite period upon payment for the same at the rate of $1 per day. Pennsylvania R. Co. v. M. O. Coggins Co. (1909) 38 Pa. Super. Ct. 129.

Where a carrier transports freight from a point in another state under a contract for its delivery f. o. b. cars of a Texas railway, to be shipped to another point in Texas, the latter carrier is engaged in interstate commerce, and not subject to the state railroad commission regulations. State v. Southern Kan. Ry. Co. of Texas (Tex. Civ. App. 1899) 49 S. W. 252.

If the final destination of goods shipped from a point without the state of Texas is a point within that state, the shipment is an interstate one, and not subject to the commission rates of Texas, though not made on a through bill of lading. Gulf, C. & S. F. Ry. Co. v. Fort Grain Co. (Tex. Civ. App. 1903) 72 S. W. 419, 73 S. W. 845.

Where a shipment of lumber had not been made to any foreign point, and was not by the shipping contract started on its final journey from the state, nor committed to a connecting carrier for transportation beyond the state, and required a further shipment to fix its destination beyond the state, it was intrastate commerce, and subject to the rates fixed by the Texas Railroad Commission. Texarkana & Ft. S. Ry. Co. v. Sabine Tram Co. (Tex. Civ. App. 1910) 129 S. W. 198.

Code Va. 1887, § 1215, in so far as it undertakes to fix the rate of charges to be received within the state by common carriers engaged in interstate commerce, violates this clause. Southern Express Co. v. Goldberg (1903) 44 S. E. 893, 101 Va. 619, 62 L. R. A. 669.

A contract between a shipper and a railroad company for the carriage of goods from a point within one state to a point in another state is interstate commerce, and is not the subject of state regulation as to tolls or compensation therefor. Jennings v. Big Sandy & C. R. Co. (1907) 57 S. E. 272, 61 W. Va. 664.

96. Stockyards and packing houses.—The circumstance that a state line runs through stock yards, and that a lot of stock there sold may be at the time partly in each of two states, is immaterial, so far as concerns any question of interstate commerce involved in the transaction. Hopkins v. U. S. (1898) 19 Sup. Ct. 40, 171 U. S. 578, 43 L. Ed. 290, reversing order U. S. v. Hopkins (C. C. 1897) 82 Fed. 529.

A state statute regulating public stock yards, which limits the charge for yardage to one charge, and permits the owner of dead stock to dispose of it as he may please, is not in substantial conflict with the provisions of the act of May 29, 1884, entitled "An act for the establishment of a bureau of animal industry, and to prevent the exportation of diseased cattle," as that act and the regulations thereunder, which are applicable only to cattle shipped from certain areas of country and at certain times, merely prescribe certain sanitary measures to be observed in such cases. Cotting v. Kansas City Stock-Yards Co. (C. C. 1897) 79 Fed. 679.

Live stock shipped from various states to the yards of a stockyards association in another state, by the solicitation and procurement of the members thereof, to be there sold, or to be reshipped to other states, if the market should be unsatisfactory, does not cease to be a subject of interstate commerce as soon as it reaches such yards and is there unloaded, nor until it has been further acted upon so as to become mingled with the mass of property in the state. U. S. v. Hopkins (C. C. 1897) 82 Fed. 529; Cotting v. Kansas City Stockyards Co., Id. 839.

The Kansas statute of March 3, 1897, regulating stock yards, fixing compensation for yarding, feeding, and watering live stock, and fixing a limit for the prices of feed, etc., is not in violation of any provision of the federal constitution, as applied to the Kansas City Stock-Yards Company. Cotting v. Kansas City Stock-Yards Co. (C. C. 1897) 82 Fed. 839.

The business of a stockyards company in receiving, yarding, and feeding live stock, and making sales thereof, for the owners, though performing these services for a mixed interstate and local traffic, is such an incident to com-

merce as may be subject to restriction in its charges by state legislation. Id.

The fact that a particular stock yard extends over the boundary line between two states does not make the business there carried on interstate commerce. Cotting v. Kansas City Stock-Yards Co. (C. C. 1897) 82 Fed. 850.

Packing houses engaged in slaughtering cattle, sheep, and hogs intended for interstate and foreign markets are not engaged in interstate commerce. U. S. v. Boyer (D. C. 1898) 85 Fed. 425.

The acts (Act March 3, 1891, c. 555, and Act March 2, 1895, c. 169), whereby the secretary of agriculture was empowered to have made a careful inspection of cattle, sheep, and hogs at slaughter houses located in the several states, the products of which were intended for sale in other states or foreign countries, are void because they do not pertain to interstate or foreign commerce. Id.

A stockyards company maintaining tracks connecting with the tracks of railroad companies, and which by its own locomotives and servants transports cars containing interstate shipments to and from the tracks of the railroad companies, is a common carrier engaged in interstate commerce, though it collects compensation only from the railroad companies and is paid under a contract between it and them. U. S. v. Union Stockyards Co. of Omaha (D. C. 1908) 161 Fed. 919, judgment affirmed Union Stockyards Co. of Omaha v. U. S. (1909) 169 Fed. 404, 94 C. C. A. 626.

That most of the unauthorized business done as a common carrier by a foreign stockyards company is interstate and an intrastate business is done only in connection therewith does not so merge the two classes as to place all the business beyond the state's control. State v. Kansas City Stockyards Co. of Missouri (1915) 145 P. 831, 94 Kan. 96.

97. Sale of goods and merchandise—In general.—Defendant, a liquor dealer of New York, received from persons in Vermont, by telegraph and mail, express orders for liquors, which he filled by selecting the liquors and delivering them to an express company of New York for delivery in Vermont C. O. D. Held, that the transaction was one of interstate commerce. O'Neil v. Vermont (1892) 144 U. S. 323, 12 Sup. Ct. 693, 36 L. Ed. 450.

The business of taking orders on commission for the purchase and sale of grain and cotton for future delivery, and transmitting them to other states, is not interstate commerce, so as to be exempt from state taxation, where, in those cases in which contracts for purchases for future delivery result in an actual delivery, the property is bought in the state to which the orders are transmitted, and there held for the purchaser, and in those cases in which there is a delivery upon a contract of sale made by the broker, the seller is at liberty to acquire the property in the market where delivery is required or elsewhere. Ware & Leland v. Mobile County (1908) 28 Sup. Ct. 526, 209 U. S. 405, 52 L. Ed. 855, 14 Ann. Cas. 1031, affirming judgment Ware v. Mobile County (1906) 41 So. 153, 146 Ala. 163.

A state does not tax interstate transactions by imposing a tax upon a domestic corporation selling within a designated territory in the state automobiles built by a foreign corporation under an arrangement by which the latter agreed to build for and sell to the former, for cash, at a specified less than list price, deliveries to be made as soon as practicable after orders should be received, the domestic corporation customarily making payment through drafts attached to the bills of lading, and there being nothing connecting the ultimate buyer with the manufacturer other than a warranty direct from manufacturer to buyer, and such buyer's agreement "to pay the list price f. o. b. factory," since such sales are not interstate ones; the relation of principal and agent between the foreign and domestic corporations not existing so far as the buyer is concerned. Banker Bros. Co. v. Pennsylvania (1911) 32 Sup. Ct. 38, 222 U. S. 210, 56 L. Ed. 168, affirming judgment Commonwealth v. Banker Bros. Co. (1909) 38 Pa. Super. Ct. 101.

A decision of a state court sustaining the defense of illegality under Laws Miss. 1908, c. 115, prohibiting the sale of malt liquors, in a suit by a nonresident manufacturer of a beverage, to recover the amount due for the right to make local sales, held not to affect any right incident to interstate commerce. Purity Extract & Tonic Co. v. Lynch (1912) 33 Sup. Ct. 44, 226 U. S. 192, 57 L. Ed. 184, affirming judgment (1911) 56 So. 316, 100 Miss. 650.

Business carried on in Kansas by a liquor dealer maintaining warehouse on the Missouri side of the Missouri river, filling orders for liquors for Kansas customers by deliveries in his own wagon or by freight, held interstate business, though such dealer is a citizen of Kansas. Kirmeyer v. State of Kansas (1915) 35 S. Ct. 419, 236 U. S. 568, 59 L. Ed. 721, reversing decree State v. Kirmeyer (1913) 128 P. 1114, 88 Kan. 589.

A contract made in Kentucky by a Kentucky corporation for the purchase of lumber to be sawed and delivered for shipment in Alabama relates to interstate commerce. Parsons-Willis Lumber Co. v. Stuart (1910) 182 Fed. 779, 105 C. C. A. 211.

The power of congress to regulate the introduction into the states of articles of commerce necessarily implies the right to authorize the sale of commercial articles so introduced. Swift v. Sutphin (C. C. 1889) 39 Fed. 630, 635.

Liquors imported by a common car-

rier from another state, for the personal use of the importer, are under the protection of the interstate commerce law only so long as such personal use continues, and such protection ceases if the liquors are given to another. Donald v. Scott (C. C. 1895) 76 Fed. 559.

A contract to operate a factory and market the product on joint account is not one relating to interstate commerce in a constitutional sense, so as to exempt it from the operation of state laws, merely because the article manufactured is largely sold in other states. Diamond Glue Co. v. United States Glue Co. (C. C. 1900) 103 Fed. 838.

A contract by which a corporation agrees to take the entire product of a number of persons, firms and corporations engaged in mining coal and making coke in a certain district, which is intended for "Western shipment," to sell the same at not less than a minimum price, to be fixed by an executive committee appointed by the producers, and to account for and pay over to such producers the entire proceeds above a fixed sum per ton, to be retained as "compensation,"—the stated purpose being "to enlarge the Western market," —and under which the shipments are made into other states, is one affecting interstate commerce, and is subject to the provisions of the anti-trust law. U. S. v. Chesapeake & O. Fuel Co. (C. C. 1900) 105 Fed. 93, judgment affirmed Chesapeake & O. Fuel Co. v. U. S. (1902) 115 Fed. 610, 53 C. C. A. 256.

Where a foreign corporation sold whisky to defendants, to be shipped from Kentucky to New Orleans, and took the notes sued on, at the time of the sale, for the purchase price, which notes were payable in New Orleans, the transaction constituted an act of interstate commerce, and was therefore not within Const. La. 1898, art. 264, providing that no domestic or foreign corporation shall do any business within the state without having one or more known places of business and an authorized agent or agents within the state, on whom process may be served. Julius Kessler & Co. v. E. F. Perilloux & Co. (C. C. 1902) 127 Fed. 1011.

Intoxicating liquors lawfully sold in good faith in one state may be lawfully delivered to the purchaser in another state, and the carrier and means employed in such carriage are entitled to protection from interference by the state authorities as instruments of interstate commerce. Kansas City Breweries Co. v. Trickett (C. C. 1907) 195 Fed. 840.

A contract made in Alabama for the purchase and sale there of 3,000,000 feet of lumber to a foreign corporation, the buyer to inspect and accept a delivery there, was not interstate commerce, though the buyer intended thereafter to ship the lumber outside the state. In re Conecuh Pine Lumber & Mfg. Co. (D. C. 1910) 180 Fed. 249.

The right to trade in interstate commerce includes the right to sell. Ex parte Eaglesfield (D. C. 1910) 180 Fed. 558.

The sale and shipment from Ohio to Washington, D. C., of a bottle of medicine containing cocaine without a label indicating its presence, the seller knowing when he solicited the order that the transaction, if completed, would necessitate interstate transportation, was interstate commerce, whether the sale was made before or after shipment, and is within Pure Food and Drugs Act June 30, 1906 (Comp. St. § 8817 et seq.). U. S. v. Tucker (D. C. 1911) 188 Fed. 741.

Congress may not make criminal the act of collecting the price of liquor shipped in interstate commerce after the completion of the transaction, under the power to regulate interstate commerce, for the act is not a part of that commerce. U. S. v. First Nat. Bank (D. C. 1911) 190 Fed. 336.

The question whether or not a sale is one in interstate commerce is not to be determined by the time and place of the technical passage of title or of the legal completion of the sale, but the entire transaction must be taken into consideration. In re Selman Heating & Plumbing Co. (D. C. 1913) 204 Fed. 839, decree affirmed Coxe v. Peck-Williamson Heating & Ventilating Co. (1913) 208 Fed. 409, 125 C. C. A. 628.

Where a foreign corporation, having no office or warehouse in Michigan, leased a steam shovel to a resident of that state, and on forfeiture of the lease contracted for a sale thereof to a resident of Michigan at plaintiff's office in Ohio, the transaction constituted interstate commerce and was valid without compliance with Pub. Acts Mich. 1907, No. 310. Vulcan Steam Shovel Co. v. Flanders (D. C. 1913) 205 Fed. 102.

The sale of brick in another state, to be delivered in Alabama, is an act of interstate commerce, which is not affected by laws of Alabama requiring foreign corporations to have a place of business and an agent in the state as a condition precedent to doing business therein. Cook v. Rome Brick Co. (1892) 98 Ala. 409, 12 South. 918.

A sale in Alabama of books and abstract forms situated in Georgia, followed by delivery in Alabama, was a transaction of interstate commerce, subject to the regulation of congress. Culberson v. American Trust & Banking Co. (1895) 107 Ala. 457, 19 South. 34.

In an action to recover the purchase price of machinery, a plea alleging that the cause of action was founded upon business done by plaintiff in the state, and that at the time the business was

done plaintiff was a foreign corporation, and had no known place of business in the state, as required by Const. Ala. art. 14, § 4, was not demurrable on the ground that it showed that the sale constituted interstate commerce. Keystone Mfg. Co. v. Hampton (1904) 37 So. 552, 141 Ala. 415.

Code Ala. 1896, § 5087, prohibiting the soliciting of orders for spirituous, vinous, or malt liquors to be shipped into a district in which the sale of such liquors is prohibited, in so far as it purports to apply to residents of other states soliciting orders for spirituous liquors to be transported from another state into Alabama, is violative of the commerce clause. Moog v. State (1906) 41 So. 166, 145 Ala. 75.

A sale of machinery to be removed from another state and delivered in this state is an act of interstate commerce, to which the laws of Alabama cannot apply; but a contract for transporting machinery from another state and furnishing the labor to build or assemble the materials into a structure in this state is not the delivery of an article of commerce exempt from local regulations. American Amusement Co. v. East Lake Chutes Co. (Ala. 1911) 56 So. 961.

Bill alleging sale of lightning rods by foreign corporation held to show interstate transaction, and not demurrable for failure to show right to do business in the state. E. A. Foy Co. v. Haddock (Ala. 1915) 67 So. 978.

The sale of goods by citizens of one state to citizens of another state constitutes interstate commerce, and no state may forbid or control such transactions. Frank A. Menne Factory v. Harback Bros. (1908) 107 S. W. 991, 85 Ark. 278.

The negotiation of sales of goods which are in another state for the purpose of introducing them into the state where the negotiation is had is interstate commerce, though the sales are by sample or catalogue. Wilcox v. People (1909) 104 P. 408, 46 Colo. 382.

A criminal accusation charging that defendant, living in Chattanooga, Tenn., solicited orders for the sale of liquors by a circular sent through the mail from Chattanooga to a person living in Georgia, where the sale of liquor is prohibited, set forth no crime under Pen. Code Ga. 1895, § 428, providing that if any person shall solicit the sale of liquors in any county where the sale is forbidden, he shall be guilty of a misdemeanor; either the actual shipment or the steps outside the borders of the state essential to and forming a part of the sale being acts of interstate commerce. R. M. Rose Co. v. State (1909) 65 S. E. 770, 133 Ga. 353.

The sale and delivery of goods or manufactured commodities by a citizen or corporation of one state, in the usual course of business by the usual instrumentalities and means, is interstate commerce. Lehigh Portland Cement Co. v. McLean (1909) 149 Ill. App. 360, judgment affirmed (1910) 92 N. E. 248; Hill Lumber Co. v. Same (1909) 149 Ill. App. 368.

Intoxicating liquors brought from another state after they reach their destination in Iowa are subject to the restrictions of the statute of that state as to intoxicating liquors. State v. Zimmerman (1889) 78 Iowa, 614, 43 N. W. 458.

A nonresident has a right to sell intoxicating liquors to a resident of Iowa for importation into that state, without reference to the police regulations thereof. Wind v. Iler (1895) 93 Iowa, 316, 61 N. W. 1001, 27 L. R. A. 219.

The right of a nonresident merchant to sell his goods in the state carries with it the right to deliver them, and to employ any agent he may deem proper, provided that at no time before delivery the goods become mingled with the common mass of property in the state, so as to deprive the transaction of its interstate features. City of Kinsley v. Dyerly (Kan. 1908) 98 P. 228.

An express company which knowingly carries a C. O. D. shipment of liquor from a foreign state into local option territory, to a consignee who informs it that he has not ordered the same, but will accept it if it is held for him until he can procure the money to defray the charges, becomes, by holding the liquor a week pursuant to the arrangement with the consignee, a mere bailee or warehouseman of the liquor, and cannot defend a prosecution under Ky. St. § 2557, subsec. 4, declaring sales of liquor shipped C. O. D. into local option territory unlawful, and making the carrier selling or delivering the goods liable jointly with the vender, on the ground that the shipment is interstate commerce, but is guilty of a violation of the statute, as the actual seller of the liquor. Adams Express Co. v. Commonwealth (1905) 87 S. W. 1111, 27 Ky. Law Rep. 1096, reversed (1907) 27 S. Ct. 606, 206 U. S. 129, 51 L. Ed. 987.

Where a liquor dealer outside the state ships whisky C. O. D. into the state consigned to one who has not ordered it, and then notifies him thereof, whereupon he pays for and receives it, the transaction is not interstate commerce. Adams Express Co. v. Commonwealth (1906) 92 S. W. 932, 29 Ky. Law Rep. 224, 5 L. R. A. (N. S.) 630, which is reversed by (1907) 27 Sup. Ct. 608, 206 U. S. 138, 51 L. Ed. 992; Id. (1906) 92 S. W. 935, 29 Ky. Law Rep. 230, 231; Id. (1906) 92 S. W. 936, 29 Ky. Law Rep. 231.

Where a foreign corporation delivers wagons to an agent in Ohio for sale

in Kentucky from an established agency, the business is not exempt from regulation by Kentucky as interstate commerce. Milburn Wagon Co. v. Commonwealth (1907) 104 S. W. 323, 31 Ky. Law Rep. 937.

Accused informed a witness desiring to know if he would sell whisky that the witness could order whisky from the manager of the distillery in a sister state. He furnished the witness a blank order on the manager in the sister state, and, at her request, he filled it out and the witness mailed the order to the manager with $2. The manager shipped the whisky by express, and it was delivered to the witness. The whisky was never in accused's possession nor was he compensated for the assistance he gave to the witness in getting it. Held, that the transaction was interstate commerce, because it was between citizens of different states, and was unaffected by the local option law. Whitmire v. Commonwealth (1911) 135 S. W. 767, 140 Ky. 734.

A shipment of liquor from Cincinnati, Ohio, to a purchaser in Kentucky, was an interstate shipment and not subject to regulations by the laws of Kentucky, though the order was solicited by letter from the seller's place of business in Kentucky and the price was paid at such place. Parker v. Commonwealth (1912) 145 S. W. 754, 147 Ky. 715.

In prosecution for violating Ky. St. § 3915, prohibiting combinations to fix prices, instrument executed in the state held not a mere order but a contract of sale as of the date when made, and not as of the date when ratified without the state, and hence the transaction was not an interstate one. American Seeding Machine Co. v. Commonwealth (1913) 153 S. W. 972, 152 Ky. 589.

Acts Ky. 1912, c. 146, declaring it unlawful to purchase and procure for another intoxicating liquors, either as agent of the buyer or seller, can have no application to an interstate commerce transaction. Martin v. Commonwealth (1913) 156 S. W. 870, 153 Ky. 784.

Where X., member of a club, directs M., manager thereof, to purchase for him in a foreign state a case of beer, giving him the money therefor, and to have it ordered in the name of and shipped to, the club, and M., as such manager, receives it, it is the property of X., and M.'s possession is that of X. and, the purchase being interstate commerce as to X., it is the same as to M. Id.

Where unlawful sale of intoxicating liquor in local option territory was completed, either before or after its delivery to an interstate carrier, there was no question of interference with interstate commerce. Frogg v. Commonwealth (1915) 173 S. W. 383, 163 Ky. 175.

The negotiation in one state of sales of goods which are in another state, for the purpose of their introduction in the former state, is interstate commerce, and such goods are not liable to a license tax in the place where they are sold. Pegues v. Ray (1898) 23 So. 904, 50 La. Ann. 574.

Acts La. 1908, No. 176, construed to require licenses for the sale of liquor from owners of vessels plying on the Mississippi river while engaged in interstate and foreign commerce, does not conflict with the commerce clause. State v. Southern Pac. Co. (1915) 68 So. 819, 137 La. 435, L. R. A. 1915F, 1140.

Liquor which is the subject of an interstate shipment does not come under the control of state laws until it passes into the actual or constructive possession of the consignee, and such delivery to the consignee may be made at his residence, place of business, or at some common depot. Commonwealth v. People's Express Co. (1909) 88 N. E. 420, 201 Mass. 564.

Convict-made goods are lawful subjects of commerce, and a statute restricting freedom of trade in such goods is an unjustifiable interference with interstate commerce as to goods purchased in other states. In re Opinion of the Justices (1912) 98 N. E. 334, 211 Mass. 605.

Where a foreign corporation shipped perfumery to its agent within the state, who was in charge of a canvassing crew, and they carried the perfumery from house to house, to be purchased or sold by the householder or his children, and later accounted for to another agent of the corporation, such transaction did not constitute interstate commerce, beyond the authority of plaintiff city to regulate. City of Muskegon v. Hanes (1907) 112 N. W. 1077, 14 Detroit Leg. N. 489, 149 Mich. 460.

Pub. Acts Mich. 1901, p. 316, No. 206, § 1, makes it unlawful for a foreign corporation to carry on business in the state without having first filed a copy of its charter, etc., with the Secretary of State, etc., and prohibits any corporation not complying with the act from maintaining any action in this state on a contract made in this state, etc. Section 6 (page 319) provides that the act shall not apply to the sale of goods which would be protected as interstate commerce. Held that, where an order for books was directed to the vendor in a sister state, and contemplated the delivery of the books after the order, which was in fact done, an action thereon could be maintained in the state without compliance with the statute as to filing of plaintiff's charter, etc. Fifth Avenue Library Soc. v. Hastie (1908) 118 N. W. 727, 15 Detroit Leg. N. 939, 155 Mich. 56.

Sales made by a foreign corporation through mail orders by defendant to the corporation's place of business in

Chicago, from which the goods ordered were sent to defendant in Grand Rapids, constituted interstate commerce not within Pub. Acts Mich. 1903, No. 34, and Pub. Acts Mich. 1907, No. 310, prohibiting foreign corporations from doing business in Michigan without having first complied with the Michigan law. Despres, Bridges & Noel v. Zierleyn (1910) 128 N. W. 769, 17 Detroit Leg. N. 925.

Plaintiff, a foreign corporation, engaged in manufacturing lamps, had a sales office in the state, and sold defendant a number of lamps; the contract providing for renewal of the parts and the maintenance of an agency by plaintiff within the state, to repair and replace the goods sold, for an indefinite period. Held, that the business conducted by plaintiff, as shown by the contract, in selling the lamps and in furnishing the repair parts was not interstate commerce. Nernst Lamp Co. v. Conrad (1911) 131 N. W. 120, 165 Mich. 604.

Defendant, who maintained a general store in Chicago, traveled from place to place taking orders for provisions. After sales had been made, the goods, each kind packed separately, would be placed in a car and consigned to defendant's own order to the cities where the goods had been sold, without any mark to identify them as goods sold to any particular person. When the goods arrived, they would be delivered to the purchaser, and if refused, or for any reason not delivered, would be placed in a storehouse provided by defendant for that purpose. Held, that such sales were not interstate commerce, but were subject to regulation under Comp. Laws Mich. § 5324, prohibiting hawkers and peddlers from soliciting sales of goods within the state without a license. People v. Stewart (Mich. 1911) 132 N. W. 1071.

Sales and distributions of petroleum, though imported from other states, made by an oil company after being received by it in Mississippi and becoming incorporated into the general mass of property therein, constituted intrastate commerce, and were governed by the state's laws. Standard Oil Co. of Kentucky v. State (Miss. 1914) 65 So. 468.

A contract for the sale of the goods of a foreign corporation operating a furnace in a sister state held a contract involving interstate commerce; and an action for breach of contract is maintainable in the courts of the state, though the corporation has not complied with Rev. St. Mo. 1909, §§ 3039, 3040. Rogers v. Union Iron & Foundry Co. (1912) 150 S. W. 100, 167 Mo. App. 228.

The diversion by a seller of goods to other buyers, rendered necessary for the carrying on of interstate commerce, does not render a transaction an intrastate transaction; and an action for breach of contract is maintainable, though the seller, a foreign corporation, has not complied with R. S. Mo. 1909, §§ 3039, 3040. Id.

Purchase of glassware by a Missouri corporation from plaintiff to be shipped from plaintiff's factory in Pennsylvania to the defendant in Missouri by the carrier designated by defendant held to involve interstate commerce. Westmoreland Specialty Co. v. Missouri Glass Co. (Mo. App. 1912) 152 S. W. 387.

A contract between plaintiff, a foreign corporation, and a resident of Missouri, held to constitute interstate commerce, and not to be subject to the Missouri anti-trust law, so that plaintiff's right to sue cannot be defeated because it had not procured a license to do business in Missouri as required by R. S. Mo. 1909, § 3040. J. R. Watkins Medical Co. v. Holloway (1914) 168 S. W. 290, 182 Mo. App. 140.

Missouri corporation, selling goods to one denominated its sales agent in South Carolina, title vesting in the agent, the business conducted by him being his own, was engaged in interstate commerce, and need not comply with South Carolina law as to foreign corporations. Watkins v. Donnell (Mo. App. 1915) 179 S. W. 980.

Where a foreign corporation sells goods within the state, there is no presumption that the sales are interstate commercial transactions so as to render inapplicable Act Mont. March 8, 1893, requiring such corporations to do certain acts as a condition precedent to the right to do business in the state. Kent & Stanley Co. v. Tuttle (1897) 50 P. 559, 20 Mont. 203.

Where a contract made by a foreign corporation in New York provided that the corporation should furnish and install certain elevators in a building in New York City according to certain specifications, the carrying out of such contract did not constitute interstate commerce. Portland Co. v. Hall & Grant Const. Co. (1907) 106 N. Y. Supp. 649, 121 App. Div. 779, rehearing granted (1908) 108 N. Y. Supp. 821, 123 App. Div. 495.

Where a sale of impure milk was made within the state to one residing within the state, the fact that the common carrier permitted the consignee to take the goods from its hands at a point in another state did not make the sale interstate commerce. People v. Abramson (1910) 122 N. Y. Supp. 115, 137 App. Div. 549.

The liability of a seller of impure milk, the entire transaction occurring between residents of this state, is not affected, though the milk, to reach its final destination, passes through another state. Id.

Where a contract of sale is made between residents of one state, the delivery of the goods through the boundaries of a sister state does not affect the domestic character of the business, and render it interstate commerce. People

v. Abramson (1913) 101 N. E. 849, 208 N. Y. 138, affirming judgment (1911) 131 N. Y. Supp. 798, 147 App. Div. 491.

A purchase by a dealer of a commodity on a margin from a firm in another state is not protected from indictment in this state by the interstate commerce clause. State v. Clayton (1905) 50 S. E. 866, 138 N. C. 732.

A Kentucky corporation sold goods in Ohio by commercial agents, and by correspondence. Held, that such business was interstate commerce. Haldy v. Tomoor-Haldy Co. (1896) 4 Ohio S. & C. P. Dec. 118.

The business of receiving shipments of intoxicating liquors and delivering parcels to persons whose names were written thereon is not protected by the Constitution and laws of the United States regulating interstate commerce in intoxicating liquors. Blunk v. Waugh (Okl. 1912) 122 P. 717.

A foreign corporation not having complied with Rev. Laws Okl. 1910, §§ 1335–1341, is nevertheless entitled to sue for the price of goods ordered by a resident of the state from it by mail and delivered from without the state. J. P. Bledsoe & Son v. W. B. Young Supply Co. (Okl. 1915) 145 P. 1125.

A contract to sell machines to be used or sold in the state by the purchaser, and to furnish other machines f. o. b. at the place of business of the seller, a foreign corporation, held interstate commerce. Fuller v. Allen (Okl. 1915) 148 P. 1008.

A foreign corporation, engaged in interstate commerce, may sue in Oklahoma on contracts of sale made with citizens of Oklahoma, notwithstanding its failure to comply with Rev. Laws Okl. 1910, §§ 1335–1343. M. D. Wells Co. v. V. J. Howard & Co. (Okl. 1915) 151 P. 616.

Whenever, as a part of the delivery from the seller to the buyer in another state, transportation is begun, the shipment is a part of interstate commerce, but mere delivery to a carrier as a beginning or preparation for subsequent delivery in another state is intrastate commerce. Service & Wright Lumber Co. v. Sumpter Valley Ry. Co. (Or. 1913) 135 P. 539.

In a prosecution for transporting contraband liquor, where the proof showed that defendant had liquor in his possession and was actually selling it, it was contraband liquor, and was not within the protection of the interstate commerce clause. State v. Pope (1908) 60 S. E. 234, 79 S. C. 87.

Where a foreign corporation sold a water tank and tower to one who was erecting a system of waterworks in the state, the transaction was within the commerce clause, and was valid, notwithstanding failure to file its articles of incorporation or appoint a resident agent, as required by the state laws. Flint & Walling Mfg. Co. v. McDonald (S. D. 1908) 114 N. W. 684.

The fact that plaintiff agreed to erect the water tank and tower in the state did not take the contract out of the protection of the federal Constitution. Id.

The transaction pursuant to a contract by which plaintiff agreed to ship goods from out of the state to defendant within it, to be sold by defendant as factor for plaintiff, is interstate commerce. Sioux Remedy Co. v. Lindgren (S. D. 1911) 130 N. W. 49.

Where it is contemplated by the parties to a contract that, as a part of the transaction, the goods concerning which the contract is made shall be shipped from one state to another, the contract is one pertaining to interstate commerce, within the inhibition prohibiting interference on the part of the state, regardless of whether the contract is one of purchase, sale, or bailment; the test being whether, as part of the performance of the contract, it is contemplated that there should be a shipment from one state to another of the identical goods to which the contract relates. Sioux Remedy Co. v. Cope (S. D. 1911) 133 N. W. 683.

Where a contract between a foreign corporation and defendants, residents of the state, pertained to the shipping of goods ordered by defendants from plaintiff from another state to defendants' place of business within the state, it involved interstate commerce, without reference to whether defendants were purchasers or mere agents for plaintiff, the consignor. Id.

Retailing liquors on a steamboat making regular trips between ports in Arkansas and Tennessee, while within the boundaries of Tennessee, did not constitute interstate commerce, though the boat was engaged in such commerce, so as to relieve the seller from liability for privilege taxes imposed on such business by the laws of Tennessee. Foppiano v. Speed (1904) 82 S. W. 222, 113 Tenn. 167, affirmed (1905) 26 Sup. Ct. 138, 199 U. S. 501, 50 L. Ed. 288

One who sells intoxicating liquors solely in interstate commerce does not violate local prohibitory laws because he did not purchase his liquors in interstate commerce; the sale and not the purchase of liquors being prohibited. State v. Chadwell (Tenn. 1914) 169 S. W. 1170.

Nonresident corporation's delivery of oil and oil in barrels ordered by customers in the state held within the protection of the commerce clause, and not liable to the privilege tax imposed by Acts Tenn. 1909, c. 479, § 4. Western Oil Refining Co. v. Dalton (Tenn. 1915) 174 S. W. 1138.

A sale by a nonresident corporation of goods to be delivered in Texas is a transaction of interstate commerce. Lyons-Thomas Hardware Co. v. Reading Hardware Co. (Tex. Civ. App. 1893) 21 S. W. 300; H. Zuberbier Co. v. Harris (Tex. Civ. App. 1896) 35 S. W. 403.

Beer manufactured in another state, and imported and delivered to a dealer in this state, ceases, upon delivery, to be an article of interstate commerce. Fuqua v. Pabst Brewing Co. (1896) 38 S. W. 29, 750, 90 Tex. 298, 35 L. R. A. 241.

The selling by a corporation, created by another state, of goods manufactured in that state, and shipped into the state of Texas, is interstate commerce, whether the goods are sold before they are shipped, or shipped into the state of Texas and then sold; and hence the corporation need not comply with R. S. Tex. 1895, art. 745, requiring a foreign corporation, as a condition precedent to transacting or soliciting business in Texas, to file its articles of incorporation, and receive a permit from the secretary of state. Miller v. Goodman (1897) 40 S. W. 718, 91 Tex. 41.

The sale by a foreign corporation of goods made in Indiana, and shipped into Texas, after they were bought, is interstate commerce; and in an action therefor it is unnecessary to allege and prove that a permit to do business in Texas was obtained. C. B. Cones & Son Mfg. Co. v. Rosenbaum (Tex. Civ. App. 1898) 45 S. W. 333.

One who manufactures flour out of the state, and ships it into the state to commission merchants, by whom it is sold, is none the less engaged in interstate commerce because, though put up in sacks, it is shipped into the state by the car load, while it is sold by the sack by the commission men. Lasater v. Purcell Mill & Elevator Co. (1899) 54 S. W. 425, 22 Tex. Civ. App. 33.

Where parties in the state order goods from a foreign corporation in another state, and the goods are shipped into the state with a draft attached to the bill of lading, the transaction is interstate commerce. Gale Mfg. Co. v. Finkelstein (1899) 54 S. W. 619, 22 Tex. Civ. App. 241.

Intoxicating liquors shipped from one state into another on a C. O. D. contract is interstate commerce, and cannot be controlled by state laws. Sedgwick v. State (Tex. Cr. App. 1905) 85 S. W. 813; Taggart v. Same, Id. 1155; Hickcox v. Same, Id. 1198.

Interstate commerce consists of intercourse and traffic between citizens or inhabitants of different states, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale, and exchange of commodities. Barnhard Bros. & Spindler v. Morrison (Tex. Civ. App. 1905) 87 S. W. 376.

Plaintiff company, located in New York, contracted with defendant company, located in Texas, to furnish defendant a specified number of souvenir albums, and defendant further agreed not to sell any of the albums in the city in which defendant was located for one year. Held, that the contract was one relating to interstate commerce, and hence was not subject to the Texas anti-trust laws of 1903 (Laws 1903 c. 94), defining and prohibiting conspiracies in restraint of trade under penalties therefor, as the purpose of such law does not reach subjects beyond the power of the state to regulate. Albertype Co. v. Gust Feist Co. (Tex. 1909) 114 S. W. 791, reversing judgment Gust Feist Co. v. Albertype Co. (Civ. App. 1908) 109 S. W. 1139.

A contract made in Texas for the sale of goods to a resident corporation by a foreign corporation to be shipped from a sister state to the buyer in Texas affects interstate commerce, and is not subject to the Texas anti-trust laws. Moroney Hardware Co. v. Goodwin Pottery Co. (Tex. Civ. App. 1909) 120 S. W. 1088.

Where goods sold and contemplated to be sold under a contract in restraint of trade were to be shipped from a sister state to Texas and there mingled with other goods of the buyer in Texas to become a part of the buyer's stock and to be there sold at retail, and the contract was made with the knowledge and purpose and intent of all the parties thereto that that should be done, the parties were liable for a violation of the Texas anti-trust act of 1903 (Laws 1903, c. 94), as against the objection that the transaction was interstate commerce. State v. Racine Sattley Co. (Tex. Civ. App. 1911) 134 S. W. 400.

The purchase of goods in one state to be shipped into another is interstate commerce and not within the provisions of the state anti-trust laws. Id.

A contract for the sale of goods by a citizen of New York to a citizen of Texas, the goods to be delivered in New York to be transported to Texas by common carrier, constituted interstate commerce, and was therefore not within the anti-trust laws of Texas, and was not invalid because it contained a provision attempting to fix the price at which the goods should be resold by the buyer. McCall Co. v. J. D. Stiff Dry Goods Co. (Tex. Civ. App. 1912) 142 S. W. 659.

Agent of nonresident manufacturer receiving goods in bulk, including patent and other medicines, unpacking them at his house, and retailing them from a team from place to place, held not engaged in interstate commerce, but in the occupation of selling patent and other medicines so as to be liable to a license tax imposed by the law of this state. Shed v. State (Tex. Cr. App. 1913) 155 S. W. 524.

A contract entered into in Ohio for the consignment of rubber tires to a factor or agent in this state for sale, under which the tires were shipped from Ohio, involved interstate commerce, and the statutes requiring a

foreign corporation to procure a permit to do business within the state before it may bring suit are not applicable. Stein Double Cushion Tire Co. v. Wm. T. Fulton Co. (Tex. Civ. App. 1913) 159 S. W. 1013.

Nor do the state anti-trust laws avoid such contract. Id.

A contract with a foreign corporation for the sale of goods and their resale by the buyer in the state held to constitute interstate commerce, and the statutes prohibiting suits by foreign corporations without a permit to do business did not apply to a suit thereon. Dr. Koch Vegetable Tea Co. v. Malone (Tex. Civ. App. 1914) 163 S. W. 662.

A sale held to constitute interstate commerce notwithstanding the foreign seller agreed to send one of its men to assist the buyer in starting a contest in which the articles sold were to be prizes. American Mfg. Co. v. Skidmore Drug & Furniture Co. (Tex. Civ. App. 1914) 170 S. W. 128.

Sale of machinery and the installation of ice manufacturing plant in the state by a foreign corporation held local business not amounting to interstate commerce. York Mfg. Co. v. Colley (Tex. Civ. App. 1914) 172 S. W. 206.

A foreign corporation's sale of coffee held an interstate transaction, and the corporation could recover, though it had not complied with Vernon's Sayles' Ann. Civ. St. Tex. 1914, arts. 1314–1318. Maury-Cole Co. v. Lockhart Grocery Co. (Tex. Civ. App. 1915) 173 S. W. 262.

A contract for the sale of goods to be retailed in the state, the buyer to sell only the seller's products, is not saved from invalidity, as creating a trust in violation of Vernon's Sales' Ann. Civ. St. Tex. 1914, art. 7796, because of its providing for interstate shipment thereof. Armstrong v. W. T. Rawleigh Medical Co. (Tex. Civ. App. 1915) 178 S. W. 582.

The sale of an article to be shipped from another state to Vermont, followed by such shipment, is interstate commerce, not subject to state control, and therefore not affected by P. S. Vt. 776, prohibiting a foreign corporation maintaining an action in the state on a contract made in it, unless it has obtained the certificate required by section 774 for a foreign corporation to do business in the state. Livingstone Mfg. Co. v. Rizzi Bros. (Vt. 1913) 85 A. 912.

Where an Ohio corporation sold goods to a resident of Vermont without having complied with P. S. Vt. 774, prescribing conditions to the right of such a corporation to do business in Vermont, although it delivered them to the carrier in Ohio for shipment to the buyer, the contract covered a transaction in interstate commerce, and the corporation could recover. Kinnear & Gager Mfg. Co. v. Miner (Vt. 1916) 96 A. 333.

A corporation engaged in the sale of oil, which brings its oil from a foreign state into this state, and mingles it with the general mass of property in the state, is not in selling oil in the state, either in original barrels or from wagons, engaged in interstate commerce in such sense as to preclude a city of the state from exacting a license tax from it. Standard Oil Co. v. City of Fredericksburg (1906) 52 S. E. 817, 105 Va. 82.

The test whether a transaction constitutes interstate commerce is whether the subject-matter of the sale is within the jurisdiction of the state when the sale is made, so that where the purchaser of a picture was not bound to take a frame under his contract, but the sale of the frame was wholly completed within the state when the picture was delivered, its sale was not interstate commerce. Roselle v. Commonwealth (Va. 1909) 65 S. E. 526.

One who solicits orders for liquor by mailing a letter in one city of the state to an address in another city of the state does not solicit a sale involving interstate commerce. State v. Holmes (Wash. 1912) 122 P. 345.

A company, engaged in selling on mail orders merchants' trading stamps to merchants in another state, and redeeming same with premiums shipped from such other state, is engaged in interstate commerce. Sperry & Hutchinson Co. v. Hill (W. Va. 1915) 86 S. E. 748.

Transactions involving a physical transfer of merchandise from the possession and title of an owner in one state to the possession and ownership of purchasers in another state are interstate. Loverin & Browne Co. v. Travis (Wis. 1908) 115 N. W. 829.

Where goods received from a foreign corporation were purchased by another for resale and not merely received for sale in the state as agent, the business was interstate commerce, so that St. Wis. 1898, § 1770b, would not apply to avoid a contract to indemnify the corporation for the default of such person as agent for selling the goods. Sanitas Co. v. Niezorawski (1909) 120 N. W. 292, 138 Wis. 374.

Where goods shipped by a nonresident to his resident commission agent to be held and sold and delivered in Wisconsin are sold and delivered here, the sale and delivery is not interstate commerce, irrespective of whether the note for the price is a Wisconsin contract or a contract of the state of the residence of the seller. Duluth Music Co. v. Clancey (Wis. 1909) 120 N. W. 854.

A contract for the sale and purchase of hay made between a resident of Wisconsin and a foreign corporation for use by the latter in Georgia is a transaction of interstate commerce, and the corporation, though unlicensed, may sue for breach of contract. Southern

Flour & Grain Co. v. McGeehan (Wis. 1910) 128 N. W. 879.

Where foreign corporations, without having complied with St. Wis. 1898, § 1770b, regulating their right to do business within the state, were authorized to sell goods to a merchant in Wisconsin as an act of interstate commerce, they were also authorized to take a chattel mortgage on the buyer's stock of goods to secure the purchase price, and, on nonpayment of the debt, to foreclose the mortgage as a part of the interstate commercial transaction. F. A. Patrick & Co. v. Deschamp (1911) 129 N. W. 1096, 145 Wis. 224.

Where plaintiffs sold goods to defendant in interstate commerce, and afterwards took a mortgage thereon to secure the indebtedness, a subsequent agreement, after they had taken possession of the property, that they would permit defendant to continue private sales on condition that defendant consent to permit them to apply the proceeds of prior sales to additional indebtedness, not secured by the mortgage, was valid as a transaction in furtherance of interstate commerce, notwithstanding the corporation had not complied with St. Wis. 1898, § 1770b, prescribing the terms on which a foreign corporation shall be permitted to do business in Wisconsin. Id.

Where plaintiff contracted to sell certain mill machinery, to be shipped from Pennsylvania and installed in Wisconsin, the fact that plaintiff agreed to furnish a millwright to assist in placing the machinery did not deprive the contract of its interstate character. Wolf Co. v. Kutch (Wis. 1911) 132 N. W. 981.

A contract of sale made by a foreign corporation of articles out of the state to be shipped into it is a transaction of "interstate commerce," and unaffected by St. Wis. 1898, § 1770b, providing no foreign corporation shall transact business in the state till it has obtained a license so to do. S. F. Bowser & Co. v. Schwartz (1913) 140 N. W. 51, 152 Wis. 408.

A sale by a foreign corporation of an appliance which had been sold to a local resident, who later purchased a different appliance, held not an interstate commerce transaction; the sale being in the state. Sprout, Waldron & Co. v. Amery Mercantile Co. (Wis. 1916) 156 N. W. 158.

98. —— Delivery on agents' orders.— The business of taking orders on commission for the purchase and sale of grain and cotton for future delivery, and transmitting them to other states, is not interstate commerce, so as to be exempt from state taxation, where, in those cases in which contracts for purchases for future delivery result in an actual delivery, the property is bought in the state to which the orders are transmitted, and there held for the purchaser, and in those cases in which there is a delivery upon a contract of sale made by the broker, the seller is at liberty to acquire the property in the market where delivery is required or elsewhere. Ware & Leland v. Mobile County (1908) 28 Sup. Ct. 526, 209 U. S. 405, 52 L. Ed. 855, 14 Ann. Cas. 1031, affirming judgment Ware v. Mobile County (1906) 41 So. 153, 146 Ala. 163.

The sale within the state of a frame for a portrait, made in another state, to fill an order taken by a solicitor in the former state, cannot be so separated from the rest of the dealings between the nonresident maker and the purchaser as to sustain the imposition of a license tax, under Act Ala. March 7, 1907 (Acts 1907, p. 469) § 17, where the order for the portrait contemplated its delivery in an appropriate frame, which the purchaser of the portrait should have the option of buying at the factory price. Dozier v. State of Alabama (1910) 30 S. Ct. 649, 218 U. S. 124, 54 L. Ed. 965, 28 L. R. A. (N. S.) 264, reversing judgment (1908) 46 So. 9, 154 Ala. 83, 129 Am. St. Rep. 51.

A state does not tax interstate transactions by imposing a tax upon a domestic corporation selling within a designated territory in the state automobiles built by a foreign corporation under an arrangement by which the latter agreed to build for and sell to the former, for cash, at a specified less than list price, deliveries to be made as soon as practicable after orders should be received, the domestic corporation customarily making payment through drafts attached to the bills of lading, and there being nothing connecting the ultimate buyer with the manufacturer other than a warranty direct from manufacturer to buyer, and such buyer's agreement "to pay the list price f. o. b. factory," since such sales are not interstate ones; the relation of principal and agent between the foreign and domestic corporations not existing so far as the buyer is concerned. Banker Bros. Co. v. Commonwealth of Pennsylvania (1911) 32 Sup. Ct. 38, 222 U. S. 210, 56 L. Ed. 168, affirming judgment Commonwealth v. Banker Bros. Co. (1909) 38 Pa. Super. Ct. 101.

Agent of nonresident portrait manufacturer, to whom the latter ships portraits made to fill orders and frames for such portraits, cannot be required to take out a peddler's license, when putting the portraits into the frames and delivering them. Davis v. Commonwealth of Virginia (1915) 35 Sup. Ct. 479, 236 U. S. 697, 59 L. Ed. 795, reversing judgment (1912) 75 S. E. 1135, 113 Va. 562.

In an action by a foreign corporation on certain foreign bills of exchange, drawn on and accepted by defendants, residents of Texas, and also an account for goods sold and delivered by plaintiff to defendants, an answer alleging that defendants, as agents for plaintiff, solicited orders in Texas for merchandise to be shipped by plaintiff from

England to the purchasers, would not show such facts as would render plaintiff subject to the state statute requiring foreign corporations to file a copy of their charter and obtain a permit before engaging in business in the state, as the business shown would constitute commerce between a foreign country and the United States, not subject to state regulation. Wagner v. J. & G. Meakin (1899) 92 Fed. 76, 33 C. C. A. 577.

A sale of goods by a foreign corporation, made by an agent sent into the state, to be shipped to him in the state from another state, is interstate commerce. Kirven v. Virginia-Carolina Chemical Co. (1906) 145 Fed. 288, 76 C. C. A. 172, 7 Ann. Cas. 219.

Sale of merchandise shipped from one state to another to the seller's agent, though unidentified, and by him delivered to the appropriate customer, held interstate commerce, and not subject to a local licensing ordinance. City of Lee's Summit v. Jewel Tea Co. (1914) 217 Fed. 965, 133 C. C. A. 637, affirming decree Jewel Tea Co. v. Lee's Summit, Mo. (D. C. 1912) 198 Fed. 532.

Where agents employed by nonresidents were furnished with samples and sent orders obtained by them to their employers, who shipped from another state to the agents the goods ordered for delivery, a single sale by one of the agents of his sample did not alter the character of his occupation, so as to deprive him of the protection of the provision of the constitution giving to congress power to regulate commerce between the states. In re Houston (C. C. 1891) 47 Fed. 539, 14 L. R. A. 719.

Sess. Laws Kan. 1885, c. 149, § 12, which makes it a criminal offense to "take or receive any order for intoxicating liquors from any person in this state, other than a person authorized to sell the same as in this act provided," as applied to a commercial traveler or agent for a liquor house having its place of business in another state, who solicits and takes orders in Kansas from persons who desire liquors for their own use, and not for sale, which orders he forwards to his principal for acceptance or rejection, is an attempted interference with interstate commerce, and void, as in violation of the commerce clause. In re Bergen (C. C. 1900) 115 Fed. 339.

Sale of goods by means of orders taken by solicitors, the goods remaining in all instances, the property of complainant, a New Jersey corporation, until they were delivered to the customer in Oregon, held interstate commerce, and hence neither complainant nor its solicitors were subject to the Oregon peddlers law. Grand Union Tea Co. v. Evans (D. C. 1914) 216 Fed. 791.

An employé of a foreign grocery company, who simply delivered and collected the price of goods for which orders had been theretofore taken by salesmen of the grocery company, to be approved by it, and which, after approval, had been shipped in packages by the company, consigned to itself, was engaged in interstate commerce, and not subject to an occupation tax. Crum v. Town of Prattville (Ala. 1908) 46 So. 750.

Where a foreign corporation, manufacturing and selling sewing machines, had no place of business in the state, but transacted business by soliciting agents, and by shipping machines to agents, who delivered them to the buyers, it was engaged in interstate commerce, and a delivery agent was not subject to Code Ala. 1907, § 2361, subd. 58, imposing an annual license tax on persons selling or delivering sewing machines. Miller v. State (1913) 62 So. 307, 7 Ala. App. 183.

That an agent who delivers lightning rods, shipped in from another state to customers who had previously ordered them, sometimes made reductions from the contract price for the rods does not change the character of the transaction from being interstate commerce. Wright v. State (1913) 63 So. 14, 8 Ala. App. 437.

An agent, who delivers lightning rods to those who previously ordered them, the rods being shipped from another state, is engaged in interstate commerce, and not required to have a license. Id.

A corporation of one state may send its agents to another to solicit orders for its goods or contract for a sale thereof without being embarrassed by state requirements as to taking out licenses, filing certificates, establishing resident agencies, and the like. International Trust Co. v. A. Leschen & Sons Rope Co. (Colo. 1907) 92 P. 727.

A foreign corporation having no office or local agent or place of business in Colorado, but engaging merely in selling goods in Colorado through traveling salesmen, engages in interstate commerce, and it may sue for goods so sold and delivered without first complying with the statute regulating foreign corporations. Herman Bros. Co. v. Nasiacos (1909) 103 P. 301, 46 Colo. 208.

A business carried on by a nonresident of this state through agents, some of whom solicit from citizens of Georgia orders for goods, and forward the same to their principal, in the state of his residence, and others of whom, after the arrival of shipments from that state, make deliveries to and collections from the customers here, is not protected by the interstate commerce clause from municipal taxation in Georgia, when it affirmatively appears that some of these goods are never in fact ordered or purchased until after they are actually within the limits of this state. Chrystal v. City of Macon (1899) 33 S. E. 810, 108 Ga. 27.

The above is applicable to a business in which each customer, though he actually orders a portrait from a dealer in another state, has the right or privi-

lege of selecting and purchasing from the latter's agent in this state a suitable frame for every portrait, from a stock of frames shipped to Georgia for this purpose by the dealer; no customer, however, being in any instance bound to purchase a frame. Id.

One who as agent of a nonresident principal, takes orders on such principal for the purchase of goods held in such other state, and who when the goods are shipped to him, receives and delivers them in the original packages to his customers, and receives from them the price, is engaged in interstate commerce. Kehrer v. Stewart (1903) 44 S. E. 854, 117 Ga. 969, affirmed (1905) 25 Sup. Ct. 403, 197 U. S. 60, 49 L. Ed. 663.

Act Idaho March 16, 1901 (Sess. Laws 1901, p. 155), providing for licensing solicitors taking orders for goods, is unconstitutional, as an interference with interstate commerce, in so far as it imposes such burden on the authorized solicitors of citizens of other states trying to introduce their goods into the state; but where the property, prior to the sale, has been transported to the state, a contract concerning the same does not look to interstate transportation for its consummation and is subject to state control. In re Kinyon (1904) 75 P. 268, 9 Idaho, 642.

The statute regarding foreign corporations doing business within the state cannot be construed to prohibit foreign corporation sending drummers into the state to take orders, which are sent to the corporation, where they are passed on, and, if accepted the goods are shipped to the purchaser as such construction would be in conflict with the interstate commerce clause of the federal constitution. Havens & Geddes Co. v. Diamond (1901) 98 Ill. App. 557.

A foreign corporation manufacturing cement in the state of its domicile and selling it in the state through agents might sue in the state courts for the price of cement sold and delivered though it had not complied with Hurd's Rev. St. Ill. 1909, c. 32, § 67g, imposing conditions on foreign corporations, since the corporation was engaged in interstate commerce. Lehigh Portland Cement Co. v. McLean (1910) 92 N. E. 248, 245 Ill. 326.

On a trial for peddling without a license in violation of an ordinance, it appeared that a firm doing business from New York, through the various states had a general agent and distributing agents in the state, of whom defendant was one. The distributing agents sent their orders to the general agent, who forwarded them to New York, and received the goods from there. He repacked and sent them to the distributing agents, who delivered them to their customers. Held, that defendant was engaged in interstate commerce, and was not subject to the ordinance. City of Huntington v. Mahan (1895) 142 Ind. 695, 42 N. E. 463.

Where a traveling salesman, whose principal was engaged in the sale of intoxicating liquors in Illinois, accepted an order for the sale of liquors in Iowa, which order was sent to his principal in Illinois, subject to the latter's acceptance or rejection, and the liquor was shipped by express C. O. D. from the principal to the buyer, the transaction constituted interstate commerce; and hence such salesman was not subject to prosecution under Code Iowa, § 2382, as amended by Acts 28th Gen. Assem. c. 74, prohibiting any person from soliciting or accepting any order for the purchase of liquors, or from aiding in the delivery or distribution thereof. State v. Hanaphy (1902) 90 N. W. 601, 117 Iowa, 15.

A person who takes orders from samples for goods which he engages to deliver, and which are to be shipped into the state from another state, is not engaged in interstate business, when such orders are not transmitted to such other state, or filled there, but are filled from goods not in the original packages sent to him in bulk, C. O. D., from such other state. In re Pringle (1903) 72 P. 864, 67 Kan. 364.

In a prosecution for violation of a city ordinance imposing a license tax on persons soliciting orders for the sale of goods, where defendant is the agent of a nonresident merchant, carries samples and solicits orders, which he sends to his principal for approval, that the principal ships the goods to the same agent with authority to deliver and collect the price will not prevent the transaction from being interstate commerce. City of Kinsley v. Dyerly (Kan. 1908) 98 P. 228.

The owner of intoxicating liquors in another state cannot under the interstate commerce clause come into the state or send his agent here, and, contrary to the state laws, solicit orders for the purchase of intoxicating liquors, to be shipped from such other states. Crigler v. Shepler (Kan. 1909) 101 P. 619.

Gen. St. Kan. 1901, § 2479, providing that one taking orders for liquors in the state other than one authorized so to do under the act, or who shall contract for the sale of the same with any other than the person authorized to sell, commits a misdemeanor, is not in violation of the constitution, authorizing congress to regulate interstate commerce. Id.

Laws Kan. 1909, c. 164, § 5, prohibiting the taking of orders within the state for intoxicating liquors, is not a burden upon interstate commerce in violation of the commerce clause, and such clause does not protect the owner of intoxicating liquors in another state who comes into the state, or sends his agent, and solicits orders to be shipped from the other state, in violation of the constitution. State v.

Sherman (1910) 107 P. 33, 81 Kan. 874.

Where the only business transacted by defendant (a foreign shoe manufacturing corporation) in Kentucky was the sale of shoes to retail dealers through orders taken by traveling salesmen, which were sent to defendant's factory, in the state of its domicile, and there accepted or rejected, such business constituted interstate commerce; and hence defendant was not liable for the penalty imposed by Ky. St. § 571, prohibiting a foreign corporation from engaging in business in Kentucky without giving the location of its office within the state, and the name of its officer or agent there on whom process might be served. Commonwealth v. Hogan, McMorrow & Tieke Co. (1903) 74 S. W. 737, 25 Ky. Law Rep. 41.

Ky. St. § 571, requiring all corporations doing business within the state to file in the office of the secretary of state a statement giving the name of an agent, and the location of his place of business, where process could be served on him for the corporation, in so far as it affected a foreign corporation engaged in selling farm machinery through a resident agent in Kentucky, and not through drummers, is not a regulation of interstate commerce. Commonwealth v. Parlin & Orendorff Co. (1904) 80 S. W. 791, 118 Ky. 168, 26 Ky. Law Rep. 58.

Whisky manufactured in Kentucky and sent by the distiller into Ohio in order to be reshipped in retail quantities to consumers in local option territory in Kentucky, whose orders have been taken by the distiller's agents, is not the subject of interstate commerce. Crigler v. Commonwealth (1905) 87 S. W. 276, 120 Ky. 512, 27 Ky. Law Rep. 918; Id. (1905) 87 S. W. 280, 27 Ky. Law Rep. 925-927; Id. (1905) 87 S. W. 281.

The sale of picture frames, etc., by an agent acting for a principal in another state, where the pictures were made and shipped to the purchaser, constituted interstate commerce, and hence the agent was not subject to a state law (Acts Ky. 1906, p. 202) imposing a license tax on picture solicitors. Commonwealth v. Baldwin (1906) 96 S. W. 914, 29 Ky. Law Rep. 1074.

Where the goods, for the uncollected price of which the note sought to be enforced was given, were shipped to an agent in Tennessee for sale and delivery by him in that state, the interstate character of the goods ceased upon delivery to the agent in Tennessee, so that it cannot be claimed that the transaction out of which the debt arose was interstate commerce, so as to make the note valid, though the principal had not complied with the Tennessee laws to entitle it to do business within the state. Orr's Adm'r v. Orr (1914) 163 S. W. 757, 157 Ky. 570.

Sale of machinery by foreign corporation through traveling salesmen held interstate transaction, despite measurements of proposed location taken by agent. Louisville Trust Co. v. Bayer Steam Soot Blower Co. (Ky. 1915) 179 S. W. 1034.

Accused, who took orders for goods which were to be filled without the state, held engaged in interstate commerce. State v. Littlefield (1914) 91 A. 945, 112 Me. 214.

Where a Connecticut corporation maintained a Boston office, the sale and delivery of goods to citizens of Connecticut through the local office is not interstate commerce for that reason. Marconi Wireless Telegraph Co. of America v. Commonwealth (1914) 106 N. E. 310, 218 Mass. 558.

On a prosecution for a violation of a city ordinance, requiring peddlers to pay a license fee, it appeared that defendant went from house to house soliciting orders for spices, etc., that he acted as an agent for a foreign corporation having its office in another state, that, when he received a number of orders, he sent them to a city in another state, and that the goods called for in such orders were sent to him; an account being kept with him alone, the goods when received by him not being packed or marked for the individual customers. It was also shown that he sold some goods from a stock kept on hand, and distributed premiums out of stock on hand. Held that, from such facts, together with the presumption that the corporation had voluntarily applied to be admitted to do business in the state on the footing of a domestic corporation, under Comp. Laws Mich. § 8574, avoiding all contracts made by foreign corporations until the payment of a certain tax, defendant could not escape liability, on the ground that he was engaged in interstate commerce. People v. Smith (1907) 110 N. W. 1102, 147 Mich. 391, 13 Detroit Leg. N. 1068; Grand Union Tea Co. v. City of Ionia (1911) 130 N. W. 339, 18 Detroit Leg. N. 32.

Sales of goods by a corporation situated without a state to a resident of the state, though made through traveling salesmen or agents sent into the state, to be shipped to the purchaser, constitute interstate commerce, and are not subject to prohibition or regulation by the state constitution or statutes against foreign corporations doing business within the state. Imperial Curtain Co. v. Jacob (1910) 127 N. W. 772, 17 Detroit Leg. N. 751.

Where plaintiff, a foreign corporation, sent a traveling salesman into Michigan to sell goods to retailers, and the goods were delivered from the agent's trunks, the exhibition of the goods, the offer to sell, and the sale and delivery, all

taking place within the state, the transactions did not constitute interstate commerce. Despres, Bridges & Noel v. Zierleyn (1910) 128 N. W. 769, 163 Mich. 399, 17 Detroit Leg. N. 925.

A foreign corporation appointing a resident sales agent and agreeing to deliver to the agent the goods f. o. b. at points outside state, held engaged in interstate commerce, and not subject to Pub. Acts Mich. 1901, No. 206, as amended by Pub. Acts 1903, No. 34, regulating foreign corporations doing business in the state. Standard Fashion Co. v. Cummings (Mich. 1915) 153 N. W. 814.

A foreign corporation, selling goods on orders from salesmen or by mail, and shipping only on such orders, is engaged in interstate commerce, and not within Gen. St. Minn. 1913, §§ 6206–6208. Victor Talking Mach. Co. v. Lucker (1915) 150 N. W. 790, 128 Minn. 171.

Defendant, having taken orders for groceries in Missouri, sent them to wholesale grocers in Illinois, where the different articles were made up in packages, and all shipped together in one or more large boxes and barrels to the grocers' own order in Missouri, with directions to their agent not to deliver the goods to defendant until paid for. Such agent received the goods and removed them to his warehouse, where the bulk was broken, and the different packages for each customer segregated and delivered to them, through defendant, on their paying the price to defendant, and he delivering the money to such agent. Held, that the sale was not a transaction in interstate commerce. Town of Canton v. McDaniel (1905) 86 S. W. 1092, 188 Mo. 207.

An agent of a corporation, having its place of business in another state, took orders for unframed crayon portraits to be made at the corporation's place of business, and left with each purchaser a memorandum of the agreement which recited that a certain price should be paid for the portrait on delivery, and that while the purchaser was not obliged to take a frame, all portraits would be delivered in frames. Subsequently defendant delivered the portraits as agent of the corporation, and urged the purchasers to purchase the frames. Held, that the transactions in regard to the portraits constituted interstate commerce, so that defendant could not be required to take out a peddler's license, but the transactions in regard to the frames did not constitute interstate commerce. State v. Looney (Mo. 1906) 97 S. W. 934, affirming judgment (App. 1906) 96 S. W. 316.

A foreign corporation manufacturing its machinery in the state of its origin constitutes a resident of Missouri its sales agent in Missouri and other states. The contracts procured by the agent for machinery were not effective until approved by the foreign corporation at its home office. The agent procured a contract for machinery for a resident of Missouri, and the foreign corporation accepted it and manufactured the machinery called for. The contract called for delivery f. o. b. cars at the home office of the corporation, and required it to furnish men, if required, to start the machinery. The agent had no power to make collections, and he was paid by the foreign corporation from its home office. The foreign corporation performed its part of the contract. It had no property in Missouri. Held, that the transaction was interstate commerce, and Rev. St. Mo. 1909, §§ 3037, 3039, 3040, requiring a foreign corporation to obtain a certificate to do business in the state in order to sue in the courts of the state, did not prevent the foreign corporation from maintaining an action on the contract in the courts of Missouri. Chuse Engine & Mfg. Co. v. Vromania Apartment Co. (Mo. App. 1911) 133 S. W. 624.

A contract made with a foreign corporation for soliciting orders for books published by the corporation, to be imported into Missouri and delivered by the company's agent direct to the subscribers ordering them, related to interstate commerce. Security State Bank v. Simmons (1913) 157 S. W. 585, 251 Mo. 2.

Where a sales agent of a foreign corporation located in a sister state took orders in a city for merchandise for future delivery, and mailed them to the corporation, where each article was separately wrapped and then shipped together to the agent, who delivered them to the respective purchasers, the corporation and the agent were engaged in interstate commerce. Jewel Tea Co. v. City of Carthage (Mo. 1914) 165 S. W. 743.

Sale of goods by a foreign corporation through an agent taking orders from house to house and sending them to the corporation to be filled and delivered by such agent held interstate commerce, so that the agent was not subject to a local tax imposed on mercantile agents. Fleming v. City of Mexico (Mo. 1914) 171 S. W. 321.

A foreign corporation may, by agents, sell by sample its goods in sister states and have them transported to buyers without interference by state or municipal authorities. Kansas City v. McDonald (Mo. 1915) 175 S. W. 917.

A foreign corporation, manufacturing in the state of its origin food products and selling them by agents to the wholesale trade or to retailers, held engaged in interstate commerce. Id.

A sale of goods by a foreign corporation to a resident, through the corporation's nonresident broker, held interstate commerce, and the corporation could sue without first complying with the law of the state. Dinuba Farmers' Union Packing Co. v. J. M. Ander-

son Grocer Co. (Mo. App. 1916) 182 S. W. 1036.

Act N. J. March 20, 1889 (P. L. p. 77), prohibiting the sale of intoxicating liquors without a license, is limited to the regulation of sales within the state, and a resident employé of a nonresident who obtained an order in the state for liquors to be furnished by the nonresident, and who subsequently procured the liquor and delivered the same in the state to the buyer, did not violate the act, which, if construed to embrace the transaction, is in conflict with the commerce clause of the constitution. State v. Coleman (N. J. Sup. 1910) 77 A. 1026.

Where the only business carried on by a nonresident corporation in New York was that of soliciting orders through agents, and thereafter shipping the goods direct to the purchaser from the home factory, the business cannot be taxed under Laws N. Y. 1880, c. 542, providing for the taxation of franchises of foreign corporations, since such tax would be a burden on interstate commerce. People v. Roberts (1898) 50 N. Y. S. 355, 27 App. Div. 455, 5 N. Y. Ann. Cas. 279.

A foreign corporation, which manufactures and sells shoes through an agent, is engaged in interstate commerce. M. D. Wells Co. v. V. J. Howard & Co. (Okl. 1915) 151 P. 616.

Sales of carriages by agents passing through the country held to have been made in Iowa so as to constitute interstate commerce. Spaulding v. McNary (Or. 1913) 130 P. 391, rehearing denied Id. 1128.

It is interstate commerce, and not a doing of business in Pennsylvania, within Act April 22, 1874 (P. L. 108), and Act June 1, 1889 (P. L. 420), requiring the establishment of an office and appointing of an agent within the state, for a foreign corporation, which has its capital invested and manufactures its goods in another state, to deliver its goods in Pennsylvania on orders. Mershon & Co. v. Pottsville Lumber Co. (1898) 40 A. 1019, 187 Pa. 12, 42 Wkly. Notes Cas. 399, 67 Am. St. Rep. 560.

Under Const. art. 1, § 8, confiding to congress the power to regulate interstate commerce, an ordinance of a city, fixing a special license tax for all occupations carried on within said city, is void as to the agent of a nonresident company, engaged in delivering pictures under a contract previously made between the customer and said company, and selling frames to customers only, with whom the purchase of the same is voluntary, and independent of the contract for the picture. City of Laurens v. Elmore (1899) 33 S. E. 560, 55 S. C. 477, 45 L. R. A. 249.

After alcohol had been delivered to the consignee at the railroad station, it was no longer protected as interstate commerce, if held for unlawful use. State v. Messervy (S. C. 1910) 68 S. E. 766, 86 S. C. 501.

A salesman representing a foreign mercantile corporation solicited orders for merchandise, to be paid for on delivery if found as represented. When the canvass of the community was completed, the salesman classified the merchandise called for in the several individual orders obtained, ascertained the quantity of each article, and sent to his employer one general order covering the aggregate number or quantity of articles of each class. The goods thus ordered were packed in large boxes and barrels and shipped by a common carrier to a point designated by the salesman, to whom the bill of lading was sent. Upon receipt of the goods the salesman opened the boxes and arranged the goods for delivery to the purchasers on payment of the purchase price. The money received on delivery of the goods was remitted to the employer. Held, that the corporation was not engaged in interstate commerce, but in the business of a retail merchant in the community in which the transactions were made, rendering it liable for the privilege tax imposed upon local merchants. Loverin & Brown Co. v. Tansil (1907) 102 S. W. 77, 118 Tenn. 717.

A corporation domiciled in Kansas, through its commercial agents, solicited business and sold and shipped goods and merchandise to points in other states. Held, that such transactions were interstate commerce. Bateman v. Western Star Milling Co. (1892) 1 Tex. Civ. App. 90, 20 S. W. 931.

A foreign manufacturer made buggies, and shipped them into the state in carload lots and smaller quantities, which were peddled through the country by salaried employés, who sold for cash and on time, receiving payment and notes as the agents of the employer. When a buyer desired a vehicle of a peculiar make, his order was sent to the manufacturer, where the vehicle was made as desired, and, if paid for, was shipped direct to the buyer; otherwise, it was delivered by one of the employés, who received the payment. Held, that such transaction constituted interstate commerce, and the employé was not liable to a state occupation tax. Kirkpatrick v. State (1901) 60 S. W. 762, 42 Tex. Cr. R. 459.

A person acting as a manufacturer's agent, taking orders for stoves to be shipped from the factory into another state in three separate parcels, and to be delivered and set up by another employé of the manufacturer, is not engaged in peddling stoves, within Act Tex. 1899, requiring that every person peddling cooking stoves shall pay an occupation tax, but is an agent, within the protection of the interstate commerce clause of the constitution. Harkins v. State (Tex. Cr. App. 1903) 75 S. W. 26.

A foreign corporation, selling goods in the state through an agency, is not required to obtain a permit to do busi-

ness in the state. Hallwood Cash Register Co. v. Berry (1904) 80 S. W. 857, 35 Tex. Civ. App. 554.

In a prosecution for violating a local option law it appeared that defendant was soliciting orders for whisky; that witness gave defendant an order which he filled out on a house in Kentucky; that some time afterwards the whisky came C. O. D. by express and witness paid the express agent the charges, and that witness never paid defendant any money for the whisky. It further appeared that defendant received a commission on all whisky orders taken by him where the whisky was accepted by the consignees, but that whisky ordered and not accepted by the consignee was shipped back at defendant's expense. Held, that the sale was protected as interstate commerce. Donley v. State (Tex. Cr. App. 1905) 89 S. W. 553.

Defendant gave plaintiffs' agent in Texas an order for goods, which he forwarded to plaintiffs in Ohio, where they accepted it, shipping the goods from there to Texas. Held, that the transaction was interstate commerce, and so not covered by the Texas anti-trust law (Laws 1903, c. 94). Eclipse Paint & Mfg. Co. v. New Process Roofing & Supply Co. (Tex. Civ. App. 1909) 120 S. W. 532.

A sale by a foreign corporation of goods to be shipped to Texas from its factory in another state, subject to the approval of the corporation at its home office in the state of its origin, is an interstate transaction. State v. Racine Sattley Co. (Tex. Civ. App. 1911) 134 S. W. 400.

A foreign corporation employing traveling agents in the state to solicit orders for merchandise, and shipping to the state merchandise to fill the orders, is engaged in interstate commerce, and is not within Rev. St. Tex. 1911, arts. 1314, 1318, requiring foreign corporations to obtain a permit to transact business in the state. Erwin v. E. I. Du Pont De Nemours Powder Co. (Tex. Civ. App. 1913) 156 S. W. 1097.

The sale of goods by a citizen of one state to a citizen of another state which are to be shipped from one to the other is "interstate commerce," though the sale is made by the seller's agent in the buyer's state. J. R. Watkins Medical Co. v. Johnson (Tex. Civ. App. 1913) 162 S. W. 394.

That a foreign corporation sends its agents into the state to solicit orders does not cause sales made by such corporation, where consummated outside of the state, to lose their standing as interstate commerce. American Mfg. Co. v. Skidmore Drug & Furniture Co. (Tex. Civ. App. 1914) 170 S. W. 128.

A city ordinance designated as peddlers persons taking orders within the city for groceries, etc., and imposed a penalty upon such persons for taking orders without paying a license fee. Defendant was convicted of taking orders for teas, etc., without a license, for a firm in another state which had no agency or branch business in the state, defendant taking orders by sample and sending them to his firm, which filled them, by shipping unbroken packages to the buyers in this state, and delivering them by persons other than its solicitors. Held, that the ordinance was a regulation of interstate commerce, and it was immaterial that it did not discriminate between residents and nonresidents, or that it might have been a valid police regulation as to intrastate sales. State v. Glasby (1908) 97 P. 734, 50 Wash. 598; Same v. Davis (1908) 97 P. 737, 50 Wash. 704.

Soliciting orders or making a contract for the sale of goods in one state, and which by the order or contract are to reach the purchasers in another, is an inherent part of the commerce consisting of the whole transaction. Loverin & Browne Co. v. Travis (Wis. 1908) 115 N. W. 829.

A transaction wherein a foreign corporation shipped building material f. o. b. cars in Wisconsin from Illinois, where the material was manufactured, pursuant to an order received by its salesman in Wisconsin and approved at the company's home office in Illinois, constituted interstate commerce within the federal constitution, and hence the corporation is not prevented from suing on a claim arising from the transaction because it has not complied with St. Wis. 1898, § 1770b, prescribing requirements before a foreign corporation may lawfully do business in Wisconsin. United States Gypsum Co. v. Gleason (Wis. 1908) 116 N. W. 238.

Plaintiff's assignor, an Iowa corporation, not having complied with the law so as to entitle it to do business in Wisconsin, procured an order for goods from defendant through its traveling salesman in Wisconsin, who forwarded the order to the corporation's place of business in Iowa where the order was filled and the goods shipped to the buyer in Wisconsin. Held, that such transaction involved a physical transfer of merchandise from the possession and title of the seller in Iowa to the possession and ownership of the buyer in Wisconsin, and was therefore interstate commerce, as to which St. Wis. 1898, § 1770b, prohibiting actions on contracts made by foreign corporations in Wisconsin, which had failed to file their articles with the Secretary of State, etc., was inapplicable. Ady v. Barnett (1910) 124 N. W. 1061, 142 Wis. 18.

Where a traveling agent solicited orders for portraits and picture frames, and sent such orders to the home office of the concern, in another state, from which the articles ordered were subsequently shipped, consigned to the company, and then delivered by the agent to the customers, and the prices agreed on at the time the order was given collected, the contract is one of the state wherein the home office is

located, and the goods remain subject to interstate commerce regulations, the delivery by the agent to the persons ordering them not constituting a sale by him within the state. State v. Willingham (1900) 62 P. 797, 52 L. R. A. 198, 9 Wyo. 290, 87 Am. St. Rep. 948.

A nonresident who solicits orders among residents of the state for vehicles manufactured in another state, which are to be delivered after the orders are procured, subject to the approval of the foreign seller, is engaged in interstate commerce. State v. Byles (Wyo. 1913) 136 P. 114.

99. —— Distribution from warehouse or by local dealer.—A contract made in New York by residents thereof for the sale to residents of another state of coffee to be shipped from Rio Janeiro to New York City by a designated steamer, the buyers to have free storage and fire insurance for the first month after the arrival of the steamer, and the storage of the coffee in New York, is a New York contract, and as such is governed by the prohibition made by Laws N. Y. 1893, c. 661, § 41, against the sale within the state of adulterated food products. Crossman v. Lurman (1904) 24 S. Ct. 234, 192 U. S. 189, 48 L. Ed. 401, affirming judgment (1902) 63 N. E. 1097, 171 N. Y. 329, 98 Am. St. Rep. 599.

A state is not precluded by the commerce clause of the federal constitution from imposing a merchants' tax upon a nonresident manufacturing corporation which has selected a city of that state as a distributing point, and has secured a local transfer company to take charge of its products when shipped to that point, assort them, store them in a warehouse, and make delivery in the original packages to the customers of the manufacturer, either as expressly directed by it, or under general directions in favor of its recognized and approved customers, whose names were furnished to the transfer company, since, under such circumstances, the goods, when stored in the warehouse, were no longer in transit, but had reached their destination, and were held in the state for sale. American Steel & Wire Co. v. Speed (1904) 24 Sup. Ct. 365, 192 U. S. 500, 48 L. Ed. 538, affirming judgment (1903) 75 S. W. 1037, 110 Tenn. 524, 100 Am. St. Rep. 814.

The tax imposed by Pub. Laws N. C. 1903, c. 247, as construed by the state courts, upon such local business of a foreign meat-packing house as its sales within the state of products already stored there on orders received after these products are thus stored, is not invalid as an interference with interstate commerce. Armour Packing Co. v. Lacy (1906) 26 S. Ct. 232, 200 U. S. 226, 50 L. Ed. 451, affirming judgment Lacy v. Armour Packing Co. (1904) 47 S. E. 53, 134 N. C. 567.

A corporation manufacturing its product in New Jersey and buying from other manufacturers, which shipped from there to its warehouses in Massachusetts and New York, from which sales are made and in Connecticut, is engaged in interstate commerce within the prohibition of the Sherman Anti-Trust Act July 2, 1890. Standard Sanitary Mfg. Co. v. U. S. (1912) 33 S. Ct. 9, 226 U. S. 20, 57 L. Ed. 107, affirming decree U. S. v. Standard Sanitary Mfg. Co. (C. C. 1911) 191 Fed. 172.

The decision of a state court sustaining the defense of illegality, under Laws Miss. 1908, c. 115, prohibiting the sale of malt liquors, to a suit brought by a nonresident manufacturer of a beverage to recover the amount which a local dealer agreed to pay for the exclusive right to make local sales, does not involve the denial of any right incident to interstate commerce, where such agreement contained no suggestion that the contemplated resales were to be made in the original imported packages, but was broad enough to include other sales, and hence encountered the local statute as applied to transactions outside the protection accorded by the federal constitution to interstate commerce. Purity Extract & Tonic Co. v. Lynch (1912) 33 Sup. Ct. 44, 226 U. S. 192, 57 L. Ed. 184.

Where a manufacturing corporation of New Jersey made annual factorage contracts with a corporation in Colorado, which latter corporation received, stored, and sold the merchandise at its expense in consideration of the factorage secured by it, the making of the contracts and their performance by the New Jersey corporation were transactions of interstate commerce, which could not be prohibited or trammeled by the legislature of the state of Colorado. Butler Bros. Shoe Co. v. United States Rubber Co. (1907) 156 Fed. 1, 84 C. C. A. 167, writ of certiorari denied (1908) 29 Sup. Ct. 686, 212 U. S. 577, 53 L. Ed. 658.

Where a corporation of one state sends its manufactured goods into another state, in car-load lots, and its agents take the same, in small quantities, from a central storehouse, and carry them about the country, selling and delivering them directly to purchasers, such agents are not engaged in selling goods by sample, nor in interstate commerce. American Harrow Co. v. Shaffer (C. C. 1895) 68 Fed. 750, appeal dismissed (1897) 17 Sup. Ct. 991, 166 U. S. 718, 41 L. Ed. 1187.

An ordinance of the city of Titusville, Pa., requiring the payment of a license fee from all persons soliciting orders for goods, books, etc., is void as a regulation of interstate commerce, in so far as it is applied to an agent soliciting orders for books, to be filled on the approval of his principal in New York, notwithstanding that the books are sent from a storehouse in Pitts-

burg, which is kept replenished from the main office in New York. In re Nichols (C. C. 1891) 48 Fed. 164; In re Tyerman (C. C. 1891) Id. 167.

An ordinance requiring the payment of a license fee from all persons soliciting orders for goods, books, etc., cannot be upheld on the ground that it is a police regulation designed to protect the inhabitants from the unwarrantable intrusions of such canvassers, since by paying the fee the business may be carried on without restraint. Id.

A manufacturing company which makes its product in one state and stores it in warerooms in other states, where it is sold, the trade extending over several states, is engaged in interstate commerce. U. S. v. Standard Sanitary Mfg. Co. (C. C. 1911) 191 Fed. 172, decree affirmed Standard Sanitary Mfg. Co. v. U. S. (1912) 33 S. Ct. 9, 226 U. S. 20, 57 L. Ed. 107.

An agent of a foreign stove manufacturer, having no place of business in the state, who takes from a temporary warehouse stoves shipped by the manufacturer from its home office after its acceptance of orders procured by its salesmen selling by sample, and procuring orders and notes for the price and transmitting them to the home office for approval, and who delivers the same in the original form to the buyers, is not within a municipal ordinance imposing a license on agents selling stoves, etc.; he being engaged in interstate commerce. Lee v. Intendant and Town Councilmen of La Fayette (Ala. 1907) 45 So. 294.

The interstate commerce clause has no application to sales of goods in this state, when it appears that the same had been manufactured in another state, shipped in quantities to an agent of the manufacturer residing in Georgia, by him deposited in a warehouse, and from thence delivered on retail orders obtained by a traveling agent of the manufacturer. Duncan v. State (1808) 30 S. E. 755, 105 Ga. 457.

Where goods manufactured in another state were shipped to a warehouse in this state, and at that point distributed among customers, who, after such shipment, had purchased different articles of these goods from a person going from house to house exhibiting samples and taking orders, the sales so made did not constitute interstate commerce. L. B. Price Co. v. City of Atlanta (1898) 31 S. E. 619, 105 Ga. 358.

A New Jersey corporation engaged in the sale and distribution of teas, coffees, and spices maintained a warehouse in Grand Rapids, from which its trade in Michigan was supplied. The corporation furnished defendant with a horse and wagon, and he solicited orders from door to door, and at intervals ordered from the warehouse at Grand Rapids a sufficient amount of goods to fill the same, whereupon he delivered the goods to his customers, collected the price, retained the commission, and remitted the balance. The house at Grand Rapids did not know what customers defendant had, or their names, and simply filled defendant's orders for the goods. Held, that defendant was not engaged in interstate commerce, so as to exempt him from liability under a city ordinance prohibiting peddling without a license. City of Muskegon v. Zeeryp (1903) 96 N. W. 502, 134 Mich. 181, 10 Detroit Leg. N. 519.

Foreign corporation which retaining title, shipped proprietary medicines into state to salesman who retailed them about the country, devoting entire time to the business, held not engaged in interstate commerce. E. A. Lange Medical Co. v. Brace (Mich. 1915) 152 N. W. 1026.

The legislature of a state has power to regulate the domestic sale at retail of adulterated foods to consumers though lawfully shipped into the state and sold to retailers in interstate commerce. Armour & Co. v. Bird (1909) 123 N. W. 580, 159 Mich. 1, 16 Detroit Leg. N. 798.

A contract for a foreign corporation engaged in manufacturing organs, which appointed defendant, a retail dealer in this state, its agent for the sale of organs, consigned to the dealer to be kept in stock and sold on a commission, was not one relating to interstate commerce so as to be exempt from the operation of the statute relating to foreign corporations, but merely a contract establishing a branch agency. Farrand Co. v. Walker (1913) 155 S. W. 68, 169 Mo. App. 602.

The shipment of goods into the state by a foreign corporation for storage and sale on commission is an interstate transaction, and such corporation in so doing is not amenable to Rev. Codes N. D. 1905, §§ 4695–4699, forbidding a foreign corporation to transact business within the state until it shall have filed with the secretary of state a copy of its charter, and requiring such corporation to file a power of attorney with that officer constituting him its attorney, on whom process may be served, and declaring every contract made by the corporation without first having complied therewith void. Sucker State Drill Co. v. Wirtz Bros. (N. D. 1908) 115 N. W. 844.

An Indiana corporation had an exclusive sales agent in Nebraska, which was in possession of buggies belonging to the principal. The contract of agency expired, and one who had taken possession of the former agent's warehouse sold the buggies to a resident of South Dakota without the owner's authority. Held, that the Indiana corporation after the expiration of the contract of agency was transacting an interstate business so far as

the buggies were concerned, and could bring replevin in South Dakota to recover them without complying with Civ. Code S. D. §§ 883, 885, requiring a foreign corporation before doing business in the state to file with the secretary of state its articles of incorporation and to appoint a resident agent. Rex Buggy Co. v. Dinneen (S. D. 1909) 122 N. W. 433.

A state statute imposing conditions upon the sending into the state by a foreign manufacturing corporation of articles to be sold on commission by local merchants is void, as interfering with interstate commerce. Allen v. Tyson-Jones Buggy Co. (1897) 40 S. W. 393, 714, 91 Tex. 22.

Where a foreign corporation, by agent, in Texas, sold a piano stored in that state, it was entitled to recover therein on notes given for the price, though it had not taken out a permit to transact business in the state, as required by statute; since the sale was a transaction of interstate commerce. Shaw Piano Co. v. Ford (Tex. Civ. App. 1897) 41 S. W. 198.

A corporation which manufactures goods out of the state, and ships them into it to commission merchants, by whom they are sold, is engaged in interstate commerce, and not in "transacting" or "soliciting" business in the state, within Rev. St. Tex. art. 745, relative to permits. Lasater v. Purcell Mill & Elevator Co. (1899) 54 S. W. 425, 22 Tex. Civ. App. 33.

A petition, in an action by the state against a foreign corporation for a violation of the Texas anti-trust act of 1903 (Laws 1903, c. 94), which alleged that the foreign corporation was a manufacturer of farming implements and vehicles; that it contracted with a dealer in the state in such articles to give him the exclusive sale of its goods, the latter agreeing not to buy or sell any other makes of like goods; that the foreign corporation had traveling salesmen soliciting business throughout the state; that the contract was signed by one of the salesmen; and that the foreign corporation was a wholesale dealer in farming implements and vehicles—was sufficient as against a general demurrer to show that it was the purpose of the foreign corporation to sell goods under the contract at the residence of the dealer in Texas, and that it was its purpose that the contract should be carried into effect in Texas, so that the transaction was not interstate commerce, but was subject to the state anti-trust laws. State v. Racine Sattley Co. (Tex. Civ. App. 1911) 134 S. W. 400.

100. Traffic in original packages—In general.—An original package of intoxicating liquors was transported by rail from another state, and upon being unloaded on the depot platform, and before delivery to the consignee, was seized under a search warrant. The condemnation proceedings were begun before the enactment by congress of the "Wilson Bill." Held, that the shipment was a lawful act of interstate commerce, and the liquors were not liable to seizure under the law of Iowa relating to intoxicating liquors. Leisy v. Hardin (1890) 135 U. S. 100, 10 Sup. Ct. 681, 34 L. Ed. 128; State v. Corrick (1891) 82 Iowa, 451, 48 N. W. 808.

One importing a proper article of interstate commerce into a state may sell it in the original package, not only in person, but through an agent having a store in the state. Schollenberger v. Commonwealth of Pennsylvania (1898) 18 Sup. Ct. 757, 171 U. S. 1, 43 L. Ed. 49.

The right of one importing into a state a proper article of interstate commerce, to sell it in the original package, does not depend on whether the package is suitable for retail trade or not; the right to sell it is the same whether to consumers or retail dealers. Id.

Act Pa. May 21, 1885, forbidding the manufacture or sale of any oleaginous substance or compound designed to take the place of butter or cheese made from pure milk or cream, is void as an interference with interstate commerce, as applied to pure oleomargarine brought into the state and sold in original packages. Schollenberger v. Commonwealth of Pennsylvania (1898) 18 Sup. Ct. 757, 171 U. S. 1, 43 L. Ed. 49.

One importing a proper article of interstate commerce into a state may sell it in the original package, not only in person, but through an agent having a store in the state. Id.

Paper packages of cigarettes 3 inches by 1½ inches in size, containing 10 cigarettes without any shipping address, taken from a loose pile of such packages at the factory by an express company in a basket furnished by it in which it carries them and from which it empties them on the counter of a consignee in another state, do not constitute original packages of interstate commerce, and hence their sale may be prohibited by a state. Austin v. Tennessee (1900) 21 Sup. Ct. 132, 139, 179 U. S. 343, 45 L. Ed. 224.

The tax imposed on cigarette selling by Code Iowa, § 5007, is not an invalid regulation of commerce as applied to sales at retail of packages of ten cigarettes in small pasteboard boxes, sealed and stamped with the revenue stamp, which had been shipped loose to the retailer from another state by an express company which merely issued a receipt in duplicate, showing the number of packages and the name of the consignee, the packages not being separately or otherwise addressed, since such a box can in no just sense be con-

sidered an original package. Cook v. Marshall County (1905) 25 S. Ct. 233, 196 U. S. 261, 49 L. Ed. 471, affirming judgment (1903) 93 N. W. 372, 119 Iowa, 384, 104 Am. St. Rep. 238.

Trade in fresh meat is sufficiently shown to be commerce among the states, protected from restraint by Act July 2, 1890 (Comp. St. § 8820 et seq.), by allegations in a bill charging meat dealers with violations of that act, which, even if they import a technical passing of title at the slaughtering places in cases of sales, also import that the sales are to persons in other states, and that the shipments to other states are pursuant to such sales, and by allegations charging sales of such meat by their agents in other states, which indicate that some, at least, of the sales were in the original packages. Swift & Co. v. U. S. (1905) 25 S. Ct. 276, 196 U. S. 375, 49 L. Ed. 518.

Each separate bottle shipped by a manufacturer to a local dealer under a contract for an agreed price per cask and per case is not an original package exempt from the interdiction of Laws Miss. 1908, c. 115, prohibiting sales of malt liquors. Purity Extract & Tonic Co. v. Lynch (1912) 33 S. Ct. 44, 226 U. S. 192, 57 L. Ed. 184, affirming judgment (1911) 56 So. 316, 100 Miss. 650.

Small packages of a food preservative, suitable for consumer and sold separately in various lots, held not original packages, though respectively in original envelopes, so as to escape prohibition of Hurd's Rev. St. Ill. 1913, c. 127b, §§ 8, 22, against sale of food preservatives containing boric acid. Price v. People of State of Illinois (1915) 35 S. Ct. 892, 238 U. S. 446, 59 L. Ed. 1400, affirming judgment People v. Price (1913) 101 N. E. 196, 257 Ill. 587, Ann. Cas. 1914A, 1154.

A nonresident of a state may import into the state intoxicating liquors and sell the same in the original packages, and so long as they remain in the original packages in the hands of the importer they do not become so intermingled with the common mass of the property of the state as to leave the protection afforded to importations by this clause. Allen v. Black (C. C. 1890) 43 Fed. 228, 230.

By Act Aug. 2, 1886 (Comp. St. § 6215 et seq.), oleomargarine was recognized as an article of commerce and put under the control of a national law regulating its sale, following it not only through the course of manufacture, and regulating that, but following it also into the hands of the wholesale dealers, and further into the hands of the retail dealer, and it is the duty of the court to assume that the act will be enforced and that its provisions made to prevent fraud will be effective. Oleomargarine brought into a state in original packages is within the protection of the federal constitution and can be sold in the packages entirely independently of a state statute, and subject only to the provisions of the national law. But the instant an original package is opened and its contents exposed to retail they thereby become mingled with the property of the state, and subject in every respect to its law. In re Worthen (C. C. 1891) 58 Fed. 467, 469.

Removing the lid of an original package of oleomargarine, so that a prospective buyer may examine its contents, is not such a breaking of the package as will destroy its original character, and make its sale punishable, under Code Md. art. 27, § 90, which is unconstitutional as to original packages imported from another state. In re McAllister (C. C. 1892) 51 Fed. 282.

Acts N. C. 1891, c. 331, providing that persons selling seed in packages unmarked by the date when such seed were grown, except farmers selling seed in open bulk to other farmers or gardeners, shall be guilty of a misdemeanor, is unconstitutional and void in so far as it applies to the selling of seed in original packages imported from another state. In re Sanders (C. C. 1892) 52 Fed. 802.

The Iowa statute prohibiting the manufacture or sale of cigarettes is an interference with interstate commerce, as applied to sales in small boxes, containing 10 cigarettes each, of cigarettes imported in that form from other states without being inclosed in other boxes or wrappers. State of Iowa v. McGregor (C. C. 1896) 76 Fed. 956.

An original package, within the meaning of the law of interstate commerce, is the package delivered by the importer to the carrier at the initial point of shipment, in the exact condition in which it was shipped. In the case of liquors in bottles, if the bottles are shipped singly, each is an original package, but if a number are fastened together, and marked, or are packed in a box, barrel, crate, or other receptacle, such bundle, box, barrel, crate, or receptacle constitutes the original package. Guckenheimer v. Sellers (C. C. 1897) 81 Fed. 997.

Sales of intoxicating liquors in South Carolina by citizens of other states, in the original packages in which they are imported into the state, are subject to the regulations imposed by the dispensary law of the state as to the times and quantities in which, and the persons to whom, they may be made, and all such provisions as are in the nature of police regulations. Moore v. Bahr (C. C. 1897) 82 Fed. 19.

A liquor dealer who is a citizen of another state has a right to store liquors in original packages within the state of South Carolina for purposes of sale in such packages. Id.

The Montana statute requiring all

persons engaged in selling cigarettes, whether on commission or otherwise, to pay a license fee of $10 a month (Pol. Code, § 4064, subd. 15), is not void as an interference with interstate commerce, as applied to one who, either as owner or as agent for a nonresident manufacturer, causes cigarettes to be brought into the state, and there exposes them for sale and sells them, in the original packages of importation. In re May (C. C. 1897) 82 Fed. 422.

Where cigarettes put up in small boxes, bearing internal revenue stamps, are shipped from one state to another, the boxes constitute original packages; but when they reach their place of rest for final disposal, and are to remain there until sold to customers, they thereupon become a part of the mass of the property of the state. Id.

The Tennessee statute entirely prohibiting the importation or sale of cigarettes is invalid, as an interference with interstate commerce, in so far as it applies to cigarettes brought into the state from other states or foreign countries, and sold in the original packages of importation. Sawrie v. State of Tennessee (C. C. 1897) 82 Fed. 615.

Oleomargarine is a lawful subject of commerce, and a state statute (Act Minn. April 19, 1899, § 16) which prohibits the sale of oleomargarine so colored as to resemble butter is unconstitutional and void in so far as it applies to a sale within the state of oleomargarine manufactured in another state, and imported by the agent of the manufacturer, and sold by him in the original and unbroken packages of importation, stamped and marked as required by Act of Aug. 2, 1886 (24 Stat. 209), the product being composed of the materials described in said act as constituting lawful oleomargarine of commerce. In re Brundage (C. C. 1899) 96 Fed. 963.

Complainants operated a store in New York City, from which they sold goods for delivery to customers in Atlantic Highlands, N. J. These goods in original packages were to be sent by boat or express to Atlantic Highlands, where complainants' employés put them into complainants' wagons and delivered them at the residences of the customers. Held, that the entire transaction, from the purchase of the goods to the delivery to the purchasers, constituted interstate commerce. Simpson-Crawford Co. v. Borough of Atlantic Highlands (C. C. 1908) 158 Fed. 372.

Where goods are brought from another state into New Jersey under contract of sale, and delivered there in their original packages to the purchasers, the transit may not be interfered with by the state or any of its municipalities, except for proper police purposes. Id.

A merchant in Chicago employed an agent, who solicited orders for merchandise in a city in Missouri and reported the orders. The merchant put up each article ordered in a package, and all the packages were shipped to the agent, who took the goods from the depot and delivered them to the customers and collected the price. Held, that the transaction was interstate commerce, and that an ordinance imposing a license for selling merchandise in that manner was invalid as an interference with interstate commerce. Jewel Tea Co. v. Lee's Summit, Mo. (C. C. 1911) 189 Fed. 280.

Sale of merchandise shipped from one state to another in packages to the seller's agent, though unidentified and by him delivered to the particular customer, held to constitute interstate commerce, and not subject to a local ordinance imposing a license tax on venders. Jewel Tea Co. v. Lee's Summit, Mo. (D. C. 1912) 198 Fed. 532.

Act Ohio May 3, 1913 (103 Ohio Laws, pp. 399–401), providing for board of censors to inspect moving picture films, relates only to films after they have been removed from the cases in which they are shipped, and placed on reels for exhibition within the state, and hence is not a regulation of interstate commerce. Mutual Film Co. v. Industrial Commission of Ohio (D. C. 1914) 215 Fed. 138.

Where accused ordered four quarts of liquor from a dealer in Tennessee, two for himself and two for another, and the liquor was received in one box by express, the shipment ceased to be interstate commerce, and became subject to the state laws, when accused removed it from the box. Vernon v. State (Ala. 1909) 50 So. 57.

Where a foreign corporation shipped goods to its agent, and the agent sold them in the original packages, the transaction was an interstate one. Padgett v. Gulfport Fertilizer Co. (1914) 66 So. 866, 11 Ala. App. 366.

A state cannot, without consent of congress, regulate or prohibit the sale in original packages of liquor shipped in from another state or foreign country. State v. Grier (Del. Gen. Sess. 1913) 88 A. 579.

The importation of cigarettes in original packages, being protected by the interstate commerce law, cigarettes so imported for the personal consumption of the importer do not become subject to state regulation on the termination of the transportation, nor while they are in the importer's possession for personal consumption. State v. Lowry (1906) 77 N. E. 728, 166 Ind. 372, 4 L. R. A. (N. S.) 528.

The importation of cigarettes in original packages for personal consumption is a transaction involving interstate commerce and is not within Acts Ind. 1905, c. 52, regulating and prohibiting the manufacture, sale, keeping for sale, owning, or giving away of cigarettes, etc. Id.

Where intoxicating liquors were shipped from another state to a pur-

chaser in Iowa, the fact that upon receipt thereof the purchaser drew the bungs of the barrels for the sole purpose of testing the liquors did not make such liquors a part of the general mass of property in Iowa, and so subject to its police regulations. Wind v. Iler (1895) 93 Iowa, 316, 61 N. W. 1001, 27 L. R. A. 219.

An "original package," within the constitutional provision respecting the regulation of commerce, is the identical package delivered by the importer to the carrier at the initial point of shipment, in the exact condition in which it was shipped. McGregor v. Cone (1908) 73 N. W. 1041, 104 Iowa, 465, 39 L. R. A. 484, 65 Am. St. Rep. 522.

Sugar in the state, shipped in packages, is not subject to license tax at destination out of the state, nor are the wines of California; and the same rule applies to other natural or manufactured articles, as well to the retail as to the wholesale trade. Henderson v. Ortte (1905) 38 So. 440, 114 La. 523.

The business of importing beer into the state and selling it therein in the original packages is interstate commerce; and hence cannot be taxed by the state. State v. Pabst Brewing Co. (1911) 55 So. 349, 128 La. 770.

Oleomargarine having become a proper subject of commerce among the states and with foreign nations, Code Md. art. 27, § 89 ("Oleomargarine Law"), is void, under the commerce clause of the constitution, wherein it attempts to prohibit the importation and sale, in original packages, of oleomargarine made in another state. Fox v. State (1899) 43 A. 775, 89 Md. 381, 73 Am. St. Rep. 193.

Code Pub. Gen. Laws Md. art. 27, § 89, as amended by Laws 1900, c. 496, prohibiting the sale of oleomargarine made in imitation of yellow butter, is void in so far as it is construed to prohibit having in possession and sale in the state of oleomargarine in the original package, made in another state. McAllister v. State (1902) 50 A. 1046, 94 Md. 290.

Under the laws of the United States, the importer of intoxicating liquors may himself sell them in the original packages, without regard to any state law. State v. Robinson (1862) 49 Me. 285.

Where plaintiff, engaged in the wholesale liquor business in Ohio, without any place of business in Michigan, except one where a few samples were kept, contracted in Michigan to sell defendant whisky to be shipped from Ohio to defendant in Michigan in the original packages, the transaction constituted interstate commerce, and not a sale of liquor within Comp. Laws Mich. 1897, §§ 4018, 5379, regulating sales of liquor within the state, and imposing a tax on the business of selling such liquors at wholesale. Sloman v. William D. C. Moebs Co. (1905) 102 N. W. 854, 139 Mich. 334, 11 Detroit Leg. N. 857.

Sales of dairy products, consisting of interstate shipments sold in the original unbroken packages, are governed by the acts of congress, and not by state laws, and hence are not subject to a city ordinance prohibiting the use in such products of formaldehyde or other foreign substances or preservatives. City of St. Louis v. Wortman (1908) 112 S. W. 520, 213 Mo. 131.

Const. Okl. (Bunn's Ed.) § 499, prohibiting the conveyance of intoxicating liquor from one place within the state to another therein, does not apply to an interstate shipment until delivery thereof. High v. State (1909) 101 P. 115, 2 Okl. Cr. 161, 28 L. R. A. (N. S.) 162.

Conveying intoxicating liquor from the railroad station to the home of the consignee is a part of the interstate transportation, where shipped from another state, and is not in violation of Const. Okl. (Bunn's Ed.) § 499, prohibiting the conveyance of intoxicating liquor from one place to another in the state. Id.

Under the interstate commerce clause, a resident of the state may order and receive intoxicating liquor from another state and convey the same in the original package from the depot to his home. High v. State (Okl. Cr. App. 1909) 101 P. 115; Moreland v. State (Okl. Cr. App. 1909) 101 P. 138; Hudson v. State (Okl. Cr. App. 1909) 101 P. 275.

Where defendant ordered liquor from Kentucky, and it was shipped into the state, and was being taken from the depot to his home when seized under the prohibitory law on a charge that defendant was unlawfully in possession thereof, the court should have directed a verdict of acquittal. Moreland v. State (Okl. Cr. App. 1909) 101 P. 138, 2 Okl. Cr. 237.

An interstate shipment of intoxicants for the personal use of the consignee and his family is protected, under the interstate commerce clause, from seizure until it has reached the home of the consignee by continuous conveyance. Hudson v. State (1909) 101 P. 275, 2 Okl. Cr. 176.

Ten-pound packages of oleomargarine, put up out of the state, and sent into it, by the manufacturer, to be there sold by his resident agent, from his store, by the package, are not "original packages," but being intended for sale to the consumer, and in fact so sold, are subject to the police regulation of the state. Commonwealth v. Paul (1895) 170 Pa. St. 284, 33 Atl. 82, 37 Wkly. Notes Cas. 137, 30 L. R. A. 396.

Since cigarettes are not legitimate articles of commerce, their sale in original packages, imported from another state, is not protected by the interstate commerce clause. Blaufeld v. State (1899) 53 S. W. 1090, 103 Tenn. 593.

The sale of liquors imported into this

country in accordance with the laws of the United States, while remaining in the original packages in which they were imported, is not prohibited by the laws of this state regulating the sale of intoxicating liquor. Jones v. Hard (1860) 32 Vt. 481.

Although the statutes relating the sale of intoxicating liquors covered sales in the original packages of importation, and therefore, under the decision in Leisy v. Hardin (1889) 135 U. S. 100, 10 Sup. Ct. 681, 34 L. Ed. 128, were in contravention of the commerce clause, yet this decision did not render them wholly null, and they were still valid as to all other sales. State v. Kibling (1891) 63 Vt. 636, 22 Atl. 613.

Beer imported into the state by a resident of the state can be lawfully sold in original packages, though the sale of beer is prohibited by the laws of the state. Yearteau v. Bacon (1893) 65 Vt. 516, 27 Atl. 198, applying Leisy v. Hardin (1890) 135 U. S. 100, 10 Sup. Ct. 681, 34 L. Ed. 128.

While an imported product remains unbroken in the original package, it is under the protection of the commerce clause. Peitz v. State (1887) 32 N. W. 763, 764, 68 Wis. 538.

A transaction by which merchandise is sold to a domestic corporation by a foreign corporation, and is consigned to the local agent of the foreign corporation to be inspected by the purchaser, and after inspection is delivered to the purchaser in the original packages, constitutes interstate commerce; and rights arising out of the same may be enforced by the foreign corporation, although it has not complied with Rev. St. Wis. 1898, § 1770b, requiring foreign corporations to file their articles with the secretary of state, etc. Greek-American Sponge Co. v. Richardson Drug Co. (1905) 102 N. W. 888, 124 Wis. 469, 109 Am. St. Rep. 961.

Defendant, a domestic corporation, agreed with the agent of plaintiff, a foreign corporation, to purchase a bale of sponges, subject to inspection. The agent had the sponges, together with other consignments, shipped to him at the city in which defendant conducted its business, and, on defendant's direction, inspected the bales by cutting the cords, examining the contents, and then putting all the sponges back, and refastening the bales as they were before they were opened. Thereupon a bale was delivered to defendant. Held, that the facts justified a finding that the sponges were shipped merely for purpose of inspection, and were delivered to defendant in the original package, and had not lost before their delivery their character as the subject of interstate commerce. Greek-American Sponge Co. v. Richardson Drug Co. (1905) 102 N. W. 888, 124 Wis. 469, 109 Am. St. Rep. 961.

Delivery to the purchaser of goods in another state is an inherent and essential part of the intercourse defined by the word "commerce," without consideration as to the manner or continuity of the transportation or the maintenance at the time of delivery of the same inclosure or package which characterized the commencement of the transportation. Loverin & Browne Co. v. Travis (Wis. 1908) 115 N. W. 829.

When retailers received canned goods at their place of business, removed the cans from the box in which they were shipped, and put the goods up for sale in the cans as they received them, they so dealt with the articles as to mingle them with the general property of the state before they were sold by them in their trade. McDermott v. State (Wis. 1910) 126 N. W. 888.

That articles are being sold in the original packages as transported after being commingled with property of the state on arrival at their destination by treating the same as other property for sale to customers at retail cannot prevent the state subjecting them to proper police regulation to protect the people. Id.

101. —— Single shipment containing numerous packages.—Paper packages of cigarettes, each 3 inches in length and 1½ inches in width, containing 10 cigarettes, without any shipping address on such packages, when they are taken from a loose pile of such packages at the factory by an express company, in a basket which it furnishes, in which it carries them, and from which it empties them on the counter a consignee in another state, do not constitute original packages of interstate commerce; but, if there is any original package in the shipment, it is the basket. Austin v. State of Tennessee (1900) 21 Sup. Ct. 132, 179 U. S. 343, 45 L. Ed. 224, affirming judgment (1898) 48 S. W. 305, 101 Tenn. 563, 50 L. R. A. 478, 70 Am. St. Rep. 703.

The tax imposed on cigarette selling by Code Iowa, § 5007, is not an invalid regulation of commerce as applied to sales at retail of packages of ten cigarettes in small pasteboard boxes, sealed and stamped with the revenue stamp, which had been shipped loose to the retailer from another state by an express company which merely issued a receipt in duplicate, showing the number of packages and the name of the consignee, the packages not being separately or otherwise addressed, since such a box can in no just sense be considered an original package. Cook v. Marshall County (1905) 25 Sup. Ct. 233, 234, 196 U. S. 261, 49 L. Ed. 471, affirming judgment (1903) 93 N. W. 372, 119 Iowa, 384, 104 Am. St. Rep. 238.

Where bottles of whisky, each sealed up in a paper wrapper and closely packed together in uncovered wooden

boxes furnished by an express company, and marked, "To be returned," are shipped from one state to another, the boxes, and not the bottles, constitute the "original packages," within the meaning of the decisions of the supreme court on the interstate commerce clause. In re Harmon (C. C. 1890) 43 Fed. 372.

The fact that the internal revenue department has recognized a package containing 10 cigarettes as an "original package," for the purpose of taxation, is not conclusive, as the repacking of such packages in additional coverings is optional with the manufacturer. McGregor v. Cone (1898) 73 N. W. 1041, 104 Iowa, 465, 39 L. R. A. 484, 65 Am. St. Rep. 522.

Where a company in another state ships to an agent only such goods as are ordered, placing several packages in a box, and the agent opens the boxes and delivers the packages to the customers in accordance with their previous orders, the particular packages involved being delivered in the form the company received them from the manufacturers, the whole transaction constitutes interstate commerce, and is not subject to the state pure food law as to misbranding packages; congress having provided regulations relating to the sale in unbroken packages of misbranded articles imported from another state by Act June 30, 1906 (Comp. St. § 8718). State v. Eckenrode (Iowa, 1910) 127 N. W. 56.

Where cigarettes are manufactured in a sister state and placed in paper boxes for convenience of transportation and sale, and such boxes are provided with a proper label, giving the name of the cigarettes, the caution notice, the number of the factory, the number of the revenue district, and the name of the state in which they are manufactured, and the proper internal revenue stamp, duly canceled, is pasted across the end of such package, so as to seal the same, in accordance with the requirements of the act of congress and the internal revenue laws governing the packing, shipment, and sale of cigarettes, such paper box must be regarded as an original package; and its character will not be changed by its being placed, with other boxes of the same kind, in a wooden box for shipment. State v. Goetze (1897) 43 W. Va. 495, 27 S. E. 225, 64 Am. St. Rep. 871.

102. —— Division of contents of package.—Each separate bottle shipped into the state by a manufacturer to a local dealer under a contract by the terms of which the agreed prices were per cask containing 10 dozen bottles, and per case containing 6 dozen bottles, cannot be considered an original package, so as to save the local sales from the interdiction of Laws Miss. 1908, c. 115, prohibiting sales of malt liquors. Purity Extract & Tonic Co. v. Lynch (1912) 33 Sup. Ct. 44, 226 U. S. 192, 57 L. Ed. 184.

A box containing whisky in bottles was shipped from Illinois to Iowa, and while in the latter state the box was opened by a resident of Iowa, who sold one of the bottles of whisky, contrary to the Iowa statute. For this he was convicted by a justice, and he applied to be released on habeas corpus, because his sale was protected under the interstate commerce clause of the national constitution. Held, that he should not be released, since the question whether the bottle or the box was the original package was sufficiently doubtful to make the proper remedy an appeal, rather than an application for habeas corpus. Allen v. Black (C. C. 1890) 43 Fed. 228.

Newspapers published outside the state, when exposed for separate sale within the state, are no longer original packages, but are subject to state regulation. State v. Delaye (Ala. 1915) 68 So. 993, L. R. A. 1915E, 640.

Where a representative of a principal residing in another state takes orders in the state on such principal for goods held in such other state, and who, when the goods are shipped, receives them in this state, breaks the original packages, and distributes them among customers from whom he obtains such orders, and on delivery receives from them the price of the goods, is engaged in interstate commerce. Stone v. State (1903) 43 S. E. 740, 117 Ga. 292.

Where goods are packed in a case by the shipper in another state, and are shipped into the state, the "original package" was the case in which the goods were packed and shipped into the state, and when the case was opened for the sale and delivery of the separate packages, and they were removed therefrom, such packages lost their distinctive character of articles of interstate transportation, and became a part of the taxable property of the state. Parks Bros. & Co. v. Nez Perce County (1907) 89 P. 949, 13 Idaho, 298.

Where small boxes, each containing 10 cigarettes, as made up for sale and stamped by the manufacturer, are packed in a wooden box before delivery to a carrier, and are thus shipped into the state, the wooden box and its contents constitute the original package; and a dealer who receives it, opens it, and sells therefrom a package of 10 cigarettes, is amenable to the state law prohibiting the traffic. McGregor v. Cone (1898) 73 N. W. 1041, 104 Iowa, 465, 39 L. R. A. 484, 65 Am. St. Rep. 522.

An article which is the subject of interstate commerce becomes subject to the police regulations of the state, on sale thereof by the importer, or when

the original package in which it was imported is broken, and the several parcels are so mingled with other property, or so exposed for sale, as to destroy the identity of the package in which it was imported. Id.

The vendor of unbroken packages made up in one package by the manufacturer in another state, received by the consignee of the manufacturer in package, and delivered to the customer here in package, without its ever having become a part of the mass of the property in the state, is not liable for a peddler's license. Henderson v. Ortte (1905) 38 So. 440, 114 La. 523.

Imported foreign liquors are liable to seizure and forfeiture, under Rev. St. Me. c. 27, while the importer retains possession thereof in the original package, but for the purpose, and with the intent, to break it, and sell them in this state in quantities less than a package. State v. Blackwell (1876) 65 Me. 556.

Where original packages containing dairy products, consisting of interstate shipments, are broken, and the products are sold in different packages from those in which they were shipped into the state, the transactions are changed from interstate to intrastate commerce, and become subject to state laws. City of St. Louis v. Wortman (1908) 112 S. W. 520, 213 Mo. 131.

The laws of congress controlling interstate commerce can have effect upon property only during the time it retains its distinctive interstate quality of commerce, and when such property is shipped to and enters the body of the property of the state, the original packages being broken and the contents offered and sold to retailers or consumers, its interstate quality is lost and it ceases to be subject to congressional control. Ex parte Agnew (1911) 131 N. W. 817, 89 Neb. 306, 35 L. R. A. (N. S.) 836, Ann. Cas. 1912C, 676.

An original package as governed by the interstate commerce law is one delivered by the importer to the carrier at the initial point of shipment, and retains its form and contents until received by the consignee in the same condition as when shipped, and if upon arriving at its destination in a sister state the package is broken, and its contents in smaller units offered for sale, entering into the retail commerce of the state the distinctive quality of interstate commerce is lost, and the goods become at once subject to state laws. Id.

A state cannot impose a duty upon articles which have been imported for sale, until the importer has either sold them, or divided them into smaller quantities by breaking up the casks, packages, etc., so as to destroy the character of import which subjected them to duties under the laws of the United States. People v. Maring (1867) 42 N. Y. (3 Keyes) 374.

Where a 10-pound package of oleomargarine is brought from another state into Pennsylvania, and there broken, the contents become a part of the common mass of property within the state, and subject to its laws, and a sale of two pounds therefrom is not protected as a sale by the original package. Commonwealth v. Paul (1892) 148 Pa. St. 559, 24 Atl. 78.

Where one, purporting to act as agent of a nonresident principal, sells goods by sample to residents of the state, and forwards his orders to a branch house outside the state, though there is a branch house within the state, and the bill for the goods shows they were consigned and charged to the agent individually, without reference to the purchasers, and on receipt of the original package the agent breaks it and delivers the articles to the different purchasers, the transaction does not constitute interstate commerce, so as to exempt the agent from paying a privilege tax and obtaining a license as required by the laws of the state. Kimmell v. State (1900) 56 S. W. 854, 104 Tenn. 184.

A person sold articles manufactured outside of the state, by sample. He sent an order in his own name, without giving the name of any customer, to one of the manufacturer's distributing agents in the state; and the articles were shipped to him in one box, which he opened, delivering the articles indiscriminately to those who had agreed to purchase. None of the articles were ordered or shipped for any particular purchaser. Held, that such person was not engaged in interstate commerce, and not protected from state taxation on such business. Croy v. Epperson (1900) 58 S. W. 235, 104 Tenn. 525, 51 L. R. A. 254.

An agent, acting for a nonresident principal, who sells articles by sample, and orders such articles in his own name, and has them shipped to him in one box, which he opens, and delivers the articles to the purchasers, indiscriminately, is not protected by the commerce clause of the federal constitution from taxation by the state, since the sales were not of original packages, but of distinct parts of an original package after it had been broken, and such articles had become parts of the general property within the state. Id.

As soon as a package is broken up for use or for retail in the hands of the importer it is under state regulation. Peitz v. State (1887) 32 N. W. 763, 764, 68 Wis. 538.

An agent to solicit orders for a principal in another state, after securing several orders, made out an order sheet addressed to his principal, directing it to ship to him the goods therein specified, and on the sheet he stated the various parcels that he had sold to different individuals, each order being referred to by a number, but not giving the purchaser's name. The goods were wrapped up by the principal in the amounts of each specification designated by the number of the order on each parcel,

but not with the purchaser's name, and all of the parcels were then shipped in a larger package to the agent. On receipt of the larger package the agent opened the same and delivered the individual parcels to the respective purchasers. Held, that the act of delivery was a part of the interstate commerce consisting of the whole transaction. Loverin & Browne Co. v. Travis (Wis. 1908) 115 N. W. 829.

103. —— Goods in transit or storage. —Goods moving in interstate commerce cease to be such commerce only after delivery and sale in the original package. Heymann v. Southern Ry. Co. (1906) 27 Sup. Ct. 104, 107, 203 U. S. 270, 51 L. Ed. 178, 7 Ann. Cas. 1130.

Intoxicating liquors shipped C. O. D. from one state into another cannot be subjected to seizure, under the laws of the latter state, while in the hands of the express company, without infringing the commerce clause of the federal constitution. American Express Co. v. Iowa (1904) 25 Sup. Ct. 182, 183, 196 U. S. 133, 49 L. Ed. 417 (reversing judgment State v. American Express Co. [1902] 92 N. W. 66, 118 Iowa, 447); Adams Express Co. v. Same (1904) 25 Sup. Ct. 185, 196 U. S. 147, 49 L. Ed. 424 (reversing judgment State v. Adams Express Co. [1903] 95 N. W. 1129).

Congress could lawfully enact the provisions of Food and Drugs Act June 30, 1906, c. 3915, § 10, under which adulterated articles of food, the subjects of interstate commerce, may be confiscated by a proceeding in rem in the Federal courts after they have reached their destination and there remain in the hands of the consignee in the original unbroken packages. Hipolite Egg Co. v. U. S. (1911) 31 Sup. Ct. 364, 366, 220 U. S. 45, 55 L. Ed. 364.

A constructive delivery of goods by a carrier to a buyer can be effected only by an agreement between the carrier or middleman and the buyer, whereby the former agrees to hold the goods for the latter for some purpose other than that of carriage to and delivery at their original destination; and, in the absence of an agreement with the buyer to the contrary, the carrier will be presumed to hold in its original capacity, and the carrier cannot constitute itself the buyer's agent for the custody of the goods, nor can the buyer, without the carrier's consent, make it his agent for custody. State v. Intoxicating Liquors (1908) 72 A. 331, 104 Me. 502.

The obligation of the carrier to carry the goods to their destination and there deliver them to the consignee can be terminated only by actual or constructive delivery, or by a new contract with the consignee in place of the contract of carriage. That intoxicating liquors shipped from without the state were retained by the carrier without actual delivery for 24 days, and that the consignees were represented by fictitious names and were to the carrier unknown, is insufficient to establish constructive delivery by the carrier to the consignees, so as to end the interstate transit and render the liquor subject to seizure. Id.

Respondent, having been advised by an express company that it held an interstate shipment of intoxicating liquors addressed to him, paid the express charges and signed a receipt therefor, but told the company to keep the package until he found out whether it was his. Seven hours later the package was seized under search and seizure process while in the company's office. Held that, at the time of seizure, there had been no constructive delivery to respondent, and that the liquors were still in interstate commerce, and hence not subject to search and seizure on state process. State v. Parshley (1911) 81 A. 484, 108 Me. 410.

Under the interstate commerce clause, a resident may order and receive intoxicants from another state, and convey the same in the original package from the depot to his home. McCord v. State (Okl. Cr. App. 1909) 101 P. 280.

The prohibition law (Sess. Laws Okl. 1908, c. 69, art. 3, § 1), making it unlawful to have possession of intoxicating liquor with the intention of violating any provisions of the act, has no application to an interstate shipment until delivery at its destination. Id.

Conveying intoxicating liquor from the railroad station to the home of the consignee is a part of the interstate transportation, where shipped from another state, and is not a violation of the prohibition law (Sess. Laws Okl. 1908, c. 69). Id.

An interstate shipment of intoxicating liquor is protected, by the interstate commerce clause, until delivery to the consignee, and the taking of such a shipment from the depot by a drayman, and placing it on his dray for delivery to the consignee, is part of the interstate transportation. McCord v. State (1909) 101 P. 280, 2 Okl. Cr. 214.

104. —— Effect of Wilson act.—See, also, notes under Comp. St. § 8738.

The decisions of the supreme court of the United States that the state prohibitory laws were not operative on liquors imported and sold in the original packages did not have the effect to annul those laws, and hence their reenactment was not necessary in order to make them immediately operative upon such liquors after the passage of the Wilson bill (Comp. St. § 8738). In re Rahrer (1891) 140 U. S. 545, 11 Sup. Ct. 865, 35 L. Ed. 572 (reversing [C. C. 1890] 43 Fed. 556); Commonwealth v. Calhane (1891) 154 Mass. 115, 27 N. E. 881; State v. Lord (1891) 66 N. H. 479, 29 Atl. 556.

Act Aug. 1890 (Comp. St. § 8738), providing that intoxicating liquors transported into any state or territory

or remaining therein for use, consumption, sale, or storage, shall, on arrival, be subject to the laws of such state or territory merely subjects liquors brought into a state to the police power thereof while still in the original packages, and gives the state no authority to punish persons who bring liquors into a port of a state without attempting to unload them. Ex parte Jervey (C. C. 1895) 66 Fed. 957; Jervey v. The Carolina (D. C. 1895) Id. 1013.

Since the enactment of Act Aug. 8, 1890 (Comp. St. § 8738), a state may lawfully prohibit or regulate the sale of liquors brought from another state, even while in the original package. Vance v. W. A. Vandercook Co. (1898) 18 Sup. Ct. 674, 170 U. S. 438, 42 L. Ed. 1100, reversing judgment in part and affirming judgment in part W. A. Vandercook Co. v. Vance (C. C. 1897) 80 Fed. 786.

A license tax imposed under municipal ordinance upon those engaged in selling beer in the city by the barrel, half barrel, or quarter barrel must be regarded, even when applied to interstate transactions in the original packages, as an exercise of the police power permitted by Wilson Act Aug. 8, 1890 (Comp. St. § 8738), subjecting intoxicating liquors arriving in a state to the laws of such state enacted in the exercise of its police powers, although the city may derive more or less revenue from the ordinance in question. Phillips v. City of Mobile (1908) 28 Sup. Ct. 370, 208 U. S. 472, 52 L. Ed. 578, affirming judgment City of Mobile v. Phillips (1906) 40 So. 826, 146 Ala. 138; Richard v. Same (1908) 28 Sup. Ct. 372, 208 U. S. 480, 52 L. Ed. 581.

A sale in original package of intoxicating liquors from foreign countries held subject to a state license tax under Wilson Act Aug. 8, 1890 (Comp. St. § 8738). Frederick DeBary & Co. v. State of Louisiana (1913) 33 Sup. Ct. 239, 227 U. S. 108, 57 L. Ed. 441, affirming judgment State v. Frederick De Bary & Co. (1912) 58 So. 892, 130 La. 1090.

Delivery in Pennsylvania of liquors in interstate commerce on sales made in the state may not be punished under Act Pa. May 13, 1887 (P. L. 113), forbidding sale of liquors without license, though Wilson Act Aug. 8, 1890 (Comp. St. § 8738), subjects liquors on their arrival in the state to the operation of its laws, as though produced in the state. Rossi v. Commonwealth of Pennsylvania (1915) 35 Sup. Ct. 677, 238 U. S. 62, 59 L. Ed. 1201, reversing judgment Commonwealth v. Rossi (1913) 53 Pa. Super. Ct. 210.

The purpose of Wilson Act Aug. 8, 1890 (Comp. St. § 8738), was to place liquors which have been transported into a state as subjects of interstate commerce, on their arrival therein, on an exact equality, so far as relates to the right to sell the same, with liquors manufactured in the state; and to that extent only did congress, by such act, give its consent that the state might, in the exercise of its police powers, impose regulations and restrictions upon the sale of such liquors in the original packages. Minneapolis Brewing Co. v. McGillivray (C. C. 1900) 104 Fed. 258.

Under Act Aug. 8, 1890 (Comp. St. § 8738), known as the Wilson law, which provides that intoxicating liquors transported into any state or territory, and remaining there for use, sale, or storage, shall on arrival be subject to the operation and effect of local laws enacted in the exercise of the state's police powers the question whether Act Mo. April 17, 1901, imposing a tax on liquors imported for sale into the state, violates Const. art. 1, § 10 prohibiting any state from laying imposts or duties on imports, or section 8, giving congress the power to regulate interstate commerce, cannot arise. State v. Bengsch (1902) 170 Mo. 81, 70 S. W. 710.

The Wilson law (Comp. St. § 8738) is not a delegation, but an exercise, of the power of congress to regulate commerce between the states, and it subjects intoxicating liquors from other states in the original packages to the laws of the state enacted before its passage. State v. Fraser (1891) 1 N. D. 425, 48 N. W. 343.

Defendant purchased whisky in North Carolina, and while transporting it from the place of purchase to his home, after entering South Carolina, was arrested for a violation of the state law, and the whisky seized. The liquor was for his personal use, was being conveyed by him in his buggy, and nothing had been done to break the continuity of the transportation from the place of purchase to his home. The Wilson act (Comp. St. § 8738), provides that all liquors transported into any state, or remaining there for use, consumption, or sale therein, shall on arrival in such state be subject to the laws of such state enacted in the exercise of its police powers. Held, that the whisky had not at the time of its seizure "arrived," within the meaning of the Wilson act, but was in course of transportation, and was not subject to seizure under the state laws. State v. Holleyman (1899) 33 S. E. 366, 55 S. C. 207, 45 L. R. A. 567.

105. Trade-marks.—See, also, notes, ante, as to "Powers and Rights Remaining in the States."

R. S. tit. 60 c. 2 (Comp. St. tit. 60, c. 2), relating to trade-marks, was not authorized by this clause. In re Trade-Mark Cases (1879) 100 U. S. 82, 96, 25 L. Ed. 550.

That legislation of congress in regard to trade-marks was not limited to their use in "commerce with foreign nations, and among the several states, and with the Indian tribes," but embraces all

commerce, including that between citizens of the same state. U. S. v. Steffens (1879) 100 U. S. 82, 25 L. Ed. 550.

If an act of congress can in any case be extended as a regulation of commerce to trade-marks, it must be limited to their use in "commerce with foreign nations and among the several states, and with the Indian tribes," and cannot be made applicable to commerce between citizens of the same state. In re Trade-Mark Cases (1879) 100 U. S. 82, 25 L. Ed. 550.

Act 1876, §§ 4, 5, prohibiting the infringement of trade-marks, and declaring that any person who, with intent to defraud, shall make or counterfeit any trade-mark, shall be subject to punishment, was unconstitutional, since a trade-mark is not an invention, discovery, or writing within Const. art. 1, § 8, cl. 8, giving congress power to secure exclusive rights of authors and inventors to their respective writings or discoveries, nor is such legislation within the clause of the constitution giving congress the right to regulate commerce between the states, with foreign nations, and Indian tribes. U. S. v. Steffens (1879) 100 U. S. 82, 25 L. Ed. 550.

The remedies afforded by Act March 3, 1881, c. 138, § 7, 21 Stat. 502, in case of the "wrongful use" of a trade-mark registered under that act as used in commerce with foreign nations or with the Indian tribes, are only available when the infringement of such trade-mark consists in the use of a counterfeit or imitation on goods intended for such commerce. Warner v. Searle & Hereth Co. (1903) 24 Sup. Ct. 79, 191 U. S. 195, 48 L. Ed. 145, affirming decree Searle & Hereth Co. v. Warner (1902) 112 Fed. 674, 50 C. C. A. 321.

Congress had power under the commerce clause to enact the trade-mark laws (Act March 3, 1881, c. 138, 21 Stat. 502; Act Aug. 5, 1882, c. 393, 22 Stat. 298; and Act Feb. 20, 1905 [Comp. St. § 9485 et seq.]), especially as a "trade-mark" is a distinctive mark of authenticity through which the products of particular manufacturers or the vendible commodities of particular merchants may be distinguished from those of others. Rossmann v. Garnier (1914) 211 Fed. 401, 128 C. C. A. 73.

The provision of Comp. St. § 9490, that nothing therein shall prevent the registration of any mark used by the applicant or his predecessor or by those from whom title to the mark is derived in interstate or foreign commerce or commerce with Indian tribes which was in actual or exclusive use as a trade-mark of the applicant or his predecessor for ten years next preceding the passage of that act, is not unconstitutional. Id.

The legislation by congress upon the subject of trade-marks cannot be sustained under the power to legislate in favor of authors and inventors, nor under the power to regulate commerce, and the act of July 8, 1870, on this subject, is unconstitutional. Leidersdorf v. Flint (C. C. 1878) Fed. Cas. No. 8,219.

The decision of the supreme court of the United States, holding the trade-mark legislation of congress to be unconstitutional and void, does not affect the validity or impair the force of a decree enjoining the use by defendant of a certain label or trade-mark; it appearing that the injunction suit wherein said decree was rendered was not a statutory but a common-law proceeding. U. S. v. Roche (C. C. 1879) Fed. Cas. No. 16,180.

In 1870 congress passed a statute providing for the registration of trade-marks, and in 1876 a statute imposing penalties for trespass upon the rights obtained by such registry. The statute of 1870 having been declared unconstitutional, in 1881 a valid statute was enacted, touching the same subject, which did not re-enact the penal statute of 1876, and made no reference thereto. Held, that the penal statute fell with that of 1870, and did not remain suspended, to become operative under the statute of 1881. U. S. v. Koch (C. C. 1889) 40 Fed. 250, 5 L. R. A. 130.

The legislation embodied in R. S. §§ 4937–4947, and Act Aug. 1876, c. 274, relating to trade-marks, is unconstitutional, because not limited to trade-marks used in foreign or interstate commerce or in commerce with Indian tribes. Hennessy v. Braunschweiger & Co. (C. C. 1898) 89 Fed. 664, 666.

The trade-mark acts of 1881 and 1882 are valid. Id.

Congress has power to provide for trade-marks used in interstate and foreign commerce and in commerce with Indian tribes, and this power has been exercised by the enactment of Act March 3, 1881. Brennan v. Emery-Bird-Thayer Dry Goods Co. (C. C. 1900) 99 Fed. 971, 973.

Property in trade-marks may be made the subject of legislation by the states; the power of congress to regulate such subject being derived from the interstate commerce clause. Louis Bergdoll Brewing Co. v. Bergdoll Brewing Co. (D. C. 1914) 218 Fed. 131.

Authority of congress over trade-marks is limited to interstate commerce transactions. Id.

Congress has no power to declare what are, or what are not, lawful trade-marks, or to say that any alleged marks can be appropriated without a prior use. In re A. G. Spalding & Bros. (1906) 27 App. D. C. 314.

The act of congress assuming to confer exclusive jurisdiction upon the federal courts in trade-mark cases has been pronounced unconstitutional. Smail v. Sanders (1889) 20 N. E. 296, 118 Ind. 105.

No rights are acquired by the filing of a label in the United States Patent Office, as against any person doing

business in the same state, since congress has no power to legislate with respect to trade-marks so far as concerns commerce within the boundaries of a state. Perlberg v. Smith (1905) 62 A. 442, 70 N. J. Eq. 638.

Regulation of trade-marks held to find its authority under the commerce clause. Oneida Community v. Oneida Game Trap Co. (Sup. 1915) 154 N. Y. S. 391, affirming judgment (1914) 150 N. Y. S. 918.

106. Occupations in general.—A live stock commission merchant, whose place of business is at a certain stock yards in a city, and who there buys and sells stock for others, is not engaged in interstate commerce, within the meaning of the anti-trust statute, although the stock may have been shipped from another state or territory, consigned to him for sale, and may be sold for shipment to another state or a foreign country. Nor is the nature of his business affected in that regard by the fact that he pays drafts drawn against consignments of stock to him for sale, nor because he may have previously loaned money to aid in the preparation of the stock for market, and taken a mortgage thereon, the amount of which he deducts from the proceeds of the sale. Hopkins v. U. S. (1898) 19 Sup. Ct. 40, 171 U. S. 578, 43 L. Ed. 290, reversing order U. S. v. Hopkins (C. C. 1897) 82 Fed. 529.

Interstate commerce is not unconstitutionally regulated by the requirement of Laws N. Y. 1910, c. 348, that a license from the comptroller be obtained by individuals or partnerships desiring to engage in the business of private banking, as applied to one whose business chiefly consists in receiving deposits in very small sums from time to time until they reach an amount sufficient to be sent to other states and foreign countries. Engel v. O'Malley (1911) 31 Sup. Ct. 190, 219 U. S. 128, 55 L. Ed. 128, affirming decree (C. C. 1910) 182 Fed. 365.

Where vaudeville performers were booked under contracts requiring them to go from state to state, business of theater owners and their booking agents held in part interstate commerce. H. B. Marienelli, Limited, v. United Booking Offices of America (D. C. 1914) 227 Fed. 165.

Act Ala. Feb. 26, 1889 (Acts 1888–89, p. 45), prohibiting the selling of any pool, or the doing of any act whereby money may be won or lost on a horse race or other contest not occurring in the state, and forbidding any person in the state to act as agent in placing outside the state any pool or other device or wager, or to do anything in the state to aid any person in entering into any transaction whereby he may win or lose money on a horse race or other contest outside the state, is not an interference with interstate commerce. State v. Stripling (1897) 21 So. 409, 113 Ala. 120, 36 L. R. A. 81.

The lending of money by a foreign corporation does not constitute interstate commerce. Padgett v. Gulfport Fertilizer Co. (1914) 66 So. 866, 11 Ala. App. 366.

The interstate commerce clause held not to prohibit state or political subdivision from imposing reasonable occupation tax on business of putting up or erecting lightning rods, though the rods were sold by the person taxed as agent for a nonresident manufacturer and shipped from the foreign state directly to the purchaser. Browning v. City of Waycross (Ga. App. 1912) 74 S. E. 564.

Crimes Act N. J. 1898 (P. L. p. 812) § 65, punishing the keeping of a resort for gamblers whose wagers are made by means of telegraphic communications with persons outside of the state, is not in conflict with the interstate commerce clause, though the section may incidentally prevent interstate wagers by telegraph. Ames v. Kirby (1904) 59 A. 558, 71 N. J. Law, 442.

The business of hiring laborers and soliciting emigrants is not "an article of commerce," within the commerce clause, so that requiring an emigrant agent to obtain a license is in violation of such provision. State v. Napier (1902) 41 S. E. 13, 63 S. C. 60.

107. Insurance.—The business of insurance, as conducted by insurance companies organized under the laws of other states, is not interstate commerce. Paul v. Virginia (1868) 75 U. S. (8 Wall.) 168, 19 L. Ed. 357; State v. Phipps (1893) 50 Kan. 609, 31 Pac. 1097, 34 Am. St. Rep. 152, 18 L. R. A. 657.

A state statute enacting that no insurance company not incorporated under the laws of the state shall carry on its business within the state without previously obtaining a license for that purpose, by depositing bonds with the state treasurer, according to its capital, is not in conflict with that clause of the United States constitution which declares that congress shall have power to regulate commerce with foreign nations and among the several states, since the issuing of a policy of insurance is not a transaction of commerce, within the meaning of the clause, even though the parties be domiciled in different states, but is a simple contract of indemnity against loss. Paul v. Virginia (1868) 75 U. S. (8 Wall.) 168, 19 L. Ed. 357.

The business of marine insurance, like other insurance business, is not commerce, or an instrumentality thereof, but merely an incident, and therefore the constitutional provision as to interstate commerce does not prevent a state from prescribing conditions on which a foreign insurance company may do business in the state, or from enforcing such conditions. Hooper v.

California (1895) 15 Sup. Ct. 207, 209, 155 U. S. 648, 39 L. Ed. 297.

Pen. Code Cal. § 439, declaring "every person who in this state procures or agrees to procure any insurance for a resident of this state" from a foreign insurance company which has not complied with the insurance laws of the state guilty of a misdemeanor, does not attempt to prevent the procurement outside of the state of insurance. Id.

The business of life insurance is not commerce, and therefore a state statute regulating contracts of life insurance made between residents of the state and corporations of other states is not invalid as a regulation of interstate commerce. New York Life Ins. Co. v. Cravens (1900) 20 Sup. Ct. 962, 178 U. S. 389, 44 L. Ed. 1116, affirming judgment Cravens v. New York Life Ins. Co. (1899) 50 S. W. 519, 148 Mo. 583, 71 Am. St. Rep. 628.

The interstate character of a contract of life insurance made by a resident of one state with a corporation of another state does not give it immunity from the control of the state in which the insured resides and in which the corporation does business. Id.

Insurance is not commerce, and a foreign life insurance company may therefore be subjected to the annual tax imposed under Rev. Codes Mont. 1907, § 4073, upon the basis of the excess of premiums received over losses and expenses incurred within the state during the previous year, although its manner of business is such that all risks are accepted, and contracts made, modified, and discharged at its home office, and the premiums are transmitted to such office, and all advances and loans to policy holders are consummated there. New York Life Ins. Co. v. Deer Lodge County (1913) 34 Sup. Ct. 167, 231 U. S. 495, 58 L. Ed. 332, affirming judgment (1911) 115 P. 911, 43 Mont. 243.

The issuing of a policy of life insurance is not "commerce," within the interstate commerce clause. Berry v. Mobile Life Ins. Co. (C. C. 1878) Fed. Cas. No. 1,358.

The statutes requiring foreign insurance companies only to take out licenses for their agents as a condition to doing business in the state do not violate this clause; insurance not being commerce. Commonwealth v. Gregory (1905) 89 S. W. 168, 28 Ky. Law Rep. 217, 407.

The business of life insurance conducted in the state by a foreign corporation under a certificate of authority from the state, collecting premiums and paying losses on policies and making loans to policy holders on the security of their policies, is not "commerce." New York Life Ins. Co. v. Deer Lodge County (1911) 115 P. 911, 43 Mont. 243.

The business of insurance is not interstate commerce, entitled to the protection and coming within the provision of the interstate clause. State v. Insurance Co. of North America (1906) 106 N. W. 767, 71 Neb. 320.

The state may regulate the business of insurance, even going so far as to designate the competency of the parties to engage in the business, to prohibit agencies therefor, and to impose a payment of a tax as a condition to the establishment of such agencies. Fire Department v. Noble (N. Y. 1854) 3 E. D. Smith, 440; Same v. Wright (N. Y. 1854) Id. 453.

The business of insurance is not commerce, so as to limit the power of the state to impose conditions upon which a foreign insurance company may transact business in the state. Fisher v. Traders' Mut. Life Ins. Co. (1904) 48 S. E. 667, 136 N. C. 217.

St. Wis. 1913, c. 51, § 51.32, is not unconstitutional as attempting to regulate interstate commerce, the license tax being imposed on life insurance business, which is not interstate commerce, and not on the incidental business of loaning and investing money. Northwestern Mut. Life Ins. Co. v. State (Wis. 1915) 155 N. W. 609.

108. Foreign corporations.—A contract under which a foreign corporation was to superintend the operation of a factory within the state, and control, handle, and sell its output, is not relieved from the operations of Rev. St. Wis. 1898, §§ 1770b, 4978, prohibiting foreign corporations from transacting business within the state until they have filed a copy of their charter with the secretary of state, because the contemplated traffic in the product might extend beyond the limits of the state. Diamond Glue Co. v. United States Glue Co. (1903) 23 Sup. Ct. 206, 208, 187 U. S. 611, 47 L. Ed. 328.

Interstate commerce is unconstitutionally regulated by the provisions of Gen. St. Kan. 1901, § 1283, under which the filing of a statement of financial condition is made a prerequisite to the right of a foreign corporation engaged in imparting instruction by correspondence to do business in the state, where such business involves the solicitation of students in Kansas by local agents, who are also to collect and forward to the home office the tuition fees, and the systematic intercourse by correspondence between the company and its students and agents, wherever situated, and the transportation of the needful books, apparatus, and papers. International Text-Book Co. v. Pigg (1910) 30 Sup. Ct. 481, 485, 217 U. S. 91, 54 L. Ed. 678, 27 L. R. A. (N. S.) 493, 18 Ann. Cas. 1103, reversing judgment (1907) 91 P. 74, 76 Kan. 328.

Commerce is conducted among the states, within the meaning of the federal constitution, by a corporation engaged in imparting instruction by correspondence, whose business involves

the solicitation of students in other states by local agents, who are also to collect and forward to the home office the tuition fees, and the systematic intercourse between the corporation and its scholars and agents, wherever situated, and the transportation of the needful books, apparatus, and papers. Id.

Every corporation empowered by the state of its creation to engage in interstate commerce may carry on that commerce in sound articles of commerce in every other state in the Union, and every prohibition or burden which another state attempts to impose on such business is unconstitutional. Butler Bros. Shoe Co. v. United States Rubber Co. (1907) 156 Fed. 1, 84 C. C. A. 167, writ of certiorari denied (1908) 29 Sup. Ct. 686, 212 U. S. 577, 53 L. Ed. 658.

Every corporation which is in the employ of the United States has the right to exercise the necessary corporate powers and to transact the requisite business to discharge the duties of that employment in every other state in the Union without let or hinderance. Id.

Defendant construction company having been awarded a contract for the building of a sewer in J., Wis., contracted with defendant pipe company, a West Virginia corporation, having its central office in Michigan, whereby the pipe company was to manufacture concrete sewer pipe, furnishing the superintendent, also all the forms, steel reinforcements, saddle, etc., the construction company furnishing the cement and gravel and the labor necessary to make the pipe on the ground where it was to be used. The pipe company's forms, derrick, and saddle, together with the reinforcing material, was shipped to J. from outside the state. Held, that the contract was not a transaction of interstate commerce, and, the pipe company never having complied with the Wisconsin law regulating the transaction of business in that state by foreign corporations, the contract was void and unenforceable for the benefit of the company or its assignee, under St. Wis. 1913, § 1770b, providing that every contract made by or on behalf of any such corporation affecting its personal liability, or relating to property within the state before it has complied with the requirements prescribed for doing business within the state, shall be wholly void on its behalf and on behalf of its assigns. Loomis v. People's Const. Co. (1914) 211 Fed. 453, 128 C. C. A. 125.

Congress, having incorporated a railroad company to engage in interstate commerce, and to serve the United States in the transportation of troops and munitions of war, a state in which the railroad was located could not announce conditions for noncompliance with which the corporation would be excluded from its borders, and hence Const. La., as amended (see Act No. 10 of Ex. Sess. 1907), providing for the exclusion of federal and foreign corporations that should take advantage of their right to institute suits in or remove the same to the federal courts, was invalid as to such railroad company. Mercantile Trust Co. v. Texas & P. Ry. Co. (C. C. 1908) 216 Fed. 225.

The provisions of the state statutes and constitution, regulating foreign corporations doing business in the state, relate only to intrastate business, as if extended to interstate business, they would violate the commerce clause. Fifth Ave. Library Society v. Rhodes (Ala. 1915) 69 So. 918.

The statute providing that no foreign corporation shall prosecute a suit until it has complied with the law does not apply to a foreign corporation engaged solely in interstate commerce, and it may sue without complying with the law. Herman Bros. Co. v. Nasiacos (1909) 103 P. 301, 46 Colo. 208.

Transactions, wherein a note for goods bought is given to a foreign corporation, which is engaged solely in interstate traffic, and which does not maintain an office or place of business in the state, the goods being prepared out of the state and shipped to a customer in the state, held interstate commerce. Circular Advertising Co. v. American Mercantile Co. (Fla. 1913) 63 So. 3.

Interstate commerce transactions are not subject to Acts Fla. 1907, c. 5717, requiring foreign corporations to file certain statements and pay certain fees before transacting business in the state, and making void contracts made without complying with the statute. Id.

Acts Fla. 1907, c. 5717, requiring foreign corporations to file certain statements and pay certain fees before transacting business in the state, and making void contracts made without complying therewith, does not apply to interstate transactions, but is designed solely as a regulation of intrastate transactions by foreign corporations. Id.

Statutes regulating foreign corporations doing business in Illinois must be so construed and enforced as not to interfere with interstate commerce. Lehigh Portland Cement Co. v. McLean (1909) 149 Ill. App. 360, judgment affirmed (1910) 92 N. E. 248; Hill Lumber Co. v. Same (1909) 149 Ill. App. 368.

The right of free intercourse and trade between the states extends to corporations. Lehigh Portland Cement Co. v. McLean (1910) 92 N. E. 248, 245 Ill. 326, 137 Am. St. Rep. 322.

Act Ill. May 18, 1905 (Laws 1905, p. 127), § 6, prohibiting foreign corporations, not complying with the act, from suing in the courts of the state, does not apply to foreign corporations engaged in interstate commerce. American Art Works v. Chicago Picture

Frame Works (1914) 106 N. E. 440, 264 Ill. 610, affirming judgment (1914) 184 Ill. App. 502.

Ky. St. § 571, declaring it to be unlawful for any corporation to carry on business in the state without having filed with the secretary of state a statement designating its office in this state, and its agent thereat, upon whom process may be served, is not a regulation of interstate commerce in its application to a press-dispatch company. Associated Press v. Commonwealth (1901) 60 S. W. 295, 523, 22 Ky. Law Rep. 1229; Id. (1901) 60 S. W. 867, 22 Ky. Law Rep. 1369.

The question whether the business in which a foreign corporation is engaged within the state is interstate commerce is one of fact to be determined by the proper tribunal. Commonwealth v. Read Phosphate Co. (1902) 67 S. W. 45, 113 Ky. 32, 23 Ky. Law Rep. 2284.

Laws Miss. 1908, c. 122, attempting to penalize a foreign corporation engaged in interstate and intrastate commerce, by prohibiting it from doing an intrastate business, for exercise of its right, guaranteed by the federal constitution, to remove a suit from a state court to a federal court, is not within the power of the state. Louisville & N. R. Co. v. State (Miss. 1914) 65 So. 881.

The business of a Pennsylvania correspondence school is carried on in New York by agencies in various parts of the state to solicit persons to contract with it for instruction. It has different division offices, each in charge of the corporation's district superintendent having under him a corps of the corporation's representatives. The expenses of the offices are paid by the corporation, and the payments made by subscribers are collected by the superintendents, deposited in special accounts in their own names in the cities where the offices are situated, and are from time to time sent to the corporation. The corporation sells text-books, drawings, and other outfits in the state, and each of its superintendents and representatives is required to be qualified to give instruction to its students, and assistance therein is given at the division offices to such students as desire it. Held, that its business in the state is not interstate commerce. International Text-Book Co. v. Connelly (1910) 124 N. Y. S. 603, 67 Misc. Rep. 49, judgment affirmed (Co. Ct. 1910) 125 N. Y. S. 1125.

Where a foreign corporation sent its agent into Montana to buy or solicit the consignment of wool to its warehouses in other states, the business thus conducted was interstate commerce. MacNaughton Co. v. McGirl (1897) 49 P. 651, 20 Mont. 124, 38 L. R. A. 367, 63 Am. St. Rep. 610.

The interstate commerce clause applies as well where the commerce is carried on by corporations as when carried on by natural persons. Id.

The business of a foreign corporation conducting a correspondence school, by soliciting students in Missouri by local agents who collect and forward tuition fees, and by intercourse by correspondence between the corporation and its students and agents, and by the transportation of needful books, papers, and apparatus, is exclusively interstate business, governed by the federal constitution and laws, and Rev. St. Mo. 1899, §§ 1024–1026 (Ann. St. 1906, pp. 886–890), requiring a foreign corporation to obtain a certificate to do business in the state, etc., are void so far as they apply to it. International Text-Book Co. v. Gillespie (Mo. 1910) 129 S. W. 922.

Where the local agent of a foreign corporation negotiates a contract to build a boat for a resident of the state, the contract being subject to acceptance by the corporation, and the boat to be built at the home of the corporation, the transaction is interstate commerce, and the state statutes requiring foreign corporations doing business in the state to do certain things as a condition precedent to doing business in the state are inapplicable. Koenig v. Truscott Boat Mfg. Co. (Mo. App. 1911) 135 S. W. 514.

A foreign corporation engaged solely in interstate commerce need not comply with Rev. St. Mo. 1909, §§ 3039, 3040, regulating foreign corporations. Rogers v. Union Iron & Foundry Co. (Mo. App. 1912) 150 S. W. 100.

Conditions imposed on the right of a foreign corporation to do business wholly within the state would not be objectionable as regulating interstate commerce. Security State Bank v. Simmons (Mo. 1913) 157 S. W. 585, 251 Mo. 2.

That a foreign corporation required an office and employés to transact business in this state is immaterial in determining whether such business was interstate commerce; the criterion being whether there was an importation into one state from another. Id.

A New York linotype company which maintained no office or branch agency in Missouri, but merely contracted to, and did, furnish skilled mechanics to make repairs on its leased machines at the expense of the lessees, was engaged in interstate commerce, and not in doing a local business in Missouri, to render compliance on its part with Rev. St. Mo. 1909, §§ 3039, 3040, a necessary condition to its recovery on a lease contract. Mergenthaler Linotype Co. v. Hays (Mo. App. 1916) 181 S. W. 1183.

Since a contract with a foreign corporation to publish the supreme court reports partakes of the nature of interstate commerce, such corporation may make the contract without filing the certificate required under Rev. St. Neb. 1913, § 725, with the secretary of state. Traphagen v. Lindsay (Neb. 1914) 146 N. W. 1026.

Plaintiff, an Illinois corporation, sent agents into the Indian Territory and Arkansas to take orders for enlarging

pictures. The orders, when taken, were sent to its home office in Chicago, where the pictures were enlarged, and the pictures with frames were shipped by it to agents, different from those who took orders, who delivered them to the patrons and collected the money, which they remitted to plaintiff. Held, that this was interstate commerce, and that a failure by plaintiff to designate a resident agent in the Indian Territory upon whom service might be had under the provisions of Act Feb. 18, 1901, c. 379, §§ 4, 5, 34 Stat. 795, requiring foreign corporations to designate an agent in the Indian Territory before beginning to carry on business, did not render void a bond executed by one of its delivering agents in the Indian Territory, conditioned for the faithful performance of his duty as such wherever the plaintiff sent him. Chicago Crayon Co. v. Rogers (Okl. 1911) 119 P. 630.

After one of the plaintiff's delivering agents had executed a bond in the Indian Territory, conditioned for the faithful performance of his duty, he was sent to Arkansas, where the alleged breach of the bond occurred. Held, that a failure by plaintiff to designate a resident agent in Arkansas upon whom service might be had, as required by Kirby's Dig. Ark. §§ 825, 829a, did not constitute a defense in favor of the sureties on the bond. Id.

A foreign corporation engaged in interstate commerce may sue on a contract of employment entered into with a citizen of Oklahoma, though it has not filed a copy of its articles of incorporation, or appointed a service agent in the state pursuant to Rev. Laws Okl. 1910, §§ 1338, 1341. Kibby v. Cubie, Heimann & Co. (Okl. 1913) 137 P. 352.

A foreign corporation engaged in interstate commerce was not within the constitutional and statutory provisions limiting the right of a foreign corporation to sue in the state or enforce a contract, though it had not procured a permit to do business in the state. Dr. Koch Vegetable Tea Co. v. Shumann (Okl. 1914) 139 P. 1133.

Rev. Laws Okl. 1910, §§ 1335–1341, prescribing conditions precedent to a foreign corporation's right to sue, do not apply to an action for debt arising out of an interstate commercial transaction. J. P. Bledsoe & Son v. W. B. Young Supply Co. (Okl. 1915) 145 P. 1125.

A foreign corporation does not have to comply with the laws of the state as to foreign corporations in order to sue in the state on an interstate commerce contract. Sioux Remedy Co. v. Lindgren (S. D. 1911) 130 N. W. 49.

A Minnesota corporation, which gives veterinary advice and prescriptions to its subscribers, etc., held engaged in interstate commerce, so that the Interstate Commerce Act renders Civ. Code S. D. §§ 883, 885, inoperative as to it. Peterson v. Hoftiezer (S. D. 1915) 150 N. W. 934.

A contract between citizens of one state and a corporation of another state for the erection of a single plant is a transaction of interstate commerce, and not a doing of business in the state where the plant is to be erected, within a statute requiring a foreign corporation "to register its charter" before doing business therein. Davis & Rankin Bldg. & Mfg. Co. v. Caigle (Tenn. Ch. App. 1899) 53 S. W. 240.

The construction of a glass factory by a foreign corporation did not constitute interstate commerce, where the necessary labor and part of the material was obtained within the state. Ft. Worth Glass & Sand Co. v. S. R. Smythe Co. (Tex. Civ. App. 1910) 128 S. W. 1136.

The construction of gas producers for a glass factory, including the furnishing of material and labor by a foreign corporation, the labor and part of the material being obtained within the state, did not constitute interstate commerce, though the contract was made outside of the state. S. R. Smythe Co. v. Ft. Worth Glass & Sand Co. (Tex. 1912) 142 S. W. 1157.

A foreign corporation engaged in interstate commerce may not be controlled by the foreign corporation laws of this state. Shaenfield v. Hall Safe & Fixture Co. (Tex. Civ. App. 1913) 157 S. W. 462.

Where plaintiff was engaged in business of instruction by correspondence in various subjects, the instruction being carried on entirely by letter through the mails, it was not engaged in interstate commerce within the federal Constitution, so as to prevent a state from requiring it to pay a license tax as a condition precedent to doing business therein under the protection of its laws. International Text-Book Co. v. Lynch (1908) 69 A. 541, 81 Vt. 101.

A foreign corporation which manufactured signaling devices in installing such devices on a railroad in the state held to be doing business therein, and not merely selling goods in interstate commerce, and so were subject to Code Va. 1904, § 1104, fixing conditions upon which foreign corporations could do business. General Ry. Signal Co. v. Commonwealth (Va. 1916) 87 S. E. 598.

Laws Wash. 1913, p. 326, regulating foreign building and loan associations does not attempt to regulate interstate commerce. State v. Merrill (Wash. 1914) 144 P. 925; Same v. Garness (Wash. 1914) Id. 929.

A Pennsylvania corporation contracted with a citizen of Wisconsin for the furnishing, by the usual transportation agencies, of instruction continuously for a considerable period of time. The contract was accepted and to a great extent performed in Pennsylvania, and included only incidentally the transfer of articles of property to Wisconsin,

which were not objects of sale but instrumentalities through which the instruction was furnished. Held, that the transactions did not constitute interstate commerce. International Text-Book Co. v. Peterson (1907) 113 N. W. 730, 133 Wis. 202.

What is really sold in the case of a contract by a foreign corporation for the sale of its stock to a resident is an interest in the corporation, and the transaction does not involve any question of interstate commerce. Southwestern Slate Co. v. Stephens (Wis. 1909) 120 N. W. 408.

The fact that the application of St. Wis. 1898, § 1770b, to contracts, made in the state by a foreign corporation, for towage on Lake Superior between two points in the state, may hamper the towing company in its business and thus indirectly affect interstate commerce, does not bring the matter solely within the scope of congressional regulation. Independent Tug Line v. Lake Superior Lumber & Box Co. (1911) 131 N. W. 408, 146 Wis. 121.

A Minnesota corporation made a contract in Wisconsin to tow saw logs, cut in that state, from one Wisconsin point on Lake Superior to another, never having complied with St. Wis. 1898, § 1770b, requiring foreign corporations to file a copy of their articles of incorporation with the secretary of state before transacting any business in the state, and making any contracts in violation thereof unenforceable by the corporation, but enforceable against it. Held, that the matter was not beyond the scope of state regulation because carried on on a public international body of water, and hence subject only to congressional action, since Enabling Act, § 1, extends the state limits to the center line of Lake Superior, which is the international boundary fixed by treaty between the United States and the British possessions, so that the lake is not a public international body of water like the ocean where the national boundary is only 3 miles from shore, but the whole matter, contract, and performance was wholly within the state of Wisconsin. Id.

109. Transportation of passengers in general.—Transportation of freight and passengers from one state to another, or through more than one state, either by land or water, is interstate commerce. In re State Freight Tax (1872) 82 U. S. (15 Wall.) 232, 21 L. Ed. 146; Wabash. St. L. & P. Ry. Co. v. Illinois (1886) 118 U. S. 557, 7 Sup. Ct. 4, 30 L. Ed. 244; Sweatt v. Boston, H. & E. R. Co. (C. C. 1871) Fed. Cas. No. 13,684; Pullman Southern Car Co. v. Nolan (C. C. 1884) 22 Fed. 276 (decree affirmed State of Tennessee v. Pullman Southern Car Co. [1886] 6 Sup. Ct. 643, 117 U. S. 51, 29 L. Ed. 791); Mobile & O. R. Co. v. Sessions (C. C. 1886) 28 Fed. 592; State v. Carrigan (1876) 39 N. J. Law (10 Vroom) 35; Steam Co. v. Livingston (N. Y. 1825) 3 Cow. 713; Fry v. State (1878) 63 Ind. 552, 30 Am. Rep. 238; Southern Pac. Ry. Co. v. Haas (Tex. 1891) 17 S. W. 600; American Starch Co. v. Batement (Civ. App. 1893) 22 S. W. 771.

The transportation of goods and passengers by continuous carriage from one point in a state to another point in the same state is not interstate commerce, within the meaning of the federal constitution, although for a part of the route it is over the soil of another state. Lehigh Val. R. Co. v. Pennsylvania (1892) 12 Sup. Ct. 806, 808, 145 U. S. 192, 36 L. Ed. 672; Id. (1892) 12 Sup. Ct. 809, 145 U. S. 205, 36 L. Ed. 676.

Congress in the exercise of its power over commerce could enact Act June 26, 1906, § 2, which rendered unenforceable a prior contract, valid when made, by which an interstate carrier agreed to issue annual passes for life in consideration of a release of a claim for damages. Louisville & N. R. Co. v. Mottley (1911) 31 Sup. Ct. 265, 269, 219 U. S. 467, 55 L. Ed. 297, 34 L. R. A. (N. S.) 671.

Traffic carried on by a Kentucky street railway in connection with an Ohio corporation operating on the Ohio side of the Ohio river in transporting passengers across an interstate bridge between Kentucky and Ohio by a continuous trip and a single fare is interstate commerce. South Covington & C. St. R. Co. v. City of Covington (1915) 35 Sup. Ct. 158, 235 U. S. 537, 59 L. Ed. 350, reversing decree South Covington & C. R. Co. v. Same (1912) 143 S. W. 28, 146 Ky. 592.

Transportation of persons as well as of property is "commerce," and congress may regulate their interstate transportation. Bennett v. U. S. (1912) 194 Fed. 630, 114 C. C. A. 402, judgment affirmed (1913) 33 Sup. Ct. 288, 227 U. S. 333, 57 L. Ed. —.

No statute of Arkansas inhibits persons described as belonging to "the low and lawless type of humanity" coming into the state. Under the fourteenth amendment, and under the interstate commerce clause, of the constitution, they now have that right. State of Arkansas v. Kansas & T. Coal Co. (C. C. 1899) 96 Fed. 353.

Transportation of passengers between Europe and the United States constituting a part of the commerce of the United States with foreign nations, congress has power to prohibit all contracts, combinations, and conspiracies in restraint of such commerce. U. S. v. Hamburg-Amerikanische Packet-Fahrt-Actien-Gesellschaft (C. C. 1911) 200 Fed. 806.

A contract between corporations operating steamship lines between the United States and European ports for the control of steerage passenger busi-

ness held to directly and materially affect foreign commerce, and to be an unlawful contract, combination, and conspiracy, within the Anti-Trust Act. (Comp. St. § 8820 et seq.) Id.

Rates established by a state for the intrastate carriage of freight or passengers necessarily indirectly affect interstate rates; but that fact does not render the establishment of such rates unconstitutional, as an interference with interstate commerce. In re Arkansas Rate Cases (C. C. 1911) 187 Fed. 290, decree reversed Allen v. St. Louis, I. M. & S. R. Co. (1913) 33 Sup. Ct. 1030, 230 U. S. 553, 57 L. Ed. 1625.

Transportation of persons is commerce. U. S. v. Southern Ry. Co. (D. C. 1908) 164 Fed. 347, judgment affirmed Southern R. Co. v. U. S. (1911) 32 Sup. Ct. 2, 222 U. S. 20, 56 L. Ed. 72.

The power to regulate commerce between the states and with foreign countries conferred on congress by the federal constitution includes the power to regulate the transportation of persons. U. S. v. Hoke (D. C. 1911) 187 Fed. 992, judgment affirmed Hoke v. U. S. (1913) 33 Sup. Ct. 281, 227 U. S. 308, 57 L. Ed. 523, 43 L. R. A. (N. S.) 906, Ann. Cas. 1913E, 905.

Congress has the right to regulate the charges for the transportation of freight or passengers by interstate carriers. Portland Ry., Light & Power Co. v. Portland (D. C. 1912) 201 Fed. 119.

The transportation of passengers from one state to another is in its nature national, and is commerce between the states and beyond the reach of state legislation, and admits of and requires uniformity of regulation through congress, affecting all alike. Pullman Co. v. Linke (D. C. 1913) 203 Fed. 1017.

Where one boards a train to go from a point within the state to one without it, and pays the amount demanded therefor, not wishing or offering to break up the continuous passage by paying to the last station within the state on such route, the transaction is one as to interstate commerce, to which Kirby's Dig. Ark. §§ 6611, 6620, fixing a maximum per mile passenger rate and declaring a penalty for a greater charge, have no application. Kansas City Southern Ry. Co. v. Brooks (1907) 105 S. W. 93, 84 Ark. 233.

Where one boards a train to go to a point from within the state to one without it, but desires to break up the continuity of his journey, and offers, but is refused permission, to pay his fare to the last station in the state on the route, intending there to get a ticket for the rest of the trip, and a fare is collected of him greater than he would have to pay had he been permitted so to do, there is a matter of intrastate commerce involved, making applicable Kirby's Dig. Ark. §§ 6611, 6620, fixing a maximum per mile passenger rate, and declaring a penalty for a greater charge. Id.

A passenger who traveled from one point to another in the same state, over a route through another state for a short distance, is not entitled to recover the penalty imposed by Kirby's Dig. Ark. § 6620, upon a railroad for charging a greater compensation than was permitted by the state statutes. St. Louis, I. M. & S. R. Co. v. Spriggs (Ark. 1914) 167 S. W. 96.

Transportation between two ports in Los Angeles county over a route passing over the high seas and outside the territorial jurisdiction of the state held not "commerce with foreign nations," within the commerce clause, so as to prevent regulation of such transportation by the state railroad commission. Wilmington Transp. Co. v. Railroad Commission of California (Cal. 1913) 137 P. 1153, 166 Cal. 741.

If the places from which and to which passengers are carried and the line over which they are carried are within the state, the commerce is domestic and subject to state control. Luken v. Lake Shore & M. S. Ry. Co. (1911) 94 N. E. 175, 248 Ill. 377.

The court has jurisdiction of an offense consisting of a violation of the Sunday law by a steamboat while engaged in carrying passengers from one Indiana town to another, though the voyage begins and ends at a city in Kentucky. Dugan v. State (1890) 25 N. E. 171, 125 Ind. 130, 9 L. R. A. 321; Dorsey v. State (1890) 25 N. E. 350, 125 Ind. 600.

Laws Kan. 1905, c. 354, providing that railroad companies shall furnish free transportation to shippers of live stock, and authorizing actions to recover penalties for its violation, does not apply to interstate shipments. Missouri, K. & T. Ry. Co. v. Sinclair (Kan. 1908) 94 P. 123.

Where a city ordinance regulating the rates of fare to be charged by a public hackman operated only within the limits of the city and did not assume to regulate the rates for interstate commerce, it was not invalid as regulating interstate commerce because a hackman might contract to carry a passenger into another state. The Taxicab Cases (1913) 143 N. Y. S. 279, 82 Misc. Rep. 94, order affirmed Yellow Taxicab Co. v. Gaynor (1913) 144 N. Y. S. 299, 159 App. Div. 893, and in Hotel Astor v. City of New York (1913) 144 N. Y. S. 494, 159 App. Div. 888.

The carrying of a pleasure party on a steamboat is not interstate commerce, although the boat may touch the shores of different states. State v. Seagraves (1905) 85 S. W. 925, 111 Mo. App. 353.

Transportation of a passenger from a point in Arkansas to a point in Missouri was interstate transportation, and governed by the Interstate Commerce Act. Ligon v. St. Louis & S. F. Ry. Co. (Mo. App. 1914) 168 S. W. 647.

Laws N. H. 1913, c. 92, § 1, requiring

carriers to issue mileage books good over all their steam railway lines in the state, held limited to intrastate transportation, so that such mileage was not good for the part of an interstate journey which was outside the state, though the service began and ended within the state. Holden v. Maine Cent. R. R. (N. H. 1914) 92 A. 334, 77 N. H. 397.

The enactment of section 13 of the act of July 7, 1838, "to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam" (5 Stat. 306), which provides "that in all suits and actions against proprietors of steamboats, for injuries arising to person or property from the bursting of the boiler of any steamboat, or the collapse of a flue, or other injurious escape of steam, the fact of such bursting, collapse, or injurious escape of steam, shall be taken as full prima facie evidence, sufficient to charge the defendant, or those in his employment, with negligence, until he shall show that no negligence has been committed by him or those in his employment," is within the commerce clause; and the provisions of said section are obligatory in cases coming within their purview on the courts of this state, as well as the courts of the United States. Bradley v. Northern Transp. Co. (1864) 15 Ohio St. 553.

Having assumed control of interstate railway passenger traffic under its constitutional power, it must be presumed that congress has prescribed all the regulations and penalties which it deemed proper to impose on such interstate traffic, and hence a state cannot impose additional statutory exactions and burdens. Missouri, K. & T. Ry. Co. of Texas v. Fookes (Tex. Civ. App. 1897) 40 S. W. 858.

A passenger was carried by three separate railroads from a point outside of the state to a point within the state. He had separate transportation issued by the respective companies. The last railroad company carried him from points within the state. The passenger's baggage was checked through from the point of beginning to the point of destination. By what authority the agent of the initial carrier so checked the baggage, did not appear. Held, that the last railroad company was engaged in state commerce, and Rev. St. Tex. 1895, art. 320, expressly prohibited it from limiting its liability as a common carrier of the baggage. White v. St. Louis Southwestern Ry. Co. of Texas (Tex. Civ. App. 1905) 86 S. W. 962.

In case of a passenger traveling on a pass good from one point in the territory of New Mexico to another point, there is no interstate carriage or question of interstate commerce. Stamp v. Eastern Ry. Co. of New Mexico (Tex. Civ. App. 1913) 161 S. W. 450.

110. Exclusion or expulsion of aliens. —See, also, notes, ante, as to "Exclusive or Concurrent Powers of Congress and the States," and as to "Powers and Rights Remaining in the States."

Congress has power to legislate with reference to undesirable aliens desiring to enter the United States, and also with reference to the deportation of undesirable aliens already within the United States. Fong Yue Ting v. U. S. (1893) 13 Sup. Ct. 1016, 1022, 149 U. S. 698, 37 L. Ed. 905; Kaoru Yamataya v. Fisher (1903) 23 Sup. Ct. 611, 613, 189 U. S. 86, 47 L. Ed. 721; Zakonaite v. Wolf (1912) 33 Sup. Ct. 31, 226 U. S. 272, 57 L. Ed. 218; Bugajewitz v. Adams (1913) 33 S. Ct. 607, 228 U. S. 585, 57 L. Ed. 978; Schwartz v. Same (1913) 33 S. Ct. 609, 228 U. S. 592, 57 L. Ed. 980; Haw Moy v. North (1910) 183 Fed. 89, 105 C. C. A. 381 (writ of error denied [1911] 32 Sup. Ct. 522, 223 U. S. 717, 56 L. Ed. 628); Hoo Choy v. Same (1910) 183 Fed. 92, 105 C. C. A. 384 (writ of certiorari denied [1911] 32 S. Ct. 522, 223 U. S. 718, 56 L. Ed. 628); Siniscalchi v. Thomas (1911) 195 Fed. 701, 115 C. C. A. 501; Ex parte Hamaguchi (C. C. 1908) 161 Fed. 185; Ex parte Li Dick (C. C. 1910) 176 Fed. 998; U. S. v. Williams (D. C. 1897) 83 Fed. 997; U. S. v. Weis (D. C. 1910) 181 Fed. 860; Ex parte Pouliot (D. C. 1912) 196 Fed. 437; (1899) 22 Op. Atty. Gen. 353.

The former act of August 3, 1882, to regulate immigration, imposing duty on alien passengers, is a valid exercise of the power to regulate commerce with foreign nations. Edye v. Robertson (1884) 5 Sup. Ct. 247, 249, 112 U. S. 580, 28 L. Ed. 798, affirming judgment (C. C. 1883) 18 Fed. 147.

Congress has power, even in times of peace, to exclude aliens from, or prevent their return to, the United States, for any reason it may deem sufficient. Chae Chan Ping v. U. S. (1889) 130 U. S. 581, 9 Sup. Ct. 623, 32 L. Ed. 1068, affirming order In re Chae Chan Ping (C. C. 1888) 36 Fed. 431.

It is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. Fong Yue Ting v. U. S. (1893) 13 Sup. Ct. 1016, 1018, 149 U. S. 698, 37 L. Ed. 905, following Nishimura Ekiu v. U. S. (1892) 12 Sup. Ct. 336, 142 U. S. 651, 35 L. Ed. 1146, Chae Chan Ping v. U. S. (1888) 9 Sup. Ct. 623, 130 U. S. 581, 32 L. Ed. 1068, and Legal Tender Cases (1870) 12 Wall. 457, 20 L. Ed. 287.

In the United States this power is vested in the national government, to which the constitution has committed the entire control of international relations, in peace as well as in war. It belongs to the political department of

the government, and may be exercised either through treaties made by the president and senate, or through statutes enacted by congress, upon whom the constitution has conferred the power by this clause. The supervision of the admission of aliens may be intrusted by congress either to the state department, or to the treasury department. Nishimura Ekiu v. U. S. (1892) 12 Sup. Ct. 336, 338, 142 U. S. 651, 35 L. Ed. 1146.

The right of a nation to expel or deport foreigners who have not been naturalized or taken any steps towards becoming citizens of the country rests upon the same grounds, and is as absolute and unqualified as the right to prohibit and prevent their entrance into the country. Fong Yue Ting v. U. S. (1893) 13 Sup. Ct. 1016, 1019, 149 U. S. 698, 37 L. Ed. 905.

Congress may exclude aliens of a particular race from the United States, prescribe the terms and conditions upon which certain classes of aliens may come to this country, establish regulations for sending out of the country such aliens as come here in violation of law, and commit the enforcement of such provisions, conditions, and regulations exclusively to executive officers without judicial intervention. Kaoru Yamataya v. Fisher (1903) 23 Sup. Ct. 611, 613, 189 U. S. 86, 47 L. Ed. 721.

The power of congress to forbid entry of foreigners within the dominions of the United States is well established, whether it be based on the inherent power of sovereignty or upon the provisions of the commerce clause. U. S. ex rel. Turner v. Williams (1904) 24 Sup. Ct. 719, 722, 194 U. S. 279, 48 L. Ed. 979.

Congress, in the exercise of its authority over foreign commerce and of its power to regulate immigration, could lawfully enact the provisions of Act March 3, 1903, c. 1012, § 9, 32 Stat. 1215, which make it unlawful to bring into the United States any alien afflicted with a loathsome or dangerous contagious disease, provide for the exacting of a penalty for bringing in an alien so afflicted, and authorize the refusal of clearance papers to a vessel while any such fine imposed upon it remains unpaid. Oceanic Steam Nav. Co. v. Stranahan (1909) 29 Sup. Ct. 671, 676, 214 U. S. 320, 53 L. Ed. 1013; International Mercantile Marine Co. v. Same (1909) 29 Sup. Ct. 678, 214 U. S. 344, 53 L. Ed. 1024, affirming judgment International Mercantile Marine Co. v. Stranahan (C. C. 1907) 155 Fed. 428.

Congress could empower the Secretary of Commerce and Labor to enforce, without invoking the judicial power, the penalty imposed by Act March 3, 1903, c. 1012, § 9, 32 Stat. 1215, for bringing into the United States an alien afflicted with a loathsome or dangerous contagious disease. Id.

Congress may exclude aliens or prescribe the terms on which they may come in, establish regulations for sending out of the country aliens entering in violation of law, and commit the enforcement of the conditions and regulations to executive officers, but it may not control all the dealings of citizens with resident aliens. Keller v. U. S. (1909) 29 Sup. Ct. 470, 471, 473, 213 U. S. 138, 53 L. Ed. 737, 16 Ann. Cas. 1066.

Congress had no power to enact the provisions of Act Feb. 20, 1907, c. 1134, § 3, 34 Stat. 899, for the criminal punishment of the mere keeping, maintaining, supporting, or harboring, for the purpose of prostitution, any alien woman within three years after she shall have entered the United States. Id.

Congress has the power to exclude or expel aliens to provide for deportation, and to intrust this to executive officers acting alone or in connection with the courts. U. S. v. Hung Chang (1904) 134 Fed. 19, 67 C. C. A. 93.

Congress has plenary power to exclude aliens from entry into the United States, or to provide for their admission subject to such restrictions as it may prescribe; and, where it has given discretionary power to executive officers or agencies to determine the right of entry under such restrictions, the ground of such determination cannot be inquired into by the courts in habeas corpus proceedings instituted by an alien, who is restrained of his liberty for the purpose of deportation by such officers. The question, however, whether the law does vest such officers with power of final decision is necessarily one for judicial inquiry, and an alien given by the law a right of appeal may invoke the powers of a court for the enforcement of such right. Rodgers v. U. S. (1907) 157 Fed. 381, 85 C. C. A. 79.

Congress may exclude aliens of a particular race, prescribe conditions on which certain classes of aliens may enter the country, establish regulations for sending out of the country aliens coming in violation of law, and commit the enforcement of the law exclusively to executive officers without judicial intervention. Looe Shee v. North (1909) 170 Fed. 566, 95 C. C. A. 646.

The granting of control over aliens for the prescribed period in the executive department to enforce the national policy as to immigration is within the power of congress. Prentis v. Stathakos (1911) 192 Fed. 469, 112 C. C. A. 607.

The power of congress to prohibit a second or later entrance of aliens and the power originally to exclude them are derived from the same source. Frick v. Lewis (1912) 195 Fed. 693, 115 C. C. A. 493.

Congress may exclude aliens, regulate their coming, provide for their deportation, and confer on the executive department or subordinate officials thereof the duty to enforce the law. Choy Gum v. Backus (1915) 223 Fed. 487, 139 C. C. A. 35.

Act Feb. 26, 1885, prohibiting the importation of aliens under contract to perform labor within the United States, is within the power of congress to regulate commerce with foreign nations, and constitutional. U. S. v. Craig (C. C. 1886) 28 Fed. 795; In re Florio (C. C. 1890) 43 Fed. 114.

Congress has plenary power over aliens, and may expel them from the country at any time and for any reason. U. S. v. North German Lloyd S. S. Co. (C. C. 1911) 185 Fed. 158.

The power of congress to deal with aliens is absolute, under which it may expel those of a particular class and permit others to remain on specified conditions, and under this power a classification which selects alien criminals for deportation is the exercise of a just discrimination. U. S. v. Chew Cheong (D. C. 1894) 61 Fed. 200, 203.

The right to exclude or expel aliens from the territory of the United States is vested in the political department of the government, and is a right with which the judicial department can have nothing to do, except as authorized by treaty or act of congress. U. S. v. Ngum Lun May (D. C. 1907) 153 Fed. 209.

Congress has an absolute inherent right to exclude and deport aliens as a part of its sovereign power, and hence the fact that an alien has resided in the United States for a long period and intends to make his residence permanent did not affect the government's right to exclude him, if in the judgment of congress such exclusion was proper. U. S. v. Williams (D. C. 1910) 183 Fed. 904.

Congress may define and regulate the admission of aliens into the United States and prescribe the conditions upon which the privilege of admission may be enjoyed. U. S. v. Greenawalt (D. C. 1914) 213 Fed. 901.

Congress may commit to any official, department, or tribunal, executive or judicial, the determination of any questions of fact or otherwise upon which the admission of aliens may depend, and may prescribe within what time, in what manner, and by whom any decisions made may be reviewed. Id.

Congress has power to prohibit the importation of aliens for immoral or undesirable purposes, and to punish any person who shall import, or attempt to import, an alien for a prohibited purpose. Ex parte Gouyet (D. C. 1909) 175 Fed. 230.

Chinese Exclusion Act May 5, 1892, c. 60, is valid. U. S. v. Yuen Pak Sune (D. C. 1910) 183 Fed. 260, affirmed (1911) 191 Fed. 825, 112 C. C. A. 339.

Congress has plenary power to provide for the expulsion of an alien from the territory of the United States. U. S. v. Weis (D. C. 1910) 181 Fed. 860.

The matter of importation into the United States of foreigners is exclusively within the power of congress to control and regulate, and the control and regulation may apply to dealings of those foreigners in the United States when relating to matters of importation. U. S. v. Krsteff (D. C. 1911) 185 Fed. 201.

Congress may determine the quantity, character, and quality of evidence that shall be required to admit an alien into the United States, or grant him a certificate of return after absence, or to establish his right to remain, when found here, but, where it does not do so, the court must receive the testimony of all qualified witnesses and give it the weight to which it is entitled. U. S. v. Ching Sing Quong (D. C. 1915) 224 Fed. 752.

Bona fide seamen have always been excepted from the operation of our immigration laws, although not excepted therefrom by express language; their inclusion in the class of alien immigrants can fairly be regarded as beyond the intention of congress. (1901) 23 Op. Atty. Gen. 521.

Congress has the undoubted right to regulate the admission of aliens into the United States, whether as immigrants or otherwise, and to exclude altogether any class of aliens whose entrance it might deem contrary to the general welfare of the Union. (1907) 26 Op. Atty. Gen. 180.

III. White slave traffic act.—Congress had power to enact White Slave Act June 25, 1910 (Comp. St. § 8712 et seq.), making criminal transportation of women in interstate commerce for purposes of prostitution. Hoke v. U. S. (1913) 33 S. Ct. 281, 227 U. S. 308, 57 L. Ed. 523, 43 L. R. A. (N. S.) 906, Ann. Cas. 1913E, 905 (affirming judgment U. S. v. Hoke [D. C. 1911] 187 Fed. 992); Athanasaw v. U. S. (1913) 33 S. Ct. 285, 227 U. S. 326, 57 L. Ed. 528, Ann. Cas. 1913E, 911; Bennett v. Same (1913) 33 S. Ct. 288, 227 U. S. 333, 57 L. Ed. 531 (affirming judgment [1912] 194 Fed. 630, 114 C. C. A. 402); Harris v. Same (1913) 33 Sup. Ct. 289, 227 U. S. 340, 57 L. Ed. 434 (affirming judgment [1912] 194 Fed. 634, 114 C. C. A. 406); Kalen v. U. S. (1912) 196 Fed. 888, 116 C. C. A. 450; U. S. v. Rispoli (D. C. 1911) 189 Fed. 271.

Act June 25, 1910, c. 395, 36 Stat. 825, known as the "White Slave Traffic Act," making it a criminal offense to knowingly transport or to procure the transportation of women from one state into another for immoral purposes, is not unconstitutional as an attempted infringement of the police powers of the states, and is within the powers conferred on congress by the com-

merce clause of the Constitution. Bennett v. U. S. (1912) 194 Fed. 630, 114 C. C. A. 402; U. S. v. Warner (C. C. 1911) 188 Fed. 682; U. S. v. Westman (D. C. 1910) 182 Fed. 1017.

A limitation of the means of prohibited transportation of women for purposes of prostitution to common carriers need not be implied to sustain the validity of the white slave act of June 25, 1910 (Comp. St. § 8712 et seq.). Wilson v. U. S. (1914) 34 S. Ct. 347, 232 U. S. 563, 58 L. Ed. 728.

The act known as the "White Slave Traffic Act" (Comp. St. § 8712 et seq.) is constitutional. Paulsen v. U. S. (1912) 199 Fed. 423, 118 C. C. A. 97.

Congress, under the commerce clause had full power to pass the White Slave Act (Comp. St. § 8712 et seq.), though it be construed as extending to the transportation of a female from one state to another solely for the purpose of unlawful sexual intercourse with the defendant. Johnson v. U. S. (C. C. A. 1914) 215 Fed. 679.

VI. MEANS AND METHODS OF REGULATIONS

(A) In general

112. Nature and scope in general.—Any regulation of the transportation of interstate commerce, whether it be upon the high seas, the lakes, the rivers, or upon railroads or other artificial channels of communication, affecting commerce, operates as a regulation of commerce itself. Gibbons v. Ogden (1824) 22 U. S. (9 Wheat.) 1, 6 L. Ed. 23; Brown v. Maryland (1827) 25 U. S. (12 Wheat.) 419, 6 L. Ed. 678; Smith v. Turner (1849) 48 U. S. (7 How.) 282, 12 L. Ed. 702; Pennsylvania v. Wheeling & B. Bridge Co. (1855) 59 U. S. (18 How.) 421, 15 L. Ed. 435; Almy v. California (1860) 65 U. S. (24 How.) 169, 16 L. Ed. 644; In re State Freight Tax (1872) 82 U. S. (15 Wall.) 232, 21 L. Ed. 164; City of Council Bluffs v. Kansas City, St. J. & C. B. R. Co. (1876) 45 Iowa, 338, 24 Am. Rep. 773.

Inspection, quarantine, and health laws of all descriptions, laws for regulating the internal commerce of a state, and laws with respect to turnpike roads, ferries, etc., are not in the exercise of a power to regulate commerce. Gibbons v. Ogden (1824) 22 U. S. (9 Wheat.) 1, 6 L. Ed. 23.

Act 1845, c. 19, extending the admiralty and maritime jurisdiction of the district courts of the United States to certain cases upon the lakes and navigable waters connecting them, is not a regulation of commerce. The Genesee Chief v. Fitzhugh (1851) 53 U. S. (12 How.) 443, 13 L. Ed. 1058; Fretz v. Bull (1851) 53 U. S. (12 How.) 466, 13 L. Ed. 1068.

The enforcement of a contract between a railroad company and an elevator company, giving the elevator company for a prescribed term the handling of all grain brought by the railroad company in its cars to a city on the Mississippi to be transported to a place beyond, is not an interference with the power of congress to regulate commerce where by the construction of a railroad bridge across the Mississippi it became unnecessary for the railroad company to have the grain brought by it to the city handled at that place. Dubuque & S. C. Co. v. Richmond (1873) 86 U. S. (19 Wall.) 584, 589, 22 L. Ed. 173.

Any act of a state interfering in any way with the free traffic between citizens of different states in any article of commerce is an attempted regulation of such commerce, and an invasion of the power exclusively conferred upon congress, whose nonaction with respect to any particular commodity is a declaration of its purpose that the commerce therein shall be free. In re Barber (C. C. 1889) 39 Fed. 641, 644, affirmed (1890) 10 Sup. Ct. 862, 136 U. S. 313, 34 L. Ed. 455.

Congress has the power to regulate interstate commerce by any means which may be proper, so long as such means are not contrary to some provision of the constitution. Interstate Commerce Commission v. Brimson (1894) 14 Sup. Ct. 1125, 1130, 154 U. S. 447, 38 L. Ed. 1047.

It is not enough to show that, in the working of a statute, there is some tendency, logically discernible, to interfere with commerce or existing contracts, as modern society is so closely related in its different parts that what affects any part must be felt more or less by all the rest, but practical lines must be drawn, and distinctions of degree must be made. Diamond Glue Co. v. United States Glue Co. (1903) 23 Sup. Ct. 206, 208, 187 U. S. 611, 47 L. Ed. 328.

Any exercise of state authority, in whatever form manifested, which directly regulates interstate commerce, is repugnant to this clause. Adams Exp. Co. v. Kentucky (1909) 29 Sup. Ct. 633, 634, 214 U. S. 218, 53 L. Ed. 972.

The police power of the state cannot justify a direct interference with interstate commerce. Kansas City Southern Ry. Co. v. Kaw Valley Drainage Dist. of Wyandotte County, Kan. (1914) 34 Sup. Ct. 564, 233 U. S. 75, 58 L. Ed. 857, reversing judgment Kaw Valley Drainage Dist. of Wyandotte Co. v. Kansas City Terminal Ry. Co. (1912) 123 P. 991, 87 Kan. 272.

A state law authorizing the seizure and imprisonment of free negroes brought into the state on board of any foreign vessel is unconstitutional. Elkison v. Deliesseline (C. C. 1823) Fed. Cas. No. 4,366.

Any act of the legislature, or any ordinance of a city, which prevents the free exchange of lawful articles of commerce between the states, contravenes the commerce clause of the constitution. Ex parte Kieffer (C. C. 1889) 40 Fed. 399, 402.

The power of congress to regulate interstate commerce, imports the right and power to enact laws, and not merely to make rules and regulations. Snead v. Central of Georgia Ry. Co. (C. C. 1907) 151 Fed. 608.

Though as a general rule the police power belongs to the state, congress may, in regulating interstate commerce, impose regulations which are in their essential nature police regulations. Kelley v. Great Northern Ry. Co. (C. C. 1907) 152 Fed. 211.

Congress may make that a regulation of commerce which a state may employ as a guard for its internal policy or to preserve the public health or peace or to promote its peculiar interests. Craig v. Kline (1870) 65 Pa. St. (15 P. F. Smith) 399, 3 Am. Rep. 636.

Acts 32d Leg. Tex. c. 23, making it a felony to procure a female to leave the state for the purpose of prostitution, is not a regulation of interstate commerce. Hewitt v. State (Tex. Cr. App. 1914) 167 S. W. 40.

A state enactment may be valid, though it incidentally affects interstate commerce, where it is an aid to, rather than a burden on, such commerce. Missouri, K. & T. Ry. Co. of Texas v. State (Tex. 1916) 181 S. W. 721.

Act Va. March 17, 1856, entitled "An act providing additional protection for slave property, and authorizing searching of vessels about to sail," is not unconstitutional, as a regulation of interstate commerce. Baker v. Wise (Va. 1861) 16 Grat. 139.

The consolidation of two corporations in accordance with Code Va. 1904, § 1105a, subsecs. 40, 41, was not in violation of the commerce clause. Winfree v. Riverside Cotton Mills Co. (Va. 1912) 75 S. E. 309.

To regulate commerce is to prescribe the rules by which it shall be governed, that is, the conditions on which it shall be conducted, to determine how far it shall be free, how far it shall be subject to duties and other exactions, and how far it shall be prohibited. State v. Peet (1908) 68 A. 661, 80 Vt. 449.

113. Exercise of eminent domain.—A state statute, granting the right of eminent domain to telegraph companies with respect to railroad rights of way, is not invalid as an attempted regulation of commerce, as applied to interstate lines of railroad. Louisville & N. R. Co. v. Western Union Telegraph Co. (1913) 207 Fed. 1, 124 C. C. A. 573, affirming order Western Union Telegraph Co. v. Louisville & N. R. Co. (D. C. 1913) 201 Fed. 946.

The condemnation under the state laws of a railroad crossing over a railroad which handles interstate commerce is not an interference with interstate commerce. Mobile & B. R. Co. v. Louisville & N. R. Co. (Ala. 1915) 68 So. 905.

A telegraph company organized within the state may under this clause condemn land for its lines over the right of way of a railroad company organized within the state and leased to another railroad engaged in interstate commerce. Western Union Telegraph Co. of Illinois v. Louisville & N. R. Co. (Ill. 1915) 110 N. E. 583.

A state statute, construed not to permit a subsequent appropriation of lands already appropriated to public use if the new use constitutes a material interference with the existing use, held not unconstitutional as permitting a telegraph company to condemn a way along a railroad right of way used in interstate commerce. Louisville & N. Ry. Co. v. Western Union Telegraph Co. of Indiana (Ind. 1915) 110 N. E. 70.

114. Prohibitory acts and ordinances in general.—The constitutional power of congress to regulate interstate commerce includes the power to prohibit in cases where such prohibition is in aid of the lawful protection of the public. Bennett v. U. S. (1912) 194 Fed. 630, 114 C. C. A. 402, judgment affirmed (1913) 33 Sup. Ct. 288, 227 U. S. 333, 57 L. Ed. 531.

Act July 31, 1912 (Comp. St. § 10416 et seq.), prohibiting the importation of prize fight films, held a valid exercise of power under commerce clause. Weber v. Freed (1915) 224 Fed. 355, 140 C. C. A. 41.

No article of commerce can be excluded from introduction into and sale in a state by state prohibition laws. Swift v. Sutphin (C. C. 1889) 39 Fed. 630, 636.

A state may not in certain cases forbid the sale of goods brought into the state otherwise lawfully from another state, nor forbid them to be brought in, for such enactments, if permissible, may be so framed as to restrict or prohibit the right of commerce between the states. Holyoke & South Hadley Falls Ice Co. v. Ambden (C. C. 1893) 55 Fed. 593, 594, 21 L. R. A. 319.

Constitutional or statutory provisions of a state, prohibiting the crews of foreign vessels from loading or unloading their ships in the ports of such state, are void, as regulations of commerce with foreign nations. Cuban Steamship Co. v. Fitzpatrick (C. C. 1895) 66 Fed. 63.

Acts Colo. 1899, p. 175, § 1, prohibiting the docking of horses and the importation and use of them, in so far as it prohibits the importing from other states of docked tailed horses, or the using of them while they are still owned by the person who brought them into the state, violates the interstate commerce clause. Stubbs v. People (Colo. 1907) 90 P. 1114.

An ordinance of the state board of agriculture and immigration, which prohibits the importation into the state of all kinds of citrus plants, is invalid as an interference with interstate com-

merce. State v. West (1915) 67 So. 934, 136 La. 867.

Under this clause the fact that a state has prohibited the sale of a certain article of commerce by its own citizens does not give it the right to prohibit the importation of it into the state. City of Buffalo v. Reavey (1899) 55 N. Y. S. 792, 37 App. Div. 228.

P. L. N. J. 1905, p. 461, making it unlawful for any person to transport through pipes the water of any fresh water river of the state into another state for use therein, is not void as a violation of the interstate commerce clause; for the right of the state to preserve the common property cannot be destroyed merely because the unlawful abstracter of the water intends to transport it into another state for use therein. McCarter v. Hudson County Water Co. (1905) 61 A. 710, 70 N. J. Eq. 525, affirmed (Err. & App. 1906) 65 A. 489, 70 N. J. Eq. 695.

So much of Civ. Code S. C. 1902, § 2845, as prohibits the importation into and sale of articles in the state with a view to lessen or which tend to lessen full and free competition is an attempt to regulate interstate commerce, and cannot be sustained under the police power. State v. Virginia-Carolina Chemical Co. (1905) 51 S. E. 455, 71 S. C. 544.

Act Va. Feb. 29, 1896, which prohibits the selling of pools on trials of speed of animals to take place without the state, since it is intended to suppress a form of gambling, is a valid exercise of the police power of the state, and does not therefore violate the commerce clause. Lacey v. Palmer (1896) 93 Va. 159, 24 S. E. 930.

115. Inspection in general.—A state law which authorizes a state officer at a port to make a survey of seagoing vessels there arriving, and of damaged goods found on board—not for the purpose of certifying the quantity and value of the things inspected for the protection of consumers, but to furnish official evidence for the parties immediately concerned, and, where goods are found damaged, to provide for their sale—is not an inspection law, such as a state may pass, but a regulation of commerce, and unconstitutional. Foster v. Port of New Orleans (1876) 94 U. S. 246. 24 L. Ed. 122, reversing (1874) 26 La. Ann. 105.

Laws Md. 1864. c. 346, § 41, as amended by Laws Md. 1870, c. 291, prohibits, under penalties, the export, from the state, of tobacco raised therein, except in hogsheads, which shall have been inspected, passed, and marked according to the provisions of the act, with the proviso that nothing therein "contained shall be construed to prohibit any grower of tobacco, or any purchaser thereof, who may pack the same in the county or neighborhood where grown, from exporting or carrying out of this state any such tobacco without having the same opened for inspection; but such tobacco, so exported or carried out of this state without inspection, shall in all cases be marked with the name in full of the owner thereof, and the place of residence of such owner, and shall be liable to the same charge of outage and storage as in other cases." Held, that the proviso permitting tobacco to be shipped from the state without "being opened for inspection" did not deprive the statute of its character as an inspection law, and render it obnoxious to the interstate commerce clause. Turner v. State (1883) 2 Sup. Ct. 44, 107 U. S. 38, 27 L. Ed. 370.

Such statute is not a regulation of commerce. Nor is it unconstitutional as discriminating between the state buyer and manufacturer of leaf tobacco and the purchaser who buys for transportation to another state or to a foreign country, or as discriminating between the different classes of exporters. Turner v. Maryland (1883) 2 Sup. Ct. 44, 52, 107 U. S. 38, 27 L. Ed. 370.

Gen. Laws Minn. 1889, c. 8, which prohibits the sale of dressed meat within any municipal division of the state unless the animal was inspected there within 24 hours before it was slaughtered, and makes its violation a misdemeanor, though it purports to be for the protection of the public health, in effect prohibits the importation of meats slaughtered in other states, whose citizens cannot reasonably conform to the mode of inspection prescribed; and hence it is in violation of the interstate commerce clause. State v. Barber (1889) 136 U. S. 313, 10 Sup. Ct. 862, 34 L. Ed. 455, affirming (C. C. 1889) 39 Fed. 641.

A state law prohibiting the sale of meat within any municipal division of the state unless the animal was inspected there within 24 hours before it was slaughtered, is violative of the commerce clause. Minnesota v. Barber (1890) 10 Sup. Ct. 862, 863, 136 U. S. 313, 34 L. Ed. 455, affirming In re Barber (C. C. 1889) 39 Fed. 641.

Acts Va. 1889-90, c. 80, which prohibits the offering for sale of fresh meat at places 100 miles or more distant from the place of slaughter, unless it has been inspected by the local authorities, for which inspection the owner of the meat is to pay one cent per pound, is in effect a prohibition on the sale in Virginia of fresh meat, although entirely wholesome, if from animals slaughtered 100 miles or over from the place of sale; and, though enacted under the guise of the police power of the state, as a means of protecting its citizens from unwholesome meats, the act is unconstitutional, as being a regulation in restraint of interstate commerce. Brimmer v. Rebman (1890) 138 U. S. 78, 11 Sup. Ct.

213, 35 L. Ed. 862; In re Rebam (C. C.) 41 Fed. 867.

The act, being a burden on interstate commerce, is not to be sustained simply because it applies alike to the people of all states, including the people of Virginia. Brimmer v. Rebman (1890) 138 U. S. 78, 11 Sup. Ct. 213, 35 L. Ed. 862, affirming (C. C. 1890) 41 Fed. 867.

Since the act, by reason of the onerous inspection fee, goes far beyond the purpose of legitimate inspection to determine quality and quantity, and practically prevents citizens of distant states, dealing in fresh meat, from coming into competition on terms of equality with local dealers in Virginia, the supreme court will not assume, for the purpose of sustaining the act, that fresh meat will or may become unwholesome if transported 100 miles or more from the place where slaughtered before it is offered for sale. Brimmer v. Rebman (1890) 138 U. S. 78, 11 Sup. Ct. 213, 35 L. Ed. 862, affirming (C. C. 1890) 41 Fed. 867.

Act Va. March, 1867, requiring all flour brought into the state to be inspected, the owner to pay therefor, and providing a penalty for any person selling such flour without inspection, is discriminating, no such inspection being required for flour manufactured in the state, and is therefore unconstitutional, as imposing a direct burden on commerce among the states. Voight v. Wright (1891) 11 Sup. Ct. 855, 141 U. S. 62, 35 L. Ed. 638.

Act La. No. 147 of 1888, providing that the governor shall appoint two coal gaugers to gauge any coal or coke boat or barge in the state, and ascertain the number of bushels in each load; that no boat load of coal or coke shall be sold in the state until gauged, etc., when applied to boat loads of coal brought from a foreign state, on the navigable waters of the United States, is not in conflict with the interstate commerce clause. Pittsburgh & S. Coal Co. v. State of Louisiana (1895) 156 U. S. 590, 15 Sup. Ct. 459, 39 L. Ed. 544.

A statute absolutely prohibiting the importation by citizens for their own use of intoxicating liquors, without regard to the question of their purity, is not an inspection law because it provides for the examination by a state chemist of all liquors sold in the state. Scott v. Donald (1897) 17 Sup. Ct. 265, 165 U. S. 58, 41 L. Ed. 632.

The requirement of the South Carolina dispensary law that a resident of the state intending to have liquors shipped into the state for his own use shall certify such intention to the state chemist, who shall be furnished with a sample for testing, and, if found pure, shall issue a certificate to the proposed consignor authorizing the shipment, and providing that any package brought into the state without such certificate attached shall be seized and confiscated, is void, as an unauthorized interference by the state with interstate commerce. Vance v. W. A. Vandercook Co. (1898) 18 Sup. Ct. 674, 170 U. S. 438, 42 L. Ed. 1100, modifying judgment W. A. Vandercook v. Vance (C. C. 1897) 80 Fed. 786.

A state inspection law may operate upon imported as well as exported articles. Patapsco Guano Co. v. Board of Agriculture of North Carolina (1898) 18 Sup. Ct. 862, 171 U. S. 345, 43 L. Ed. 191, affirming decree (C. C. 1892) 52 Fed. 690.

An inspection law, enacted by a state "in the exercise of its police powers," within the meaning of Wilson Act Aug. 8, 1890 (Comp. St. § 8738), subjecting to laws so enacted all intoxicating liquors arriving in the state, is not void as an interference with interstate commerce because it operates to deter shipments into the state. Pabst Brewing Co. v. Crenshaw (1905) 25 Sup. Ct. 552, 554, 198 U. S. 17, 49 L. Ed. 925, affirming decree (C. C. 1903) 120 Fed. 144.

The prohibition against the receipt by common carriers for transportation beyond the limits of the territory of hides which do not bear the evidence of inspection required by Act N. M. March 19, 1901, is a valid exercise of the police power, and does not, there being no congressional legislation covering the subject and making a different provision, violate the commerce clause of the federal constitution, although hides not offered for transportation are not required to be inspected after 30 days in slaughterhouses, and not at all outside of the slaughterhouses, and although the incidental effect of the statute may be to levy a tax upon this class of property. Territory of New Mexico v. Denver & R. G. R. Co. (1906) 27 Sup. Ct. 1, 5, 203 U. S. 38, 51 L. Ed. 78, affirming judgment (1904). 78 Pac. 74, 12 N. M. 425.

Subjecting all kerosene or other illuminating oils sold or offered for sale in the state to an inspection for the purpose of determining the safety and value of such oils for illuminating purposes, as is done by the North Carolina act of March 8, 1909 (Acts 1909, c. 554), is a proper exercise of the police power, and does not violate the commerce clause. Red "C" Oil Mfg. Co. v. Board of Agriculture of North Carolina (1912) 32 Sup. Ct. 152, 222 U. S. 380, 56 L. Ed. 240, affirming decree (C. C. 1909) 172 Fed. 695.

Prohibition against sales by importing purchasers of concentrated commercial feeding stuffs in original packages, under Laws Ind. 1907, c. 206, without compliance with its requirements as to inspection, is a proper exercise of the police power and not an unconstitutional regulation of inter-

state commerce. Savage v. Jones (1912) 32 Sup. Ct. 715, 721, 225 U. S. 501, 56 L. Ed. 1182.

Censorship by a state board, under Act April 16, 1913 (103 Ohio Laws, p. 399), of motion picture films to be displayed in the state, is not an unlawful burden on interstate commerce, as applied to films brought in from another state. Mutual Film Corp v. Industrial Commission of Ohio (1915) 35 Sup. Ct. 387, 236 U. S. 230, 59 L. Ed. 552; Mutual Film Co. v. Same (1915) 35 Sup. Ct. 393, 236 U. S. 247, 59 L. Ed. 561. Affirming decree (D. C. 1914) 215 Fed. 138.

Interstate commerce in renting and delivery of motion picture films is not unlawfully burdened by Laws Kan. 1913, c. 294, making it unlawful to exhibit motion picture films not first examined by the superintendent of public instruction. Mutual Film Corporation of Missouri v. Hodges (1915) 35 Sup. Ct. 393, 236 U. S. 248, 59 L. Ed. 561.

No article of commerce can be excluded from introduction into and sale in a state by state inspection laws. Swift v. Sutphin (C. C. 1889) 39 Fed. 630, 636.

A state may provide for the reasonable inspection of dressed meat or any article of commerce, and prohibit its introduction into the state if unwholesome or unfit for use as food, but it cannot encroach upon the power of congress to regulate interstate commerce. In re Barber (C. C. 1889) 39 Fed. 641, 646 (affirmed [1890] 10 Sup. Ct. 862, 136 U. S. 313, 34 L. Ed. 455).

Ordinances 619 and 620 of the city of Topeka, in regard to meat inspection, providing that the animal must be inspected before slaughtering, and must be slaughtered within one mile of the city limits, the effect of which is to exclude dressed meat brought from a distance, are unconstitutional, as interfering with free commerce between the states. Ex parte Kieffer (C. C. 1889) 40 Fed. 399.

Laws N. D., 1890, c. 188, § 5, provides that it shall be the duty of every public warehouseman to receive for storage any grain, dry and in a suitable condition; that such grain in all cases be inspected and graded by duly authorized inspectors, etc. Section 32 provides that "the charge for the inspection of grain shall be and constitute a lien on the grain so inspected, and when such grain is in transit the charges shall be treated as advance charges, to be paid by the common carrier in whose possession the same is at the time of inspection." Held, that the words "in transit," in section 32, did not apply to interstate shipments, and that inspectors could not require common carriers to open cars containing wheat consigned to other states for inspection at state lines. Great Northern Ry. Co. v. Walsh (C. C. 1891) 47 Fed. 406.

The fact that Acts La. Ex. Sess. 1870, p. 156, providing for the inspection of flour, applied only to the port of New Orleans, and that no penalty was provided for its violation, were matters for the consideration of the legislature alone, and did not go to the question of its validity under the federal constitution. Glover v. Board of Flour Inspectors (C. C. 1891) 48 Fed. 348.

Laws Wis. 1905, p. 37, c. 19, as amended by Laws Sp. Sess. 1905, p. 19, c. 12, which provides for the inspection, grading, and weighing of grain at Superior, requires all grain sold, delivered, stored, or reshipped at that point to be in accordance with the weights and grades so established and all warehouse receipts to be based thereon, prohibits the mixing of grades so made by warehousemen, and expressly prohibits any sales or deliveries under Minnesota grades, as applied to interstate shipments or deliveries is unconstitutional and void, as a burdensome regulation upon, and interference with, interstate commerce. Globe Elevator Co. v. Andrew (C. C. 1906) 144 Fed. 871, order affirmed Andrew v. Globe Elevator Co. (1907) 156 Fed. 664, 84 C. C. A. 376.

A state may lawfully make local regulations affecting interstate commerce having for their object the protection of the public from fraud and imposition, and which are in aid of such commerce, but a matter like the fixing of grades by which grain may be sold in interstate commerce, and without which it cannot be sold on any large scale is one which admits of only one uniform system of regulation, and is therefore within the exclusive power of congress; and legislation by a state which attempts to impose its own inspection and grades on all grain sold, delivered, or stored within its limits, to the exclusion of those of other states, not only creates or invites a conflict with other states, but imposes a direct burden upon interstate commerce, and is unconstitutional and void as a regulation thereof. Id.

In Act Mo. May 4, 1899 (Sess. Laws 1899, p. 228), providing for the inspection of beer and other malt liquors, section 5, which requires every person or corporation who shall receive for sale or offer for sale any beer or other malt liquors other than those manufactured in the state before offering the same for sale to notify the inspector, who shall inspect and label the same, etc., reasonably construed, has no application to the case where beer manufactured outside of the state is shipped through it for sale in another state, nor to such shipment into the state to a warehouse of the shipper used merely for convenience in distributing beyond the limits of the state. Pabst Brewing Co. v. Crenshaw (C. C. 1903) 120 Fed.

144, decree affirmed (1905) 25 Sup. Ct. 552, 198 U. S. 17, 49 L. Ed. 925.

The Kentucky pure food law (Laws 1906, p. 282, c. 48), which requires articles of food sold in the state to be labeled to disclose their ingredients and authorizes the director of the agricultural experiment station to take samples from each package for analysis, is not unconstitutional, but is valid as an inspection law. Nor was it rendered invalid by the enactment of the national food and drugs act, which does not conflict with its provisions. Savage v. Scovell (C. C. 1908) 171 Fed. 566.

A state statute providing for the inspection and testing of kerosene oil sold for use in the state for illuminating purposes is within the police powers of the state, and is not unconstitutional as an interference with interstate commerce. Red C. Oil Mfg. Co. v. Board of Agriculture (C. C. 1909) 172 Fed. 695, decree affirmed (1912) 32 Sup. Ct. 152, 222 U. S. 380, 56 L. Ed. 240.

Subjecting all kerosene or other illuminating oils sold or offered for sale in the state to an inspection for the purpose of determining the safety and value of such oils for illuminating purposes, as is done by the North Carolina act of March 8, 1909 (Acts 1909, c. 554), is a proper exercise of the police power, and does not violate the commerce clause. Red "C" Oil Mfg. Co. v. Board of Agriculture of North Carolina (1912) 32 Sup. Ct. 152, 154, 222 U. S. 380, 56 L. Ed. 240, affirming decree (C. C. 1909) 172 Fed. 695.

A mortgage and note executed in Alabama, by a citizen thereof to a citizen in Georgia, in payment for guano which was delivered to and accepted by the purchaser in Georgia, cannot be avoided because the guano was not inspected and branded under the laws of Alabama on being brought to Alabama. Stokes v. Culver (1876) 57 Ala. 412.

The Ala. act of 1871 had no extraterritorial operation, and did not affect the validity of sales of fertilizers made in another state. Renfro v. Loyd (1879) 64 Ala. 94.

Act Cal. May 3, 1852, providing for the appointment of a gauger in San Francisco, is not unconstitutional as interfering with the regulation of commerce. Addison v. Saulnier (1861) 19 Cal. 82.

Act Colo. March 21, 1889, which requires the inspection, before slaughter, of certain animals intended for human food, is in violation of the constitution of the United States in so far as such act provides that fresh meats, sound, healthy, and fit for human food, cannot lawfully be shipped into this state to be sold except on condition that the animals from which such meats have been taken shall have been inspected and certified within 48 hours before slaughtering, as provided by said statute. Schmidt v. People (1892) 18 Colo. 78, 31 Pac. 498.

Ordinance July 24, 1852, of the city of Georgetown, providing for the inspection of "every barrel and half barrel of flour manufactured within this town, or brought to the same for sale, shipment, or exportation," does not apply to flour in transit through the city, though transhipped there, and is therefore not unconstitutional as an attempt to regulate commerce between the states. Corporation of Georgetown v. Davidson (1868) 6 D. C. 278.

Inspection laws may be constitutionally applied, not only to the produce of the country to be exported, but to imports brought in for the purpose of sale within the state. Green v. City of Savannah (Ga. 1832) R. M. Charlt. 368.

Where guano is sold by a dealer in another state to a purchaser in Georgia, and the delivery is made without the state, and the title is in the purchaser when the property is brought into the state, the sale is illegal, because the guano is not branded and tagged, as required by Code Ga. § 1553, for all fertilizers offered for sale or distribution in the state. Martin v. Upshur Guano Co. (1886) 77 Ga. 257.

The statutes of Georgia touching the inspection of fertilizers relate solely to such as are offered for sale or distribution in that state. Atlantic Phosphate Co. v. Ely (1889) 82 Ga. 438, 9 S. E. 170.

An ordinance creating a packing house inspector, whose duty it is to inspect all meats shipped into the city or brought from outside the county, and requiring him to visit all packing houses daily and places of importers of meat stuff, and secure their bills of lading to determine whether the shipments have been made in proper time, and whether cars containing such meat have been properly iced during transit, and imposing upon the importers an inspection charge, while it imposes no such charge on others engaged in like business, is invalid as an unlawful interference with interstate commerce. Armour & Co. v. City Council of Augusta (Ga. 1910) 67 S. E. 417.

A state cannot, under the guise of exercising its police power, enact inspection laws burdening foreign or interstate commerce, or impose upon property brought into the state from another state burdens and taxes more onerous than is imposed upon like property in the state. State v. Butterfield Live Stock Co., Limited (1909) 106 P. 455, 17 Idaho, 441.

The federal constitution reserves to the states the power to pass inspection laws and to lay imposts and duties upon imports and exports necessary for executing and carrying into effect such laws. Id.

Acts Ind. 1889, p. 150, entitled "An act for the protection of the public health by the promoting of the growth and sale of healthy cattle and sheep,

making it a misdemeanor to sell the same without inspection before slaughter within this state, and to authorize cities to appoint inspectors," is in violation of the constitution of the United States. State v. Klein (1890) 126 Ind. 68, 25 N. E. 873.

State laws imposing reasonable police regulations for the protection of the markets against the sale of unfit commodities, by means of establishing an inspection of articles offered for sale, and imposing a penalty for offering uninspected goods, do not infringe the United States constitution. State v. Fosdick (1869) 21 La. Ann. 256.

Act La. No. 147 of 1888, providing that no boat load of coal or coke shall be sold in the state until it has been inspected, and fixing the fees for gauging and regauging which are required to be paid by the seller, is not a regulation of commerce. State v. Pittsburg & S. Coal Co. (1889) 41 La. Ann. 465, 6 South. 220.

A city ordinance, requiring under penalty that all live stock shall be inspected on the hoof, before being slaughtered, by a town officer as a condition to sale for food purposes of the meats of such animals, excludes from town market all meats taken from animals slaughtered in other states, or in the state at any considerable distance from the town, contravenes the commerce clause of Const. U. S. art. 1, § 8. Carter v. Green (La. 1910) 53 So. 729.

Gen. St. Mass. c. 49, §§ 122, 124, relating to the inspection and sale, in that state, of lime imported from Maine, is void, as repugnant to the interstate commerce clause. Higgins v. 300 Casks of Lime (1880) 130 Mass. 1.

St. Mass. 1912, c. 248, § 1, prohibiting the sale of neat cattle, unless inspected at the time of slaughter by an official inspector and stamped as provided, is a reasonable police regulation for the protection of the public health and valid as such, though it incidentally affects interstate commerce. Commonwealth v. Moore (1913) 100 N. E. 1071, 214 Mass. 19.

Laws Minn. 1907, c. 355, providing for the inspection of animals imported into the state, is not a violation of the interstate commerce clause. Evans v. Chicago & N. W. Ry. Co. (Minn. 1909) 122 N. W. 876.

An inspection under Laws Minn. 1909, c. 502 (Gen. St. 1913, §§ 3619–3632), of gasoline shipped into the state, mingled with other gasoline, held for sale, and not designed for any particular purchaser or for reshipment to any particular place, held not an interference with interstate commerce. State v. Bartles Oil Co. (Minn. 1916) 155 N. W. 1035.

Laws requiring articles to be inspected or weighed and measured before being sold are in the nature of police regulations, and, if reasonable, are not a restraint upon commerce. Gaines v. Coates (1875) 51 Miss. 335.

Wag. St. Mo. p. 729, § 4, affixing a penalty to the sale of petroleum to persons without inspection, does not require an owner or manufacturer to have the oils inspected before selling to a nonresident. State v. Waters (1878) 5 Mo. App. 578.

The offense of refilling branded oil barrels is none the less an offense, under the statute, because of the intention to send the barrels out of the state. State v. Parsons (1882) 12 Mo. App. 205.

Rev. St. Mo. § 5838, provides for the appointment of an inspector of petroleum, oils, etc., in certain cities, to inspect petroleum, etc., "which may be manufactured, offered for sale, or sold for consumption for illuminating purposes within the state." Held to apply only to oil to be consumed within the state. State ex rel. Spencer v. White (1882) 75 Mo. 465.

Under Act Aug. 8, 1890 (Comp. St. § 8738), declaring that all intoxicating liquors transported into a state, on arrival therein are subject to its laws enacted in the exercise of police powers, Act Mo. May 4, 1899, prohibiting the sale of beer or malt liquors till the same are inspected, and the fee therefor paid to the state, is not in violation of the rights of interstate commerce. State v. Bixman (1901) 162 Mo. 1, 62 S. W. 828.

The ordinance of the city of New York against selling pressed hay without inspection is void. City of New York v. Nichols (N. Y. 1843) 4 Hill, 209.

Laws 1907, c. 113, requiring elevator companies to return certificates of inspection and weighmaster's certificates of weight to the buyer, is not in violation of the interstate commerce clause, and its operation will not interfere with interstate commerce, but is a legitimate exercise of the police power. State v. Minneapolis & Northern Elevator Co. (N. D. 1908) 114 N. W. 482, 485.

A state inspection law has no force outside the state. Van Camp v. Aldrich (Ohio, 1873) 2 Am. Law Rec. 454.

St. Okl. c. 3, art. 1, which provides for the inspection of all stock driven into Beaver county, and requires the inspector to collect specified fees per head from the owner or person in charge, and imposes penalties for failure to comply with certain provisions of the act, is in conflict with the commerce clause. Farris v. Henderson (1893) 1 Okl. 384, 33 Pac. 380.

Under Acts Tenn. 1875 and 1877, fixing the standard of coal oil, it is a misdemeanor to sell the same without inspection, whether the sale be for consumption in this state or elsewhere. Coffin v. State (1879) 70 Tenn. (2 Lea) 559.

A municipal ordinance requiring inspection of all milk sold within the city limits, and providing that the vendors shall pay a license fee, is not extraterritorial in effect, nor void as affecting

persons beyond the city limits, when it only touches those who come within such limits to dispose of their milk. City of Norfolk v. Flynn (1903) 44 S. E. 717, 101 Va. 473, 62 L. R. A. 771, 99 Am. St. Rep. 918.

116. —— Fees.—A state inspection law imposing a charge which it declares to be for defraying the cost of inspection will not be held unconstitutional, as an unwarranted tax on interstate commerce, merely because some of the revenue derived therefrom has in fact been applied to other purposes. Patapsco Guano Co. v. Board of Agriculture of North Carolina (1898) 18 Sup. Ct. 862, 171 U. S. 345, 43 L. Ed. 191, affirming decree (C. C. 1892) 52 Fed. 690.

Act N. C. Jan. 21, 1891, imposing an inspection tax of 25 cents per ton on fertilizers, is not so excessive as to make the act a mere levying law, obnoxious to the objection of being an unwarrantable interference with interstate commerce. Id.

Interstate commerce in intoxicating liquors is not unlawfully burdened by an inspection law enacted by a state "in the exercise of its police powers," within the meaning of Wilson Act Aug. 8, 1890 (Comp. St. § 8738), subjecting to laws so enacted intoxicating liquors arriving in the state, because the statute does not provide for an adequate inspection, and imposes a burden beyond the cost of inspection. Pabst Brewing Co. v. Crenshaw (1905) 25 Sup. Ct. 552, 198 U. S. 17, 49 L. Ed. 925, affirming decree (C. C. 1903) 120 Fed. 144.

It is not within the police powers of a state to subject an article of interstate commerce passing through the state, or which may be temporarily stored therein for distribution to purchasers in other states, to exactions either in the way of taxes or inspection fees, and a bill by a manufacturer of beer in another state alleging that such inspection law is construed by the state officers to require the inspection of beer shipped into the state by complainant and there stored in its warehouses for convenience of distribution until it shall be there sold and forwarded in the original packages to the purchasers in other states, and that complainant is required under penalty of prosecution to pay the fees for such inspection, states a cause of action for an injunction. Id.

An inspection charge of 80 cents per hundred for stamps to be affixed to commercial feeding stuffs, under Laws Ind. 1907, c. 206, is not so unreasonably in excess of the cost of inspection as to invalidate the statutes, when applied to sales by importers in original packages. Savage v. Jones (1912) 32 Sup. Ct. 715, 225 U. S. 501, 56 L. Ed. 1182.

Imposition by Code Supp. Iowa 1907, §§ 5077a6–5077a24, governing the inspection and analysis of concentrated feeding stuffs, of an inspection fee of ten cents per ton when sold within the state, or, in lieu thereof, of an annual license fee of $100, does not render the statute invalid as applying to sales by importers in original packages. Standard Stock Food Co. v. Wright (1912) 32 Sup. Ct. 784, 225 U. S. 540, 56 L. Ed. 1197.

The charge of 1 cent per bushel on oysters coming from other states levied by Oyster Law Md. § 69, to defray the expenses of inspection and other expenses of the state fishery force, unlawfully interferes with interstate commerce, where such tax regularly yields a revenue largely in excess of the amount required to pay the salaries of the inspectors. D. E. Foote & Co. v. Stanley (1914) 34 Sup. Ct. 377, 232 U. S. 494, 58 L. Ed. 698, reversing decree (1911) 82 A. 380, 117 Md. 335.

The right of the states to make inspection laws is subject to the paramount right of congress to regulate foreign and interstate commerce, and an impost on imports or exports is void, if in excess of what is absolutely necessary for executing such inspection laws. Neilson v. Garza (C. C. 1876) Fed. Cas. No. 10,091.

Congress is the proper authority to decide whether a charge or duty is or is not excessive. Id.

Act N. C. March 8, 1909 (Laws 1909, c. 554), providing for the inspection and testing of illuminating oils sold or offered for sale in the state, imposing a tax of one-half cent per gallon on such oils to defray the expenses of such inspection and testing, and empowering the State Board of Agriculture to make rules and regulations therefor such as "they may deem necessary to provide the people of the state with satisfactory illuminating oil," is within the police powers of the state, and is not unconstitutional as an interference with interstate commerce, nor because the charge made is so excessive as to show it to be a revenue, and not an inspection statute. Red C. Oil Mfg. Co. v. Board of Agriculture (C. C. 1909) 172 Fed. 695.

A charge of ½ cent per gallon, made by such act cannot be said, in advance of the experience gained from the actual operation of the act, to be so seriously in excess of what is necessary as to justify the imputation that the real purpose of the statute was to raise a revenue, in violation of the commerce clause. Red "C" Oil Mfg. Co. v. Board of Agriculture of North Carolina (1912) 32 Sup. Ct. 152, 154, 222 U. S. 380, 56 L. Ed. 240, affirming decree (C. C. 1909) 172 Fed. 695.

Laws Idaho 1909, p. 72, providing that all persons who bring sheep from any other state or territory into the state shall notify the state live stock inspector, stating the number of sheep, brands, etc., and pay a grazing fee of five cents per head, could not be justified as a provision for preserving the health and welfare of sheep within the

state as an inspection law, because the funds realized from the assessment are turned into the live stock sanitary fund and generally used for such purpose, there being no duty imposed upon the state live stock sanitary board in return for the levy of such assessment, and full provision being made otherwise for the inspection of all sheep brought within the state and produced within the state, and a special levy made for the purpose of paying therefor. State v. Butterfield Live Stock Co., Limited (1909) 106 P. 455, 17 Idaho, 441.

The acts La. of 1867 and 1868, imposing a charge for weighing and inspecting each bale of hay brought to the port of New Orleans for sale, irrespective of the state or place where the hay is made, do not involve a regulation of commerce between the states. Hay Inspectors v. Pleasants (1871) 23 La. Ann. 349.

Laws N. M. 1901, c. 45, providing for the inspection of the hides of animals killed at slaughter houses, permitting a fee of 10 cents a hide to be charged therefor against the owner, and prohibiting any railroad company from shipping hides not inspected and tagged beyond the limits of the territory, was valid as an inspection law, though its purpose was not to improve the quality of the hides, etc., but was for the sole purpose of aiding in the detection and punishment of crime or fraud against the cattle industry. Territory v. Denver & R. G. R. Co. (1906) 78 P. 74, 12 N. M. 425; Id. (1905) 79 P. 295, 12 N. M. 425, affirmed Territory of New Mexico v. Denver & Rio Grande Railroad Company (1906) 27 Sup. Ct. 1, 203 U. S. 38, 51 L. Ed. 78.

Since a part of the fees collected under such act are applicable to the payment of expenses incurred by the cattle sanitary board as provided by Comp. Laws N. M. § 220, and the secretary of such board has various other duties to perform than those pertaining to the business of inspecting hides, a showing that the cost of such inspection was much less than the amount authorized to be charged by section 3 was insufficient to establish the invalidity of the statute on the ground that the fees provided were beyond the requirements of inspection. Id.

The amount of such fee does not render that statute, if otherwise valid, repugnant to the commerce clause, where it is not so unreasonable and disproportionate to the services rendered as to challenge the good faith of the law. Id.

The tax of 25 cents a ton imposed upon fertilizers by Code N. C. 1883, § 2190 (as amended, Laws 1891, c. 9), to defray the expense of inspection, is not in itself so unreasonable or excessive as to show a purpose to evade the commerce clause against the taxation of imports by the states. State v. Caraleigh Phosphate & Fertilizer Works (1896) 25 S. E. 795, 119 N. C. 120.

The oil inspection law is violative of the commerce clause in so far as the fees provided for exceed the reasonable necessary cost of inspection, if in fact it exceeds such cost. Bartles Northern Oil Co. v. Jackman (N. D. 1915) 150 N. W. 576.

A city ordinance requiring the measurement by an inspector of coal sold within the city, and allowing him a fee therefor, is not, as applied to imported coal, repugnant to the provision of the commerce clause. City Council of Charleston v. Rogers (S. C. 1823) 2 McCord, 495, 13 Am. Dec. 751.

117. Immigration in general.—Act N. Y. 1824, requiring masters of vessels arriving at New York to make report of the names, etc., of foreign passengers, etc., is not an interference on the part of the state with commerce between the port of New York and foreign ports. City of New York v. Miln (1837) 36 U. S. (11 Pet.) 102, 9 L. Ed. 648, affirming Milne v. New York (C. C.) Fed. Cas. No. 9,618.

The third section of the act of the legislature of the commonwealth of Massachusetts of April 20, 1837, entitled, "An act relating to alien passengers," providing that no alien passengers (except those likely to become paupers, who are prohibited, in another section, from being landed unless a bond is given to secure the city, town, or state against their support) shall be landed until a sum of two dollars is paid to the boarding officer for each passenger so landing, is repugnant to the constitution and laws of the United States, and therefore void. Norris v. City of Boston (1849) 48 U. S. (7 How.) 283, 12 L. Ed. 702.

A statute which imposes a burdensome and almost impossible condition on the shipmaster as a prerequisite to his landing his passengers, with an alternative payment of a small sum of money for each one of them, is a tax on the shipowner for the right to land such passengers, and, in effect, on the passenger himself, since the shipmaster makes him pay it in advance as part of his fare. Such a statute of a state is a regulation of commerce, and, when applied to passengers from foreign countries, is a regulation of commerce with foreign nations. Legislation on the subject which it covers is confided exclusively to congress by that clause of the constitution which gives to that body the "right to regulate commerce with foreign nations." It cannot be defended as falling within the police power of the state, for legislation is prohibited to the state over all matters on which it is granted exclusively to congress; nor is the constitutional objection to this tax on the passenger removed because the penalty for failure to pay does not accrue until 24 hours after he is landed. The penalty is incurred by the act of landing him without payment, and is, in fact, for the act of bringing him into the state.

Henderson v. City of New York (1875) 92 U. S. 259, 23 L. Ed. 543.

A state statute required the owner of every vessel arriving at the port of New York to give a bond for every passenger in a penalty of $300 conditioned to indemnify the commissioners of emigration and every county, city, and town in the state against any expense for the relief of such passenger for four years thereafter but authorizes in commutation of such bond the payment of $1.50 for each passenger, is void as a regulation of commerce with foreign nations. Id.

A statute which authorizes a state commissioner of emigration to decide if the passengers on a ship are insane, blind, paupers, or lewd women, and to require of the master or owner a separate bond for each passenger included in those classes in the sum of $500 conditioned to save harmless every county, city, or town of the state against any expense incurred for the relief of such passenger for two years thereafter, and authorized the owner or master to commute for the bond by paying such a sum of money as the commissioner may in each case think proper to exact, 20 per cent. of which the commissioner is to retain, is in conflict of this section, and void. Chy Lung v. Freeman (1875) 92 U. S. 275, 280, 23 L. Ed. 550.

Under the power to regulate commerce with foreign nations, the congress has power to impose any restrictions it sees fit upon the immigration of aliens, and to provide penalties for the violation of those restrictions by persons bringing aliens into the country. Lees v. U. S. (1893) 14 Sup. Ct. 163, 150 U. S. 476, 37 L. Ed. 1150.

Act N. Y. Feb. 11, 1824, imposing penalties for neglecting to report passengers brought from foreign countries into the port of New York, is within the police power of the state. Milne v. New York (C. C.) Fed. Cas. No. 9,618.

Immigration, either temporary or permanent, is an essential ingredient of intercourse and traffic, and the power to regulate commerce lodged by the constitution in the general government implies the power to regulate both as to persons and as to goods, and its exercise cannot be interfered with by any state. Lin Sing v. Washburn (1862) 20 Cal. 534.

Act Cal. March 20, 1891 (St. 1891, p. 185), intended to prohibit Chinese from coming into the state, and to prescribe the terms on which those residing in the state may remain or travel between different points in the state, is in conflict with the commerce clause, and is void. Ex parte Ah Cue (1894) 101 Cal. 197, 35 Pac. 556; Ex parte Lippman (1894) 35 Pac. 557.

Section 2 of the immigration law, enacted March, 1869, and re-enacted in Rev. St. La. 1870, § 1722, is not in conflict with the commerce clause. The law is simply a police regulation adopted by the state for the protection of its own citizens. Immigration Com'rs v. Brandt (1874) 26 La. Ann. 29.

Act N. Y. 1881, providing for inspection of persons and effects of emigrants arriving by vessel at the port of New York from any foreign country, is not, within Const. art. 1, § 10, c. 2, an inspection law, for which the state may lay duties on imports or exports; and therefore Laws N. Y. 1881, c. 432, § 590, entitled "An act to raise money for the execution of the inspection laws of the state of New York," which levies a duty on every alien coming from a foreign port to the port of New York, is a regulation of interstate commerce, and void. People v. Edye (N. Y. 1882) 11 Daly, 132.

Laws N. Y. 1882, c. 145, providing for the raising by the commissioners of emigration of a fund for the expenses of the inspection and care of alien passengers, by contract with carriers of emigrants by vessel to the city of New York, was not enforceable, as the subject is solely within the jurisdiction of the United States congress; and the commissioners were not liable to the city of New York for the care and maintenance by the city of immigrants arriving at that port, where it was not shown that there was any existing fund out of which payment therefor could be made by the commissioners. New York v. Commissioners of Emigration (1891) 59 Hun, 624, 13 N. Y. Supp. 751.

118. Tax on immigrants or aliens.—A New York statute relating to passengers in vessels arriving at the port of New York held not to be a regulation of commerce, but of police, to prevent the state being burdened with an influx of foreigners, and to prevent their becoming paupers, etc. New York v. Miln (1837) 11 Pet. 102, 137, 9 L. Ed. 648.

State statutes imposing taxes on alien passengers are void. Passenger Cases (1849) 7 How. 283, 393, 12 L. Ed. 702.

The statute of New York of May 31, 1881, imposing a tax on every passenger from a foreign country landing in the port of New York who is not a citizen of the United States, and holding the vessel which brings him liable for the tax, is an invalid regulation of interstate commerce. The tax is not relieved from this constitutional objection by calling in an inspection law. People v. Campagnie Générale Transatlantique (1883) 107 U. S. 59, 2 Sup. Ct. 87, 27 L. Ed. 383, affirming (C. C. 1882) 10 Fed. 357.

Act Aug. 3, 1882 (22 Stat. 214), "to regulate immigration," which imposes on the owners of steam or sailing vessels who shall bring passengers from a foreign port into a port of the United States a duty of 50 cents for every such passenger not a citizen of this country, to constitute a fund "to defray

the expense of regulating immigration under this act, and for the care of immigrants arriving in the United States, for the relief of such as are in distress," etc., is a valid exercise of the power to regulate commerce with foreign nations. Edye v. Robertson (1884) 5 Sup. Ct. 247, 112 U. S. 580, 28 L. Ed. 798, affirming judgment (C. C. 1883) 18 Fed. 147.

Act Aug. 3, 1882 (22 Stat. 214), entitled "An act to regulate immigration," imposes on the owners of vessels who shall bring passengers from a foreign port into a port of the United States a duty of 50 cents for every such passenger not a citizen of the United States, and is not a tax subject to the limitations imposed by the constitution on the general taxing power of congress. Id.

The act entitled "An act to regulate immigration," which levies a duty of 50 cents for every passenger not a citizen of the United States who shall come by steam or sail vessel from a foreign port to any port within the United States, to be paid to the collector of customs of the port to which such passengers shall come, by the master, owner, agent, or consignee of every such vessel, is a regulation of commerce with foreign nations. Edye v. Robertson (C. C. 1883) 18 Fed. 135, judgment affirmed (1884) 5 Sup. Ct. 247, 112 U. S. 580, 28 L. Ed. 798.

Act Aug. 3, 1882, "to regulate immigration," which imposes upon the owners of vessels who shall bring passengers from a foreign port into a port of the United States a duty of 50 cents for every such passenger not a citizen of this country, was held valid. Id.

A state tax on immigrants is void. People v. Downer (1857) 7 Cal. 169; Mitchell v. Steelman (1857) 8 Cal. 363.

The state act of April 26, 1862, "to protect free white labor against competition with Chinese coolie labor and to discourage the immigration of the Chinese into California," taxing every Chinese person over 18 years of age $2.50 per month during residence in the state, is contrary to that clause in the United States constitution which confers upon congress the power to regulate commerce, and is unconstitutional. Lin Sing v. Washburn (1862) 20 Cal. 534.

A tax the effect of which is to diminish personal intercourse is a tax upon commerce, within the meaning of that term as used in the constitution of the United States. Id.

Act Cal. April 26, 1862, being an act to discourage immigration of the Chinese into California, is not within the power of the state to exclude paupers and other obnoxious persons; it not appearing that the Chinese are such. Id.

119. Tax on passengers.—The Act Ohio March, 1834, assessing tolls upon passengers carried by mail coaches in Ohio, is constitutional, since not a tax upon the coach itself. State v. Neil (1835) 7 Ohio (7 Ham.) 132, 28 Am. Dec. 623, reversed in (1845) 44 U. S. (3 How.) 720, 11 L. Ed. 800.

In 1865 the state of Nevada levied "a capitation tax of one dollar upon every person leaving the state by any railroad, stage-coach, or other vehicle engaged or employed in the business of transporting passengers for hire," to be paid by the proprietors or corporations so engaged. Held, that such a tax was unconstitutional, on the ground that it would interfere with the right of the general government, under the federal constitution, to the free passage of its officers, agents, and troops over every part of the national territory. Crandall v. Nevada (1867) 73 U. S. (6 Wall.) 35, 18 L. Ed. 744, reversing (1865) 1 Nev. 294.

The statute of New York of May 31, 1881, imposing a tax on every passenger from a foreign country landing in the port of New York who is not a citizen of the United States, and holding the vessel which brings him liable for the tax, is a regulation of commerce. The tax is not relieved from this constitutional objection by calling it an inspection law. People v. Campagnie Générale Trans-Atlantique (1883) 107 U. S. 59, 2 Sup. Ct. 87, 27 L. Ed. 383, affirming (C. C. 1882) 10 Fed. 357.

Section 2955, Pol. Code Cal., so far as it requires the payment of 70 cents for each passenger inspected to ascertain if he is afflicted with leprosy, coming into the United States by sea, and imposing a fine for nonpayment upon the owners and consignees of the vessel bringing the passengers, is unconstitutional and void. People v. Pacific Mail S. S. Co. (C. C. 1883) 16 Fed. 344.

A state may not lay a tax on passengers passing through the state, for such enactment, if permissible, may be so framed as to restrict or prohibit the right of commerce between the states. Holyoke & South Hadley Falls Ice Co. v. Ambden (C. C. 1893) 55 Fed. 593, 594, 21 L. R. A. 319.

The tax under Act La. March 27, 1843, No. 81, providing a fund for the Charity Hospital of New Orleans, being imposed exclusively on the passengers, and not on the officers and crew of the vessel, is not a regulation of commerce; nor a usurpation of the power to "regulate commerce with foreign nations and among the several states," exclusively vested in congress. State v. Fullerton (La. 1844) 7 Rob. 210.

120. Quarantine and other sanitary regulations—In general.—The expense of quarantine regulations cannot be raised by a tax on foreign-owned ships engaged in interstate or international commerce. Peete v. Morgan (1873) 86 U. S. (19 Wall.) 581, 22 L. Ed. 201.

No unconstitutional regulation of commerce is made by Acts La. 1898,

No. 192, § 8, under which the state board of health may exclude healthy persons from entering a locality infested with a contagious or infectious disease, whether such persons come from within or without the state. Compagnie Francaise De Navigation A Vapeur v. Board of Health of State of Louisiana (1902) 22 Sup. Ct. 811, 186 U. S. 380, 46 L. Ed. 1209, affirming judgment (1899) 25 South. 591, 51 La. Ann. 645.

No unconstitutional regulation of commerce is made by Acts La. 1898, No. 192, § 8, under which the state board of health may exclude healthy persons from entering a locality infested with a contagious or infectious disease, whether such persons come from within or without the state. Id.

The statute of California making it an offense to disinter or remove from the place of burial the remains of any deceased person without a permit, for which a fee of $10 must be paid, does not violate the clause of the constitution providing that "congress shall have power to regulate commerce with foreign nations." In re Wong Yung Quy (C. C. 1880) 2 Fed. 624, 631.

The power to regulate commerce includes the power to adopt quarantine laws. U. S. v. Craig (C. C. 1886) 28 Fed. 795, 797.

The detention and disinfection of immigrants by order of a state board of health, with the purpose of preventing infectious disease, is not a regulation of foreign commerce by a state. Minneapolis, St. P. & S. S. M. Ry. Co. v. Milner (C. C. 1893) 57 Fed. 276, following Brown v. Maryland (1827) 12 Wheat. 419, 6 L. Ed. 678.

A state cannot, under a pretense of protecting the public health, enact laws which, in their necessary operation, are a direct burden upon interstate commerce. Commonwealth v. Moore (1913) 100 N. E. 1071, 214 Mass. 19.

Though a state law is apparently for the protection of the public health, it will be scrutinized as to its practical operation and results in determining whether it in fact regulates interstate commerce. Id.

State statutes enacted in the exercise of the state's police power, which have a general operation and are rationally connected with the promotion of the public health, will be sustained, though they incidentally affect interstate commerce. Id.

The ordinance of the city of St. Louis which prescribes that boats coming from below Memphis, having had on board, at any time during the voyage, more than a specified number of passengers, should remain in quarantine not less than 48 hours nor more than 20 days, does not conflict with the exclusive right to regulate commerce which is reserved to congress by the constitution of the United States. City of St. Louis v. McCoy (1853) 18 Mo. 238.

An ordinance by a city, under power from the state, regulating quarantine laws, is valid, although interfering incidentally with commerce. City of St. Louis v. Boffinger (1853) 19 Mo. 13.

Regulations for the protection of the public health are within the police powers of the state, and not an interference with interstate commerce, where they have some substantial relation to a public object which government can accomplish, and are not arbitrary and unreasonable and beyond the necessities of the case. Borden's Condensed Milk Co. v. Board of Health of Town of Montclair (N. J. 1911) 80 A. 30.

Laws N. Y. 1875, c. 604, prohibiting, except under certain restrictions, the deposit of offal or dead animals in certain rivers and bays, is in the nature of a police regulation, and does not contravene the constitutionally exclusive power of congress to regulate commerce. City of New York v. Furgueson (N. Y. 1881) 23 Hun, 594.

The passage of health and quarantine laws are within the reserved powers of the state, and are not unconstitutional, when applied to immigrants, as interfering with the federal rights as to the regulation of commerce. Board of Health v. Loyd (Pa. 1850) 1 Phila. 20.

121. —— Protection of animals against disease.—The statute of Missouri which prohibits driving or conveying any Texas, Mexican, or Indian cattle into the state, between the 1st day of March and the 1st day of November in each year, is in conflict with the clause of the constitution which ordains that "congress shall have power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." It cannot be sustained as a quarantine regulation, or as an exercise of the police powers of the state. Hannibal & St. J. R. Co. v. Husen (1877) 95 U. S. 465, 24 L. Ed. 527.

The provision of Code Iowa 1873, § 4059, that any one who has in his possession in the state Texas cattle which have not wintered north of the southern boundary of Missouri or Kansas shall be liable for any damages that may accrue from allowing them to run at large, and so spreading Texas fever, is not an attempted regulation of interstate commerce. Kimmish v. Ball (1889) 129 U. S. 217, 9 Sup. Ct. 277, 32 L. Ed. 695.

The Idaho sheep quarantine act of March 13, 1899, authorizing the governor, when he has reason to believe that there is an epidemic infectious disease of sheep in localities outside the state, to investigate the matter, and, if he finds that the disease exists, to make a proclamation declaring such localities infected and prohibiting the introduction therefrom of sheep into the state, except under such restrictions as, after consultation with the state sheep inspector, he may deem proper, is with-

in the police power of the state, and is not a regulation of interstate commerce. Rasmussen v. State of Idaho (1901) 21 Sup. Ct. 594, 181 U. S. 198, 45 L. Ed. 820, affirming judgment State v. Rasmussen (1900) 59 P. 933, 7 Idaho, 1, 52 L. R. A. 78, 97 Am. St. Rep. 234.

Proper quarantine regulations restricting the importation of cattle from another state on account of the danger of disease do not make unconstitutional regulations of commerce. Smith v. St. Louis & S. W. Ry. Co. of Texas (1901) 21 Sup. Ct. 603, 181 U. S. 248, 45 L. Ed. 847, affirming judgment St. Louis S. W. Ry. Co. v. Smith (1899) 49 S. W. 627, 20 Tex. Civ. App. 451.

No unconstitutional burden on interstate commerce is made by the provisions of Sess. Laws Colo. 1885, p. 335, prohibiting the importing of cattle from south of the thirty-sixth parallel of north latitude between April 1st and November 1st, unless first kept for 90 days at some place north of that parallel, or unless a certificate of freedom from contagious or infectious disease has been obtained from the state veterinary sanitary board. Reid v. People of State of Colorado (1902) 23 Sup. Ct. 92, 187 U. S. 137, 47 L. Ed. 108, affirming judgment (1902) 68 Pac. 228, 29 Colo. 333, 93 Am. St. Rep. 69.

Nothing in the provision of Act Feb. 2, 1903 (Comp. St. § 8698), that, when an inspector of the Bureau of Animal Industry has issued a certificate that he has inspected animals and found them free from disease, such animals may be introduced into any state without further inspection or exaction of fees of any kind except such as may be ordered or exacted by the Secretary of Agriculture, precluded the enactment of Laws Kan. 1905, c. 495, § 27, making it a misdemeanor for any person to transport into the state cattle from any point south, except for immediate slaughter, without having first caused them to be inspected and passed as healthy by the proper state officials, or by the Bureau of Animal Industry of the Interior Department of the United States. Asbell v. State of Kansas (1908) 28 Sup. Ct. 485, 209 U. S. 251, 52 L. Ed. 778, 14 Ann. Cas. 1101, affirming judgment State v. Asbell (1906) 86 P. 457, 74 Kan. 397.

A regulation promulgated by the Secretary of Agriculture under the authority of Act Feb. 2, 1903 (Comp. St. § 8699), which is directed to the transportation of cattle from quarantined states, and which in terms recognizes restrictions imposed by the state of destination, does not invalidate—at least, where no quarantined areas are involved—the provision of Laws Kan. 1905, c. 495, § 27, making it a misdemeanor for any person to transport into the state cattle from any point south, except for immediate slaughter, without having first caused them to be inspected and passed as healthy by the proper state officials, or by the Bureau of Animal Industry of the Interior Department of the United States. Id.

Interstate commerce is not unlawfully regulated, in the absence of controlling federal legislation, by Laws Kan. 1905, c. 495, § 27, making it a misdemeanor for any person to transport into the state cattle from any point south, except for immediate slaughter, without having first caused them to be inspected and passed as healthy by the proper state officials, or by the Bureau of Animal Industry of the Interior Department of the United States. Id.

The Idaho sheep quarantine act of March 13, 1899 (Sess. Laws 1899, p. 452), provides that whenever the governor has reason to believe that scab or any other infectious disease of sheep has become epidemic in certain localities outside the state he must, by proclamation, designate such localities, and prohibit the importation from them of any sheep into the state, except under such restrictions as, after consultation with the sheep inspector, he may deem proper. Held, that a bill by sheep owners, alleging that defendants, acting under a proclamation issued by the governor under such act prohibiting the importation of any sheep from an adjoining county in another state for the period of 40 days, prevented complainants from driving their sheep across the line into Idaho for pasturage on their own and the public lands within the state as they were accustomed to do each spring, and for shipment to market, stated a cause of action for equitable relief by injunction, where it also alleged that such sheep were free from disease, and had been so found by the United States inspectors; that there was no infectious disease epidemic on the range where they were or had been; and that the reasons stated in the proclamation for such prohibition were false and groundless, and were based on statements made by defendants and others for the purpose of excluding sheep of other owners, and securing a monopoly of the grazing on the public lands within the state; and where it also showed that the exclusion would work irreparable injury to complainants. Smith v. Lowe (1903) 121 Fed. 753, 59 C. C. A. 185.

The order of the Department of Agriculture of April 26, 1904 (Bureau of Animal Industry Order No. 124), prohibiting the importation of hay and straw from continental Europe as a means of preventing the introduction of foot and mouth disease among cattle in the United States, is a regulation of commerce with foreign nations and an exercise of legislative power, and therefore void. (1904) 25 Op. Atty. Gen. 249.

Act Ark. May 28, 1907 (Laws 1907, p. 1043), to prevent the introduction and spread of contagious diseases of animals, is a quarantine measure within

the police power of the state, and not in conflict with the authority of congress to regulate interstate commerce. Kansas City Southern Ry. Co. v. State (Ark. 1909) 119 S. W. 288.

Sess. Laws Colo. 1885, p. 335, § 2, making it unlawful for any person to bring into the state any cattle from a state south of the thirty-sixth parallel of north latitude, unless first held at a point north of that parallel for at least 90 days, or unless a bill of health is procured from the state sanitary board, and requiring the person to pay the expense of the inspection, is not a regulation of interstate commerce, as, at most, it only indirectly affects it, and is not in conflict with Const. art. 1, § 8, subd. 3, conferring on congress power to regulate interstate commerce. Reid v. People (1902) 68 P. 228, 29 Colo. 333, judgment affirmed (1902) 23 Sup. Ct. 92, 187 U. S. 137, 47 L. Ed. 108.

Laws Idaho 1895, p. 125, § 14, concerning the appointment of a sheep inspector, etc., and Laws 1897, p. 115, §§ 4, 6, amendatory thereof, declaring it to be unlawful to bring sheep into this state without first having them dipped, place restriction upon interstate commerce, and are repugnant to Const. art. 1, § 8. State v. Duckworth (Idaho, 1897) 51 P. 456, 39 L. R. A. 365, 95 Am. St. Rep. 199.

Act Idaho March 13, 1899, giving the governor of the state power on learning of infectious diseases being prevalent among sheep, in localities without the state, to declare such localities quarantined, and prohibit the importation of sheep therefrom, except under regulations to be provided by the state sheep inspector, and further providing that, after quarantine is declared, all persons bringing sheep into the state must notify the county inspector, and not allow such sheep to move on the public highway without first being inspected, is not void as in restraint of interstate commerce. State v. Rasmussen (1900) 59 P. 933, 7 Idaho, 1, 52 L. R. A. 78, 97 Am. St. Rep. 234. Judgment affirmed Rasmussen v. State of Idaho (1901) 21 Sup. Ct. 594, 181 U. S. 198, 45 L. Ed. 820.

Act Ill. Feb. 27, 1867, to prevent the importation into the state of certain cattle which communicate a fatal disease at certain seasons of the year to native cattle, is not obnoxious to the objection that it unnecessarily extends the prohibition to all seasons of the year beyond the probable danger of infection. Stevens v. Brown (1871) 58 Ill. 289.

The constitutionality of the Illinois act of Feb. 27, 1867, to prevent the importation of Texas or Cherokee cattle into Illinois, has been frequently affirmed and recognized, and as there is nothing in the amendment to that act approved April 16, 1869, to which the reasoning in these cases is not equally applicable, the question of the constitutionality of the amendment may be deemed settled. Chicago & A. R. Co. v. Gasaway (1874) 71 Ill. 570.

Rev. St. Ill. 1874, p. 141, prohibiting Texas and Cherokee cattle from being brought into or carried through the state, is in conflict with the interstate commerce clause. Chicago & A. R. Co. v. Erickson (1879) 91 Ill. 613, 33 Am. Rep. 70; Salzenstein v. Mavis (1879) 91 Ill. 391, overruling Yeazel v. Alexander (1871) 58 Ill. 254.

Comp. Laws Kan. c. 105, § 60, prohibiting the importation into that state of cattle diseased with the Texan, splenic, or Spanish fever, is not an unconstitutional regulation of commerce. Missouri Pac. Ry. Co. v. Finley (1888) 38 Kan. 550, 16 Pac. 951.

Laws Kan. 1881, c. 161, as amended by Laws 1885, c. 191, prohibiting the bringing into the state, at certain seasons, of cattle capable of communicating, or liable to impart, the Texas, splenic, or Spanish fever, and making the fact that cattle come from south of the thirty-seventh parallel of north latitude prima facie evidence that they are capable of communicating that disease, does not interfere with interstate commerce. Rouse v. Youard (1895) 1 Kan. App. 270, 41 Pac. 426.

Wag. St. Mo. p. 251, § 1, prohibiting the shipment of Texas cattle into the state during certain seasons of the year, does not violate the interstate commerce clause. Wilson v. Kansas City, St. J. & C. B. R. Co. (1875) 60 Mo. 184; Husen v. Hannibal & St. J. R. Co., Id. 226; Dimond v. Kansas City, St. J. & C. B. R. Co., Id. 393; Mercer v. Same, Id. 397; Kenney v. Hannibal & St. J. R. Co. (1876) 62 Mo. 476; Brown v. Same, Id. 490.

Wag. St. Mo. p. 251, § 1, prohibiting the introduction, under certain conditions, of Texas cattle into the state, is void, as being a regulation of commerce. Gilmore v. Hannibal & St. J. R. Co. (1878) 67 Mo. 323.

Sections 1 and 9 of the act restricting the importation of Texas, Mexican, and Indian cattle are unconstitutional, as being an attempt to regulate interstate commerce. Urton v. Sherlock (1881) 75 Mo. 247.

Rev. St. Mo. 1889, § 953 et seq., which prohibits the transportation into or through the state of all cattle infected with any contagious disease, and which renders persons transporting such cattle liable to persons whose cattle contract the disease from them, and which makes the mere fact that the existence of Texas fever among cattle in the neighborhood of cattle so transported prima facie evidence that the cattle transported were diseased, in effect prohibits the transportation of all Texas cattle through the state, as they, though healthy themselves, are apt to give the Texas fever to other cattle, and, so far as it prohibits the transportation of such cattle by boats or railroads "through" the state, is in violation of the commerce clause. Grimes v. Eddy

(1894) 126 Mo. 168, 28 S. W. 756, 47 Am. St. Rep. 653, 26 L. R. A. 638.

Rev. St. Mo. § 953, in so far as it provides that no railroad company or steamboat owner shall transport through the state Texas, Mexican, Cherokee, or Indian cattle afflicted with Texas or Spanish fever, is void, as an interference with interstate commerce; it, in effect, entirely prohibiting the transportation through the state of such varieties of cattle, since all of them contain microbes by which Texas fever may be communicated to native cattle. Id.

Rev. St. Mo. 1889, §§ 953, 954, in so far as they prohibit the transportation, through the state, of Texas, Mexican, Cherokee, or Indian cattle afflicted with Texas or Spanish fever, are an interference with interstate commerce. Selvege v. St. Louis & S. F. Ry. Co. (1896) 135 Mo. 163, 36 S. W. 652.

Rev. St. Tex. 1895, tit. 102, c. 7, giving the live stock sanitary commission authority to prohibit the importation of cattle into the state on the ground that infectious disease has broken out among the cattle of such other state, is not unconstitutional as an interference with interstate commerce. St. Louis S. W. Ry. Co. of Texas v. Smith (1899) 49 S. W. 627, 20 Tex. Civ. App. 451. Affirmed Smith v. St. Louis & S. W. Ry. Co. (1901) 21 Sup. Ct. 603, 181 U. S. 248, 45 L. Ed. 847.

Rev. St. Wyo. 1899, § 2090, as amended and re-enacted by Sess. Laws 1905, c. 98, § 4, making it unlawful to bring infected sheep into the state, is not a regulation of interstate commerce, but is a reasonable exercise of the state's police power. Patrick v. State (Wyo. 1908) 98 P. 588.

See, also, note, post, as to "Creation of or Exemption from Civil Liabilities or Remedies."

122. Preferences and discriminations in general.—Commerce among the states in any commodity can only be free when the commodity is exempted from all discriminating regulations and burdens imposed by local authority by reason of its foreign growth or manufacture. Webber v. Virginia (1880) 103 U. S. 344, 351, 26 L. Ed. 565.

The specification of a municipal council, in its resolutions and ordinances for street improvements, that Trinidad Lake asphalt shall be the material used, does not constitute such a direct interference with the interstate commerce as to be repugnant to the commerce clause, because the particular kind of asphalt is a product of a foreign country and there are deposits in several of the United States from which suitable asphalt can be had. Field v. Barber Asphalt Pav. Co. (1904) 24 Sup. Ct. 784, 786, 194 U. S. 618, 48 L. Ed. 1142, modifying decree (C. C. 1902) 117 Fed. 925.

A valid regulation of commerce need not apply to all commodities alike, but the regulations may make a discrimination between articles and carriers. U. S. ex rel. Attorney General of the U. S. v. Delaware & Hudson Co. (1909) 29 Sup. Ct. 527, 539, 213 U. S. 366, 53 L. Ed. 836.

To render a state statute void on the ground that it affects commerce between the states, it must involve some discrimination against goods shipped from other states, or against persons engaged in such commerce. In re May (C. C. 1897) 82 Fed. 422.

Rev. Codes Idaho, §§ 1475, 1476, requiring that state and county printing, binding and stationery work shall be done within the state, and within the county where required for use, do not interfere with nor regulate commerce. Ex parte Gemmill (1911) 119 P. 298, 20 Idaho, 732.

A city ordinance permitting a street railroad company engaged in interstate commerce under franchises granted by the city to make discrimination in rates in favor of residents of the city against residents of another state is unconstitutional, because it conflicts with the interstate commerce clause. State v. Omaha & C. B. Ry. & Bridge Co. (1901) 84 N. W. 983, 113 Iowa, 30, 52 L. R. A. 315, 86 Am. St. Rep. 357.

That a state statute is not prohibitory in its nature does not prevent it from being invalid as regulating interstate commerce, if its effect is to discriminate against the products of other states in favor of those of its own. Commonwealth v. Moore (1913) 100 N. E. 1071, 214 Mass. 19.

The designation by city authorities of a certain kind of asphalt as the material to be used for paving a street, is not a direct interference with interstate commerce, so as to be violative of the federal constitution. Barber Asphalt Pav. Co. v. Field (1905) 86 S. W. 860, 188 Mo. 182.

Rev. Codes Mont. § 2897, which provides that any newspaper unable to complete a contract for county printing shall sublet it to some competent printing establishment within the state, is not a regulation of interstate commerce. Hersey v. Nelson (Mont. 1913) 131 P. 30.

Rev. Codes N. D. § 1807, providing that all county printing shall be done in the state, and, if practicable, in the county ordering the same, is not a violation of the interstate commerce clause. Knight v. Barnes (1898) 75 N. W. 904, 7 N. D. 591.

Rev. Codes N. D. § 1807, in requiring county printing to be done within the state, does not unlawfully discriminate either against nonresidents or those whose places of business are situated in another state, and is not violative of such clause. Id.

Act Tex. March 13, 1905 (Gen. Laws 1905, c. 25) § 1, prescribes the parties to, and venue of, suits against railroad

corporations operating within the state, or having an agent or representative therein and provides that whenever freight has been transported by two or more such corporations, or partly by one or more of them, suit for damages or loss, or any cause of action arising out of such carriage, may be brought against any one or all of the carriers in any court of competent jurisdiction in any county in which either operates or does business, or has an agent or representative. Held, that such act was not unconstitutional as a discriminatory burden on interstate commerce. St. Louis, I. M. & S. Ry. Co. v. Moon (Tex. Civ. App. 1907) 103 S. W. 1176.

123. Grants of monopolies and special privileges.—The statutes of New York granting to Livingston and Fulton the exclusive navigation of the waters within the jurisdiction of that state, with boats moved with fire or steam, for a term of years, are repugnant to that clause of the constitution of the United States which authorizes congress to regulate commerce, so far as the said acts prohibit vessels licensed according to the laws of the United States for carrying on the coasting trade from navigating the said waters by means of fire or steam. Gibbons v. Ogden (1824) 22 U. S. (9 Wheat.) 1, 6 L. Ed. 23, reversing (N. Y. 1819) 4 Johns. Ch. 150, and (N. Y. 1820) 17 Johns. 488; North River Steamboat Co. v. Livingston (N. Y. 1824) Hopk. Ch. 149; Id. (N. Y. 1825) 3 Cow. 713. CONTRA, Livingston v. Van Ingen (N. Y. 1812) 9 Johns. 507; North River Steamboat Co. v. Hoffman (N. Y. 1821) 5 Johns. Ch. 300.

The acts of the legislature of New York granting to Robert Livingston and Robert Fulton the exclusive jurisdiction of all waters within the state with boats moved by fire or steam for a term of years are repugnant to this section so far as they prohibit vessels licensed according to the laws of the United States for carrying on the coasting trade from navigating such waters by means of fire or steam. Gibbons v. Ogden (1824) 9 Wheat. 1, 186, 6 L. Ed. 23.

A statute of Maine granting the exclusive navigation of the upper part of the river Penobscot (said river being wholly within the state, and not navigable for the last eight miles of its course), for a certain time, on condition that the grantees would improve the navigation of said upper part, is not unconstitutional as in derogation of the powers granted to congress to regulate commerce. Veazie v. Moor (1852) 55 U. S. (14 How.) 568, 14 L. Ed. 545.

A state law granting rights to a telegraph company held to attempt to regulate interstate commerce, and so far as it conferred exclusive rights on the company to conflict with R. S. § 5263 et seq. Comp. St. § 10072 et seq., and to that extent to be inoperative as against a corporation of another state entitled to the privileges of the federal statutes. Pensacola Teleg. Co. v. Western U. Teleg. Co. (1877) 96 U. S. 1, 11, 12, 24 L. Ed. 708.

The power to regulate commerce extends to the power to offer bounties by discriminating duties and by special preferences and privileges. U. S. v. Craig (C. C. 1886) 28 Fed. 795, 797.

The interstate commerce law is not violated by Act Ala. March 4, 1903, p. 167, securing to the successful bidder the exclusive right to supply to the public free schools and the patrons thereof the books adopted by the school board commission. Dickinson v. Cunningham (1904) 37 So. 345, 140 Ala. 527.

Acts Ky. March 21, 1906 (Laws 1906, c. 117), and March 13, 1908 (Laws 1908, c. 8), authorizing pooling by farmers of their products, do not violate Anti-Trust Act July 2, 1890 (Comp. St. § 8820 et seq.), known as the "Sherman Law"; they having no relation to interstate commerce, but being confined in their operation to products grown and pooled in the state and to sales therein. Commonwealth v. Hodges (Ky. 1910) 125 S. W. 689.

The Creek council act incorporating and granting an exclusive franchise to a company to operate a telephone system in the Creek Nation is not repugnant to the interstate commerce clause, in so far as it grants to the company the exclusive franchise to conduct its business locally within such nation. Muskogee Nat. Tel. Co. v. Hall (1901) 64 S. W. 600, 4 Ind. T. 18.

Act Me. July 30, 1846, entitled "An act to promote the improvement of the navigation of the Penobscot river," does not violate the provisions of the federal constitution with reference to the regulation of commerce with foreign nations and among the several states. Moor v. Veazie (1850) 32 Me. 343, 52 Am. Dec. 655.

124. Prohibition and regulation of trade or business in general.—The exemption of interstate and foreign commerce from state regulation does not prevent a state from taxing the property of those engaged in such commerce located within the state as the property of other citizens is taxed, nor from regulating matters of local concern which may incidentally affect commerce, such as wharfage, pilotage, and the like. Leloup v. Port of Mobile (1888) 8 Sup. Ct. 1380, 1384, 127 U. S. 640, 32 L. Ed. 311.

Rev. Laws Mass. c. 73, § 7, providing that no person or corporation shall issue, negotiate, or sell any bonds, certificates, or obligations of any kind which are by the terms thereof to be redeemed in numerical order, or in any

arbitrary order, without reference to the amount previously paid thereon by the holder thereof, whether they are sold on the installment plan or otherwise, and section 8, providing that a violation thereof by a domestic corporation shall operate as a forfeiture of its franchise are a valid exercise of the police power. Attorney General v. Preferred Mercantile Co. of Boston (1905) 73 N. E. 669, 187 Mass. 516.

The United States constitution does not limit the legislative discretion in regulating trade in articles intimately connected with the public morals, safety, and prosperity. Metropolitan Board of Excise v. Barrie (1866) 34 N. Y. 657.

Laws N. Y. 1907, c. 185, requiring bonds from persons who add to their business of selling steamship tickets the receiving of money for transmission abroad, applies to the act of receiving on deposit moneys to be transmitted in the future, and guards against the embezzlement or loss of moneys pending the subsequent transmission, and it is not invalid as interfering with interstate or foreign commerce, as the act of receiving the deposits, and of subsequently transmitting them, are distinct, though it incidentally affects the business of transmitting money abroad. Musco v. United Surety Co. (1909) 90 N. E. 171, 196 N. Y. 459, affirming order (1909) 117 N. Y. S. 21, 132 App. Div. 300, which reversed Benvega v. United Surety Co. (1908) 115 N. Y. S. 199.

125. Advertisements.—A city ordinance merely providing that "no person shall distribute in any public street or from any buildings handbills, cards, circulars or papers of any description except newspapers," reasonably construed and enforced by the officers as a police regulation only, to protect people on the streets from annoyance, is not unlawful as an interference with interstate commerce as against a concern doing business in another state and desiring to distribute on the public streets circulars advertising such business. International Text-Book Co. v. Inhabitants of City of Auburn (C. C. 1907) 155 Fed. 986.

Police Regulations, art. 8, making it unlawful to scatter advertising matter in such manner as to litter the streets, applies to foreign corporations doing business in the District, although they are engaged in interstate commerce. International Text-Book Co. v. District of Columbia (1910) 35 App. D. C. 307.

St. Mass. 1903, c. 195, § 1, forbidding the use of the arms or the great seal of the commonwealth for advertising or commercial purposes, is not in conflict with the provision of the federal constitution investing congress with the power to regulate interstate commerce. Commonwealth v. R. I. Sherman Mfg. Co. (1905) 75 N. E. 71, 189 Mass. 76.

Under the Wilson Act (Act Aug. 8, 1890 [Comp. St. § 8738]), withdrawing to a certain extent intoxicating liquor from the protection of the commerce clause and making it subject to the police power of the state, a state may prohibit the advertising for sale of liquor sold or kept for sale without the state. State v. State Capital Co. (Okl. 1909) 103 P. 1021.

Acts W. Va. 1913, c. 13, § 8 (Code 1913, c. 32A, § 8 [sec. 1287]), forbidding the advertising of liquors for sale in the state, when construed to apply to a nonresident liquor dealer sending advertising matter into the state, held not violation of the commerce clause, in view of the Wilson Act (Comp. St. § 8738), and the Webb-Kenyon Act (Comp. St. § 8739). State v. Davis (W. Va. 1915) 87 S. E. 262.

126. Pools, trusts, conspiracies, and agreements in restraint of trade.—Interstate commerce is not unlawfully regulated, at least, in the absence of congressional action, by the Tennessee anti-trust act of March 16, 1903 (Laws 1903, c. 140), under which, as construed by the state court, a foreign oil company may be excluded from doing domestic business in the state because it has induced merchants in that state, by a gift of oil, to revoke orders on a rival company for oil to be shipped into the state. Standard Oil Co. v. Tennessee ex rel. Cates (1910) 30 Sup. Ct. 543, 544, 217 U. S. 413, 54 L. Ed. 817, affirming decree State v. Standard Oil Co. of Kentucky (1908) 110 S. W. 565, 120 Tenn. 86.

Sherman Act (Comp. St. §§ 8820, 8821), is a constitutional and valid criminal statute. United States v. Patterson (D. C. 1912) 201 Fed. 697.

Act Ark. Jan. 23, 1905 (Anti-Trust Act; Acts 1905, p. 9) § 8, authorizing an order to compel nonresident officers of a corporation, sued for a violation of the act, to appear and testify before a commission appointed by the court, and to produce books, papers, and documents, and section 9 (page 10) providing that defendant's answer may be stricken out and default judgment entered when the defendant fails to obey the order made pursuant to section 8, held valid, in so far as they authorized a reasonable order for the production of books, papers, and documents of a corporation over which the state had control. Hammond Packing Co. v. State (Ark. 1907) 100 S. W. 407, 1199.

The word "trade," as used in Laws Kan. 1889, c. 257, inhibiting conspiracies in restraint of trade, does not include interstate commerce. State v. Phipps (1893) 50 Kan. 609, 31 Pac. 1097, 18 L. R. A. 657, 34 Am. St. Rep. 152.

House Bill No. 2247, prohibiting unjust competition and monopolies, held not in violation of the commerce clause. In re Opinion of the Justices (1912) 99 N. E. 294, 211 Mass. 620.

A license issued by a state, authorizing a foreign corporation to do intrastate business, neither confers nor takes

away any authority vested in the corporation to carry on interstate commerce. Hence it is no defense to a proceeding by the state to forfeit the charter of a domestic corporation and the licenses of foreign corporations to do an intrastate business, because of violation of the state's anti-trust laws, that such corporations are engaged in interstate commerce, since the forfeiture of such corporations' charters and licenses does not constitute an interference with interstate commerce. State ex inf. Hadley v. Standard Oil Co. (1909) 116 S. W. 902, 218 Mo. 1.

Rev. St. Mo. 1899, §§ 8965, 8966, 8971, 8978 (Ann. St. 1906, pp. 4150, 4152, 4153, 4157), prohibiting pools, trusts, and conspiracies, and agreements to regulate prices and limit trade, and providing for the forfeiture of corporate charters and licenses for violation thereof, are not in violation of the commerce clause. Id.

A Missouri statute against pools and trusts cannot be invoked to invalidate a contract for the purchase and sale of goods in interstate commerce. Westmoreland Specialty Co. v. Missouri Glass Co. (Mo. App. 1912) 152 S. W. 387.

The anti-trust statutes violate neither the constitution of the United States nor that of this state. State ex inf. Barker v. Armour Packing Co. (1915) 176 S. W. 382, 265 Mo. 121.

Anti-Trust Law (Acts Tenn. 1903, c. 140), making void all agreements, etc., between persons or corporations made with a view to the restriction of competition in the "importation or sale of articles imported into this state," or in the manufacture or sale of articles of domestic growth or of domestic raw material, or which tend to advance, reduce or control the price or cost to the producer or consumer of any such article, and providing penalties for the making of such agreements, etc., is not violative of the commerce clause; the statute being not intended to apply to interstate commerce, the word "importation" being inaccurately used in referring to articles already imported; and the law is a valid exercise of police power. Standard Oil Co. v. State (1907) 100 S. W. 705, 117 Tenn. 618, 10 L. R. A. (N. S.) 1015.

That the sale of goods by a citizen of another state to a citizen of Texas under a contract which violated the Texas Anti-Trust Act (Rev. St. 1911, arts. 7796, 7798) also constituted interstate commerce would not prevent the anti-trust act from applying to invalidate the contract and prevent a recovery thereon. J. R. Watkins Medical Co. v. Johnson (Tex. Civ. App. 1913) 162 S. W. 394.

The anti-trust laws of the state do not apply to transactions involving interstate commerce. Dr. Koch Vegetable Tea Co. v. Malone (Tex. Civ. App. 1914) 163 S. W. 662.

127. Blue sky laws.—Acts 35th Gen. Assem. Iowa, c. 137, commonly termed the "Blue Sky Law," regulating dealings in stocks, bonds, and securities, held, on application for preliminary injunction, unconstitutional as imposing a direct burden on interstate commerce. William R. Compton Co. v. Allen (D. C. 1914) 216 Fed. 537.

Act W. Va. Feb. 11, 1913, known as the "Blue Sky Law," held unconstitutional. Bracey v. Darst (D. C. 1914) 218 Fed. 482.

The Michigan "Blue Sky Law" of 1915 (Pub. Acts Mich. 1915, No. 46) held void, as imposing a direct burden upon interstate commerce. N. W. Halsey & Co. v. Merrick (D. C. 1915) 228 Fed. 805.

128. Dealing in futures on margins.—Laws Miss. 1908, c. 118, forbidding dealing in futures on margins, does not place undue burdens and restrictions on interstate commerce. State v. Beatty (Miss. 113) 60 So. 1016.

129. Sale of lottery tickets.—The regulation of interstate commerce may sometimes assume the form of prohibition against a certain class of commerce, as lottery tickets, liquor, etc. Champion v. Ames (1903) 23 Sup. Ct. 321, 327, 188 U. S. 321, 47 L. Ed. 492.

When the conditions of a bond of a foreign government fall within the condemnation of the police regulations of a state, changing its character to a species of lottery, to prohibit its sale does not violate treaty stipulations, or constitutional provisions as to commerce. Ballock v. State (1890) 73 Md. 1, 20 Atl. 184, 8 L. R. A. 671.

130. Stamp duties on bills of exchange and bills of lading.—Act Cal. April, 1858, amending Act April, 1857, providing a revenue for the support of the government of the state, so far as it imposes a tax on bills of lading for the transportation of gold or silver from any point in the state to any point without the state, is unconstitutional, as regulating interstate commerce. Garrison v. Tillinghast (1861) 18 Cal. 404.

Act Cal. May 14, 1862 (St. 1862, p. 539), imposing a stamp tax upon foreign and inland bills, passengers, etc., held to be a regulation of commerce, within the meaning of section 8, art. 1, of the constitution, and therefore unconstitutional and void. People v. Raymond (1868) 34 Cal. 492.

A statute levying a state stamp duty on foreign bills of exchange (St. Nev. 1871, 142) is not a regulation of interstate commerce. Ex parte Martin (1871) 7 Nev. 140, 8 Am. Rep. 707.

131. Making corporations liable for taxes on bonds issued.—Act Pa. June 30, 1885, requiring the deduction of a state tax by corporate officers in paying interest on bonds owned by residents of the state, does not violate the provision of the constitution as to interstate commerce. Commonwealth v. New

York, L. E. & W. R. Co. (1892) 150 Pa. St. 234, 24 Atl. 609.

Act Pa. June 30, 1885, § 4, making private corporations, domestic and foreign, responsible for the assessment and collection of taxes on bonds issued by them and held by residents of Pennsylvania, is not a regulation of commerce. Id.

132. Foreign corporations.—The state may discriminate between her own domestic corporations and those of other states. Bank of Augusta v. Earle (1839) 38 U. S. (13 Pet.) 519, 10 L. Ed. 274; Paul v. Virginia (1868) 75 U. S. (8 Wall.) 168, 19 L. Ed. 357; Ducat v. City of Chicago (1870) 77 U. S. (10 Wall.) 410, 19 L. Ed. 972.

A statute of Colorado of 1877, entitled "An act to provide for the formation of corporations," cannot be construed to impose upon a foreign corporation limitations of its right to make contracts in the state for carrying on commerce between the states, for that would make the act an invasion of the exclusive right of congress to regulate commerce between the states. Cooper Mfg. Co. v. Ferguson (1885) 5 Sup. Ct. 739, 113 U. S. 727, 28 L. Ed. 1137, reversing judgment (C. C. 1880) 4 Fed. 498.

The right of a foreign corporation to engage in business within a state other than that of its creation depends solely upon the will of such other state, except with respect to business of a federal nature. Waters-Pierce Oil Co. v. Texas (1900) 20 Sup. Ct. 518, 525, 177 U. S. 28, 44 L. Ed. 657.

The right of foreign corporations to do an interstate business cannot under the commerce clause be restricted as is attempted by Gen. St. Kan. 1905, § 1358, requiring such corporation, as a condition to doing business, to file a statement of their financial condition. Buck Stove & Range Co. v. Vickers (1912) 33 Sup. Ct. 41, 226 U. S. 205, 57 L. Ed. 189, reversing judgment (1909) 101 P. 668, 80 Kan. 29.

The right of foreign corporations to do a purely interstate business within the state cannot, consistently with the commerce clause of the constitution, be restricted, as is attempted by Gen. St. Kan. 1905, § 1358, which requires such corporations, as a condition of their right to prosecute such business, to make and file with the secretary of state a complete and detailed statement exhibiting their financial condition, and provides that the obtaining of the certificate of the secretary of state that such statement has been properly made shall be a condition precedent to the right of the corporation to maintain an action in the Kansas courts. Id.

Right of foreign corporation to enforce payment for goods sold in interstate commerce is so directly connected with it that the imposition of unreasonable conditions on this right operates as a restraint of interstate commerce. Sioux Remedy Co. v. Cope (1914) 35 Sup. Ct. 57, 235 U. S. 197, 59 L. Ed. 193, reversing judgment (1911) 133 N. W. 683, 28 S. D. 397.

A foreign corporation doing local business within the state may, within the commerce clause, be required to file a copy of its charter conformably to Laws Tenn. 1895, c. 81, as a condition to its right to sue in the state courts. Interstate Amusement Co. v. Albert (1916) 36 Sup. Ct. 168, 239 U. S. 560, 60 L. Ed. 439.

Where a corporation of one state is engaged in both interstate and intrastate commerce in any other state, the prohibition or the conditioning by the latter state of its exercise of its right to do business within its borders, without discriminating between what constitutes interstate business and that which constitutes intrastate commerce, is unconstitutional so far as it relates to the former. Butler Bros. Shoe Co. v. United States Rubber Co. (1907) 156 Fed. 1, 84 C. C. A. 167, writ of certiorari denied (1908) 29 Sup. Ct. 686, 212 U. S. 577, 53 L. Ed. 658.

Under Gen. St. Kan. 1909, § 5146, prohibiting a foreign corporation which violates the anti-trust laws of the state from doing business therein and making it the duty of the Attorney General to enforce such prohibition, a district court of the state has jurisdiction to appoint receivers for the business and property of such a corporation within the state at suit of the Attorney General. McKinney v. Landon (1913) 209 Fed. 300, 126 C. C. A. 226, affirming decree Same v. Kansas Natural Gas Co. (D. C. 1913) 206 Fed. 772.

A foreign corporation engaged in both interstate and local commerce may be adjudged guilty of a violation of the anti-trust laws of the state, its license to do business in the state canceled, and receivers appointed of all its property in the state, although used also in conducting its interstate business. Id.

While a state may exclude from its jurisdiction foreign corporations not engaged in interstate commerce, it cannot exclude a foreign corporation engaged in such commerce any more than it can exclude an individual so engaged. State v. Pullman Palace-Car Co. (C. C. 1883) 16 Fed. 193.

The constitution of the United States protects the commercial transactions of a corporation of another state against state legislation imposing conditions upon the right to conduct such business. Williams v. Hintermeister (C. C. 1886) 26 Fed. 889.

Corporations equally with individuals are in carrying on foreign and interstate commerce within the protection of the commercial power of congress, and cannot be molested in another state by state burdens. Stockton v. Baltimore & N. Y. R. Co. (C. C. 1887) 32 Fed. 9, 14.

Article 236, Const. La., which provides that no foreign corporation shall

do any business in this state without having one or more known places of business, and an authorized agent or agents in the state upon whom process can be served, is null and void, being an attempt on the part of the state to interpose a restriction on navigation, and therefore in conflict with the provisions of the act approved February 17, 1793, passed in pursuance of a clear authority under the constitution of the United States. New Orleans & M. Packet Co. v. James (C. C. 1887) 32 Fed. 21.

Pub. Acts Mich. 1913, No. 143, providing for the regulation and supervision of foreign and domestic investment companies in the sale of securities in Michigan, held a direct interference with interstate commerce, and therefore invalid. Alabama & N. O. Transp. Co. v. Doyle (D. C. 1914) 210 Fed. 173.

The Kansas Anti-Trust Act (Gen. St. 1909, § 5146) vests courts of the state with authority to appoint receivers of the property of a foreign corporation within the state for its violation. McKinney v. Kansas Natural Gas Co. (D. C. 1913) 206 Fed. 772, decree affirmed Same v. Landon (1913) 209 Fed. 300, 126 C. C. A. 226.

Under Gen. St. Kan. 1909, §§ 1724, 1728, subjecting foreign corporations to the same judicial control as domestic, and authorizing the appointment of receivers for the latter for abuse of corporate privileges, a state court has power to appoint receivers for property of a foreign corporation within the state on the same ground. Id.

The Alabama constitution, providing that no foreign corporation shall do business in this state unless having a known place of business and an authorized agent therein, does not violate the commerce clause. American Union Telegraph Co. v. Western Union Telegraph Co. (1880) 67 Ala. 26, 42 Am. Rep. 90; Ware v. Hamilton Brown Shoe Co. (1891) 92 Ala. 145, 9 South. 136.

The state may exclude foreign corporations by act, or impose any restrictions that may be proper as a condition upon which foreign corporations may do business in the state. Nelms v. Edinburgh-American Land Mortgage Co. (1891) 92 Ala. 157, 9 South. 141; Noble v. Mitchell (1893) 100 Ala. 519, 14 South. 581, 25 L. R. A. 238.

A foreign corporation has the right to sell articles of commerce anywhere in the state, and ship them to the purchasers, and any attempt to interfere with such business is an interference with interstate commerce. Nelms v. Edinburgh-American Land Mortg. Co. (1891) 92 Ala. 157, 9 South. 141.

Act Gen. Assem. Ark. April 4, 1887, provides that, before any foreign corporation shall begin business in the state, it shall file a certificate in the office of the secretary of state, designating an agent on whom process may be served, and stating its principal place of business in the state; and that, if any corporation shall fail to do so, all its contracts with citizens of the state shall be void as to the corporation. Plaintiff, a foreign corporation, without filing the certificate required by law, entered into a contract with a citizen of the state by which it agreed to sell goods to him at stipulated prices, and on credit. Defendant became surety on a bond, executed at the same time as the contract, to secure payment for goods which might be sold thereunder, both the contract and the bond being executed in the state. Held, that plaintiff could recover on the bond, since the transactions of the parties were interstate commerce, and could not be affected by the act of the general assembly. Gunn v. White Sewing-Mach. Co. (1892) 57 Ark. 24, 20 S. W. 591, 38 Am. St. Rep. 223, 18 L. R. A. 206.

Act Ark. Feb. 16, 1899 (Acts 1899, p. 19, § 2), as amended by Act May 8, 1899 (Acts 1899, p. 305), providing that a foreign corporation doing business in the state shall file with the Secretary of State a certified copy of its articles of incorporation and pay a fee of $25, will be construed as requiring this only as a condition to doing intrastate business, and so not in conflict with the commerce clause. Western Union Telegraph Co. v. State (Ark. 1907) 101 S. W. 748.

So much of Civ. Code Cal. § 408, as requires foreign corporations before doing business in the state to file a copy of their articles with the secretary of state, held not in restraint of interstate commerce. H. K. Mulford Co. v. Curry (1912) 125 P. 236, 163 Cal. 276.

Gen. Laws Colo., § 213, requiring foreign corporations, before they shall be permitted to do business in the state, to file a certificate with the secretary, is not in conflict with the constitution. Utley v. Clark-Gardner Lode Min. Co. (1878) 4 Colo. 369.

A state statute requiring a foreign corporation to file a certificate before bringing an action for goods sold and delivered in such state, but made at its place of business in another state, is a regulation of interstate commerce, in violation of Const. art. 1, § 8. Kindel v. Beck & Pauli Lithographing Co. (1893) 19 Colo. 310, 35 Pac. 538, 24 L. R. A. 311; Fairbanks, Morse & Co. v. Macleod (1896) 8 Colo. App. 190, 45 Pac. 282.

A foreign corporation, though engaged in interstate trade, may, before being permitted to do business in the state, be required to comply with such reasonable conditions as are contained in Laws Sp. Sess. Kan. 1898, c. 10, requiring the filing of its charter, the payment of charter fees, the making of reports and furnishing any information concerning its business, the appointment of agents to receive service of process, etc. State v. American Book Co. (1902) 69 P. 563, 65 Kan.

847, dismissed American Book Co. v. State of Kansas (1904) 24 Sup. Ct. 394, 193 U. S. 49, 48 L. Ed. 613.

A state statute requiring a foreign railroad corporation to become a resident corporation, as a condition of its right to continue to operate that part of its road within the state, is not an interference with interstate commerce. Commonwealth v. Mobile & O. R. Co. (1901) 64 S. W. 451, 23 Ky. Law Rep. 784, 54 L. R. A. 916.

Ky. St. § 571, which provides that all corporations carrying on business in this state shall have one or more known places of business in the state, and an authorized agent thereat upon whom process can be served, and making it unlawful for such corporation to carry on any business in the state without complying with the requirements of the section, and filing a statement with the Secretary of State, etc., is void, in so far as it affects steamship companies engaged in interstate traffic, because in conflict with the interstate commerce clause. Ryman Steamboat Line Co. v. Commonwealth (1907) 101 S. W. 403, 30 Ky. Law Rep. 1276, 10 L. R. A. (N. S.) 1187.

A corporation, engaged in the business of manufacturing and selling hay presses, employed agents in a state other than that of its domicile to solicit orders, which were forwarded to it in such other state for approval. If approved, the presses were shipped from that state to the purchaser, or to the agent for the purchaser. Held, that such transactions constituted interstate commerce, and hence the corporation was not liable for the penalty imposed by Ky. St. § 571, for failure to comply with its requirement that a corporation carrying on business in that state shall file in the office of the Secretary of State a statement of the location of its office and the name of its agent on whom process can be served. Commonwealth v. Eclipse Hay Press Co. (1907) 104 S. W. 224, 31 Ky. Law Rep. 824.

Ky. St. § 765 (Russell's St. § 5365), providing that no foreign railroad corporation may condemn land for or acquire a right of way for or purchase or hold lands for depots, tracks, or other purposes until it shall have become organized as a corporation under the laws of the state by filing articles of incorporation as provided by section 763 (Russell's St. § 5363) construed to prohibit a foreign railroad corporation from operating a railroad within the state as owner without complying with such section, is not unconstitutional as an attempted interference with interstate commerce. Plummer v. Chesapeake & O. Ry. Co. of Kentucky (1911) 136 S. W. 162, 143 Ky. 102.

Act La. No. 66 of 1894, imposing a fine for effecting marine insurance in Louisiana in any foreign company which has not complied with the state law, is constitutional. State v. Allgeyer (1896) 48 La. Ann. 104, 18 South. 904.

Rev. St. Mo. 1899, §§ 1025, 1026, requiring foreign corporations to file with the Secretary of State a copy of their charters and certain other statements, and obtain a certificate authorizing them to do business in the state, etc., is not a regulation of interstate commerce. Fay Fruit Co. v. McKinney (1903) 77 S. W. 160, 103 Mo. App. 304.

Act Mont. March 8, 1893, requiring every foreign corporation, before commencing business in the state, to designate an agent and its principal place of business, and declaring its contracts void on failure to comply, in so far as it applies to foreign corporations engaged in interstate commerce, is void. MacNaughton Co. v. McGirl (1897) 49 P. 651, 20 Mont. 124, 38 L. R. A. 367, 63 Am. St. Rep. 610.

Laws N. Y. 1892, c. 687, § 15, requiring foreign corporations to obtain a certificate of authority to do business in New York, cannot operate to prevent foreign corporations from selling goods within New York by traveling salesmen without procuring such certificate, as such operation would violate the interstate commerce clause. Murphy Varnish Co. v. Connell (1894) 10 Misc. Rep. 553, 32 N. Y. Supp. 492.

Stock Corporation Law N. Y. (Consol. Laws, c. 59) § 33, requiring every foreign corporation "having an office for the transaction of business in this state" to keep a stock book therein open for inspection by enumerated persons, if construed as requiring a foreign corporation which has an office in the state for the transaction of business in the state to keep any such office open for inspection, though it does not transact business in the office, is not invalid as interfering with interstate commerce, since it does not regulate the business of foreign corporations or restrict them in any way in transacting business in the state, whether such business is interstate or not. Hovey v. De Long Hook & Eye Co. (1911) 133 N. Y. S. 25, 147 App. Div. 881, affirming judgment (1910) 126 N. Y. S. 1; Same v. Richardson (1911) 133 N. Y. S. 33, 147 App. Div. 892.

Act Ohio May 19, 1894, providing that no foreign corporation shall do business in the state unless it complies with certain regulations, and that, if it does do business without such compliance, it cannot maintain an action with reference to the transaction, is void, as an interference with interstate commerce, so far as it applies to sales made by such corporation through traveling agents or by mail. Haldy v. Tomoor-Haldy Co. (1894) 4 Ohio S. & C. P. Dec. 118, 3 Ohio N. P. 43.

Act Ohio May 19, 1894, providing that no foreign corporation doing busi-

ness in the state could maintain an action with reference to such business unless it filed a copy of its charter with the secretary of state, paid the required fees, and received a certificate therefor, is in contravention of the interstate commerce clause. Id.

A state cannot require a foreign corporation to designate a resident agent, upon whom service may be had, as a condition precedent to its engaging in interstate commerce with residents of the state. Chicago Crayon Co. v. Rogers (1911) 119 P. 630, 30 Okl. 299.

A foreign corporation is subject to payment of the license fee imposed in the sixteenth section of the Pennsylvania act of June 7, 1879, for the privilege of having an office in this state. Such a license fee is not a tax upon either the business or property of corporations, and is not, as such, a regulation of commerce. Norfolk & W. R. Co. v. Commonwealth (1886) 114 Pa. St. 256, 6 Atl. 45.

Laws S. D. 1890, c. 54, provides that no commercial agency shall do business in the state without first procuring a certificate from the state auditor, and appointing a resident attorney on whom process may be served. It must have a paid-up capital of $50,000, and a deposit of that amount with the treasurer of the state in which it is organized, and it must pay a tax of 2 per cent. on its gross earnings from business done in the state. The act also makes it unlawful for any one to act as agent or otherwise in procuring reports, etc., without having procured from the auditor a certificate of authority. The accused was a special agent for R. G. Dun & Co., who had not complied with the act. He came to the state to investigate the standing of a firm of merchants doing business here, the information obtained to be used for the benefit of the customers of R. G. Dun & Co. He was arrested and convicted. Held, that the act was not in conflict with the interstate commerce clause. State v. Morgan (1891) 2 S. D. 32, 48 N. W. 314.

Civ. Code S. D. §§ 883-885, prohibiting corporations from doing any business or maintaining any action within the state, except on condition of its filing a copy of its articles in the office of the Secretary of State and appointing a state agent on whom process may be served, did not prevent foreign corporations from transacting and enforcing interstate business within the state, and was therefore not invalid as an interference with interstate commerce. Iowa Falls Mfg. Co. v. Farrar (1905) 104 N. W. 449, 19 S. D. 632.

Civ. Code S. D. § 883, provides that no foreign corporation shall transact any business within the state, or "sue or maintain any action in any of the courts" of the state, until it shall have filed a copy of its charter or articles of corporation with the Secretary of State. Section 885 provides that such corporation shall appoint a resident agent, authorized to accept service, etc., and that no action shall be maintained in any courts of the state by such corporation on any contract made in the state, unless it shall have complied with the provisions of the article. Held that, while such act did not apply, so far as to invalidate contracts and transactions made between citizens and foreign corporations which constituted interstate commerce, the statute, in so far as it prohibited such foreign corporations from resorting to the courts of the state for the enforcement of such contracts, though valid, without their having complied with the requirements for the filing of their articles, etc., was a proper exercise of the state's police power, and was not unenforceable as to such transactions as an invalid regulation of interstate commerce. Sioux Remedy Co. v. Cope (S. D. 1911) 133 N. W. 683.

Civ. Code S. D. §§ 883, 885, in so far as they prohibit a foreign corporation, not having complied with the laws of the state, from maintaining any action on any contract made within the state, in so far as it relates to interstate commerce, should be construed, not as invalidating the contract, but as a mere exercise of the state's right to place reasonable conditions on the right of any person or corporation to use its courts. Id.

A contract with citizens of Tennessee by a foreign corporation, having no office or agency in that state, for the adjusting of machinery, is a transaction of interstate commerce, and not the doing of business within the state, within the meaning of a statute requiring foreign corporations to register their charters before doing business there. Milan Milling & Manufacturing Co. v. Gorten (1894) 93 Tenn. 590, 27 S. W. 971, 26 L. R. A. 135.

A corporation domiciled in Kansas, through its commercial agents, solicited business and sold and shipped goods and merchandise to points in other states. Held that, such transactions being "interstate commerce," a state law providing that no foreign corporation shall transact any business or maintain any action in such state without having first filed their articles of incorporation with the secretary of state is void, as being a violation of the interstate commerce law, and cannot operate to deprive such corporation of its right to bring an action in such state. Bateman v. Western Star Milling Co. (1892) 1 Tex. Civ. App. 90, 20 S. W. 931.

Where a corporation doing business in another state sells goods to be transferred and delivered to a person doing business in Texas, an action for the price cannot be defeated on the ground

of the company's failure to comply with the statute requiring a foreign corporation to file a copy of its articles of incorporation with the secretary of state of Texas, since the transaction is an act of interstate commerce, and, if the statute could be held applicable, it would violate the commerce clause. Lyons-Thomas Hardware Co. v. Reading Hardware Co. (Tex. Civ. App. 1893) 21 S. W. 300.

Act Tex. April 3, 1889, providing that any foreign corporation desiring to transact or solicit business or establish a general or special office in Texas, shall file a certified copy of its articles of incorporation with the secretary of state, and "no such corporation can maintain any suit * * * in any of the courts of this state upon any demand, * * * unless at the time such contract was made * * * the corporation had filed its articles of incorporation," does not apply to an action by a foreign corporation to recover for goods sold to a resident of Texas at its place of business in a foreign state, as such transaction is not "interstate commerce," where it is not stated that the parties contemplated shipping the goods from that state into Texas. Reed v. Walker (1893) 2 Tex. Civ. App. 92, 21 S. W. 687, distinguishing Bateman v. Western Star Milling Co. (1892) 1 Tex. Civ. App. 90, 20 S. W. 931.

A shipment of goods by a corporation domiciled in Indiana to persons doing business in Texas being "interstate commerce," a law of Texas providing that no foreign corporation shall transact any business or maintain any action in such state without having first filed articles of incorporation with the secretary of state is void, as being in violation of the interstate commerce clause, and cannot deprive such corporation of its right to bring suit in such state on a note given for such goods. American Starch Co. v. Bateman (Tex. Civ. App. 1893) 22 S. W. 771.

An act prohibiting a foreign corporation from shipping goods into the state, and there selling them, without compliance with the act requiring filing of articles and receiving a permit to transact business, is not unconstitutional. Western Paper Bag Co. v. Johnson (Tex. Civ. App. 1896) 38 S. W. 364.

133. Fish and game laws.—The enrollment and license of a vessel for the coasting trade under the laws of the United States confer no immunity from the operation of valid laws of a state, and a state statute prohibiting the taking of oysters in a specified manner and inflicting the penalty of forfeiture on a vessel employed in the unlawful taking is valid as applied to a vessel enrolled and licensed for the coasting trade. Smith v. Maryland (1855) 18 How. 71, 74, 15 L. Ed. 269.

A state law prohibiting a vessel from catching oysters with a scoop or drag does not violate the commerce clause, though such vessel is licensed for the coasting trade under an act of congress. Id.

A state law, by which only such persons as are not citizens of that state are prohibited from planting oysters in the soil covered by her tide waters, is not unconstitutional, as a regulation of commerce. McCready v. Virginia (1876) 94 U. S. 391, 24 L. Ed. 248.

Act Md. April 18, 1847, c. 214, § 22, prohibiting nonresidents of the state from catching or planting oysters in certain rivers in the state, is not repugnant to the commerce clause. Id.

Rights under the commerce clause are not infringed by the provisions of Act N. J. March 24, 1899, p. 514, § 20, as amended by Act March 22, 1901, p. 317, under which a conviction may be had for using a dredge in tidal waters of the state for the purpose of catching oysters upon leased lands without the consent of the lessees. Lee v. State of New Jersey (1907) 28 Sup. Ct. 22, 23, 207 U. S. 67, 52 L. Ed. 106, affirming judgment State v. Lee (1905) 59 A. 1118.

Foreign commerce is not unconstitutionally regulated by Laws N. Y. 1900, c. 20, under which the possession of game within the state during the closed season—except on giving the bond provided by the statute against its sale—is forbidden though the game may have been lawfully taken in foreign countries during the open season there. New York ex rel. Silz v. Hesterberg (1908) 29 Sup. Ct. 10, 12, 211 U. S. 31, 53 L. Ed. 75, affirming judgment (1906) 76 N. E. 1032, 184 N. Y. 126, 3 L. R. A. (N. S.) 163, 128 Am. St. Rep. 528, 6 Ann. Cas. 353.

A state statute regulating oyster fisheries is not repugnant to the power granted to congress to regulate commerce. Corfield v. Coryell (C. C. 1823) Fed. Cas. No. 3,230.

Oyster Law N. J. June 9, 1820, is not repugnant to the commerce clause. Id.

The authority of a state to enact laws which operate as a restraint upon interstate commerce is limited to measures which are within its legitimate police powers, and are reasonably necessary for the protection of its citizens or their property. A state has no power to forbid traffic in game imported from another state where it was lawfully killed, and the claim that the prohibition will aid local officers in detecting violations of its game laws is ineffectual to overcome the objection to the constitutionality of such a statute. In re Davenport (C. C. 1900) 102 Fed. 540.

Pen. Code Cal. § 626 (as amended St. 1893, p. 280), making it a misdemeanor to sell or offer for sale the hide or meat of any deer, is not unconstitutional, as an attempt to regulate interstate commerce, the meat not having been sold in original packages. Ex

parte Maier (1894) 103 Cal. 476, 37 Pac. 402.

Gen. St. Conn. § 2546, which provides that "no person shall at any time kill any woodcock, ruffed grouse, or quail for the purpose of conveying the same beyond the limits of the state," etc., is an exercise of the police power protecting the game birds of the state, and is not unconstitutional as a regulation of interstate commerce. State v. Geer (1891) 61 Conn. 144, 22 Atl. 1012, 13 L. R. A. 804.

The Illinois game law of May 14, 1879, making the possession or sale of quail unlawful during the period prescribed by the act, although such quail were taken or killed beyond the state limits, is not in contravention of the commerce clause. Magner v. People (1881) 97 Ill. 320.

Laws Ill. 1911, p. 351, § 11, relating to fish, held not to unlawfully restrict interstate or foreign commerce. People v. Booth Fisheries Co. (1912) 97 N. E. 837, 253 Ill. 423.

Laws Ill. 1911, p. 351, § 12, held invalid as interfering with interstate commerce when applied to fish taken outside of the state. Id.

Acts Md. 1898, c. 206, which prohibits any person having game in his possession or exposing it for sale, in original packages or otherwise, during certain seasons of the year, whether such game was killed or caught in this state or any other state, is not an infringement on the power of congress to regulate interstate commerce. Stevens v. State (1899) 43 A. 929, 89 Md. 669.

An act regulating the time and manner of taking fish in the sea within the territorial limits of the state is within the authority of the state legislature, and binding on citizens of other states, and on vessels enrolled and licensed as fishing vessels under the laws of the United States. Dunham v. Lamphere (1855) 69 Mass. (3 Gray) 268.

Acts Mich. 1893, No. 196, § 5, prohibiting the sale or possession for the purpose of sale of any kind of bird, game, or fish at any time when the taking, catching, or killing thereof is prohibited by law, and Acts Mich. 1895, No. 223, prohibiting the sale of quail, are not unconstitutional, as interfering with interstate commerce, but are valid, as within the police power of the state. People v. O'Neil (1896) 110 Mich. 324, 68 N. W. 227.

Pub. Acts Mich. 1899, No. 88, declaring it unlawful to market or have in possession any sturgeon, wall-eyed pike, or pickerel weighing less than one pound, is not although applied to fish lawfully caught in foreign waters, repugnant to the commerce clause. People v. Lassen (1906) 106 N. W. 143, 142 Mich. 597. 12 Detroit Leg. N. 857.

Regulation of the taking of fish and game within the state is not an interference with interstate commerce. People v. Setunsky (Mich. 1910) 126 N. W. 844, 17 Detroit Leg. N. 393.

A statute restricting the taking of fish is not violative of the commerce clause as to one whose purpose in taking them was to ship them into another state. Ex parte Fritz (1905) 38 So. 722, 86 Miss. 210, 109 Am. St. Rep. 700.

A state law which forbids selling or keeping specified kinds of game during certain months is not invalid, in application to game brought from another state, as a regulation of commerce. State v. Randolph (1876) 1 Mo. App. 15.

Act Mo. 1877, § 3, prohibiting the having in possession certain game within certain periods of time, does not restrain commerce. State v. Judy (1879) 7 Mo. App. 524.

Laws N. Y. 1892, c. 488, §§ 110, 112, making it a misdemeanor to catch, kill, or have the possession of certain kinds of fish during certain periods of the year, and imposing a penalty for the violation thereof, in so far as they affect the possession and right of sale by citizens of this state of fish imported from a foreign country, are in conflict with the power of congress to regulate commerce. People v. Buffalo Fish Co. (1900) 58 N. E. 34, 164 N. Y. 93, 52 L. R. A. 803, 79 Am. St. Rep. 622, affirming judgment (1899) 62 N. Y. S. 543, 30 Misc. Rep. 130; Id. (1900) 62 N. Y. S. 1143, 48 App. Div. 635.

Laws N. Y. 1902, c. 194, § 141, prohibiting the possession during the closed season of trout taken outside the state, is void as an interference with interstate commerce, and not a proper exercise of the police power. People v. A. Booth Co. (1903) 86 N. Y. S. 272, 42 Misc. Rep. 321, reversed (1905) 93 N. Y. S. 425, 105 App. Div. 184.

Forest, Fish, and Game Law N. Y. (Laws 1900, c. 20) §§ 106, 108, as amended by Laws 1904, c. 588, define the closed season for grouse and plover. Section 119, prescribes penalties for a violation of the law. Section 141, as amended by Laws 1902, c. 194, provides that, whenever the possession of fish or game is prohibited, reference is equally had to fish or game coming from without the state as to that taken within the state. Held, that the law, in so far as it attempts to punish as a crime the possession of plover and grouse lawfully imported into the state from foreign countries under the federal customs statutes, which plover and grouse are readily distinguishable from native varieties and are wholesome articles of food, and recognized and staple articles of commerce, is an unconstitutional interference with foreign commerce. People v. Hesterberg (1905) 96 N. Y. S. 286, 109 App. Div. 295; Ex parte Hill (1905) 96 N. Y. S. 296, 109 App. Div. 917, order reversed (1906) 76 N. E. 1032, 184 N. Y. 126, 3 L. R. A. (N. S.) 163.

Act Pa. June 10, 1881, making it a misdemeanor to fish in streams in which trout have been planted by the state fish commissioner for the period of

three years after such planting, is not unconstitutional in its application to the subject-matter, being a proper exercise of the police power of the state. Commonwealth v. Bender (1887) 7 Pa. Co. Ct. R. 620.

Acts Tenn. 1909, c. 519, § 2, prohibiting the sale or holding for sale of the plumage, skin, or body of birds protected by the act, captured or killed without the state, and, by section 11, the sale of any game taken or killed outside the state, except as authorized by section 16, if applied to a case where the possessor had in the course of his trade acquired title in a foreign state and brought the game into the state for use or commercial purpose, violates the interstate commerce clause. Acklen v. Thompson (1909) 126 S. W. 730, 122 Tenn. 43.

Acts Va. 1874, c. 214, § 22, prohibiting nonresidents from planting oysters in the waters of the state, is not a state regulation of interstate commerce within the prohibition of the federal constitution. McCready v. Commonwealth (Va. 1876) 27 Grat. 985.

134. Navigation and shipping.—The Delaware statute authorizing the erection of a dam over a creek into which tide waters flowed through a marsh adjoining the Delaware river, though it abridged the rights of those who had been accustomed to use the creek for purposes of navigation, etc., was held not to conflict with the constitution or laws of the United States, as being a regulation of commerce. Willson v. Blackbird Creek Marsh Co. (1829) 27 U. S. (2 Pet.) 245, 7 L. Ed. 412.

A state statute inflicting the forfeiture of a vessel for the violation of a state law by the parties on board and in possession is valid. Smith v. Maryland (1855) 59 U. S. (18 How.) 71, 15 L. Ed. 269.

An Alabama law relating to steamboats held unconstitutional and void as conflicting with this clause and acts of congress in pursuance thereof. Sinnot v. Davenport (1859) 22 How. 227, 238, 16 L. Ed. 243.

A state law as to the survey of hatches of vessels and goods on board thereof held void under this clause. Foster v. Master & Wardens of Port of New Orleans (1876) 94 U. S. 246, 24 L. Ed. 122.

Congress did not exceed its powers under the commerce clause by enacting Act Feb. 4, 1887, § 20, as amended by Act June 29, 1906, § 7 (Comp. St. § 8592), compelling carriers by water in Great Lakes engaged in transportation of passengers and property, partly by water under a joint arrangement for continuous carriage, to make annual reports embracing joint rail and water business and other business of the carriers as well. Interstate Commerce Commission v. Goodrich Transit Co. (1912) 32 Sup. Ct. 436, 224 U. S. 194, 56 L. Ed. 729, reversing judgment Goodrich Transit Co. v. Interstate Commerce Commission (Com. Ct. 1911) 190 Fed. 943.

Under its constitutional power to regulate commerce, congress may lawfully impose conditions upon the granting of clearance to vessels as a means of enforcing immigration regulations. International Mercantile Marine Co. v. Stranahan (C. C. 1907) 155 Fed. 428.

A steam tug, regularly licensed under the acts of congress, plying between ports in different states, is not amenable to local laws regulating Sunday labor. Philadelphia & Havre De Grace Steam Tow-Boat Co. v. Philadelphia, W. & B. R. Co. (D. C. 1857) Fed. Cas. No. 11,085.

Act Ala. Feb. 15, 1854, "to provide for the registration of the names of steamboat owners" which requires a written statement of the names and residences of the owners of steamboats navigating the waters of the state to be filed in the probate court of Mobile, and imposing a penalty for its violation, was held not to be a regulation of commerce, within the constitutional grant of that power to congress. Pilotage Com'rs v. The Cuba (1856) 28 Ala. 185.

The Florida act of November 25, 1828, declaring mortgages upon personal property not "effectual or valid to any purpose whatever," unless recorded in the records of the county where the property is at the time of the execution of the mortgage, etc., is not applicable to mortgages on vessels; and the records thereof are to be considered with reference to legislation by the congress of the United States, as within the powers of congress respecting the "regulation of commerce." Cunningham v. Tucker (1873) 14 Fla. 251.

A city ordinance controlling the use of tugboats in towing in and out vessels to and from the harbor is not in conflict with the commerce clause. Harmon v. City of Chicago (1884) 110 Ill. 400, 51 Am. Rep. 698.

A penal ordinance of Chicago, pronouncing steamboats emitting dense smoke to be a nuisance, is reasonable, and not unconstitutional as affecting vessels on the Chicago river. Id.

Act Ky. March 9, 1868, incorporating a navigation company, and leasing to it for 30 years certain state property, with the right to collect tolls on steamboats, etc., is not in conflict with the commerce clause. McReynolds v. Smallhouse (1871) 71 Ky. (8 Bush.) 447.

Though a steamer is engaged in interstate commerce, and is equipped with all machinery and appliances required by the act of congress, and the regulations adopted thereunder by the board of supervising inspectors, it is subject to Act No. 183, Pub. Acts Mich. 1881, requiring steamers using wood for fuel to be provided with spark arresters, and making the vessel's owner liable for loss by fire occasioned by neglect to comply with the act; such act not being in conflict with the federal legis-

lation. Burrows v. Delta Transp. Co. (1895) 106 Mich. 582, 64 N. W. 501, 29 L. R. A. 468.

The New York act of April 15, 1839, regulating the speed of boats on navigable rivers, is not a regulation of commerce. People v. Jenkins (N. Y. 1841) 1 Hill, 469; People v. Roe, Id. 470.

A statute requiring owners of vessels navigated through canals within the state to furnish lists of number of tons of freight and of passengers is a reasonable exercise of the police power of the state, and is within the constitutional authority of the legislature. Canal & Locks Com'rs v. Willamette Transportation & Locks Co. (1877) 6 Or. 219.

A company owning a canal is not on that account exempt from complying with regulations which the legislature, in the exercise of its general police power, may prescribe for vessels navigating the canal, such as a law that every such vessel shall furnish a list of passengers, etc., carried. Id.

135. Rafting of logs on navigable waters.—Code Md. art. 34, forbidding the removal of logs washed upon the shores of Chesapeake Bay and its tributaries without payment to the owner of the shore of 25 cents for each log, and providing for the sale of the logs after notice in a newspaper, and for the retention of 25 cents for each log out of the proceeds, is not unconstitutional as to logs washed upon such shores from another state, being a valid exercise of police power. Henry v. Roberts (C. C. 1892) 50 Fed. 902.

A toll imposed by a state on logs and lumber floated down from that state into an adjoining one is unconstitutional, as an attempted regulation of interstate commerce. Carson River Lumbering Co. v. Patterson (1867) 33 Cal. 334.

The provision of Gen. St. Mass. c. 78, § 5, that "no person shall cause or permit to be floated down Connecticut river any masts, spars, logs, or other timber, unless the same are formed and bound into rafts, and placed under the care of a sufficient number of persons to govern and manage the same, so as to prevent damage thereby," is constitutional, even in the case of logs coming from another state, and passing through Massachusetts on their way to a third state. Harrigan v. Connecticut River Lumber Co. (1880) 129 Mass. 580, 37 Am. Rep. 387.

Gen. St. Mass. c. 78, § 5, providing that "no person shall cause or permit to be driven or floated down the Connecticut river any masts, spars, logs, or other timber, unless the same are formed and bound into rafts and placed under the care of a sufficient number of persons to govern and manage the same, so as to prevent damage thereby," is not unconstitutional, as a regulation of interstate commerce, in the case of logs coming from one state and passing through this commonwealth on their way to another state. Id.

Act Mich. Feb. 9, 1855, providing for the formation of companies for running, driving, and rafting logs, and for regulating the flotage thereof, is valid, at least so far as it provides for the formation of companies and their powers to make contracts. Ames v. Port Huron Log-Driving & Booming Co. (1859) 6 Mich. 266.

Comp. Laws Mich. 1855, c. 66, authorizing rafting companies organized thereunder to assume control of logs of unconsenting owners floating on public highways, and to enforce compensation against the logs, is unconstitutional in allowing persons thus organizing to assume a police power over the waters used. Ames v. Port Huron Log Driving & Booming Co. (1863) 11 Mich. 139, 83 Am. Dec. 731; Beard v. Same (1863) 11 Mich. 155, note.

A statute of the state of New Hampshire, regulating the mode of rafting and driving timber on Connecticut river is not a regulation of commerce among the several states. Scott v. Willson (1825) 3 N. H. 321.

When a state exercises her own sovereign power in a matter involving the interests of her citizens, though the exercise may touch upon a subject within the field of the power to regulate commerce, it is not for that reason invalid, if no law which congress has passed upon the same subject is violated. Thus the Pennsylvania act of 1866 (P. L. 1867, Append. p. 1366), prohibiting the floating of loose logs in the Susquehanna river without being rafted, etc., is a lawful exercise of the police power of the state, upon a subject within her rightful jurisdiction, for the protection of the navigation of the river; and, not being repugnant to any law of congress passed to regulate commerce, is valid and constitutional. Craig v. Kline (1870) 65 Pa. St. (15 P. F. Smith) 399, 3 Am. Rep. 636, 2 Leg. Gaz. 81.

Act Wash. March 18, 1895 (Laws 1895, pp. 128, 131) § 5, authorizing boom companies incorporated thereunder to sluice, sack, and drive logs which impede the progress of other logs, without request of their owners, and to charge a maximum toll therefor, and giving a lien on logs therefor, is not unconstitutional. East Hoquiam Boom & Logging Co. v. Neeson (1898) 54 P. 1001, 20 Wash. 142.

136. Scaling logs.—A state statute for the scaling of logs is not in violation of this clause, for persons and property are subject to restraint to secure the general comfort and prosperity. Hospes v. O'Brien (C. C. 1885) 24 Fed. 145, 147.

Rev. St. Minn. c. 32, tit. 3, § 25, making it the duty of the surveyor general of the First district to scale all logs run through Lake St. Croix, is not unconstitutional, as a restraint upon interstate commerce. Id.

137. Employment of labor.—The Oregon statutes, depriving an employer of

the defense that the negligence resulting in injury to a servant was that of a foreman, are not a regulation of or a burden on interstate commerce. Swayne & Hoyt v. Barsch (1915) 226 Fed. 581, 141 C. C. A. 337.

Act Cal. April 26, 1862, to protect free white people against competition with Chinese, and to discourage immigration of Chinese into the state of California, is not valid, as part of the police regulations of the state, as this part thereof has been given to congress as part of the power to regulate commerce. Lin Sing v. Washburn (1862) 20 Cal. 534.

A municipal ordinance, requiring all contracts for the building of public works involving the use of dressed stone to require the work of dressing the stone to be done within the territorial limits of the state, does not violate this clause. Allen v. Labsap (1905) 87 S. W. 926, 188 Mo. 692.

Laws N. Y. 1895, c. 413 (Laws 1897, c. 415, § 14), providing that there shall not be used on any municipal work within the state any stone which is to be worked, dressed, or carved for such use, except it shall be prepared for use in this state, is unconstitutional, as in contravention of the federal constitution, vesting in congress the right to regulate interstate commerce. People v. Coler (1901) 59 N. E. 776, 166 N. Y. 144, affirming order (1900) 68 N. Y. S. 767, 56 App. Div. 459.

New York Workmen's Compensation Law of 1914, which applies to those engaged in interstate commerce, is not invalid as casting a burden on interstate commerce. Jensen v. Southern Pac. Co. (1915) 109 N. E. 600, 215 N. Y. 514, affirming order In re Jensen (1915) 152 N. Y. S. 1120.

138. Seamen.—Const. La. art. 255, provides that the general assembly shall pass laws to prevent sailors and others of the crew of foreign vessels from working on the wharves and levees of the city of New Orleans, provided there is no treaty between the United States and foreign ports to the contrary. Act La. No. 76 of 1880 enacts that no sailor or portion of the crew of foreign vessels shall engage in working on the wharves or levees of New Orleans beyond the end of the vessels' tackle, but provides that it shall not apply to the crews of vessels hailing from countries having treaties with the United States to the contrary, nor to contracts of which the United States courts have jurisdiction. Held, that the constitution and statute do not prohibit the crews of foreign vessels from loading and unloading their ships. Cuban Steamship Co. v. Fitzpatrick (C. C. 1895) 66 Fed. 63.

The act of South Carolina authorizing the seizure and imprisonment of persons of color who may come into any of her ports from any other state or any foreign port until the vessel to which they may be attached shall depart is void, as being against the commerce clause. (1824) 1 Op. Atty. Gen. 659.

Hill's Ann. Laws Or. § 1952, forbidding any person to persuade a seaman to desert a vessel within waters under the jurisdiction of the state, is a valid exercise of police power, and is not in conflict with the commerce clause, since a state act regulating commerce is not void unless contravening an existing act of congress or the policy of the government. Ex parte Young (1900) 59 P. 707, 36 Or. 247, 48 L. R. A. 153.

139. Pilots and pilotage.—Act Cal. May 20, 1861, to establish pilots and pilot regulations for the port of San Francisco, is not in violation of the commerce clause. Pacific Mail S. S. Co. v. Joliffe (1864) 69 U. S. (2 Wall.) 450, 17 L. Ed. 805.

Under Act Aug. 7, 1789, adopting the pilot regulations of the several states as government regulations, the pilot laws of the state of New York are not in conflict with the United States constitution, giving to congress the power to regulate interstate foreign commerce. Wilson v. McNamee (1880) 102 U. S. 572, 26 L. Ed. 234.

A state law requiring masters of vessels bound to ports in this state to accept the services of the first licensed pilot offering is not unconstitutional. Thompson v. Spraigue (1883) 69 Ga. 409, 47 Am. Rep. 760; Dale v. Daniels (1884) 72 Ga. 207.

The state statute providing that "if any person, other than a branch Hell Gate pilot, shall pilot or tow for any other person any vessel of any description, or board such vessel for that purpose," etc., "without the aid of a branch Hell Gate pilot on board, he shall be guilty of a misdemeanor," etc., is not in conflict with the commerce clause, but is a mere police regulation. People v. Sperry (N. Y. 1867) 50 Barb. 170.

The ordinance of the city of Charleston imposing a penalty upon all vessels (except those trading between ports in South Carolina, and owned therein) which should not receive on board a licensed pilot is void, because the discrimination conflicts with powers vested in congress; but it would have been good if it had been laid upon all vessels. Chapman v. Miller (S. C. 1844) 2 Speers, 769.

A state is not prohibited by the federal constitution from prescribing a system of pilotage. State v. Penny (1883) 19 S. C. 218.

140. Ports, harbors, and wharves.—The local authorities of a port have a right to prescribe at what wharf a vessel may lie, where she may remain at anchor in a harbor, and for what time, and what description of light she shall display at night, and similar regulations; and such directions are not in conflict with any law of congress regu-

lating commerce, or with the general admiralty jurisdiction conferred on the courts of the United States, and are valid. The James Gray v. The John Fraser (1858) 62 U. S. (21 How.) 184, 16 L. Ed. 106.

A city ordinance prescribing where a vessel may lie in a harbor, how she may remain there, what lights she must show at night, and making other similar regulations, is not in conflict with any law of congress regulating commerce. Id.

A state law enacting that the masters and wardens of a port should be entitled to demand and receive in addition to other fees $5 for every vessel arriving therein, whether called on to perform any service or not, is void as a regulation of commerce. Southern Steamship Co. v. Masters and Wardens of Port of New Orleans (1867) 6 Wall. 31, 32, 18 L. Ed. 749.

An act of a state legislature entitling portwardens to receive a certain sum or fee from every vessel coming into port, whether called on to perform any service or not, is a regulation of commerce, and therefore unconstitutional. Id.

An ordinance is not void which fixes wharfage rates according to the tonnage of vessels. Keokuk Northern Line Packet Co. v. Keokuk (1877) 95 U. S. 80, 88, 24 L. Ed. 377.

A municipal corporation, owning improved wharves and other artificial means, which it maintains, at its own cost, for the benefit of those engaged in commerce upon the public navigable waters of the United States, is not prohibited by the constitution from charging and collecting from parties using its wharves and facilities such reasonable fees as will fairly remunerate it for the use of the property. Northwestern Union Packet Co. v. City of St. Louis (1879) 100 U. S. 423, 25 L. Ed. 688.

City ordinances for the collection of wharfage held not to conflict with this clause. Northwestern Union Packet Co. v. St. Louis (1879) 100 U. S. 423, 25 L. Ed. 688; Vicksburg v. Tobin (1879) 100 U. S. 430, 25 L. Ed. 690.

An ordinance imposing wharfage fees on vessels arriving with a product of another state, and exempting vessels from payment of such fees when carrying the product of the state, is void. Guy v. City of Baltimore (1879) 100 U. S. 434, 25 L. Ed. 743, 1 Ky. Law Rep. 205, following The Wharf Case (Md. 1806) 3 Bland, 361.

Public wharfage charges under a state law not applying to vessels conveying products of the state in which they were imposed held to be a tax on interstate commerce in conflict with this clause. Id.

A city situated on navigable waters may build and own a wharf and exact reasonable compensation from vessels for its use without infringing this constitutional provision. If an ordinance which forbids the landing of vessels except by permission of the wharf master at any other point within the city than between streets specified is a regulation of commerce at all, it comes within that class in which the states may prescribe rules until congress assumes to do so. Cincinnati, P., B. S. & P. Packet Co. v. Catlettsburg (1881) 105 U. S. 559, 563, 26 L. Ed. 1.

Though the regulation of public wharves and wharfage on navigable waters may properly fall within the commercial powers of congress, still, in the absence of national legislation, the powers of the state therein are complete, and an ordinance of a city, requiring vessels discharging or receiving freight at a wharf built and owned by it to pay certain rates, is not invalid, as a regulation of interstate commerce. Parkersburg & O. R. Transp. Co. v. City of Parkersburg (1883) 2 Sup. Ct. 732, 107 U. S. 691, 27 L. Ed. 584.

The ordinance of the city of New Orleans of January 17, 1875, passed in pursuance of Act La. March 16, 1870, No. 7, § 12, fixing rates of wharfage, is not in conflict with the commerce clause, although the ordinance of May 17, 1881, authorized a sale of the revenue of the wharves for five years, on condition of the purchaser keeping them in repair, constructing new wharves, lighting the wharves, and paying a certain amount, a part of which should be used for maintaining a harbor police. Ouachita & M. R. Packet Co. v. Aiken (1887) 7 Sup. Ct. 907, 121 U. S. 444, 30 L. Ed. 976, affirming decree (C. C. 1883) 16 Fed. 890.

Charge of harbor fees, under Act Va. Jan. 18, 1798. Shinn v. McKnight (C. C. 1831) Fed. Cas. No. 12,789.

A city ordinance which provides for a reasonable compensation, proportioned to the tonnage of the vessel, for the use of expensive wharves constructed by the city, which a vessel may use at its option, there being ample space for it to land within the harbor where no such wharves have been constructed, is not in conflict with the power granted to congress to regulate interstate commerce. Northwestern Union Packet Co. v. St. Louis (C. C. 1877) Fed. Cas. No. 10,345, affirmed in (1879) 100 U. S. 423, 25 L. Ed. 688.

Laws N. Y. 1875, c. 405, and the acts of which it is amendatory, in so far as they authorize a charge for wharfage, in the case of certain boats coming from without the state, additional to that allowed to be made in the case of boats of the same character engaged exclusively in navigating waters within the state, is invalid, as an unlawful taxation of interstate commerce, and the lien attempted to be given for such wharfage charges cannot be

enforced. Broeck v. The John M. Welch (C. C. 1880) 2 Fed. 364.

Act N. Y. May 6, 1870, fixing rates of wharfage and providing penalties in double wharfage for nonpayment is not unconstitutional as being repugnant to the commerce clause. The Ann Ryan (D. C. 1873) Fed. Cas. No. 428.

Act Md. 1867, c. 295, declaring that it shall not be lawful to anchor any boat in a river of the state, within certain prescribed limits, in order to keep the channel free from obstructions to navigation, is not unconstitutional, as an attempt to regulate commerce among the several states, where such provision does not conflict with any regulation of congress. Green v. The Helen (D. C. 1880) 1 Fed. 916, 922.

The imposition of a toll or charge by the state harbor commissioners of California on merchandise, the property of the United States, passing to or over the wharves at San Francisco, is not a tax upon or in respect of interstate traffic, but is a charge for the use of property and facilities furnished the government by the state of California. (1900) 23 Op. Atty. Gen. 299.

The harbor masters' and port wardens' fees specified in the Mobile ordinance of 1870 are only to be paid when the services become necessary, and are actually offered to be rendered. Accordingly, the Alabama act of 1870, authorizing such ordinance, is not an unconstitutional restriction upon commerce. Harbor Master v. Southerland (1872) 47 Ala. 511.

Acts Fla. 1879, c. 3159, providing that the harbor master of the port of Pensacola may demand certain fees for every vessel entering the port, loading or unloading or making fast to a wharf, whether any service is rendered to the vessel or not, is unconstitutional, as being a "regulation of commerce." Webb v. Dunn (1882) 18 Fla. 721.

The imposing of wharfage fee by a city on a river which is the boundary between the states is not an interference with interstate commerce. Keckevoet v. City of Dubuque (Iowa, 1912) 138 N. W. 540.

The ordinances of the council of the second municipality of New Orleans of June 23 and 30, 1842, imposing a wharfage charge on all packages landed in or shipped from the municipality, are not invalid, as a regulation of interstate commerce. Worsley v. Second Municipality (La. 1844) 9 Rob. 324, 41 Am. Dec. 333.

The fees allowed the master and wardens, by Act La. Feb. 17, 1821, No. 62, are at least when the services for which they are claimed have been actually rendered, not inconsistent with the federal constitution. Master and Wardens of Port of New Orleans v. Prats (La. 1845) 10 Rob. 459.

An act authorizing the council of the city of New Orleans to impose a uniform rate of wharfage for vessels to defray the expenses of wharves and other works, necessary for the loading and unloading of vessels, is not unconstitutional, as a tax on commerce. Municipality No. 1 v. Pease (1847) 2 La. Ann. 538.

The act of the legislature of 1855 relative to the board of master and wardens, which provides for the payment of services actually rendered, or the tender of such services, is not a violation of the clause of the commerce clause. Wardens of Port of New Orleans v. The Martha J. Ward (1859) 14 La. Ann. 289.

The New Jersey statute of 1869 authorizing the appointment of harbor masters, with power to demand and receive a certain fee per ton on all vessels entering the Bay of New York within the limits of Jersey City, is a regulation of commerce, and void. Hackley v. Geraghty (1870) 34 N. J. Law (5 Vroom) 332.

The provision of the New York act of March 29, 1844, that if any person shall exercise any of the powers of a port warden he shall be liable to a fine, is in violation of the commerce clause; the New York act of 1819 prescribing the powers of port wardens, and providing that they shall determine and judge as to the repairs necessary for the safety of any vessel on its intended voyage. Wardens of Port of New York v. Cartwright (N. Y. 1850) 6 N. Y. Super. Ct. (4 Sandf.) 236.

A state statute providing that every vessel entering a certain port, which shall "load or unload, or make fast to any wharf therein," shall pay certain fees, graduated by the tonnage of such vessel, to harbor masters, under a penalty for default, is not in violation of the commerce clause. Benedict v. Vanderbilt (1863) 24 N. Y. Super. Ct. (1 Rob.) 194.

Laws N. Y. 1862, c. 487, § 7, provides that each harbormaster in the port of New York shall have power within the district assigned to him to assign suitable accommodations for all vessels and regulate them in the stations they are to occupy at the wharves, and shall have power to determine in what instances it is the duty of the master and others having charge of ships and vessels to accommodate each other in their respective stations, and it provides, also, that any person having charge of a vessel who shall resist or forcibly oppose said officer in discharge of his duties shall forfeit the sum of $50. Held, that the statute, so far as it establishes a harbor regulation or creates a police authority to prevent overcrowding and confusion and to facilitate equal rights among the shipping in the harbor, is not in conflict with any provision of either the state or the United States Constitution nor with any provision of federal law. Tinken v. Stillwagon (N. Y. 1878) 1 City Ct. R. 390.

Laws N. Y. 1881, c. 87, prohibiting assumption of the title of port warden by persons not duly appointed to that office, does not contravene the commerce clause. Curtin v. People (N. Y. 1882) 26 Hun, 564.

Laws N. Y. 1862, c. 487, as amended by Laws 1865, c. 586, establishing harbor regulations at the port of New York, and creating a police authority to prevent overcrowding and confusion, and to facilitate equal rights among the shipping in the harbor, is not in conflict with any provision of the state or federal constitution. Tinken v. Stillwagon (N. Y. 1882) 1 City Ct. R. 390.

141. Ferries.—The legislatures of the several states have power within their limits to establish and regulate ferries, and a privilege granted to an individual to operate such ferries does not conflict with the provisions of any treaty made by the United States with foreign powers or with any act of congress relative to the free navigation of the waters on which such ferries are operated. Mills v. St. Clair County (1845) 7 Ill. (2 Gilman) 197.

Act Miss. Nov. 29, 1865, regulating ferries across the Mississippi river, is not unconstitutional on the ground of interfering with the right of congress to regulate commerce among the several states. Marshall v. Grimes (1866) 41 Miss. 27.

The grant of a ferry privilege within the limits of the city is not an interference with interstate commerce, though the business of the ferry is across a navigable river to another state. Carroll v. Campbell (1891) 108 Mo. 550, 17 S. W. 884; Id. (1892) 110 Mo. 557, 19 S. W. 809.

142. Bridges.—The act of June 15, 1866 (Comp. St. § 10058), authorizing every railroad operated by steam to carry upon and over its road, bridges, etc., all passengers and property on their way from one state to another state, and to connect with roads of other states so as to form continuous lines of transportation; and the act of July 25, 1866, authorizing the construction of certain bridges over the Mississippi river, and making them free for the crossing of all trains of railroads terminating on either side of the river, for reasonable compensation, were designed to remove trammels upon transportation between different states, interposed by state enactments or by existing laws of congress, and were not intended to interfere with private contracts, and annul such as had been made on the basis of existing legislation and existing means of interstate communication. Dubuque & S. City R. Co. v. Richmond (1873) 86 U. S. (19 Wall.) 584, 22 L. Ed. 173.

An ordinance of Chicago in the exercise of its police powers, regulating the opening and closing of draws on bridges over the Chicago river, is not invalid, as an attempt to regulate interstate commerce. Escanaba & L. M. Transp. Co. v. City of Chicago (1882) 107 U. S. 678, 2 Sup. Ct. 185, 27 L. Ed. 442.

Laws Miss. 1867, p. 332, requiring a certain railroad company to construct and maintain a drawbridge over Pearl river, between Louisiana and Mississippi, does not violate the constitution. New Orleans, M. & T. Ry. Co. v. Mississippi (1884) 112 U. S. 12, 5 Sup. Ct. 19, 28 L. Ed. 619.

Removal of existing railway bridges over a navigable stream which formed necessary parts of an interstate commerce railroad cannot be ordered by a state court, even in the expectation that such order will lead to the elevation of the bridges, which the state court could not order without authority of the Secretary of War. Kansas City Southern Ry. Co. v. Kaw Valley Drainage Dist. Wyandotte County, Kan. (1914) 34 Sup. Ct. 564, 233 U. S. 75, 58 L. Ed. 857, reversing judgment, Kaw Valley Drainage Dist. of Wyandotte Co. v. Kansas City Terminal Ry. Co. (1912) 123 P. 991, 87 Kan. 272.

An ordinance of the city of Chicago providing that drawbridges over the Chicago river should at all times be marked by an elevated red ball or lantern, and prohibiting vessels from approaching unless permitted by lowering of the signal, held an unreasonable and invalid regulation. City of Chicago v. Chicago Transp. Co. (1915) 222 Fed. 238, 137 C. C. A. 654, L. R. A. 1915F, 1062, certiorari denied (1915) 35 Sup. Ct. 664, 238 U. S. 626, 59 L. Ed. 1495.

A city ordinance regulating the opening and closing of bridges over rivers within the limits of Chicago, so as to permit the alternate passage through of vessels, and the passage over the bridges of teams and persons, and which also provides for the closing of the bridges altogether, against passing vessels, between the hours of 6 and 7 a. m. and 5:30 and 6:30 p. m., is not in conflict with the commerce clause. Escanaba & L. M. T. Co. v. Chicago (C. C. 1882) 12 Fed. 777, decree affirmed (1882) 2 Sup. Ct. 185, 107 U. S. 678, 27 L. Ed. 442.

The fact that states on either side of a navigable river have in force statutes prohibiting the doing of certain kinds of work on Sunday does not relieve the owner of a bridge spanning the river from the duty of opening the draw on Sunday to admit the passage of vessels engaged in commerce on the river. Boland v. Combination Bridge Co. (D. C. 1899) 94 Fed. 888.

A requirement compelling railroad companies to elevate bridges over the Kansas river does not, by reason of the consequent expense and difficulty, violate the commerce clause. Kaw Val-

ley Drainage Dist. of Wyandotte County v. Kansas City Terminal Ry. Co. (1912) 123 P. 991, 87 Kan. 272.

The state may grant an exclusive franchise to build and maintain a toll bridge within the territory of the state. Piscataqua Bridge v. New Hampshire Bridge (1834) 7 N. H. 35.

143. Telegraphs and telephones.—Rev. St. Ind. 1881, § 4176, prescribing the order in which telegraphic dispatches shall be sent, and section 4178, requiring the delivery, by messenger, of such dispatches, if the persons to whom they are addressed, or their agents, reside within one mile of the station, or within the city or town in which it is located, are invalid with respect to dispatches to be delivered in other states. Western Union Tel. Co. v. Pendleton (1887) 122 U. S. 347, 7 Sup. Ct. 1126, 30 L. Ed. 1187.

A state statute requiring telegraph companies to transmit and deliver dispatches with impartiality, good faith, and due diligence, under penalty of $100 in each case (Act Ga. Oct. 22, 1887), is not void, as to messages coming from without the state, as an unwarrantable interference with interstate commerce, in the subject. Western Union Tel. Co. v. James (1896) 16 Sup. Ct. 934, 162 U. S. 650, 40 L. Ed. 1105, distinguishing Same v. Pendleton (1887) 7 Sup. Ct. 1126, 122 U. S. 347, 30 L. Ed. 1187.

Interstate commerce is not unconstitutionally regulated by a state statute under which, as construed by the state courts, a telegraph company cannot limit its liability for its negligent failure to deliver a telegram addressed to a person in another state. Western Union Telegraph Co. v. Commercial Milling Co. (1910) 31 Sup. Ct. 59, 218 U. S. 406, 54 L. Ed. 1088, 36 L. R. A. (N. S.) 220, 21 Ann. Cas. 815, affirming judgment Commercial Milling Co. v. Western Union Telegraph Co. (1909) 115 N. W. 698, 151 Mich. 425.

A recovery in a South Carolina court of damages for mental anguish from failure to deliver a telegram in the city of Washington forwarded from South Carolina, where received, cannot be authorized, as is done by Civ. Code S. C. 1902, § 2223, as construed by the state courts, without violating the commerce clause. Western Union Tel. Co. v. Brown (1914) 34 Sup. Ct. 955, 234 U. S. 542, 58 L. Ed. 1457, reversing judgment Brown v. Western Union Telegraph Co. (1912) 75 S. E. 542, 92 S. C. 354.

Notwithstanding telegraph lines are instruments of commerce, a city has the right to determine how, in what manner, and upon what condition a telegraph company shall enter and pass through the city. Mutual Union Tel. Co. v. City of Chicago (C. C. 1883) 16 Fed. 309.

Laws N. Y. 1884, c. 534, and Laws N. Y. 1885, c. 499, requiring all electric wires in any city having a population of 500,000 or more to be placed under the surface of the streets, is valid as a police regulation, as to a telegraph company which has accepted the provisions of Act July 24, 1866, and which thereby became, as to government business, an agency of the general government, and entitled to construct, etc., lines of telegraph over and along any post road, etc., and which is an instrument of interstate commerce. The statute does not infringe the power of congress to regulate commerce, or the exemption of the agencies of the federal government from state control. Western Union Tel. Co. v. City of New York (C. C. 1889) 38 Fed. 552, 3 L. R. A. 449.

Laws N. Y. 1884, c. 534, and Laws N. Y. 1885, c. 499, requiring all electric wires in any city having a population of over 500,000 to be placed under the surface of the streets, do not infringe the power of congress to regulate commerce. Id.

The constitutional provision vesting in congress the exclusive power to regulate and control interstate commerce does not preclude the exercise by states of their police powers, by imposing on telephone lines regulations designed for the safety of the local public. Michigan Tel. Co. v. City of Charlotte (C. C. 1899) 93 Fed. 11.

Act Ark. March 7, 1903 (Acts 1903, p. 123, No. 68), Kirby's Dig. Ark. § 7947, providing that "all telegraph companies doing business in this state shall be liable in damages for mental anguish or suffering, even in the absence of bodily injury or pecuniary loss, for negligence in receiving, transmitting or delivering messages," is not unconstitutional as an interference with interstate commerce because it applies incidentally to contracts for the transmission of interstate messages. Ivy v. Western Union Telegraph Co. (C. C. 1908) 165 Fed. 371, judgment reversed Western Union Tel. Co. v. Ivy (1910) 177 Fed. 63, 100 C. C. A. 481.

Hours of Service Act March 4, 1907, § 2 (Comp. St. § 8678), which makes it unlawful for any interstate carrier to permit any employé, as the terms "railroad" and "employé" are defined in section 1 (Comp. St. § 8677), to remain on duty for a longer period than those prescribed, is not unconstitutional because of the classification of telegraphers by prescribing a different limitation for the hours of operators in offices or stations continuously operated day and night and those operated only during the day time. U. S. v. St. Louis Southwestern Ry. Co. of Texas (D. C. 1911) 189 Fed. 954, judgment affirmed St. Louis Southwestern Ry. Co. of Texas v. U. S. (1912) 199 Fed. 990, 117 C. C. A. 666.

No state can exclude a foreign telegraph company from doing business within its boundaries. American Union Tel. Co. v. Western Union Tel. Co. (1880) 67 Ala. 26, 42 Am. Rep. 90.

The constitutional provision that no foreign corporation shall do business in the state, unless having a known place

of business and an authorized agent therein, does not violate the commerce clause; and a home telegraph company will not be restrained from impeding and obstructing a foreign company in running its lines, where the latter fails to show that it has such place and agent. Id.

Kirby's Dig. Ark. § 7947, authorizing recovery for mental anguish for delay in delivering a death message, held inapplicable to a message sent from Arkansas to Oklahoma, where such was not the law, since to so apply it would be an invalid restriction on interstate commerce. Western Union Telegraph Co. v. Compton (Ark. 1914) 169 S. W. 946.

Damages on account of mental anguish are not recoverable for delay in delivery of a telegram, where the message is an interstate one. Western Union Telegraph Co. v. Sharp (Ark. 1915) 180 S. W. 504.

Act Ga. Oct. 22, 1887 (Acts 1887, p. 111), prescribing a penalty for failure of a telegraph company to deliver a message within a reasonable time after its reception by the company at the office in the state of Georgia from which the delivery is to be made, whether the message be sent from another office of the company in the state or from one of its offices in another state, is not violative of the interstate commerce clause. Western Union Tel. Co. v. James (1892) 90 Ga. 254, 16 S. E. 83.

Act Ga. Oct. 22, 1887, as amended, imposing a penalty on telegraph companies for negligence in delivering messages to be delivered in Georgia, from wherever sent, was not repugnant to the interstate commerce clause. Western Union Tel. Co. v. Howell (1894) 95 Ga. 194, 22 S. E. 286, 30 L. R. A. 158.

The fact that Act Ga. Oct. 22, 1887, as amended, imposing penalties on telegraph companies for failure to promptly deliver messages, permits a recovery of the penalty for negligence in delivering, at an office in Georgia, a message from another state, does not render the act unconstitutional. Western Union Tel. Co. v. Lark (1895) 95 Ga. 806, 23 S. E. 118.

Rev. St. Ind. 1881, § 4176, imposing a penalty on telegraph companies for failure to transmit a message, when applied to messages sent to another state, is not an unconstitutional interference with interstate commerce. Western Union Tel. Co. v. Pendleton (1884) 95 Ind. 12, 48 Am. Rep. 692, Same v. Meredith (1884) 95 Ind. 93.

Rev. St. Ind. 1881, § 4176, imposing a penalty on telegraph companies with a line of wires wholly or partly within the state for failure to transmit messages with impartiality and good faith, in the order in which they are received, to be recovered by the person whose dispatch is postponed or neglected, may be enforced, though the undertaking is to transmit the message beyond the state, as it operates on the parties and the subject-matter within the state jurisdiction, by enforcing the performance of a duty created, owing and violated therein. Western Union Telegraph Co. v. Pendleton (1884) 95 Ind. 12, 48 Am. Rep. 692.

Rev. St. Ind. § 4176, providing a penalty for negligence on the part of telegraph companies in failing to properly transmit and deliver messages, is not unconstitutional, as attempting unlawfully to regulate interstate commerce. Western Union Tel. Co. v. Ferris (1885) 103 Ind. 91, 2 N. E. 240.

Act Ind. April 8, 1885, §§ 2, 3, provide that every telephone company with lines wholly or partly within the state, and engaged in a general telephone business, shall supply all applicants with telephone connections and facilities, without discrimination. Act Ind. April 13, 1885, § 1, provides that no telephone company shall charge more than three dollars for the rent of a telephone. Held that, as said acts are designed only to control telephone service within the state, they are not an interference with interstate commerce, although a company have lines extending into other states. Central Union Tel. Co. v. State (1889) 118 Ind. 194, 19 N. E. 604, 10 Am. St. Rep. 114.

A judgment of ouster from intrastate nongovernmental business, against a telegraph company, because it has not complied with Acts Kan. 1898, p. 27, c. 10, commonly known as the "Bush Act," requiring foreign corporations to perform certain conditions for the privilege of exercising their franchises in the state, does not constitute a regulation of interstate commerce or of governmental business, though the receipts at many offices from interstate and governmental business alone are not sufficient to maintain them. State v. Western Union Telegraph Co. (1907) 90 P. 299, 75 Kan. 609.

Acts Kan. 1898, c. 10, commonly known as the "Bush Act," requiring foreign corporations to file their charters, to make reports, and furnish information concerning their business, to appoint agents to receive service of process, and to pay charter fees computed upon the amount of their authorized capital stock, is not in contravention of the commerce clause. Id.

A foreign telegraph corporation engaged in interstate commerce is not entitled to construct its poles and wires on the streets of a city without payment of compensation. Postal Telegraph Cable Co. v. City of Newport (1903) 76 S. W. 159, 25 Ky. Law Rep. 635.

An ordinance forbidding transmission of telegraphic messages to poolrooms is not an unconstitutional regulation of interstate commerce, though the telegrams come from another state. City of Louisville v. Wehmoff (1904) 79 S. W. 201, 116 Ky. 812, 25 Ky. Law Rep. 1924, denying rehearing (1903) 76 S.

W. 876, 116 Ky. 812, 25 Ky. Law Rep. 995.

Acts Md. 1908, c. 280, requiring companies engaged in transmitting communications by telegraph in Maryland to show on each message delivered the time filed for transmission and the time received at the delivery office, is applicable only to intrastate messages and is not an interference with interstate commerce, but is a proper exercise of police power. Postal Telegraph-Cable Co. v. State (1909) 73 A. 679, 110 Md. 608.

Requirements of an ordinance, adopted under authority of Rev. Laws Mass. c. 25, § 54, and chapter 26, § 6, to cities to make reasonable regulations for erection and maintenance of telegraph poles in streets, and in the exercise of the police power, for the purpose primarily of preventing the erection of unnecessary and objectionable poles, to the obstruction of travel, and secondarily to provide compensation to the city for expense of inspecting the telegraph line for the protection of the public, that a telegraph line licensed to erect poles in streets shall permit other companies, for reasonable compensation, to put their wires thereon, and the city to put its wires thereon without charge, being in reference to a local matter, about which congress has taken no action, and being reasonable, are not an interference with interstate commerce, within the implied prohibition of the federal constitution. Postal Telegraph Cable Co. v. City of Chicopee (1911) 93 N. E. 927, 207 Mass. 341.

Pub. Acts Mich. 1893, No. 195, § 1, making a telegraph company liable for negligence to the amount of loss sustained, does not attempt to state, measure, or define any duty of a telegraph company, or to establish, define, or fix the consequence of its miscarriage; but the liability is established without reference to that act, and it is when the company asks to be discharged therefrom, by giving effect to a stipulation limiting liability on an unrepeated message to the amount received for its transmission, that the act becomes, if at all, effective, and hence to apply the act to an interstate message, so as to constitute such a stipulation void and no limitation of the amount of liability, is not to give the act extraterritorial effect. (Affirmed by divided court.) Commercial Milling Co. v. Western Union Telegraph Co. (1908) 115 N. W. 698, 151 Mich. 425, 15 Detroit Leg. N. 18.

Such statute applied to an interstate message, so as to constitute a stipulation therein, limiting liability on an unrepeated message to the amount received for its transmission, void, and no limitation of the amount of liability, does not regulate interstate commerce. Id.

Rev. St. Mo. 1889, § 2725, making it the duty of every telegraph company to provide sufficient facilities for the dispatch of the business of the public, to receive dispatches from and for other telegraph lines, and from or for any individual, and, on payment or tender of their usual charges for transmitting dispatches, to transmit the same promptly and with impartiality, under a penalty of $200 for every neglect or refusal so to do, is not in violation of the interstate commerce clause. Connell v. Western Union Tel. Co. (1892) 108 Mo. 459, 18 S. W. 883.

Rev. St. Mo. 1909, § 3330, requiring telegraph companies receiving a message for transmission to forward it promptly on penalty, held a valid exercise of state power which could not be said to be an interference with interstate commerce nor to give extraterritorial effect to a state law. Hewitt v. Western Union Telegraph Co. (1913) 157 S. W. 827, 172 Mo. App. 272.

Rev. St. Mo. 1909, § 3330, imposing a penalty upon telegraph companies for failure to promptly transmit telegrams, authorizes a recovery in case of delay in the transmission of an interstate message, where the delay occurs in the receiving office; the statute not being a regulation of interstate commerce. Adcox v. Western Union Telegraph Co. (1913) 157 S. W. 989, 171 Mo. App. 331.

Regulation of telegraph rates between points in the state is not an interference with interstate commerce, though the line passes out of the state between the points, it all being owned and operated by one corporation. State v. Western Union Tel. Co. (1893) 113 N. C. 213, 18 S. E. 389, 22 L. R. A. 570; Leavell v. Same (1895) 116 N. C. 211, 21 S. E. 391, 47 Am. St. Rep. 798, 27 L. R. A. 843.

St. Okl. 1893, c. 11, § 28, which regulates the order of receipt and transmission of telegraphic messages, and prescribes a penalty for its violation, but which does not attempt to regulate the delivery of messages outside the territory or of messages sent from without the territory, is not a regulation of interstate commerce. Butner v. Western Union Tel. Co. (1894) 2 Okl. 234, 37 Pac. 1087.

Order of Corporation Commission, prohibiting additional charges for delivering messages in cities and towns, held not an interference with interstate commerce. Western Union Telegraph Co. v. State (1912) 121 P. 1069, 31 Okl. 415.

Mill. & V. Code Tenn. § 1542, imposing liability upon telegraph companies for negligence in delivering a message, has no extraterritorial effect, and does not impede such company in the exercise of any federal duty or privilege, and is not unconstitutional, as interfering with interstate commerce. Western Union Tel. Co. v. Mellan (1898) 45 S. W. 443, 100 Tenn. 429.

Rev. St. Tex. 1895, arts. 3378, 3379, making invalid a stipulation with a telegraph company that it shall not be lia-

ble for a failure to deliver a message, unless notified of the claim for damages within 60 days, are void, in so far as they apply to messages sent from another state. Western Union Tel. Co. v. Burgess (Tex. Civ. App. 1897) 43 S. W. 1033, affirmed in part and reversed in part in Burgess v. Western Union Tel. Co. (1898) 46 S. W. 794, 92 Tex. 125, 71 Am. St. Rep. 833.

Code Va. § 1292, providing that every telegraph company shall deliver a telegram promptly to the person to whom it is addressed, and that for every failure to forward or deliver a dispatch as promptly as practicable the company shall forfeit $100 to the sender or addressee, is not repugnant to the interstate commerce clause. Western Union Tel. Co. v. Tyler (1893) 90 Va. 297, 18 S. E. 280, 44 Am. St. Rep. 910.

Code Va. 1887, § 1292, allowing the sendee of a telegram to recover a penalty of $100 from the telegraph company for a failure to deliver a message as soon as practicable, is not in conflict with the interstate commerce clause. Western Union Tel. Co. v. Bright (1894) 90 Va. 778, 20 S. E. 146.

Code Va. § 1291 (providing that a telegraph company failing to transmit a dispatch faithfully, impartially, and promptly shall forfeit $100 to the sender), does not contravene the interstate commerce clause. Western Union Tel. Co. v. Powell (1897) 26 S. E. 828, 94 Va. 268.

Where a telegram is transmitted over the wires of the same company, and concerns only citizens of the state, and the initial and terminal points are both in the state, it is a domestic message, though the line passes in part over the territory of another state, and the company has established a relay office in such other state, authorizing recovery of penalty under Code Va. § 1291, for delay in delivery. Western Union Telegraph Co. v. Reynolds (1902) 41 S. E. 856, 100 Va. 459, 99 Am. St. Rep. 971.

The provision of Code Va. 1887, § 1291, imposing a penalty on a telegraph company for failure to transmit a message is not violative of the commerce clause, though applicable to a telegram to another state. Postal Telegraph-Cable Co. v. Umstadter (1905) 50 S. E. 259, 103 Va. 742.

Code Va. 1904, § 1294h, cl. 6, imposing a penalty on telegraph companies for failure to deliver messages, in so far as applied to a message sent from a point within the state to a naval officer in the Norfolk Navy Yard, was not in violation of the commerce clause of the constitution as an attempt to regulate commerce between the states or with foreign nations, etc. Western Union Telegraph Co. v. Chiles (Va. 1907) 57 S. E. 587.

144. Storage warehouses and elevators.—Laws Ill. 1871, regulating warehouses at Chicago and other places, and fixing the maximum of charges for the storage of grain, is not in conflict with the commerce clause. Munn v. Illinois (1876) 94 U. S. 113, 135, 24 L. Ed. 77.

A state law fixing a maximum charge per bushel for elevating, receiving, weighing, and discharging grain by elevators, in any city of the state containing a population of 130,000 or over, is not a regulation of interstate commerce, though the elevators are largely employed in the transfer of grain in transportation from western states to the seaboard. Budd v. New York (1892) 12 Sup. Ct. 468, 476, 143 U. S. 517, 36 L. Ed. 247.

Laws N. D. 1891, c. 126, declaring all buildings, elevators, or warehouses in the state erected and operated "for the purpose of buying, selling, storing, shipping, or handling grain for profit," public warehouses (section 4), and prescribing maximum rates of charges for storing and handling grain therein (section 11), does not amount to a regulation of commerce among the states. Mr. Justice Brewer, Mr. Justice Field, Mr. Justice Jackson, and Mr. Justice White dissenting. Brass v. North Dakota (1894) 14 Sup. Ct. 857, 860, 153 U. S. 391, 38 L. Ed. 757, affirming State ex rel. Stoeser v. Brass (1892) 52 N. W. 408, 2 N. D. 482.

145. Embargo and nonintercourse.—Every subject falling within the legitimate sphere of commercial regulation may be partially or wholly excluded, when either measure is demanded by the safety or interests of the entire nation, and the exclusion cannot be limited to particular classes of subjects, but may embrace manufactures, bullion, coin or any other thing. U. S. v. Marigold (1850) 9 How. 560, 566, 13 L. Ed. 257.

Joint Resolution No. 10, March 14, 1912 (37 Stat. 630), prohibiting the exportation of arms or munitions of war to an American country in which the president has proclaimed the existence of domestic violence promoted by the use of arms or munitions of war imported from the United States held valid. Talbott v. U. S. (1913) 208 Fed. 144, 125 C. C. A. 360.

The power to regulate commerce includes the power to lay embargoes and admit goods free from duty. U. S. v. Craig (C. C. 1886) 28 Fed. 795, 797.

The embargo laws of December 22, 1807, and March 12, 1808, are not unconstitutional, either on the ground that they exceed the powers of congress to "regulate," because they interdict all foreign commerce, or because they are not by their terms limited to a specific duration. U. S. v. The William (D. C. 1808) Fed. Cas. No. 16,700.

A resident American citizen, indebted on a note payable at Canton, China, was, by the embargo act of the United States, prevented for one year from making the remittance necessary to

take up the note. He claimed a reduction equal to the difference between 12 per cent., the rate stipulated in the note, and the legal rate of the United States, for one year. Held, that the claim could not be sustained, because in all questions arising between subjects of different states each is a party to the public, authoritative acts of his own government, and is as much incapacitated from making the consequences of an act of his own state the foundation of a claim to indemnity upon a foreign subject as he would be if such act had been done immediately and individually by himself. Consequa v. Fanning (N. Y. 1818) 3 Johns. Ch. 587.

146. Creation of or exemption from civil liabilities or remedies.—Act June 29, 1906, § 7 (Comp. St. § 8592), known as the "Carmack amendment to the interstate commerce act," providing that any common carrier receiving property for interstate transportation shall be liable to the holder of the bill of lading for any damage caused by it or any common carrier to which such property may be delivered, and that no contract shall exempt such carrier from the liability imposed, is a valid regulation of interstate commerce, and does not operate to take private property for public purposes. Louisville & N. R. Co. v. Scott (Ky. 1909) 118 S. W. 990; Houston & T. C. R. Co. v. Lewis (Tex. 1910) 129 S. W. 594.

Rev. St. Ill. 1881, c. 12, p. 137, giving a lien in certain cases against water craft for damages done by them in Illinois, does not regulate commerce between the states. Johnson v. Chicago & P. Elevator Co. (1886) 7 Sup. Ct. 254, 119 U. S. 388, 30 L. Ed. 447.

So where a vessel engaged in domestic commerce among the states injures plaintiff's building, erected on the bank of a river upon which the vessel is plying, and plaintiff brings a suit in personam against the owners for the damage, the state court has jurisdiction to enforce the lien given by Rev. St. Ill. 1881, c. 12, against water craft, by attachment of the vessel, and such proceeding is not invalid as a regulation of commerce among the states. Id.

The provision of Code Iowa, § 4059, that any one who has in his possession in the state Texas cattle which have not wintered north of the southern boundary of Missouri or Kansas shall be liable for any damages that may accrue from allowing them to run at large, and so spreading Texas fever, is not an attempted regulation of interstate commerce. Kimmish v. Ball (1889) 9 Sup. Ct. 277, 129 U. S. 217, 32 L. Ed. 695.

Laws Kan. 1891, c. 201, giving a right of action for damages to persons injured by the communication of Texas fever to their cattle, and prescribing a rule of evidence in certain cases, is not a regulation of interstate commerce, so as to be void. Missouri, K. & T. Ry. Co. v. Haber (1898) 18 Sup. Ct. 488, 492, 169 U. S. 613, 42 L. Ed. 878, affirming judgment (1896) 44 P. 632, 56 Kan. 694.

A lien given by state statute on logs cut in another state for surveying and scaling them by the surveyor general while in a log boom does not constitute a burden on interstate commerce, but is a lawful charge imposed by the state for furnishing additional facilities for navigation of a water way. Lindsay & Phelps Co. v. Mullen (1900) 20 Sup. Ct. 325, 333, 176 U. S. 126, 44 L. Ed. 400.

The refusal of a state court to limit the liability of a common carrier for its negligence in the execution of a contract for interstate carriage to the valuation agreed upon does not contravene the various provisions of Act Feb. 4, 1887 (Comp. St. § 8563 et seq.), making it obligatory to provide proper facilities for interstate carriage of freight, and preventing carriers from obstructing continuous shipments on interstate lines. Pennsylvania R. Co. v. Hughes (1903) 24 Sup. Ct. 132, 191 U. S. 477, 48 L. Ed. 268, affirming judgment Hughes v. Pennsylvania R. Co. (1902) 51 A. 990, 202 Pa. 222, 63 L. R. A. 513, 97 Am. St. Rep. 713.

The creation and enforcement of a lien for a nonmaritime tort against a foreign vessel engaged in interstate commerce, under Ballinger's Ann. Codes & St. Wash. §§ 5953, 5954, which embrace all vessels, whether domestic or foreign, and whether engaged in intrastate or interstate commerce, does not offend against the commerce clause. Martin v. West (1911) 32 Sup. Ct. 42, 43, 222 U. S. 191, 56 L. Ed. 159, 36 L. R. A. (N. S.) 592, affirming judgment West v. Martin (1908) 97 Pac. 1102, 51 Wash. 85, 21 L. R. A. (N. S.) 324.

Ky. St. § 3918 (Russell's St. § 3720), which provides that any purchaser of property from any individual, firm, company, or corporation transacting business contrary to the preceding sections, which prohibit certain combinations in restraint of competition, shall not be liable for the price of such property, does not apply to contracts for the purchase of property which constitute interstate commerce. International Harvester Co. of America v. Oliver (C. C. 1911) 192 Fed. 59.

State statutes giving liens on ships for necessary repairs or supplies furnished on the credit of the vessel, which are enforceable by process in rem, in a court of admiralty, as arising under maritime contracts, cannot be classed as laws intended to impose burdens upon interstate or foreign commerce, and for that reason held unconstitutional, though applied to foreign ships, but their purpose and effect, like liens given by the general maritime law, are to facilitate commerce by enabling the ship to obtain the things necessary to

the prosecution and completion of her voyage. The Robert Dollar (D. C. 1902) 115 Fed. 218.

The appointment by a state court of a receiver of the property within the state of a foreign corporation engaged in interstate commerce does not amount to an unlawful interference with the right of such corporation to transact interstate commerce. McKinney v. Kansas Natural Gas Co. (D. C. 1913) 206 Fed. 772, decree affirmed Same v. Landon (1913) 209 Fed. 300, 126 C. C. A. 226.

Congress is without constitutional power to authorize the courts by injunction to compel a person, selling goods in interstate commerce and affected by no public duty, to sell his goods to a particular customer. Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co. (D. C. 1915) 224 Fed. 566, order affirmed (1915) 227 Fed. 46, 141 C. C. A. 594.

Code Ala. 1896, § 1066, imposing a penalty on a mortgagee whose mortgage has been satisfied for failure to enter satisfaction of record after being requested to do so, does not interfere with interstate commerce in its application to nonresident mortgagees. George F. Dittman Boot & Shoe Co. v. Mixon (1898) 24 So. 847, 120 Ala. 206.

Right of foreign corporation to recover for goods furnished under a written contract, if constituting a sale, held not defeated by noncompliance with Wingo Act, § 2. Clark v. J. R. Watkins Medical Co. (Ark. 1914) 171 S. W. 136.

Code Civ. Proc. Cal. § 339, subd. 1, providing that an action on an instrument in writing executed out of the state must be commenced within two years, is not in violation of the interstate commerce clause. Higgins v. Graham (1904) 76 P. 898, 143 Cal. 131.

Civ. Code Ga. 1895, § 2298, provides that when there are several connecting railroads under different companies, and goods are intended to be transported over more than one railroad, each company shall be responsible only to its own terminus and until delivery to its connecting road, that the last company which has received the goods as in good order shall be responsible to the consignee for any damage, and that such companies shall settle among themselves the question of ultimate responsibility. Held, that such section did not violate the interstate commerce clause. Kavanaugh & Co. v. Southern Ry. Co. (1904) 47 S. E. 526, 120 Ga. 62.

In an injunction suit, an order regulating the proportion of space in ships belonging to the defendant company and devoted to offerings of lumber for shipment at the ports of Jacksonville, Fla., and Savannah, Ga., held invalid as an attempt to regulate interstate commerce. Merchants' & Miners' Transp. Co. v. Dixon (1914) 82 S. E. 141, 141 Ga. 762.

The statute of Illinois making owners of Cherokee and Texas cattle within the state liable for any diseases communicated by them to other cattle interferes with the power of congress to regulate commerce. Jarvis v. Riggin (1879) 94 Ill. 164.

That part of section 1283, Gen. St. Kan. 1901, which provides that no foreign corporation doing business in the state shall maintain an action in any of the courts thereof without filing certain statements with the Secretary of State, does not violate the commerce clause, even when applied to corporations engaged solely in interstate commerce. John Deere Plow Co. v. Wyland (1904) 76 P. 863, 69 Kan. 255.

Gen. St. Kan. 1901, § 1283, forbidding a foreign corporation to sue in any state courts without first having obtained a certificate from the Secretary of State, is not repugnant to the interstate commerce clause. Wilson-Moline Buggy Co. v. Hawkins (1909) 101 P. 1009, 80 Kan. 117.

Gen. St. Kan. 1909, § 7107, allowing attorney's fees in actions for shortages on shipments held not obnoxious to the federal regulations of interstate commerce. Harold v. Atchison, T. & S. F. Ry. Co. (1914) 144 P. 823, 93 Kan. 456.

Rev. St. Me. c. 29, § 64, prohibiting maintenance of an action in the state to recover for liquors bought in another state with intent to sell in violation of law, is not in violation of the interstate commerce clause. Corbin v. Houlehan (1905) 61 A. 131, 100 Me. 246, 70 L. R. A. 568.

Revisal N. C. 1905, § 2644, imposing a penalty for failure to refund an overcharge within the time prescribed by section 2643, is not an interference with interstate commerce, as applied to interstate shipments; the penalty not affecting the transporation, but applying only when the carrier refuses for 60 days to refund an overcharge of freight on goods actually delivered. Thurston v. Southern Ry. Co. (1914) 81 S. E. 785, 165 N. C. 598.

22 St. at Large S. C. p. 443, providing a penalty on carriers for failure to pay damages on freight within 60 days, is not unconstitutional as in violation of the interstate commerce clause. Porter v. Charleston & S. Ry. Co. (1902) 41 S. E. 108, 63 S. C. 169, 90 Am. St. Rep. 670.

The provision of Rev. St. Tex. 1895, art. 3378, that a stipulation in a contract for a shorter limitation than two years in which to sue, and of article 3379, that a stipulation requiring notice of a claim for damages to be given within less than 90 days, as a condition to the right to sue, shall be void, are valid, as applied to a contract for the carriage of goods from the state into

another state or territory. Armstrong v. Galveston, H. & S. A. Ry. Co. (1898) 46 S. W. 33, 92 Tex. 117, reversing judgment Galveston, H. & S. A. R. Co. v. Armstrong (Civ. App. 1897) 43 S. W. 614.

An action on a note executed for goods sold to the buyer in Texas by the manufacturer, whose place of business was in Louisiana, relates to interstate commerce, so that the right to sue in the former state cannot be denied by such state for failure to pay a franchise tax. Woessner v. H. T. Cottam & Co. (1898) 47 S. W. 678, 19 Tex. Civ. App. 611.

A contract by which defendant was to have the exclusive agency and right to sell any and all goods manufactured or kept in stock by plaintiff, and was not to sell any other line of dental goods than those furnished by plaintiff, being in restraint of trade, under the laws of the state, plaintiff cannot recover for goods furnished defendant thereunder, though the sale and delivery to defendant was an interstate transaction. S. S. White Dental Mfg. Co. v. Hertzberg (Tex. Civ. App. 1899) 51 S. W. 355.

Act Tex. March 13, 1905 (Gen. Laws 1905, c. 25) § 1, prescribes the parties to, and venue of, suits against railroad corporations operating within the state, or having an agent or representative therein, and provides that whenever freight has been transported by two or more such corporations, or partly by one or more of them, suit for damages or loss, or any cause of action arising out of such carriage, may be brought against any one or all of the carriers in any court of competent jurisdiction in any county in which either operates or does business, or has an agent or representative. Held, that such act was a proper exercise of the state's police power, and was not invalid as to an interstate carrier, as imposing burdens on interstate commerce greater than those imposed on commerce within the state, and as amounting to an infringement on the power of congress to regulate interstate commerce. St. Louis Southwestern Ry. Co. of Texas v. Wester (Tex. Civ. App. 1906) 96 S. W. 769.

147. Execution of judicial process.—Where a vessel engaged in domestic commerce among the states injures plaintiff's building, erected on the bank of a river upon which the vessel is plying, and plaintiff brings a suit in personam against the owners for the damage, the state court has jurisdiction to enforce the lien given by Rev. St. Ill. 1881, c. 12, against water craft, by attachment of the vessel, and such proceeding is not invalid as a regulation of commerce among the states. Johnson v. Chicago & P. Elevator Co. (1886) 119 U. S. 388, 7 Sup. Ct. 254, 30 L. Ed. 447.

Sums due to a foreign railway carrier from other carriers as the former's share of freight on interstate shipments may be garnished under the state laws, despite the provisions of the interstate commerce act, and of R. S. § 5258, Comp. St. § 10058, securing continuity of transportation. Davis v. Cleveland, C., C. & St. L. Ry. Co. (1910) 30 Sup. Ct. 463, 217 U. S. 157, 54 L. Ed. 708, 27 L. R. A. (N. S.) 823, 18 Ann. Cas. 907.

Cars owned by a foreign railway company, which have temporarily come into the state in the course of interstate transportation, through the agency of other carriers, are subject to attachment under the state laws, despite the provisions of the interstate commerce act, and of R. S. § 5258, Comp. St. § 10058, securing continuity of transportation. Id.

A foreign corporation engaged in interstate commerce is not for that reason immune from service of process under the laws of the state in which it is carrying on business. International Harvester Co. of America v. Commonwealth of Kentucky (1914) 34 Sup. Ct. 944, 234 U. S. 579, 58 L. Ed. 1479, affirming judgment Same v. Commonwealth (1912) 145 S. W. 393, 147 Ky. 655.

Civ. Code S. D. §§ 883, 885, under which the right of a foreign corporation to enforce payment in a state court of the price of merchandise sold within the state in interstate commerce is conditioned on compliance with the requirement that such foreign corporation, before it can sue, must appoint a resident agent for service of process and file a copy of such appointment and its charter and pay the fees therefor, are an unconstitutional burden on interstate commerce. Sioux Remedy Co. v. Cope (1914) 35 Sup. Ct. 57, 235 U. S. 197, 59 L. Ed. 193, reversing judgment (1911) 133 N. W. 683, 28 S. D. 397.

A service of a summons from a Massachusetts court on a citizen of Vermont, who is at the time of service traveling through Massachusetts in order to attend court in Connecticut as a witness for and at the request of a citizen of Massachusetts, is not invalid, as an unlawful interference with interstate commerce. Holyoke & S. H. Falls Ice Co. v. Ambden (C. C. 1893) 55 Fed. 593, 21 L. R. A. 319.

The fact that an indebtedness due to a nonresident railroad company arose out of the conducting of interstate commerce does not exempt it from garnishment under a foreign attachment. Johnson v. Union Pac. R. Co. (C. C. 1906) 145 Fed. 249.

The impounding of a car under a state statute and thereby delaying transportation is contrary to the policy of congress, favoring continuous carriage and lines for transportation of interstate passengers. Pullman Co. v. Linke (D. C. 1913) 203 Fed. 1017.

Where a railroad company of this

state receives from a connecting railroad company of another state a railroad car loaded with freight, consigned from a point in another state to a point in this state, under a prevailing custom among railroads, and under a contract between the two roads at interest that, instead of unloading and reloading at the point of intersection outside of this state, the domestic company, upon payment for the use, should have the right to bring the foreign car loaded into this state and to the point of destination, there to be unloaded and afterwards reloaded with freight, and then returned, in the direction from which it came, to a point beyond the limits of this state, such car, while in this state, is not exempt from attachment sought to be executed by service of summons of garnishment for the collection of a debt alleged to be due by the owner, upon the ground that the impounding of the car is such an interference with interstate commerce as to be violative of the common clause, and R. S. § 5258 (Comp. St. § 10058). Southern Flour & Grain Co. v. Northern Pac. Ry. Co. (1907) 56 S. E. 742, 127 Ga. 626, 9 L. R. A. (N. S.) 853.

The fact that a creditor of a foreign railroad, in the prosecution of his rights to collect a debt by attachment, may, by levy and sale of an empty and idle freight car of the debtor, incidentally affect future interstate commerce, will not render such proceeding illegal. Southern Ry. Co. v. Brown (1908) 62 S. E. 177, 131 Ga. 245.

A railroad car used in interstate commerce is exempt from attachment. Missouri Pac. Ry. Co. v. Kennett (Kan. 1909) 99 P. 269.

Ky. St. § 571, requiring foreign corporation to maintain agent for process, held inoperative as to interstate commerce transactions. Louisville Trust Co. v. Bayer Steam Soot Blower Co. (Ky. 1915) 179 S. W. 1034.

To charge a railroad company as trustee of goods delivered to it as a carrier for interstate shipment would not be an unlawful interference with interstate commerce. Rosenbush v. Bernheimer (1912) 97 N. E. 984, 211 Mass. 146.

Where a large quantity of coal from which shipments were being made to parties outside the state was seized by a city marshal for taxes, replevin would not lie on the ground that the seizure was an interference with interstate commerce; it appearing that some shipments were made to points within the state. Pioneer Fuel Co. v. Molloy (1902) 91 N. W. 750, 131 Mich. 465, 9 Detroit Leg. N. 410.

The garnishment of a debt due from a railroad company doing business in the state to a railroad company not doing business in the state, embracing traffic balances arising out of interstate commerce, it not an interference with interstate commerce. Starkey v. Cleveland, C., C. & St. L. Ry. Co. (Minn. 1911) 130 N. W. 540.

A statute permitting the garnishment of a common carrier is not an attempt to regulate interstate commerce. Landa v. Holck (1895) 129 Mo. 663, 31 S. W. 900.

Pub. St. N. H. 1901, c. 220, §§ 1, 2, making all property liable to be taken in execution, subject to attachment, and defining exempt property, is valid, and an attachment of a freight car of a railroad not in actual use does not directly affect interstate commerce. De Rochemont v. New York Cent. & H. R. R. (1909) 71 A. 868, 75 N. H. 158.

Sequestration of a fund due by a resident carrier, summoned as trustee in garnishment proceedings, to a foreign corporation representing its share of proportionate freights for interstate carriage, only constituted an incidental interference with interstate commerce, and was not objectionable on that ground. Cavanaugh Bros. v. Chicago, R. I. & P. Ry. (1909) 72 A. 694, 75 N. H. 243.

The fact that an indebtedness due to a nonresident railroad company arose out of the conducting of interstate commerce does not exempt it from garnishment under a foreign attachment. Johnson v. Union Pac. R. Co. (R. I. 1908) 69 A. 298.

Where a car owned by a foreign railroad and loaded with interstate freight, to be unloaded at its destination within the state, and again loaded with interstate freight and returned in course of interstate commerce, arrives in the state, it cannot be attached at its destination before being unloaded, in a suit by a resident against the foreign railroad company, it being engaged in interstate commerce. George D. Shore & Bro. v. Baltimore & O. R. Co. (1907) 57 S. E. 526, 76 S. C. 472.

A railroad car, loaded with freight from another state in this state, and to be returned loaded to the former state, cannot be levied on under an attachment in this state; nor will such railroad company, having such cars in its possession, be liable to garnishment, by reason of such possession, because of the interstate commerce clause. Wall v. Norfolk & W. R. Co. (1903) 44 S. E. 294, 52 W. Va. 485, 64 L. R. A. 501, 94 Am. St. Rep. 948.

148. Punishment of offenses against commerce.—Under the constitution, giving power to congress to regulate commerce with foreign nations and among the several states, congress has power to punish offenses of the sort which are enumerated in Act March 3, 1825, c. 276, § 9. U. S. v. Coombs (1838) 12 Pet. 72, 78, 9 L. Ed. 1004.

Congress, under its authority to define and punish offenses against the law of nations and to regulate commerce with foreign nations, may provide for punishing as a crime the counterfeiting within the United States of

the notes of foreign banks or corporations, although such notes are not the issue of the foreign government. U. S. v. Arjona (1886) 120 U. S. 479, 7 Sup. Ct. 628, 30 L. Ed. 728.

Under the powers given to congress to regulate commerce between the states and to establish post offices and post roads, and exercised by that body in various acts, the national government may remove all obstructions to interstate commerce and the transportation of the mails, either by force operating through the executive or by process emanating from the courts. In re Debs (1895) 158 U. S. 564, 15 Sup. Ct. 900, 39 L. Ed. 1092.

Congress was not without power to provide by Act Dec. 21, 1898, § 24 (Comp. St. § 8323), that the provisions of that section making it a misdemeanor to pay any seaman his wages in advance, should extend to seamen in an American port on a foreign vessel engaged in interstate commerce. Patterson v. The Eudora (1903) 23 Sup. Ct. 821, 822, 190 U. S. 169, 47 L. Ed. 1002.

The offense of furnishing intoxicating liquor to an inebriate, created by Ky. St. § 1307, is, as applied to the transportation of liquor from state to state, a regulation of interstate commerce. Adams Express Co. v. Commonwealth of Kentucky (1909) 29 Sup. Ct. 633, 214 U. S. 218, 53 L. Ed. 972.

Delivery for shipment in interstate commerce of citrus fruits unfit for consumption may be made a criminal offense, as is done by Laws Fla. 1911, c. 6236, under the police power of the state. Sligh v. Kirkwood (1915) 35 Sup. Ct. 501, 237 U. S. 52, 59 L. Ed. 835, affirming judgment (1913) 61 So. 185, 65 Fla. 123.

The provision of Act March 2, 1895 (Comp. St. § 10407), that "any person who shall cause to be * * * carried from one state to another in the United States any paper, certificate, or instrument purporting to be or representing a ticket, chance, share, or interest in or dependent upon the event of a lottery * * * or similar enterprise," shall be guilty of an offense, is within the constitutional power of congress to regulate commerce among the states and covers a case where an individual carries from one state into another a ticket or a slip of paper which is understood by all the parties to the transaction to represent the interest of the purchaser of a chance in a lottery or "policy" game in which the drawing has not taken place. Reilley v. U. S. (1901) 106 Fed. 896, 46 C. C. A. 25, judgment reversed Francis v. U. S. (1903) 23 Sup. Ct. 334, 188 U. S. 375, 47 L. Ed. 508.

An act prohibiting the dumping of refuse in New York harbor is not unconstitutional because it makes the master of a tugboat criminally liable for the forbidden acts of his associates in the course of their general undertaking, though he may be innocent of criminal intent, since the maxim that crime proceeds from a criminal mind does not apply to statutory offenses. Jaycox v. U. S. (1901) 107 Fed. 938, 47 C. C. A. 83.

The provisions of Lacey Act May 25, 1900, §§ 3, 4 (Comp. St. § 10412), prohibiting the shipment or transportation in interstate commerce of game killed in violation of the local laws, and requiring all packages containing game shipped in interstate commerce to be plainly marked showing the name and address of the shipper and the nature of the contents, and making the violation of such provisions a criminal offense, are within the powers of congress, and constitutional and valid. Rupert v. U. S. (1910) 181 Fed. 87, 104 C. C. A. 255.

Congress had power to enact Pen. Code, § 245, Comp. St. § 10415, making it an offense for any person to knowingly deposit with any express company or common carrier, for the carriage from one state to another, any obscene, lewd, or lascivious or filthy book, pamphlet, picture, paper, letter, writing, print, or other matter of indecent character. Clark v. U. S. (1914) 211 Fed. 916, 128 C. C. A. 294.

Congress had power to provide, as it did, in the white slave act (Comp. St. § 8816), that a prosecution for violation might be had in any district from, through or into which the transportation led. Johnson v. U. S. (C. C. A. 1914) 215 Fed. 679.

Act March 3, 1825, § 23, which punishes a conspiracy to destroy a vessel or cargo with intent to defraud the underwriters, is within the power of congress to protect commerce, and applies to internal commerce. U. S. v. Cole (C. C. 1853) Fed. Cas. No. 14,832.

Under the power to regulate commerce and to make all laws necessary and proper for carrying that power into effect, congress has authority to give full protection to commerce by its criminal jurisprudence. Charge to Grand Jury (C. C. 1861) Fed. Cas. No. 18,256.

Congress may make depredations upon the high seas punishable as piracy, though they do not strictly constitute such crime as known to international law. Charge to Grand Jury—Treason and Piracy (C. C. 1861) Fed. Cas. No. 18,277.

Act June 7, 1872, § 62 (17 Stat. 276), which makes the going on board of a ship about to arrive at the place of her destination, before her actual arrival, and before she has been completely moored, without permission of the master, an indictable offense, is within the scope of the powers granted by the United States constitution. U. S. v. Anderson (C. C. 1872) Fed. Cas. No. 14,447.

The power of congress to punish offenses committed on the high seas below the grade of piracy or felony may

be sustained under the provision conferring power to regulate foreign commerce. The Ulysses (C. C. 1800) Fed. Cas. No. 14,330.

R. S. § 5344, Comp. St. § 10455, was enacted by Congress in the exercise of its power to regulate commerce, which includes the power to regulate navigation as connected with commerce; and it is not in pari materia with the preceding sections under the title of "Crimes Arising within the Territorial And Maritime Jurisdiction of the United States." U. S. v. Holtzhauer (C. C. 1889) 40 Fed. 76, 78.

While congress may possibly make acts done by American shipmasters within a foreign jurisdiction criminal, though legal by the laws of the port where the acts are committed, such an intention is not to be presumed from general language merely, which may be fully satisfied by its application within the jurisdiction of the United States, but should be inferred only from specific indications of an intention to include acts done in foreign territory. The State of Maine (D. C. 1884) 22 Fed. 734.

Under the power to regulate commerce among the states, congress is authorized to forbid, as it has done in Act Feb. 8, 1897 (Comp. St. § 10415), interstate commerce in articles designed or intended for the prevention of conception. The power to regulate commerce includes the power to declare what property or things may be the subject of commerce. U. S. v. Popper (D. C. 1899) 98 Fed. 423, 424.

Act May 29, 1884 (Comp. St. § 8695), making it a misdemeanor for one to drive live stock on foot from one state to another knowing them to have a contagious disease, is within the power given to congress to regulate interstate commerce. U. S. v. Slater (D. C. 1903) 123 Fed. 115.

Congress had power to pass Act Aug. 2, 1882 (Comp. St. § 8001), making it an offense for the master of a foreign vessel to omit to provide tables and seats at regular meals for immigrants or passengers, other than cabin passengers, bound to the United States and actually brought to a port of landing. U. S. v. Lavarrello (D. C. 1906) 149 Fed. 297.

Neither Interstate Commerce Act Feb. 4, 1887 (Comp. St. § 8563, et seq.), nor the amendatory Elkins Law Feb. 19, 1903 (Comp. St. § 8597 et seq.), is unconstitutional on the ground that, in making it a criminal act for the shipper to accept rebates, congress exceeded its power under the commerce clause of the constitution. U. S. v. Standard Oil Co. of Indiana (D. C. 1907) 155 Fed. 305, judgment reversed Standard Oil Co. of Indiana v. U. S. (1908) 164 Fed. 376, 90 C. C. A. 364, writ of certiorari denied U. S. v. Standard Oil Co. (1909) 29 Sup. Ct. 689, 212 U. S. 579, 53 L. Ed. 659.

The penal provisions of Sherman Act (Comp. St. §§ 8820, 8821), are constitutional. United States v. American Naval Stores Co. (C. C. 1909) 186 Fed. 592.

The Sherley amendment to the Food and Drugs Act (Comp. St. § 8724), punishing the making of false and fraudulent statements of the curative properties of medicines, is within the power of congress to enact. U. S. v. American Laboratories (D. C. 1915) 222 Fed. 104.

Congress has power to declare obstructions of navigable waters an offense against the United States. (1853) 6 Op. Atty. Gen. 172 and cases cited.

(B) Railroads

149. In general.—A state law requiring railroad companies to post up their rates of fare and freight, and imposing penalties for nonobservance, is not a regulation of commerce, and void for infringing the exclusive power of congress, but is valid as a police regulation. Chicago & N. W. R. Co. v. Fuller (1873) 84 U. S. (17 Wall.) 560, 21 L. Ed. 710.

Where a railroad extends through several states, and is incorporated in each, it is, as far as concerns the regulation of its business within the state, a domestic corporation; and the establishment of a board of railroad commissioners with power to regulate traffic, fix charges, and prevent discriminations (Act March 11, 1884) but prohibited from interfering with charges for transportation of persons or property from one state to another (Act March 15, 1884), is not invalid as being a regulation of interstate commerce. Stone v. Farmers' Loan & Trust Co. (1886) 116 U. S. 307, 6 Sup. Ct. 334, 388, 1191, 29 L. Ed. 636, reversing decree Farmers' Loan & Trust Co. v. Stone (C. C. 1884) 20 Fed. 270; Same v. Illinois Cent. R. Co. (1886) 116 U. S. 347, 6 Sup. Ct. 348, 29 L. Ed. 636, reversing decree Illinois Cent. R. Co. v. Stone (C. C. 1884) 20 Fed. 468; Same v. New Orleans & N. E. R. Co. (1886) 116 U. S. 352, 6 Sup. Ct. 349, 391, 29 L. Ed. 636.

Where a railroad company is chartered by the several states through which it runs, each one of such states may make all needful regulations of a police character, so long as such regulations do not impair the usefulness of its facilities for interstate traffic. Stone v. Farmers' Loan & Trust Co. (1886) 6 Sup. Ct. 334, 346, 116 U. S. 307, 29 L. Ed. 636.

Nothing in the constitution or statutes prevents a state from creating a board of railroad commissioners, or from regulating consolidation of railroad corporations, or from prescibing routes of railroads. Mobile, J. & K. C. R. Co. v. Mississippi (1908) 28 Sup. Ct. 650, 210 U. S. 187, 52 L. Ed. 1016, affirming judgment (1906) 41 So. 259, 89 Miss. 724.

Interstate commerce held not bur-

dened by requiring railroad companies to operate a particular line which they selected in a petition to state railroad commission for approval of a consolidation. Id.

Interstate commerce is not burdened by requiring railroad companies to operate a particular line which they selected, or represented that they had selected, in a petition to the state railroad commission for approval of a consolidation, although compliance may entail expense, or require the exercise of eminent domain. Id.

The power to "regulate" the accessorial service facilities, which is given to the interstate commerce commission by the interstate commerce act, must, on a proper construction, be confined to the existing state of things in regard to the use of its property by each carrier. The power is one of "regulation," merely, and the commission and the courts have no authority to invade rights of property by entering the domain of deprivation, construction, and reconstruction of properties, to carry out the proposed regulation. Detroit, G. H. & M. Ry. Co. v. Interstate Commerce Commission (1896) 74 Fed. 803, 21 C. C. A. 103, reversing decree Interstate Commerce Commission v. Detroit, G. H. & M. Ry. Co. (C. C. 1893) 57 Fed. 1005.

Construction of a levee across a railroad right of way held not an illegal interference with complainant railroad as an interstate carrier of freight, passengers, and mail. St. Louis Southwestern Ry. Co. v. Miller Levee Dist. No. 2 (D. C. 1912) 197 Fed. 815.

Laws Kan. 1901, c. 286, and acts supplementary thereto, being Laws 1903, c. 391, and Laws 1905, c. 340, creating a board of railroad commissioners with power to regulate and control the operation of common carriers, applies solely to the business of railroads within the state, and does not affect, nor apply to, nor regulate, interstate commerce. State v. Missouri Pac. Ry. Co. (1907) 92 P. 606, 76 Kan. 467.

Ky. St. § 791, requiring every person operating a railroad in the state under a lease to have the same recorded, is not an interference with interstate commerce. Commonwealth v. Chesapeake & O. Ry. Co. (1897) 101 Ky. 159, 40 S. W. 250, 19 Ky. Law Rep. 329.

The public service commission, although given jurisdiction over railroads and all carriers within the state by Acts Md. 1910, c. 180, cannot under section 27 prohibit the issuance of bonds to raise money for improvements principally outside the state by an interstate carrier; its Maryland charter (Acts 1826, c. 123, § 13), and Acts Md. 1845, c. 313, expressly authorizing the corporation to determine the aggregate amount of its indebtedness. Laird v. Baltimore & O. R. Co. (1913) 88 A. 348, 121 Md. 179.

An order of the public utility commissioners held not to involve any interference with, nor impose any burden upon any statutory commerce. Pennsylvania R. Co. v. Board of Public Utility Com'rs (N. J. 1912) 83 A. 945.

Statutes of several states, under which the Lake Shore & Michigan Southern Railway Company was organized to operate a continuous line of road, held not to encroach on the power to regulate interstate commerce. Boardman v. Lake Shore & M. S. Ry. Co. (1881) 84 N. Y. 157.

The act of 1869 (66 Ohio Laws, p. 80) and supplemental acts conferred the corporate power, upon cities of the first class, of providing a line of railroad, and authorized the borrowing of money therefor. The city of C. undertook the construction of a road through the states of Kentucky and Tennessee to a terminus in the latter state, both of which approved the Ohio law, and authorized the construction of the road in their territory; making some regulations pertaining thereto. Held not in conflict with the interstate commerce clause. Thoms v. Greenwood (1878) 6 Ohio Dec. 639.

An order of the corporation commission held not to affect interstate commerce though the proposed order served on the railroads did affect such commerce. Atchison, T. & S. F. Ry. Co. v. State (Okl. 1915) 150 P. 108.

Act Tex. 1905 (Gen. Laws 1905, c. 25), regulating the venue of suits against common carriers, was a proper exercise of the state's police power, and was not invalid as to interstate carriers, in that it imposed such burden on interstate commerce as distinguished from commerce within the state as amounts to an infringement upon the power of congress to regulate interstate commerce. St. Louis, I. M. & S. Ry. Co. v. Boshear (Tex. Civ. App. 1908) 108 S. W. 1032, judgment affirmed (Tex. 1908) 113 S. W. 6.

Rev. St. Tex. 1911, art. 6423, regulating the location by railroads of their general offices, machine shops, and roundhouses, does not interfere with interstate commerce. International & G. N. Ry. Co. v. Anderson County (Tex. Civ. App. 1915) 174 S. W. 305.

Nothing can be done by a state which will operate as a burden on the business of a carrier engaged in interstate commerce, or impair the usefulness of its facilities or instruments of interstate commerce. Sargent v. Rutland R. Co. (Vt. 1913) 85 A. 654.

150. Reports.—Section 6 of the Illinois Railroad and Warehouse Commission Act (Hurd's Rev. St. 1905, c. 114), requiring every railroad company "incorporated or doing business in the state, or which shall hereafter become incorporated or do business under any general or special law in the state," to report before a certain day in each

year to the commissioners as to the affairs of the corporation with respect to certain subjects, which are designated, is not void under the commerce clause; and this, notwithstanding Interstate Commerce Law 1887 (Act Feb. 4, 1887, § 20 [Comp. St. § 8592]), which requires a report to the interstate commerce commission substantially the same as required by section 6. People v. Chicago, I. & L. Ry. Co. (1906) 79 N. E. 144, 223 Ill. 581.

Order No. 148 of the Corporation Commission, requiring report of accidents, is not violative of the commerce clause of the federal Constitution. Gulf, C. & S. F. Ry. Co. v. State (1912) 125 P. 1103, 33 Okl. 378.

151. Parallel and competing lines.—Const. Ky. 1891, § 201, prohibiting consolidation by a railroad with a parallel or competing road, is not an interference with the power of congress over interstate commerce. Louisville & N. R. Co. v. Commonwealth of Kentucky (1896) 161 U. S. 677, 16 Sup. Ct. 714, 723, 40 L. Ed. 849, affirming (1895) 97 Ky. 675, 31 S. W. 476.

Nothing in the federal constitution or statutes prevents a state from creating a board of railroad commissioners and prescribing their powers, or from regulating or forbidding the consolidation of railroad corporations, or from prescribing the routes of railroads, and providing that parallel and competing lines shall so remain. Mobile, J. & K. C. R. Co. v. State of Mississippi (1908) 28 Sup. Ct. 650, 210 U. S. 187, 52 L. Ed. 1016, affirming judgment (1906) 41 So. 259, 89 Miss. 724.

Const. Ky. § 201, providing that no railroad company shall acquire any parallel or competing lines, is not in conflict with that part of the constitution giving congress power to regulate commerce arising among the states. Louisville & N. R. Co. v. Commonwealth (1895) 97 Ky. 675, 31 S. W. 476.

The constitutional provision against the owner or lessee of a railroad acquiring the control of a parallel line is not repugnant to the commerce clause. Von Steuben v. Central R. Co. (1895) 4 Pa. Dist. R. 153.

The provision of Const. Tex. art. 10, § 5, prohibiting railroad corporations from controlling competing or parallel lines, is not void for assuming to regulate interstate commerce, when applied to an agreement forming a traffic association between a number of such corporations for the purpose of preventing sudden and extreme changes in Texas rates, though some of the traffic embraced therein is partly without the state; and, some of the parties to the agreement being corporations created under the laws of Texas, the agreement, as to them, is illegal, and is therefore illegal as to all. Gulf, C. & S. F. Ry. Co. v. State (1888) 72 Tex. 404, 10 S. W. 81, 13 Am. St. Rep. 815, 1 L. R. A. 849.

152. Spurs and sidetracks.—An order of the railroad commission, requiring a railroad to lay a spur track at a certain point on the ground of public necessity, was not a regulation of or interference with interstate commerce, but a proper exercise of the police power of the state. St. Louis, I. M. & S. Ry. Co. v. State (Ark. 1911) 136 S. W. 938.

Revisal N. C. 1905, § 1097 (5), requiring that a railroad shall, in certain cases, put in side tracks to private industrial concerns, is not an interference with interstate commerce although such a road may run through several states, and may carry freight over this side track to other states. Corporation Commission v. Southern Ry. Co. (1910) 69 S. E. 621, 153 N. C. 559.

Where a spur track ordered by the public service commission on application of a shipper was found to be reasonable, practicable, etc., and no such interference with the operation of the road was shown as to appreciably affect its interstate business, the order did not conflict with the interstate commerce clause. State v. Public Service Commission (1914) 137 P. 1057, 77 Wash. 529.

153. Depots, stations, and terminal facilities.—Laws Or. 1907, p. 75, § 23, requiring all railroads at points of intersection with other railroads to unite therewith in establishing and maintaining suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other, and for the transfer of passengers, baggage, and freight when the same shall be ordered by the railroad commission, etc., affords added facilities for all kinds of commerce over the routes of intersecting roads, and the requirement that such railroads shall connect their lines is not a regulation of interstate commerce. Southern Pac. Co. v. Campbell (C. C. 1911) 189 Fed. 696.

Acts Ark. 1909, p. 986, requiring a railroad to erect a depot at a particular station, is an exercise of the police power, and is not a regulation of interstate commerce. St. Louis Southwestern Ry. Co. v. State (Ark. 1911) 134 S. W. 970.

A regulation made by the railroad commissioners, under the powers conferred by Laws Fla. 1899, c. 4700, requiring a terminal company organized under the laws of this state, and operating a common passenger terminal station wholly within this state for the purpose of furnishing terminal facilities to railroad common carriers entering therein, to admit a railroad company operating a railroad from a point in Florida to a point in the state of Georgia to the privileges and benefits of its said passenger station or terminal, and fixing just and reasonable rates

for the uses and privileges of such terminal, to be paid by such railroad company, is not an unconstitutional interference with interstate commerce. State v. Jacksonville Terminal Co. (1900) 27 So. 225, 41 Fla. 377.

154. Track connections and interchange of cars and traffic.—The requirement of track connections and facilities for the interchange of cars and traffic at railroad intersections, which is made by Gen. Laws Minn. 1895, c. 91, § 3, does not constitute an unconstitutional regulation of commerce. Wisconsin, M. & P. R. Co. v. Jacobson (1900) 21 Sup. Ct. 115, 179 U. S. 287, 45 L. Ed. 194, affirming judgment Jacobson v. Wisconsin M. & P. R. Co. (1898) 74 N. W. 893, 71 Minn. 519, 40 L. R. A. 389, 70 Am. St. Rep. 358.

The federal supreme court will assume that no disregard of interstate commerce needs is involved by order of the state railroad commission applying to intrastate traffic, as to interchange of cars between railroad and electric railway company in a specified town, in accordance with Pub. Acts Mich. 1907, No. 312, § 7. Michigan Cent. R. Co. v. Michigan R. R. Commission (1915) 35 Sup. Ct. 422, 236 U. S. 615, 59 L. Ed. 750, affirming judgment Michigan R. Commission v. Michigan Cent. R. Co. (1911) 132 N. W. 1068, 168 Mich. 230.

A state statute requiring railroads to draw the cars of other corporations, as well as their own, at reasonable times and for a reasonable compensation, to be agreed upon by the parties or fixed by the railroad commissioner, does not conflict with the interstate commerce clause. Rae v. Grand Trunk Ry. Co. (C. C. 1882) 14 Fed. 401.

A state filed a bill to enforce an order of the railway commissioners, holding that certain tracks in the streets of a city are public highways, and not the private property of defendant, and that defendant must pass over such tracks the cars of other companies when necessary, and fixing charges for switching. The city had given defendant permission to lay its tracks on certain streets, on condition that they should be public, and open to the use of the citizens. Held that, in imposing this condition, and fixing the rate, it does not clearly appear that the state is interfering with interstate commerce. State of Iowa v. Chicago, M. & St. P. Ry. Co. (C. C. 1887) 33 Fed. 391, appeal dismissed Chicago, B. & Q. R. Co. v. State of Iowa (1892) 12 Sup. Ct. 978, 145 U. S. 632, 36 L. Ed. 857.

Sections 1310–1316, inclusive, of the Iowa Code, requiring railway companies connecting with the Union Pacific Railway to transfer their freight, passengers, and express matter at Council Bluffs, are in conflict with the acts of July 1, 1862, and June 15, 1866, as being a state regulation of commerce, and cannot, therefore, be enforced. Council Bluffs v. Kansas City, St. J. & C. B. R. Co. (1876) 45 Iowa, 338, 24 Am. Rep. 773.

Const. Ky. § 213, requiring interchange and switching of cars between connecting carriers in the transfer and delivery of freight, is not invalid as an interference with interstate commerce; its effect on such commerce being purely incidental and indirect. Louisville & N. R. Co. v. Central Stockyards Co. (1906) 97 S. W. 778, 30 Ky. Law Rep. 18.

Under Pub. Acts Mich. 1907, No. 312, § 7, subd. "b," which provides that, where it is practicable, the railroad commission created may require railroads to interchange cars, freight, and passenger traffic, and may require track connection upon such terms as it may determine, and which, by section 26, provides that any railroad being dissatisfied with any order of the commission fixing any regulations may within 60 days commence an action against the commission to vacate such order as unreasonable, an order regularly entered by the commission, requiring two railroads to connect their tracks at such point in a certain village as they should agree upon as most desirable, and thereafter interchange cars and passenger traffic, does not violate the interstate commerce clause. Michigan R. Commission v. Michigan Cent. R. Co. (Mich. 1911) 132 N. W. 1068, 18 Detroit Leg. N. 722.

155. Equipment of trains, cars, or locomotives.—The provision of Act March 2, 1893 (Comp. St. § 8612), that a common carrier engaged in interstate commerce, which fails to equip its cars with automatic couplers, as required therein, shall not avail itself, against an employé injured by such failure, of the doctrine of assumption of risk, is within the power of Congress. Kansas City, M. & B. R. Co. v. v. Flippo (1903) 35 So. 457, 138 Ala. 487.

Gen. St. Fla. 1905, § 2864, requiring a carrier to equip its cars furnished to haul lumber or timber with sufficient standards and other appliances to keep the cargo firmly in place, and section 2865, providing that the weight of the standards shall be a part of the car, and not of the cargo, and section 2866, imposing a penalty for not complying with sections 2864 and 2865, do not constitute a burden upon interstate commerce. King Lumber & Mfg. Co. v. Atlantic Coast Line R. Co. (1909) 50 So. 509, 58 Fla. 292.

The headlight law (Act Ga. Aug. 17, 1908; Laws 1908, p. 50), requires a railroad company to equip and maintain every locomotive running on its main line after dark with a good and sufficient headlight, which shall consume not less than 300 watts at the arc, with a reflector not less than 23 inches in diameter, and to keep such headlight in good condition, and provides that any railroad company violating the act shall

be liable to indictment and punishment, and that the act shall not apply to tram roads, mill roads, and roads engaged principally in lumber or logging transportation in connection with mills. Held, that the act does not violate the interstate commerce clause, because it would require at the state line a change of headlights on locomotives doing an interstate business, if other states required head lights different from those prescribed by the act, though such change might involve some loss of time and expense on the part of the railroad company. Atlantic Coast Line R. Co. v. State (Ga. 1910) 69 S. E. 725.

Question whether Automatic Bell-Ringer Act March 8, 1909 (Acts Ind. 1909, c. 178), violated the commerce clause and the Interstate Commerce Laws thereunder, held not raised by a motion in arrest of judgment in view of Burns' Ann. St. Ind. 1908, § 2159, prescribing grounds for such motion, nor by a motion to quash an indictment for a violation of Burns' Ann. St. Ind. 1908, § 2065, limiting such motion to defects apparent on the face of the indictment. Pittsburgh, C., C. & St. L. Ry. Co. v. State (Ind. 1912) 99 N. E. 801.

Burns' Ann. St. Ind. 1908, §§ 5280, 5287, requiring railroad locomotives and cars to be equipped with grabirons, held not invalid as an attempted interference with interstate commerce. Southern Ry. Co. v. Railroad Commission of Indiana (1913) 100 N. E. 337, 179 Ind. 23.

Act Ind. March 1, 1911 (Acts 1911, c. 60), regulating the size and construction of cabooses used by common carriers, does not interfere with or place a burden upon or regulate interstate commerce, and is not superseded by the federal laws. Pittsburgh, C., C. & St. L. Ry. Co. v. State (Ind. 1913) 102 N. E. 25.

R. S. Ohio § 3365—27b, requiring carriers to use automatic couplers on locomotives or cars in moving state traffic, does not directly regulate interstate commerce or conflict with regulation thereof enacted by Congress, but requires the use of the same kind of couplers required by Congress, and therefore is not void as in contravention of the power of Congress to regulate commerce among the states. Detroit, T. & I. Ry. Co. v. State (Ohio 1910) 91 N. E. 869.

156. Operation of trains in general.—A state may regulate, at least, in the absence of congressional action upon the same subject-matter, the manner in which interstate trains shall approach dangerous crossings, the signals which shall be given, and the control of the trains which shall be required under such circumstances. Southern R. Co. v. King (1910) 30 Sup. Ct. 594, 596, 217 U. S. 524, 54 L. Ed. 868, affirming judgment (1908) 160 Fed. 332, 87 C. C. A. 284.

Prescribing a minimum of 3 brakemen for freight trains of more than 25 cars, operated in the state, as is done by Laws Ark. 1907, No. 116, does not amount to an unconstitutional regulation of interstate commerce when applied to a foreign railway company engaged in such commerce. Chicago, R. I. & P. Ry. Co. v. Arkansas (1911) 31 Sup. Ct. 275, 219 U. S. 453, 55 L. Ed. 290, affirming judgment (1908) 111 S. W. 456, 86 Ark. 412.

Civ. Code Ga. 1895, § 2222, requiring locomotive engineers to simultaneously check and keep checking the speed of their trains so as to stop in time should any person or thing be crossing the track on said road at a public road crossing, was not invalid in so far as it applied to trains engaged in interstate commerce, as an invalid regulation thereof by the state, but was within the state's police power to provide regulations for public safety. Southern Ry. Co. v. King (1908) 160 Fed. 332, 87 C. C. A. 284, judgment affirmed (1910) 30 Sup. Ct. 594, 217 U. S. 524, 54 L. Ed. 868.

A state may require a brakeman for every freight car and may prohibit double headers. Kansas City S. Ry. Co. v. Board of Railroad Com'rs (C. C. 1901) 106 Fed. 353, affirmed (1903) 23 Sup. Ct. 214, 187 U. S. 617, 47 L. Ed. 333.

Arkansas Full Crew Law, prescribing a minimum of three brakemen for freight trains of more than 25 cars, held not unconstitutional when applied to foreign railroad engaged in interstate commerce. Kansas City Southern Ry. Co. v. State (Ark. 1915) 174 S. W. 223.

Civ. Code Ga. 1895, § 2222, requiring an engineer to check the speed of his locomotive on approaching a public crossing so as to stop in time should any person be crossing, is not, as to a railroad company doing an interstate business, a regulation of interstate commerce, but is a valid exercise of the police power of the state. Southern Ry. Co. v. Grizzle (1908) 62 S. E. 177, 131 Ga. 287.

That the train by which decedent was killed carried interstate passengers did not render the blow-post law (Civ. Code Ga. 1910, §§ 2675–2677) void, as an unreasonable burden on interstate commerce. Georgia R. & Banking Co. v. Auchinachie (Ga. 1914) 83 S. E. 127.

Acts Ind. 1907, c. 11, known as the "Full Crew Act," requiring a certain number of operatives on trains within the state according to the character of the train, contains no restrictions as to the persons or things carried by such trains, or regulations of fares or freights, and was not an attempt to regulate interstate commerce, but was a proper exercise of police power. Pittsburgh, C., C. & St. L. Ry. Co. v. State (1909) 87 N. E. 1034, 172 Ind. 147.

A statute regulating the operation of trains within a state is not invalid as an interference with interstate com-

merce if its effect on such commerce is indirect or remote. Id.

The state's police power may be exercised to insure a faithful and prompt performance of duty within the state by railroads or other common carriers engaged in interstate commerce, especially with reference to the safety of persons and property. Id.

Acts Ind. 1907, c. 11, requiring all trains to have a certain number of operatives in accordance with the character of the train, applies only to the operation of trains within the state. Id.

Under Code Iowa, § 2072, requiring railroad companies to sound a whistle before a railroad crossing is reached, a railroad company, though engaged in interstate commerce and in conveying the mails, cannot escape liability for disobeying the statute, though the whistle was out of order through no negligence of the company, and to have procured another would have delayed the train, as such provision is a valid police regulation, and its enforcement does not interfere with interstate commerce. Willfong v. Omaha & St. L. R. Co. (1902) 90 N. W. 358, 116 Iowa, 548.

The state has power to prescribe reasonable regulations of mail or other trains engaged in interstate commerce where they do not conflict with regulations by Congress, and, in action for death of railway postal clerk on train devoted exclusively to carriage of mail, evidence as to a city ordinance regulating the speed of trains was competent. Lasater v. St. Louis, I. M. & S. Ry. Co. (Mo. App. 1913) 160 S. W. 818.

The state Supreme Court has no jurisdiction to compel an interstate railroad company to operate its road within the state, in the face of a general strike, on the allegation that enough competent men are willing to work "for reasonable compensation." State v. Great Northern Ry. Co. (1894) 36 P. 458, 14 Mont. 381.

The Full Crew Act is not unconstitutional as imposing a burden on interstate commerce. Pennsylvania R. Co. v. Ewing (1913) 88 A. 775, 241 Pa. 581.

157. Speed of trains.—A regulation by a city of the speed of railroad trains within the city limits is not, as to interstate trains, an unconstitutional regulation of interstate commerce, at least until Congress shall take action in the matter. Erb v. Morasch (1900) 20 Sup. Ct. 819, 820, 177 U. S. 584, 44 L. Ed. 897.

A state may regulate the speed of trains within the limits of cities, whether the train is used for interstate commerce or not. Kansas City S. Ry. Co. v. Board of Railroad Com'rs (C. C. 1901) 106 Fed. 353, affirmed (1903) 23 Sup. Ct. 214, 187 U. S. 617, 47 L. Ed. 333.

An ordinance of an incorporated town limiting the speed of trains within its limits to 6 miles an hour held to impose an unreasonable burden on interstate commerce. Lusk v. Town of Dora (D. C. 1915) 224 Fed. 650.

Civ. Code Ga. 1910, § 2675, regulating speed at crossings, held an exercise of the police power, and not unconstitutional, as applied to a railway train engaged in interstate commerce. Seaboard Air Line Ry. v. Blackwell (Ga. 1915) 84 S. E. 472.

A reasonable exercise by a city of the police power vested in it by the legislature, in regard to the speed of trains within its limits, is not invalid as an interference with interstate commerce, though it may incidentally limit the speed of such traffic. Chicago & A. Ry. Co. v. City of Carlinville (1902) 65 N. E. 730, 200 Ill. 314, 60 L. R. A. 391, 93 Am. St. Rep. 190.

An ordinance limiting the speed of trains, on an interstate railway which carries United States mail, to 10 miles an hour within the corporate limits of the municipality, which is passed for the safety of the public and the protection of life and property, is not void as imposing an unreasonable restriction upon interstate commerce and the transportation of mail. Peterson v. State (Neb. 1907) 112 N. W. 306.

The statute (Gen. Laws N. H. c. 162, § 4) prohibiting the running of railroad trains at a greater rate of speed than six miles an hour across a highway in the compact part of a town is an exercise of the police power of the state, and is applicable to railroads which extend into an adjoining state, as well as to those which are wholly within the state. Clark v. Boston & M. R. R. (1887) 64 N. H. 323, 10 Atl. 676.

158. Sunday laws.—Code Ga. § 4578, making it a misdemeanor to run a freight train in the state on the Sabbath day is a regulation of internal police, and not of commerce. Hennington v. State of Georgia (1896) 16 Sup. Ct. 1086, 163 U. S. 299, 41 L. Ed. 166, affirming (Ga. 1892) 17 S. E. 1009.

A police regulation of a state prohibiting the running of freight trains on the Sabbath is not invalid, as interfering with interstate commerce, though in effect preventing freight trains from passing through the state on that day from and to adjacent states. Chief Justice Fuller and Mr. Justice White dissenting. Id.

A state may prohibit freight trains from running on Sunday, though thereby preventing freight trains carrying interstate freight from running. Kansas City S. Ry. Co. v. Board of Railroad Com'rs (C. C. 1901) 106 Fed. 353, affirmed (1903) 23 Sup. Ct. 214, 187 U. S. 617, 47 L. Ed. 333.

Code Ga. § 4578, making it a misdemeanor to run a freight train on any railroad in the state on the Sabbath day, is a regulation of internal police, and not of commerce, and not in conflict with the constitution, even as to freight trains passing through the

state, and laden exclusively with through freight. Hennington v. State (1892) 90 Ga. 396, 17 S. E. 1009.

Pen. Code Ga. 1895, § 420, forbidding, with certain exceptions, the running of freight trains on Sunday, is not unconstitutional as a violation of interstate commerce. Seale v. State (1906) 55 S. E. 472, 126 Ga. 644.

Code N. C. § 1973, making it a misdemeanor to run railroad trains (with certain exceptions) between certain hours on Sunday, is not unconstitutional as applied to trains carrying freight between points in different states. State v. Southern Ry. Co. (1896) 25 S. E. 862, 119 N. C. 814, 56 Am. St. Rep. 689.

Code Va. § 3801, forbidding the running of trains on Sunday between sunrise and sunset, except wrecking, passenger, stock, and United States mail trains, conflicts with Const. art. 1, § 8, providing that congress shall have power to regulate commerce among the several states, and is void as to trains running between points in different states. Norfolk & W. R. Co. v. Commonwealth (1891) 88 Va. 95, 13 S. E. 340, 29 Am. St. Rep. 705, 13 L. R. A. 107.

A state statute which forbids the running of interstate freight trains between sunrise and sunset on Sunday is, by its own operation, no matter what its professed object may be, a regulation of commerce and an invasion of the exclusive domain of Congress. Norfolk & W. R. Co. v. Commonwealth (1892) 88 Va. 95, 13 S. E. 340, 13 L. R. A. 107, 29 Am. St. Rep. 705.

Code Va. § 3801, prohibiting the running of freight trains on Sunday, does not conflict with the interstate commerce clause of the constitution. Norfolk & W. R. Co. v. Commonwealth (1896) 93 Va. 749, 24 S. E. 837, overruling (1891) 88 Va. 95, 13 S. E. 340, 29 Am. St. Rep. 705, 13 L. R. A. 107.

A statute subjecting to punishment railway companies running their freight trains on Sunday is not unconstitutional, although the freight in question is in course of transportation to other states. State v. Baltimore & O. R. Co. (1884) 24 W. Va. 783, 49 Am. Rep. 290.

159. Setting fires.—Laws Mont. 1881, p. 71, § 7, requiring railroads to keep their right of way free from combustible material, does not trench on the chartered right of a railroad company, under act of congress. Diamond v. Northern Pac. R. Co. (1887) 6 Mont. 580, 13 Pac. 367.

The fact that a certain railroad company is engaged in interstate commerce does not exempt it from the operation of a statute making it liable for damage from sparks from its locomotives. Smith v. Boston & M. R. Co. (1884) 63 N. H. 25.

Gen. St. S. C. § 1511, providing that every railroad should be liable for damage by fire, is not void, under article 1, § 8, as an interference with interstate commerce. McCandless v. Richmond & D. R. Co. (1892) 38 S. C. 103, 16 S. E. 429, 18 L. R. A. 440.

160. Employés.—Act Ala. Feb. 28, 1887, requiring locomotive engineers to be examined and licensed by a board appointed by the governor, and prescribing penalties for its violation, is not unconstitutional, as a regulation of interstate commerce, even in the case of an engineer operating a locomotive attached to a train running from a point in that state to points in other states. Bradley, J., dissenting. Smith v. Alabama (1888) 8 Sup. Ct. 564, 566, 124 U. S. 465, 31 L. Ed. 508.

Act Ala. June 1, 1887, providng that engineers and other railroad employés shall be examined by a medical board, to determine whether or not they are "color-blind," and making their employment penal unless they have certificates of fitness, is not repugnant to the power vested in congress to regulate commerce, as applied to a railway company having its lines, on which the engineer runs, in different states. Nashville, C. & St. L. Ry. Co. v. State of Alabama (1888) 9 Sup. Ct. 28, 128 U. S. 96, 32 L. Ed. 352, following Smith v. Alabama (1888) 8 Sup. Ct. 564, 124 U. S. 465, 31 L. Ed. 508.

Applying to interstate transportation the provisions of Act Pa. April 4, 1868, restricting, as against a railway company, the rights of persons injured in the course of their employment in or about the railroad to those which an employé of the railway company would have under like circumstances, does not make such statute repugnant to the commerce clause. Martin v. Pittsburg & L. E. R. Co. (1906) 27 Sup. Ct. 100, 101, 203 U. S. 284, 51 L. Ed. 184, 8 Ann. Cas. 87, affirming judgment (1905) 76 N. E. 1129, 72 Ohio St. 659.

Congress may prescribe, as between an interstate carrier and such of its employés as are engaged in interstate commerce, that the carrier shall be liable for the death or injury of any such employé while so engaged which may result from the negligence of a fellow servant. Howard v. Illinois Cent. R. Co. (1907) 28 Sup. Ct. 141, 143, 207 U. S. 463, 52 L. Ed. 297.

There is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime to discharge an employé from service to a carrier because of such membership. Adair v. U. S. (1908) 28 Sup. Ct. 277, 281, 208 U. S. 161, 52 L. Ed. 436, 13 Ann. Cas. 764, reversing judgment U. S. v. Adair (D. C. 1907) 152 Fed. 737.

Construing condemnation in Employers' Liability Act April 22, 1908, § 5 (Comp. St. § 8661), of any contract or regulation intended to enable a com-

mon carrier to exempt himself from liability under the act, as embracing an existing agreement under contract of membership in a relief department, does not render the section invalid, as such agreement must be regarded as made subject to the possibility that Congress might so regulate commerce as to render the agreement unenforceable or impair its value. Philadelphia, B. & W. R. Co. v. Schubert (1912) 32 Sup. Ct. 589, 592, 224 U. S. 603, 56 L. Ed. 911, affirming judgment (1911) 36 App. D. C. 565.

A state may limit the hours of labor of railroad employés. Kansas City S. Ry. Co. v. Board of Railroad Com'rs (C. C. 1901) 106 Fed. 353, affirmed (1903) 23 Sup. Ct. 214, 187 U. S. 617, 47 L. Ed. 333.

A state may enact laws requiring locomotive engineers to be examined and licensed by a state board even in the case of an engineer operating a locomotive attached to an interstate train. Id.

Employers' Liability Act April 22, 1908 (Comp. St. § 8657 et seq.), conceding it to be otherwise within the constitutional power of Congress to regulate interstate commerce, is not invalid because it results in establishing rules and measures of liability in cases to which it applies different from those which exist under the state laws in other cases arising from the relation of master and servant, nor because it gives the right of recovery in case of the death of an employé to different parties; but in cases to which it applies it is paramount and governs in the state as well as the federal courts. Zikos v. Oregon R. & Nav. Co. (C. C. 1910) 179 Fed. 893.

Though the general assembly of Alabama cannot prescribe the conditions of contracts made in another state, it may regulate the employment of persons in the state under contracts made elsewhere; and this is the extent of Act Ala. Feb. 28, 1887, in reference to the employment of railroad engineers who have not been examined as required. Nashville, C. & St. L. Ry. Co. v. State (1887) 83 Ala. 71, 3 South. 702.

Whether state statute for protection of railway employés is invalid as an interference with interstate commerce does not depend upon the citizenship of such employés. Southern Ry. Co. v. Railroad Commission of Indiana (Ind. 1913) 100 N. E. 337.

Burns' Ann. St. Ind. 1914, § 5308, providing that requirement of any railroad relief association that employés becoming members agree to waive any damages for personal injuries or death, held not invalid as an interference with interstate commerce. Baltimore & O. S. W. R. Co. v. Hagan (Ind. 1915) 109 N. E. 194.

Act April 22, 1908 (Comp. St. § 8657 et seq.), imposing on interstate carriers liability to employés engaged in interstate commerce for injuries received through negligence of fellow servants, held a valid regulation of interstate commerce. Owens v. Chicago Great Western Ry. Co. (Minn. 1910) 128 N. W. 1011.

In an action in one state against a railroad company for negligence alleged to have caused the death of a servant in another state, the act of Congress regulating interstate commerce has no application. McManus v. Oregon Short Line R. Co. (1906) 94 S. W. 743, 118 Mo. App. 152.

Labor Law N. Y. (Consol. Laws, c. 31) § 10, requiring payment of wages in cash weekly to employés of practically all corporations except steam railroads, which are required by section 11 to pay semimonthly, does not, as to a steam railroad, interfere with and constitute a restriction upon interstate commerce so as to be void. New York Cent. & H. R. R. Co. v. Williams (1909) 120 N. Y. Supp. 1137, 136 App. Div. 904, affirming judgment (1909) 118 N. Y. Supp. 785, 64 Misc. Rep. 15.

So much of Labor Law N. Y., § 8, amended by Laws 1913, c. 466, as regulates the hours of labor of designated railroad employés, is not invalid as an interference with interstate commerce. People v. New York Cent. & H. R. R. Co. (1914) 147 N. Y. Supp. 789, order reversed (1914) 148 N. Y. Supp. 495.

Act Tex. March 11, 1909 (Acts 31st Leg. c. 46) § 2, making it unlawful to act as a conductor without certain previous experience, held not unconstitutional as an unlawful interference with interstate commerce. Smith v. State (Tex. Cr. App. 1911) 146 S. W. 900.

Employers' Liability Act Tex. 1909, § 2, which in part relieves employés engaged in operating railroads from the consequences of their own negligence in suits for personal injuries, is not invalid, under the commerce clause of the Constitution, as an attempt to regulate interstate commerce. Missouri, K. & T. Ry. Co. of Texas v. Sadler (Tex. Civ. App. 1912) 149 S. W. 1188.

The Texas Employers' Liability Act, providing, among other things, that the contributory negligence of a railroad employé shall only diminish the amount of recovery proportionate to the employé's negligence, held not invalid, as obnoxious to the commerce clause, because it does not limit its application to intrastate commerce. Texas & N. O. Ry. Co. v. Yerkes (Tex. Civ. App. 1913) 156 S. W. 579.

(C) Manufacture and sale of goods and merchandise

161. Manufacture and sale of goods and merchandise—In general.—A state cannot discriminate against a foreign citizen by reason of his being engaged in selling the products of other states. Gray v. City of Baltimore (1879) 100 U. S. 434, 25 L. Ed. 743, 1 Ky. Law Rep. 205.

Act La. No. 147 of 1888, providing that the Governor should appoint two coal gaugers to gauge any coal or coke boat in the state to ascertain the number of bushels in each load, and that no barge load should be sold in the state until gauged, when applied to boat loads of coal brought from a foreign state on the navigable waters of the United States, was not in conflict with this section. Pittsburg & S. Coal Co. v. Louisiana (1895) 15 Sup. Ct. 459, 463, 156 U. S. 590, 39 L. Ed. 544.

The payment of duties to the United States gives the right to sell the thing imported, which right to sell cannot be forbidden or impaired by the state. F. May & Co. v. New Orleans (1900) 20 Sup. Ct. 976, 980, 178 U. S. 496, 44 L. Ed. 1165.

The question whether the commerce clause is violated by the provisions of Laws Kan. 1907, c. 250, making it unlawful to sell or deliver black powder for use in any coal mines in the state except in original sealed packages containing 12½ pounds of powder, is not open on writ of error from the federal Supreme Court to review a judgment of the state court refusing a writ of habeas corpus to one convicted of a violation of the state statute, where the latter court refused to consider the contention because the fact of the importation of the package sold from outside the state did not appear at the trial. Williams v. Walsh (1912) 32 Sup. Ct. 137, 139, 222 U. S. 415, 56 L. Ed. 253.

The requirement that the name and percentage of the diluents shall be stated in the labels, under Code Supp. Iowa 1907, §§ 5077a6, 5077a24, relating to the sale in the state of concentrated commercial feeding stuffs, is a proper exercise of the police power. Standard Stock Food Co. v. Wright (1912) 32 Sup. Ct. 784, 786, 225 U. S. 540, 56 L. Ed. 1197.

Personal Property Law N. Y. § 65, as to retaking of articles sold conditionally, held not a regulation of interstate commerce, as applied to property to be sent from Pennsylvania to New York. Lanston Monotype Mach. Co. v. Curtis (1915) 224 Fed. 403, 140 C. C. A. 89.

Laws Minn. 1887, c. 196, §§ 1–3, requiring vendors of nursery stock grown in other states to file affidavit and bond with secretary of state, and present to each purchaser a certificate that he has done so, are an unconstitutional restriction on interstate commerce. In re Schechter (C. C. 1894) 63 Fed. 695.

The negotiation of sales of goods which are in another state, for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce, and a state statute which attempts to prohibit the solicitation, within the state, of orders for such goods, though their sale within the state is prohibited by an exercise of the police power, is a burden upon interstate commerce, and is void. Ex parte Loeb (C. C. 1896) 72 Fed. 657.

Pistol Act Ark. 1881, making it a misdemeanor to sell "any pistol except such as are used in the army or navy of the United States and known as the navy pistol," is not repugnant to the commerce clause, as an attempted restriction of interstate commerce, if it applies solely to internal commerce of the state. Dabbs v. State (1882) 39 Ark. 353, 43 Am. Rep. 275.

Laws Kan. 1907, c. 250, relating to the sale of black powder, held not invalid as a regulation of interstate commerce. Ex parte Williams (Kan. 1908) 98 P. 777.

Acts La., No. 48 of 1904, forbidding the sale of the plumage, skin, or body of any nongame bird protected by the act, whether the bird was captured or killed within or without the state, is not in violation of interstate commerce. In re Schwartz (1907) 44 So. 20, 119 La. 290.

R. S. Me. c. 44, § 1, prohibiting the peddling of goods not raised or manufactured in the state, is unconstitutional, as discriminating in favor of goods manufactured within the state. State v. Furbush (1881) 72 Me. 493.

Rev. Laws Mass. c. 56, § 1, prohibiting a sale of goods on condition that the purchaser shall not deal in those of any other person, firm, or corporation or association of persons is not repugnant to the commerce clause, notwithstanding the enactment of the antitrust law (Act July 2, 1890 [Comp. St. § 8820 et seq.]), prohibiting contracts directly affecting interstate or foreign commerce by way of restraint of trade or creation of a monopoly. Commonwealth v. Strauss (1906) 78 N. E. 136, 191 Mass. 545, 11 L. R. A. (N. S.) 968.

The protection of domestic laborers, manufacturers, or merchants against lawful competition from other states, by means of discriminating regulations on goods manufactured in other states, is an unjustifiable interference with interstate commerce, and not within the police power. In re Opinion of the Justices (1912) 98 N. E. 334, 211 Mass. 605.

A statute requiring the marking of convict-made goods imported into the state is invalid, as interfering with interstate commerce. Id.

Laws Minn. 1899, c. 225, § 2, requiring commission merchants to render true statements to consignors of grain sold, is not unconstitutional as an interference with interstate commerce. State v. Edwards (1905) 102 N. W. 697, 94 Minn. 225, 69 L. R. A. 667.

The state may not authorize a municipality to enact, nor may a municipality enact, ordinances restricting or prohibiting the delivery in this state to the purchaser of goods purchased by him in another state, unless some law of congress permits. State v. Stilsing

(1890) 52 N. J. Law (23 Vroom) 517, 20 Atl. 65.

Laws N. Y. 1894, c. 698, requiring goods made by convict labor in another state to be labeled as such when exposed for sale in New York, is repugnant to the interstate commerce clause. People v. Hawkins (1894) 10 Misc. Rep. 65, 31 N. Y. Supp. 115, judgment affirmed (1895) 85 Hun, 43, 32 N. Y. Supp. 524.

Laws N. Y. 1896, c. 931, prohibiting the sale of goods made by convict labor unless labeled as such, as applied to articles of commerce made in a foreign state, conflicts with this clause. People v. Hawkins (1897) 47 N. Y. S. 56, 20 App. Div. 494, 12 N. Y. Cr. R. 413, judgment affirmed (1898) 51 N. E. 257, 157 N. Y. 1, 42 L. R. A. 490, 68 Am. St. Rep. 736.

As applied to a scrub brush made in another state by convict labor, such statute is not within the police power of the state. Id.

Laws N. Y. 1892, c. 687, in so far as it attempts to impose burdens on sales within the state of goods manufactured outside of the state by a foreign corporation, is void, as in conflict with this clause. Hargraves Mills v. Harden (1898) 56 N. Y. Supp. 937, 25 Misc. Rep. 665.

Laws N. Y. 1896, c. 931, making it a misdemeanor to sell or expose for sale goods made in any prison, without labeling them "Convict-Made," with the year and name of the prison, as applied to articles made without the state, violates the commerce clause. People v. Hawkins (1898) 51 N. E. 257, 157 N. Y. 1, 42 L. R. A. 490, 68 Am. St. Rep. 736, affirming judgment (1897) 47 N. Y. Supp. 56, 20 App. Div. 494, 12 N. Y. Cr. R. 413.

Act Ohio April 23, 1894, "to prevent and punish fraud in sales of wearing apparel at public or private sale by itinerant venders, and to regulate all such sales," and providing that no such vender shall advertise, represent, or hold forth any sale as bankrupt, insolvent, or closing-out sale, or as a sale of goods damaged by smoke, fire, water, or otherwise, until he has represented the facts under oath to the secretary of state, and procured a state and municipal license, and deposited $500 with the secretary of state, is not unconstitutional, as excluding goods and merchandise from out the state in opposition to interstate commerce. Ex parte Mosler (1894) 8 Ohio Cir. Ct. R. 324.

Const. Okl. art. 9, § 43, does not prevent a foreign corporation from selling a merchant of this state goods to be shipped into the state from without its borders without compliance with the provisions of the statute. Freeman-Sipes Co. v. Corticelli Silk Co. (Okl. 1912) 124 P. 972.

Interstate commerce in the shipment of certain wagons from Iowa to Oregon ended on the arrival of the wagons in Oregon and the storage thereof, so that relator in making a subsequent sale thereof was not engaged in interstate commerce. Ex parte Case (Or. 1913) 135 P. 881.

The application of a statute prohibiting "peddling" to citizens of another state, employed on a salary by a manufacturing company located in another state, to sell small articles from house to house, is not an interference with interstate commerce. Commonwealth v. Gardner (1890) 133 Pa. St. 284, 19 Atl. 550, 25 Wkly. Notes Cas. 462, 19 Am. St. Rep. 645, 7 L. R. A. 666.

Laws S. D. 1907, c. 194, § 1, authorizing the state board of agriculture to refuse permission for the sale of nursery stock to persons failing to satisfy the board of their integrity and responsibility, is in conflict with the interstate commerce clause. Ex parte Hawley (S. D.) 1908) 115 N. W. 93.

Acts Tenn. 1903, c. 140, prohibiting agreements between persons or corporations with a view to restrict competition in the "importation or sale of articles imported into the state," or in the manufacture or sale of articles of domestic growth or of domestic raw material, or which tend to advance or control the price or cost to the producer or consumer of any such article, and providing penalties for the making of such agreements, being intended only to apply to intrastate commerce, was not in violation of the commerce clause. State v. Standard Oil Co. of Kentucky (Tenn. 1908) 110 S. W. 565.

A foreign corporation may not ship its goods to an agent in this state, to be held in stock and offered for sale in open market by him, without complying with R. S. Tex. 1895, arts. 745, 746, requiring foreign corporations to procure permits to do business from the Secretary of State as a condition of bringing suits on demands arising in the state. Barnhard Bros. & Spindler v. Morrison (Tex. Civ. App. 1905) 87 S. W. 376.

A foreign corporation which manufactures or deals in goods which are the subject of commerce may send its agents into this state to solicit orders for the sale of such goods without complying with such statute. Id.

162. —— Intoxicating liquors.—The state may absolutely prohibit the sale or manufacture of intoxicating liquors. Foster v. Kansas (1884) 112 U. S. 201, 5 Sup. Ct. 97, 28 L. Ed. 629; Kansas v. Bradley (C. C. 1885) 26 Fed. 289; Jones v. People (1852) 14 Ill. (4 Peck) 196; State v. Creeden (1889) 78 Iowa, 556, 43 N. W. 673, 7 L. R. A. 295; People v. Huntingdon (1846) 4 N. Y. Leg. Obs. 187; Same v. Quant (N. Y. 1855) 12 How. Prac. 83, 2 Parker, Cr. R. 410.

The law of Rhode Island forbidding the sale of liquors in less quantities

than 10 gallons is not unconstitutional, as a regulation of commerce, though the brandy which was sold was duly imported from France into the United States, and purchased by the party indicted from the original importer. Fletcher v. Rhode Island (1847) 46 U. S. (5 How.) 504, 12 L. Ed. 256.

The usual and ordinary legislation of the states regulating or prohibiting the sale of intoxicating liquors raises no question under the federal constitution prior to the fourteenth amendment. Bartemeyer v. Iowa (1873) 85 U. S. (18 Wall.) 129, 21 L. Ed. 929.

A state law prohibiting the sale of liquors within the state is void, in so far as it prohibits the sale of liquors by a foreign or nonresident importer in the packages in which they are brought from another state. Leisy v. Hardin (1890) 10 Sup. Ct. 681, 683, 135 U. S. 100, 34 L. Ed. 128.

The provisions of the South Carolina dispensary act of Jan. 2, 1895, forbidding the importation of intoxicating liquors by any one except certain state officers appointed under the act, are invalid, as being a restriction on interstate commerce. Mr. Justice Brown dissenting. Scott v. Donald (1897) 17 Sup. Ct. 265, 272, 165 U. S. 58, 41 L. Ed. 632; Donald v. Scott (C. C. 1895) 67 Fed. 854; Id. (C. C. 1896) 74 Fed. 859.

The provision of Act Aug. 8, 1890 (Comp. St. § 8738), that all intoxicating liquors transported into any state, or remaining there for use, consumption, sale, or storage, shall be "subject to the operation and effect of the laws of such state enacted in the exercise of its police powers," to the same extent as if they had been produced in such state, does not confer upon any state power to prohibit the importation of such liquors by any one except certain officers appointed by the state. Scott v. Donald (1897) 17 Sup. Ct. 265, 165 U. S. 58, 41 L. Ed. 632.

When a state recognizes the manufacture, sale, and use of intoxicating liquors as lawful, it cannot discriminate against the bringing of such articles in and importing them from other states; such legislation is void as a hindrance to interstate commerce and an unjust preference of the products of the enacting state as against similar products of the other states. Id.

The provision of the dispensary law of South Carolina giving to the state officers exclusive right to purchase all the liquor to be sold in the state, thereby vesting in them the power to restrict sales in the state to the products of one or more states, to the exclusion of the products of other states, does not create or authorize a discrimination which unlawfully interferes with interstate commerce, since every resident of the state has the right, which cannot be affected by state legislation, to purchase from a nonresident liquors which are the product of any state, and to have the same transported into the state for his own use. Vance v. W. A. Vandercook Co. (1898) 18 Sup. Ct. 674, 170 U. S. 438, 42 L. Ed. 1100, modifying judgment W. A. Vandercook Co. v. Vance (C. C. 1897) 80 Fed. 786.

The requirement of the South Carolina dispensary law that a resident of the state intending to have liquors shipped into the state for his own use shall certify such intention to the state chemist, who shall be furnished with a sample for testing, and, if found pure, shall issue a certificate to the proposed consignor authorizing the shipment, and providing that any package brought into the state without such certificate attached shall be seized and confiscated, is void, as an unauthorized interference by the state with interstate commerce. Id.

The provision of the South Carolina dispensary law which authorizes the use by a resident of the state of wine or liquors made by him for such purpose is not discrimination against the products of other states, which interferes with interstate commerce, such liquors being subject to all restrictions as to sales imposed on other liquors. Id.

The South Carolina State Dispensary Act (Acts 1896, p. 123, as amended in 1897) is not repugnant to the commerce clause, in so far as it exerts the absolute control of the state over the purchase and sale of liquor within the state. Murray v. Wilson Distilling Co. (1909) 29 Sup. Ct. 458, 459, 213 U. S. 151, 53 L. Ed. 742.

A state statute prohibiting carriers from carrying intoxicating liquors into any county or district therein where the sale of such liquors is prohibited by law, as applied to shipments from other states, is void as an attempted regulation of interstate commerce, and affords no justification for the refusal of a railroad company, although a corporation of such state, to receive and carry such shipments. Louisville & N. R. Co. v. F. W. Cook Brewing Co. (1909) 172 Fed. 117, 96 C. C. A. 322, 40 L. R. A. (N. S.) 798, judgment affirmed (1912) 32 Sup. Ct. 189, 223 U. S. 70, 56 L. Ed. 355.

Rev. Code Iowa, tit. 11, c. 6, prohibiting the manufacture or sale of intoxicating liquors even for exportation with certain limitations unless in its original packages and quantities, is not in conflict with the interstate commerce clause. Kidd v. Pearson (1888) 128 U. S. 1, 9 Sup. Ct. 6, 32 L. Ed. 346, affirming Pearson v. International Distillery (1887) 34 N. W. 1, 72 Iowa, 348.

An act of the legislature providing for local option, and containing a proviso that "domestic wines" shall be exempt from the provisions of the act, is unconstitutional as to the proviso, but

may be good as to the remainder. Weil v. Calhoun (C. C. 1885) 25 Fed. 865.

The Georgia local option act of Sept. 18, 1885, which, after prohibiting the sale of liquor, provides "that nothing in this act shall be so construed as to prevent the manufacture, sale, and use of domestic wines or cider," etc., in excepting domestic wines from the prohibition must be taken as also excepting other wines, and so construed is not in violation of the interstate commerce clause. Ex parte Kinnebrew (C. C. 1888) 35 Fed. 52.

Gen. Laws N. H. c. 109, § 13, making it unlawful to solicit or take orders for liquor in the state to be delivered without the state, if the salesman has reason to believe the liquor is intended for illegal sale, is not a restriction upon interstate commerce. Lang v. Lynch (C. C. 1889) 38 Fed. 489, 4 L. R. A. 431, distinguishing Bowman v. Railway Co. (1888) 8 Sup. Ct. 689, 1062, 125 U. S. 465, 31 L. Ed. 700.

The laws of Kansas prohibiting the sale of intoxicating liquors within the state are invalid in so far as they apply to sales by an agent of an importer outside of the state of liquor in the original packages in which it was brought into the state, regardless of their size. In re Beine (C. C. 1890) 42 Fed. 545.

Leisy v. Hardin, 10 S. Ct. 681, did not declare the prohibitory liquor law of Iowa (Code 1873, § 1523 et seq.) void under all circumstances, but only that imported liquors remaining unsold in the original packages in the hands of the importer are not subject to the jurisdiction of the state by reason of the commerce clause. Therefore, on the passage by congress of the Wilson bill, which subjects to state police laws all imported liquors as soon as they pass within the boundaries of the state, it became unlawful to sell such liquors in Iowa without a re-enactment of the prohibitory liquor law. In re Spickler (C. C. 1890) 43 Fed. 653, 10 L. R. A. 446.

The South Carolina dispensary act (section 25, subsec. 2), prohibiting railroad employés from unloading liquors at any point where there is not a dispensary, is unconstitutional, as interfering with interstate commerce. In re Langford (C. C. 1893) 57 Fed. 570.

The Dispensary Law, S. C. § 33, forbidding any person to bring liquors into the state, except as provided in that act, under penalty of fine and imprisonment, is void, as an interference with interstate commerce, in so far as its penalties are sought to be applied to persons who bring liquors into a port of a state, without attempting to unload them. Ex parte Jervey (C. C. 1895) 66 Fed. 957.

The South Carolina dispensary law, prohibiting citizens from purchasing alcoholic liquors in other states and importing them, but permitting such purchase and importation by state officials, discriminates against the products of such other states, and is void, as an interference with interstate commerce. Donald v. Scott (C. C. 1895) 67 Fed. 854, decree modified Scott v. Donald (1897) 17 Sup. Ct. 262, 165 U. S. 107, 41 L. Ed. 648.

Intoxicating liquors are a legitimate subject of commerce, and burdens upon interstate commerce therein cannot be justified under the police power of a state. Ex parte Loeb (C. C. 1896) 72 Fed. 657.

Act S. C. April 1, 1896, declares that all intoxicating liquors which are not purchased of a state officer authorized to sell the same, and which have not been tested by the chemist of South Carolina College, and found to be chemically pure, are of a poisonous and detrimental character, and that their use as a beverage is against the morals, good health, and safety of the state. It forbids the accepting, storing, and keeping possession thereof, and makes it unlawful for any consignee or other person to take them from any depot or place, or to pay freight, express, or other charges thereon, and authorizes their seizure by state officers whenever found. Held that, in so far as this act is applied to liquors sent into the state from other states, it is void, as an interference with interstate commerce. Donald v. Scott (C. C. 1896) 74 Fed. 859.

A city ordinance prohibiting the sale of liquor at wholesale "in connection with drugs" is not a restriction upon interstate commerce, as applied to a dealer who sells to customers in other states. Jacobs Pharmacy Co. v. City of Atlanta (C. C. 1898) 89 Fed. 244.

Sess. Laws S. D. 1897, c. 72, designated in its title as an act to provide for the licensing, restriction, and regulation of the business of the manufacture and sale of liquors, and which not only imposes a license on all manufacturers and dealers, but also contains provisions imposing regulations and restrictions upon the business, and requires all licensees to give bond to comply with such provisions, is not merely a revenue measure, but is a law enacted in the exercise of the police powers of the state, within the meaning of the Wilson Act (26 Stat. 313), which provides that liquors transported into a state as a subject of interstate commerce shall on their arrival therein be subject to the operation and effect of the laws of such state enacted in the exercise of its police powers; and hence the fact that said state statute requires a wholesale dealer in liquors who maintains a warehouse in the state to pay a license does not render it unconstitutional, as an attempt to regulate interstate commerce, as applied to a dealer who manufactures his liquors in another state, and ships them therefrom to his warehouse, and there sells them only in the

original packages. Minneapolis Brewing Co. v. McGillivray (C. C. 1900) 104 Fed. 258.

Snyder's Comp. Laws Okl. 1909, § 4180, making it unlawful for any person to manufacture, sell, give away, or otherwise furnish, except as provided in the act, any intoxicating liquors or imitation thereof or substitute therefor, or to ship or in any way convey such liquor, etc., and Sess. Laws Okl. 1907–08, p. 605, c. 69, art. 3, §§ 5, 6, providing for search and seizure of liquors within the state, has no application to liquors transported in interstate commerce into the state while remaining in the hands of the carrier for delivery to bona fide consignees on shipments with draft attached to the bill of lading, etc. Danciger v. Stone (C. C. 1909) 187 Fed. 853.

Act Ala. April 6, 1911, regulating the sale of liquors and imposing a license tax on agencies of foreign breweries in the state, held constitutional. Evansville Brewing Ass'n v. Excise Commission of Jefferson County, Ala. (D. C. 1915) 225 Fed. 204.

Section 4 of the act to incorporate the Southern University of Greensboro, forbidding the sale of liquors within five miles of the university, is constitutional. Dorman v. State (1859) 34 Ala. 216.

Act Ala. March 1, 1881, prohibits the sale of intoxicating liquors, but provides that it shall not prevent the sale of domestic wines manufactured from grapes grown in the state, though perhaps invalid in its proviso in unconstitutionally discriminating against other states, held valid in its prohibitory section. Powell v. State (1881) 69 Ala. 10.

The proviso in Act Ala. Feb. 23, 1881, prohibiting the sale of liquor, except wine raised from grapes grown in Alabama, being a discrimination against foreign wines, is unconstitutional. McCreary v. State (1883) 73 Ala. 480.

The dispensary law (Acts Ala. 1898–99, p. 108) provides that governmental subdivisions of the state may engage in the sale of liquor, and section 10 declares that no liquor shall be sold in any county of the state in which a dispensary is authorized to be located, save that any manufacturer of liquor may sell the same by wholesale to dispensers or to liquor dealers who may be authorized to sell such liquors. Held, that section 10 was not unconstitutional on the ground that it encroached on the power of congress to regulate interstate commerce, in that it prevented persons residing out of the state making sales in a dispensary district, since the provision applies solely to sales within dispensary districts. Sheppard v. Dowling (1900) 28 So. 791, 127 Ala. 1, 85 Am. St. Rep. 68.

An act authorizing the sale of wine made from grapes grown on the premises, and prohibiting the sale of wine made from grapes grown out of the state, is invalid. State v. Deschamp (Ark. 1890) 14 S. W. 653.

The Legislature of one state cannot pass an act prohibiting the sale of liquors in another state. Lindley & Marshall v. State (Ark. 1909) 120 S. W. 987.

Where liquor was ordered by intestate in Arkansas from a dramshop keeper in Missouri, where sales on credit were declared void by Rev. St. Mo. 1909, § 7189, there was no interference with interstate commerce. Landrum v. Lindsey (Ark. 1914) 169 S. W. 801.

Const. Cal. art. 11, § 11, provides that any county, city, town, or township may enforce within its limits all such local police regulations as are not in conflict with general laws. Held, that an ordinance of the city of Pasadena prohibiting the keeping of any place for selling or giving away liquors was a police regulation, the power to pass which was, under the constitutional provision, expressly delegated to the municipality, and did conflict with the commerce clause. Ex parte Campbell (1887) 74 Cal. 20, 15 Pac. 318, 5 Am. St. Rep. 418.

Ordinance prohibiting soliciting or taking of orders for intoxicating liquors in precinct wherein voters had declared against license held not to prevent shipment of goods in interstate commerce. Ex parte Coombs (Cal. 1915) 147 P. 131.

Prohibiting the keeping for sale of intoxicating liquors is not a regulation of commerce. State v. Cunningham (1856) 25 Conn. 195; Same v. Brennan's Liquors, Id. 278; Same v. Wheeler, Id. 290.

The right of a state legislature to prohibit the sale of liquor is subject to the laws of the United States regulating imports. The state is bound to admit the article imported, but not to find a market for its sale. When sold by the importer in the original package, or when broken up for retail sale, it becomes subject to the state laws, and may be taxed or the sale of it prohibited. State v. Allmond (Del. 1863) 2 Houst. 612.

Act Del. Feb. 27, 1855, prohibiting the sale of intoxicating liquor for any other than "mechanical, chemical, and medicinal purposes, and pure wines for sacramental use," saving the rights of the importer of foreign liquor under the importation laws, is constitutional. Id.

There is no distinction in principle in the application of the provisions of the federal Constitution of a prohibitory statute and to a local option statute; the one being a direct and express prohibition of the sale of liquors, and the other a prohibition conditional on the result of a vote taken upon the ques-

tion. State v. Fountain (Del. 1908) 69 A. 926.

Act Ga. Dec. 10, 1897, restraining the sale of intoxicating liquors by individuals, and creating public dispensaries for its sale, does not violate the interstate commerce clause. Plumb v. Christie (1898) 30 S. E. 759, 103 Ga. 686, 42 L. R. A. 181; Deal v. Singletary (1898) 30 S. E. 765, 105 Ga. 466.

Under Wilson Act Aug. 8, 1890 (Comp. St. § 8738), providing that intoxicating liquor transported into any state or remaining therein for use, consumption, sale, or storage shall on arrival in such state be subject to the operation and effect of the laws of such state, enacted in the exercise of its police power, to the same extent as though such liquor had been produced in such state, and shall not be exempt by reason of being introduced therein in original packages or otherwise, Pen. Code Ga. 1895, § 428, prohibiting the solicitation of orders for intoxicating liquor in a prohibition county, is not void on the ground that it conflicts with the power of Congress to regulate and control interstate commerce, though the seller and the liquor sold may both be in another state. Rose v. State (1908) 62 S. E. 117, 4 Ga. App. 588.

Act Ga. Aug. 6, 1907 (Acts 1907, p. 81), in so far as it prohibits the sale of intoxicating liquors within the state, is a valid exercise of the police power of the state, and is not violative of the interstate commerce clause because it affects transactions where the seller in Tennessee receives orders and remittances from Alabama and Tennessee, which he communicates to his agent in Georgia, where he has liquors on storage, which he directs the agent to deliver to the purchasers. Cureton v. State (Ga. 1911) 70 S. E. 786; Id. (Ga. App. 1911) 70 S. E. 964.

Code of Atlanta, § 1537, prohibiting the keeping for unlawful sale of liquors in certain places described, is not invalid as an attempt to regulate interstate commerce. Shaw v. City of Atlanta (1912) 75 S. E. 486, 11 Ga. App. 391.

Laws Ill. 1907, p. 297, providing for the creation of antisaloon territory, and prohibiting the taking of orders or the making of agreements in antisaloon territory for the sale or delivery of intoxicating liquors, does not violate the interstate commerce clause, since the act does not control the importation of liquor from other states. People v. McBride (1908) 84 N. E. 865, 234 Ill. 146.

The power of the state to prohibit the sale of liquors as a regulation of domestic commerce is not analogous to or coextensive with the power of congress to regulate interstate and foreign commerce, since the latter is unlimited, while the former is subject to the restrictions imposed by the bill of rights. Beebe v. State (1855) 6 Ind. 501, 63 Am. Dec. 391.

Code Iowa, § 1855, prohibiting the sale of intoxicating liquors, and excluding from its operation wine made from fruits grown within the borders of the state, is a police regulation, and not in conflict with Const. art. 1, § 8, which provides for the regulation of commerce between the states and foreign nations, nor with article 4, § 2, providing that "the citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states." State v. Stucker (1882) 58 Iowa, 496, 12 N. W. 483.

Code Iowa 1873, § 1550, declaring void a sale of intoxicating liquors made in Iowa, in contravention of an express statute of that state, and authorizing recovery of money paid in pursuance thereof, is not such a regulation of commerce among the states as to conflict with the federal constitution; for, although it restricts the sale of a recognized article of property, it is legislation merely relating to the health, life, and safety of the citizens, and only indirectly affects the commerce of the country. Connolly v. Scarr (1887) 72 Iowa, 223, 33 N. W. 641.

Rev. Code Iowa, tit. 11, c. 6, prohibiting the manufacture or sale of intoxicating liquors even for exportation with certain limitations unless in its original packages and quantities, is not in conflict with the exclusive right of congress to regulate state commerce. Pearson v. International Distillery (1887) 72 Iowa, 348, 34 N. W. 1, affirmed in (1888) 128 U. S. 1, 9 Sup. Ct. 6, 32 L. Ed. 346.

The only intoxicating liquors which may be manufactured, sold, or kept for sale within the state of Iowa are those manufactured within the state for mechanical, medicinal, culinary, or sacramental purposes, or imported for sale under the authority of the laws of the United States, and remaining in the original packages and quantities in which they were imported. Id.

Gen. St. Kan. 1889, par. 2550, making one who takes orders for intoxicating liquors from a person other than the person authorized to sell the same guilty of a misdemeanor, is not a regulation of interstate commerce simply because it may incidentally affect commerce. Westheimer v. Weisman (1898) 54 P. 332, 8 Kan. App. 75.

Laws Kan. 1885, c. 149, § 12, providing that any person who shall receive in the state any order for intoxicating liquors other than from a person authorized to sell the same shall be deemed guilty of a misdemeanor, and on conviction shall be punished therefor, as applied to a nonresident salesman for intoxicating liquors, taking or soliciting orders for liquors to be purchased and imported from another state, where such orders are subject to approval or rejection at the election of the nonresident merchant, is a burden on interstate commerce. State v. Hickox (1902) 68 P. 35, 64 Kan. 650.

Regulation of the taking of orders for intoxicating liquor, though such liquor is situate in another state, is not repugnant to the commerce clause. State v. Wm. J. Lemp Brewing Co. (1909) 102 P. 504, 79 Kan. 705.

The requirements of the Kansas Mahin Liquor Law, concerning statements in writing to be made or taken and filed with the county clerk, held not in violation of Interstate Commerce Act, §§ 15, 20, as amended by Act June 29, 1906, §§ 4, 7, and Act June 18, 1910, §§ 12, 14 (Comp. St. §§ 8583, 8892). State v. Missouri Pac. Ry. Co. (Kan. 1915) 152 P. 777.

Acts 1904, c. 76, under which the wholesaling of intoxicants in local option districts is forbidden, except that a manufacturer may sell at his manufactory though it be in such a district, does not discriminate against a nonresident manufacturer or wholesale dealer, and is not violative of any right secured by the Constitution. Jung Brewing Co. v. Commonwealth (1906) 98 S. W. 307, 30 Ky. Law Rep. 267.

The interstate commerce clause prevents the operation of the Kentucky Statutes on a sale of whisky in another state, and its shipment into a local option district in Kentucky, notwithstanding the seller also did business in Kentucky and opened his branch office in such other state for the purpose of taking advantage of the interstate commerce clause. Doores v. Commonwealth (1908) 109 S. W. 302, 33 Ky. Law Rep. 69.

The state has power to regulate the business of soliciting proposals to purchase intoxicating liquors by agents of foreign liquor dealers. Martin v. Commonwealth (1913) 157 S. W. 1078, 154 Ky. 662, modifying opinion on rehearing (1913) 156 S. W. 870, 153 Ky. 784, 45 L. R. A. (N. S.) 957, and following Delamater v. South Dakota (1907) 27 Sup. Ct. 447, 205 U. S. 93, 51 L. Ed. 724, 10 Ann. Cas. 733.

R. S. Me. § 56, even when applied to liquors brought from another state for sale in this state, is not in violation of the congressional power to regulate commerce, and, moreover, was not invalid prior to the act of August 8, 1890, making interstate commerce relating to intoxicating liquors subject to the police powers of the several states. Knowlton v. Dougherty (1895) 87 Me. 518, 33 Atl. 18, 47 Am. St. Rep. 349.

R. S. Me. c. 27, § 31, prohibiting the bringing of intoxicating liquors into the state with intent to sell the same in violation of law, interferes with interstate commerce. State v. Intoxicating Liquors (1900) 47 A. 531, 94 Me. 335.

R. S. Me. c. 29, § 64, providing that no action shall be maintained on any claim for liquors purchased out of the state with intention to sell them in violation of the chapter, is not invalid as a regulation of interstate commerce. Boehm v. Allen (1906) 66 A. 474, 102 Me. 217.

The interstate commerce law does not render intoxicants immune from seizure, but after seizure and upon hearing, if it is shown that the liquor was an article of interstate commerce, the carrier is entitled to its return. Kalloch v. Newbert (Me. 1908) 72 A. 736.

St. Mass. 1855, c. 215, §§ 15, 17, prohibiting sales of liquors under penalty, does not, as embracing liquors imported from other states, regulate interstate commerce, in violation of the provision of the constitution vesting in congress the exclusive right to regulate it. Commonwealth v. Clapp (1855) 71 Mass. (5 Gray) 97.

Pub. St. Mass. c. 100, strictly forbidding the sale of intoxicating liquor, is not wholly unconstitutional because it contains no express exception in favor of liquors imported in original packages from other states. Commonwealth v. Gagne (1891) 153 Mass. 205, 26 N. E. 449, 10 L. R. A. 442; Same v. Gay (1891) 153 Mass. 211, 26 N. E. 571; Id., 153 Mass. 211, 26 N. E. 852.

Code Miss. 1892, § 1604, making it a misdemeanor to act as agent of either a seller or purchaser in effecting an unlawful sale of liquor in any territory in which a sale is prohibited, is not violative of the interstate commerce clause. Hart v. State (1905) 39 So. 523, 87 Miss. 171, 112 Am. St. Rep. 437.

The statute of Iowa prohibiting the manufacture for sale of intoxicating liquors is not an infringement on the congressional power to regulate commerce, even when applied to the manufacture for the purpose of export. Tredway v. Riley (1891) 32 Neb. 495, 49 N. W. 268, 29 Am. St. Rep. 447.

Gen. Laws N. H. c. 109, § 18, making penal the soliciting or taking orders for intoxicating liquors in the state for delivery in another state, with knowledge or reasonable cause to believe they are to be brought within the state and sold in violation of the laws thereof, is a regulation of commerce among the states, without permission of congress, and therefore void. Durkee v. Moses (N. H. 1889) 23 Atl. 793.

The price of liquor sold in another state, in violation of Gen. Laws N. H. c. 109, § 18, making penal the soliciting or taking orders for intoxicating liquors in the state for delivery in another state, with knowledge or reasonable cause to believe they are to be brought within the state and sold in violation of the laws thereof, before the passage of Act Aug. 8, 1890 (the "Wilson Bill"), can be recovered. Durkee v. Moses (N. H. 1892) 23 Atl. 793, overruling Dunbar v. Locke (1883) 62 N. H. 442, and Jones v. Surprise (1887) 64 N. H. 243, 9 Atl. 384.

Under the charter of Jersey City, an ordinance was passed forbidding any

person not licensed to sell, or offer to sell, or furnish or supply, certain intoxicating liquors. Held, that such restrictions and regulations, so far as they applied to the sale of such liquors in another state, and then delivery to the purchaser in Jersey City, are invalid and void. State v. Stilsing (N. J. 1890) 52 N. J. Law (23 Vroom) 517, 20 Atl. 65.

An act prohibiting the sale of intoxicants to be drunk on the premises is not an infringement on the power of congress to regulate commerce. People v. Huntington (1846) 4 N. Y. Leg. Obs. 187.

A state law, prohibiting the sale of imported liquor by any other person than the importer, is constitutional. Wynhamer v. People (N. Y. 1855) 20 Barb. 567.

Laws N. C. 1903, c. 349, § 2, providing that the place where delivery of liquor is made in the state shall be construed to be the place of sale thereof, and that any place to which any person shall ship any liquor for the purpose of delivering the same to a purchaser shall be construed and held to be the place of sale, is not unconstitutional as to shipments within the state. State v. Patterson (1904) 47 S. E. 808, 134 N. C. 612.

Revisal N. C. 1905, § 2080, making the place of delivery of intoxicating liquors the place of sale, does not apply to a sale fully consummated in another state and where the subject-matter of the transaction is properly regarded as interstate commerce. State v. Allen (N. C. 1912) 75 S. E. 1082.

R. S. Ohio, § 6942, providing that certain provisions shall "not extend to the sale of wine manufactured from the pure juice of the grape cultivated within this state," held not in violation of the exclusively national control of interstate commerce. McGuire v. State (1885) 42 Ohio St. 530.

Under the interstate commerce clause, a resident of one state has the right to have shipped to him from another state intoxicating liquor, when ordered by him for his and his family's use, and to keep the same for such use, and the state cannot, under its police power, enact laws so as to substantially hamper or burden such constitutional right. Schwedes v. State (Okl. 1909) 99 P. 804.

Under the interstate commerce clause a resident of one state has the right to have shipped to him from another state liquor for his and his family's use, and the state cannot burden such constitutional right under its police power. Schwedes v. State (1909) 104 P. 765, 1 Okl. Cr. 660.

The prohibition law (Sess. Laws Okl. 1908, c. 69) is constitutional, and does not relate to interstate commerce. McCord v. State (Okl. Cr. App. 1909) 101 P. 280.

The protection afforded by the Constitution of the United States to shipments into the state of intoxicating liquors, on the ground that they are interstate commerce, extends only to persons lawfully in possession of the liquor so shipped. Gilmore v. State (Okl. Cr. App. 1910) 106 P. 801.

The provision of prohibition law (Comp. St. Okl. 1909, § 4180) that it shall be unlawful to solicit the purchase or sale of intoxicating liquors is not repugnant to the interstate commerce clause. Williams v. State (Okl. Cr. App. 1911) 114 P. 624.

The provisions of Act Pa. May 13, 1887 (P. L. 108), entitled "An act to restrain and regulate the sale of vinous and spirituous malt or brewed liquors, or any admixture thereof," are not a direct burden on interstate commerce in intoxicating liquors as regulated by Congress in the act commonly known as the Wilson Act. Commonwealth v. Rossi (1913) 53 Pa. Super. Ct. 210.

Act Pa. May 13, 1887, § 17, to punish the offense of selling intoxicating liquors to a "person of known intemperate habits," and to minors, is applicable to a sale in the original packages in which the liquors were imported into the state. This construction does not render the act an interference with interstate commerce, under the decision in Leisy v. Hardin (1890) 135 U. S. 100, 10 Sup. Ct. 681, 34 L. Ed. 128. Commonwealth v. Zelt (1891) 138 Pa. St. 615, 21 Atl. 7, 27 Wkly. Notes Cas. 131, 11 L. R. A. 602.

A prohibition, by a state of the sale of liquors under a certain quantity, except by license to be granted or withheld under instructions from the voters of towns, etc., is not inconsistent with the constitution of the United States, nor with a treaty by the United States to admit the liquors of a certain country at a stipulated duty, to be imported for consumption, but legal and binding. State v. Peckham (1838) 3 R. I. 289.

Pub. Laws R. I. cc. 538, 634 (forbidding the manufacture or sale of intoxicating liquors), are not unconstitutional, or in violation of Const. art. 1, § 8, relating to the regulation of commerce, because they fail to distinguish between a sale within the state and a sale without the state. State v. Fitzpatrick (1888) 16 R. I. 54, 11 Atl. 767.

The prohibition of the sale of intoxicating liquors without a license is not unconstitutional because liquors are articles of commerce admitted by the revenue laws of the United States, and because, after an article has been admitted into the country, it becomes the property of the citizen of the state, which has power to regulate or prohibit the sale. City Council of Charleston v. Ahrens (S. C. 1850) 4 Strob. 241.

Intoxicating liquor is a lawful subject of commerce, and the traffic therein is not in itself unlawful, and the state cannot prohibit its citizens from engaging in such traffic except in the exercise of its police power. McCullough v. Brown (1894) 41 S. C. 220, 19

S. E. 458, 23 L. R. A. 410; State v. O'Donnell, Id. 748.

Dispensary Act S. C. 1893, forbidding the sale of liquors by private individuals and providing for its sale by the state, is valid. State v. City Council of Aiken (1894) 42 S. C. 222, 20 S. E. 221, 26 L. R. A. 345, overruling McCullough v. Brown (1894) 41 S. C. 220, 19 S. E. 458, 23 L. R. A. 410.

Dispensary Act, S. C., March 6, 1896, providing (section 37) that "any person handling contraband liquors in the nighttime or delivering the same shall be guilty of a misdemeanor," is not unconstitutional, as interfering with interstate commerce. State v. Holleyman (1898) 31 S. E. 362, 33 S. E. 366, 55 S. C. 207, 45 L. R. A. 567.

A state law which permits a person to have in his possession liquor purchased for his own use from a dispensary within the state, but attempts to prohibit and make contraband the possession of liquor intended for personal use purchased without the state, is unconstitutional, as an interference with interstate commerce. State v. Holleyman (1899) 33 S. E. 366, 45 L. R. A. 567, 55 S. C. 207.

The statute making it a misdemeanor for any person, acting for himself or as agent, to conduct the business of liquor drummer, soliciting, or receiving orders for intoxicating liquors for interstate shipment (Act S. C. March 3, 1909 [26 St. at Large, p. 93]), is not repugnant to the commerce clause. State v. Davis (1910) 66 S. E. 875, 84 S. C. 512.

There is a strong presumption that the Legislature, in enacting Laws S. C. 1909 (26 St. at Large, p. 60) § 1, forbidding persons to have possession of liquors within the state, did not intend any interference with the right of private parties to possess such liquors for his own consumption, as any such attempted interference would be futile; the right being protected by the interstate commerce clause of the Constitution. State v. Rookard (1911) 69 S. E. 1076, 87 S. C. 442.

Act Tenn. Jan. 20, 1909 (Acts 1909, c. 1), prohibiting the sale of intoxicating liquors within four miles of any schoolhouse, is a police measure of general application, enacted on a subject over which the Legislature has plenary power, provided there is no interference with interstate commerce. J. W. Kelly & Co. v. Conner (1909) 123 S. W. 622, 122 Tenn. 339.

A statute making it a misdemeanor "to solicit an order for the sale" of intoxicating liquor within local option districts is a violation of the interstate commerce clause. Ex parte Massey (Tex. Civ. App. 1905) 92 S. W. 1086; Ex parte Hackney (1905) 92 S. W. 1092; Carter v. State (1906) 92 S. W. 1093.

The law which prohibits one from pursuing the occupation of selling intoxicating liquors by taking orders therefor in prohibition territory without a license does not interfere with interstate commerce. Craft v. State (Tex. Cr. App. 1912) 147 S. W. 1163.

A state may pass a law prohibiting the traffic in intoxicating liquor as a drink, and subjecting it to seizure, forfeiture, and destruction, when kept for that purpose. Lincoln v. Smith (1855) 27 Vt. (1 Williams) 328.

Act Vt. 1882, respecting intoxicating liquors kept and intended for unlawful purposes, is not an attempt to regulate commerce between the states, and is not repugnant to section 8, art. 1, of the constitution. State v. Four Jugs of Intoxicating Liquor (1886) 58 Vt. 140, 2 Atl. 586.

Section 2, No. 43, Acts Vt. 1882, providing for the confiscation of intoxicating liquors kept for unlawful sale, is within the police powers delegated to the legislature by article 5, pt. 1, Const. Vt. and is not repugnant to the constitution, as an attempt to regulate commerce between the states. State v. Intoxicating Liquors (1886) 58 Vt. 594, 4 Atl. 229.

163. —— Cigarettes.—A legislative restriction on or prohibition of the sale of cigarettes, the use of which is somewhat generally believed to be deleterious, particularly to young people, is within the police power of the legislature provided it does not apply to original packages or make any discrimination against cigarettes imported from other states, and if there is no doubt that the statute is designed for the protection of the public health. Austin v. Tennessee (1900) 21 Sup. Ct. 132, 133, 179 U. S. 343, 45 L. Ed. 224, affirming judgment (1898) 48 S. W. 305, 101 Tenn. 563, 50 L. R. A. 478, 70 Am. St. Rep. 703.

Under the interstate commerce clause, Acts Iowa 26th Gen. Assem. c. 96, prohibiting the sale of cigarettes within the state by all persons save jobbers doing an interstate business, is unconstitutional and void, in so far as it amounts to a regulation of interstate commerce. McGregor v. Cone (1898) 73 N. W. 1041, 104 Iowa, 465, 39 L. R. A. 484, 65 Am. St. Rep. 522.

164. —— Food products.—A Virginia law regulating the sale of meat held unconstitutional as a regulation in restraint of interstate commerce. Brimmer v. Rebman (1891) 11 Sup. Ct. 213, 138 U. S. 78, 35 L. Ed. 862.

Acts & Resolves Mass. 1891, c. 58, entitled "An act to prevent deception in the manufacture and sale of imitation butter," prohibits the manufacture or sale, etc., of any article not produced from unadulterated milk or cream which shall be in imitation of yellow butter produced from unadulterated milk or cream, provided that nothing in the act shall prohibit the manufacture or sale of oleomargarine in a separate and distinct form, and in such

manner as will advise the consumer of its real character, "free from coloration or ingredient that causes it to look like butter." Held, that such statute, in its application to sales of oleomargarine brought into Massachusetts from other states, is not in conflict with the interstate commerce clause. Plumley v. Massachusetts (1894) 15 Sup. Ct. 154, 155 U. S. 461, 39 L. Ed. 223, affirming Commonwealth v. Huntley (1892) 30 N. E. 1127, 156 Mass. 236, 15 L. R. A. 839.

Act Aug. 2, 1886, c. 840, 24 Stat. 209, entitled "An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation and exportation of oleomargarine," was not intended as a regulation of commerce among the states. Id.

Act Pa. May 21, 1885, forbidding the manufacture or sale of any oleaginous substance or compound designed to take the place of butter or cheese made from pure milk or cream, is void as an interference with interstate commerce, as applied to pure oleomargarine brought into the state and sold in original packages. Schollenberger v. Commonwealth of Pennsylvania (1898) 18 Sup. Ct. 757, 171 U. S. 1, 43 L. Ed. 49.

The fact that an article of food, which is wholesome in its pure state, is subject to be adulterated with other substances, so as to be deleterious to health, gives a state legislature no right to forbid the introduction of the pure article into the state. Id.

Oleomargarine has become a proper subject of interstate commerce, and no state has authority to entirely forbid its importation on the ground that it is a newly discovered or invented article, whose wholesomeness as a food product the state is entitled to determine for itself. Id.

The provisions of Pub. St. N. H. 1891, c. 127, §§ 19, 20, which require oleomargarine sold within the state to be colored pink, are, in effect, prohibitory of its sale, and are void as applied to interstate commercial transactions. Collins v. State of New Hampshire (1898) 18 Sup. Ct. 768, 171 U. S. 30, 43 L. Ed. 60.

The commerce clause is not violated by the provisions of the statutes of Ohio relating to the manufacture and sale of oleomargarine within the state by a corporation created by its laws. Capital City Dairy Co. v. Ohio (1902) 22 Sup. Ct. 120, 123, 183 U. S. 238, 46 L. Ed. 171, affirming judgment State v. Capital City Dairy Co. (1900) 57 N. E. 62, 62 Ohio St. 350, 57 L. R. A. 181.

Where a state pure food statute is admittedly constitutional, findings of fact by the officer as to a certain article, as a result of which it comes within the prohibition of the law, and prosecutions upon such findings, do not in themselves constitute a direct interference with interstate commerce. Arbuckle v. Blackburn (1903) 24 Sup. Ct. 148, 151, 191 U. S. 405, 48 L. Ed. 239.

The exclusion of evidence of a demand in some portions of the United States for artificially colored coffee, on the issue whether such coffee was adulterated within the prohibition of Laws N. Y. 1893, c. 661, § 41, against the sale within the state of adulterated food products, will not require a reversal of the judgment of a state court on writ of error from the United States Supreme Court, on the theory that the effect of such evidence would have been to show that coffee artificially colored as a means of fraud and deception was a recognized article of commerce, the right to deal in which was protected by the commerce clause of the federal Constitution. Crossman v. Lurman (1904) 24 Sup. Ct. 234, 192 U. S. 189, 48 L. Ed. 401, affirming judgment (1902) 63 N. E. 1097, 171 N. Y. 329, 98 Am. St. Rep. 599.

The prohibition against the sale within the state of adulterated food products which is made by Laws N. Y. 1893, c. 661, § 41, does not, as applied to food products imported into the United States through the channels of foreign commerce, violate the commerce clause, but is a valid exercise of the police power of the state to legislate for the benefit of its people in the prevention of deception and fraud. Id.

Permitting a sale of cans of a mixture of glucose and refiner's syrup shipped into the state only when the labels prescribed by Laws Wis. 1907, c. 557, are substituted for those affixed in an attempt to comply with the Food and Drugs Act, is an unlawful attempt by the state to burden legitimate federal regulations of interstate commerce, and to destroy rights arising out of the federal statute which have accrued to the government and the shipper. McDermott v. State of Wisconsin (1913) 33 Sup. Ct. 431, 228 U. S. 115, 57 L. Ed. 754, 47 L. R. A. (N. S.) 984, reversing judgment (1910) 126 N. W. 888, 143 Wis. 18, 21 Ann. Cas. 1315.

Congress under the commerce clause had power to amend Food and Drugs Act, § 8, as it did by the Act Aug. 23, 1912 (Comp. St. § 8724), so as to declare misbranded drugs which bear labels containing false statements as to curative powers. Seven Cases v. U. S. (1916) 36 Sup. Ct. 190, 239 U. S. 510, 60 L. Ed. 411, L. R. A. 1916D, 164.

The pure-food law of Ohio (2 Bates' Ann. St. §§ 4200-4 to 4200-8) which makes it an offense to manufacture for sale, sell, or offer to sell, within the state, any article of food or drink which is adulterated, within the meaning of the act, and provides that food shall be deemed to be adulterated, among other things, "if it is colored, coated, polished or powdered, whereby damage or inferiority is concealed, or if, by any means, it is made to appear better or of greater value than it really

is," but that the act shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food, "if each and every article sold or offered for sale be distinctly labeled as a mixture or compound, with the name and per cent. of each ingredient therein, and are not injurious to health," is one which it is within the police powers of the state to pass and enforce, and is not unconstitutional, as an interference with the right of congress to regulate interstate commerce, as applied to articles, mixtures, or compounds brought into Ohio from other states, and sold in the original packages. Arbuckle v. Blackburn (1902) 113 Fed. 616, 51 C. C. A. 122, 65 L. R. A. 864, appeal dismissed (1903) 24 Sup. Ct. 148, 191 U. S. 405, 48 L. Ed. 239.

The state of Missouri providing for the punishment by fine and imprisonment of any person who shall manufacture, "out of any oleaginous substance, or any compounds of the same, other than that produced from unadulterated milk, or cream from the same, any article designed to take the place of butter or cheese produced from pure unadulterated milk, or cream of the same," or who shall sell or offer for sale the same as an article of food, is not in violation of any provision of the constitution of the United States. It is not a regulation of commerce among the several states. In re Brosnahan (C. C. 1883) 18 Fed. 62.

A city ordinance, prohibiting any railroad company from allowing the sale of fruit, vegetables, or perishable freight arriving in the city over its lines from cars on the tracks, from any platform, shed, or building at the depot on the grounds of the company, is, where the merchandise affected largely comes from other states, an interference with interstate commerce, and, if not based on considerations of public health, or intended to prevent the crowding and obstruction of streets and public places, but solely to hinder competition between nonresident shippers and resident licensed dealers in the same line, it is unconstitutional and void. Spellman v. City of New Orleans (C. C. 1891) 45 Fed. 3.

The Ohio statute of March 7, 1890, prohibiting the manufacture or sale of oleomargarine unless it be manufactured and sold in separate and distinct form, and in such manner as will at once advise the consumer of its real character,—free from any coloring matter or other ingredient which would cause it to look like butter,—is invalid as a regulation of interstate commerce, in so far as it would prevent the sale of oleomargarine, colored to look like butter, in the original packages in which it is imported from other states. In re Worthen (C. C. 1891) 58 Fed. 467, following Leisy v. Hardin (1889) 10 Sup. Ct. 681, 135 U. S. 100, 34 L. Ed. 128.

Act Va. March 1, 1892 (Acts 1891-92, p. 840), entitled "An act to prevent the adulteration of butter and cheese, and the sale of the same, and preserve the public health," but in fact prohibiting the sale of oleomargarine, is not a health law, but an interference with interstate commerce. Ex parte Scott (C. C. 1895) 66 Fed. 45.

The oleomargarine law of Minnesota (Laws 1891, c. 11) affects the articles to which it relates only when sold or exposed or kept for sale within the state, and is, therefore, not invalid as interfering with the exclusive power of congress over interstate commerce. Armour Packing Co. v. Snyder (C. C. 1897) 84 Fed. 136.

The provision of the oleomargarine law of Missouri (Sess. Acts 1895, p. 26, § 2) prohibiting the manufacture or sale within the state of any substance "in imitation or semblance of natural butter," or with which any substance has been combined "for the purpose or with the effect of imparting thereto a yellow color, or any shade of yellow, so that such substitute shall resemble yellow or any shade of genuine yellow butter," is a proper regulation for the prevention of fraud and deception, which is within the police power of the state, and its enforcement as to oleomargarine brought from other states, and sold in the original packages, is not a violation of any rights secured by the interstate commerce clause. In re Scheitlin (C. C. 1900) 99 Fed. 272.

Laws Fla. 1911, c. 6236, prohibiting the shipment or sale of green or immature citrus fruits, does not conflict with the commerce clause, nor with the Food and Drugs Act of June 30, 1906. Sligh v. Kirkwood (Fla. 1913) 61 So. 185.

The power of the state to prohibit, within its borders, the sale of adulterated food does not infringe the commerce clause of the federal constitution. People v. Price (1913) 101 N. E. 196, 257 Ill. 587.

An ordinance prohibiting the sale of perishable food commodities at certain places in the city does not violate the commerce clause, where such sales in the original packages as imported are not prohibited. State v. Davidson (1898) 24 So. 324, 50 La. Ann. 1297, 69 Am. St. Rep. 478.

R. S. Me. c. 128, § 3, as amended by Laws 1885, c. 143, prohibiting the sale of any substance made in imitation of yellow butter and made exclusively of cream or milk, is not repugnant to the commerce clause, as the state may exclude from its markets any compound manufactured in another state which has been artificially colored and the sale of which may cheat the general

public into purchasing that which they may not intend to buy. State v. Rogers (1901) 49 A. 564, 95 Me. 94, 85 Am. St. Rep. 395.

The enactment of a statute which forbids the manufacture and sale of oleomargarine which is made in imitation of yellow butter is a valid exercise of the police power which remains in the several states, though such oleomargarine has been imported from another state; and it is not in violation of the constitutional provision giving to Congress the power to regulate commerce among the several states. Commonwealth v. Huntley (1892) 156 Mass. 236, 30 N. E. 1127, 15 L. R. A. 839, affirmed Plumley v. Commonwealth of Massachusetts (1894) 155 U. S. 461, 15 Sup. Ct. 154, 39 L. Ed. 223.

St. Mass. 1891, c. 58, does not prohibit commerce in oleomargarine, but prohibits deception in the sale of it for butter, and, though it prevents such sale in original packages of oleomargarine brought from another state, is a valid police regulation, and not an unconstitutional interference with interstate commerce. Id.

Pure food law (Pub. Acts Mich. 1895, No. 193), as amended, prohibiting the adulteration of articles manufactured for sale as food, does not attempt to interfere with interstate commerce, or to deny the right of nonresidents to sell or ship their goods into the state to retail dealers, but is only intended to prohibit the sale of adulterated foods as between the retailers and consumers. Armour & Co. v. Bird (1909) 123 N. W. 580, 159 Mich. 1, 16 Detroit Leg. N. 798.

The railroad and warehouse commission cannot fix rates for carriage in another state, nor can it fix rates for carriage between two points within this state over a line extending across a neighboring state. State v. Chicago, St. P., M. & O. R. Co. (1889) 40 Minn. 267, 41 N. W. 1047.

Act Mo. March 24, 1881, prohibiting the manufacture and sale of oleomargarine, or other substances imitating butter and cheese, in no way interferes with the right of congress to regulate commerce. State v. Addington (1882) 77 Mo. 110.

The pure food law (Comp. St. Neb. 1909, c. 33), requiring packages containing articles of food to be branded with a statement of the net contents by weight when offered for sale in the retail trade, imposes no obligation upon the manufacturer in another state, the requirement operating alone upon the dealer selling the product at retail as a part of the body of the property of the state and exclusively under state control. Ex parte Agnew (Neb. 1911) 131 N. W. 817; Ex parte King, Id. 820.

Pub. St. N. H. c. 127, §§ 19, 20, punishing as an offense a sale in the state of oleomargarine not of a pink color, are not in contravention of the federal constitution, as applied to a sale by the agent of a nonresident who manufactures it in another state, and ships it into the state. State v. Collins (1894) 42 A. 51, 67 N. H. 540.

Laws N. H. 1895, c. 115, § 1, prohibiting the sale of any article, product, or compound made wholly or partly of any fat, oil, or oleaginous substance, or compound thereof, not produced from unadulterated milk or cream, unless it shall be of some other color than that of yellow butter, is not in conflict with the constitution, and an agent selling oleomargarine of the color of yellow butter, in original packages, shipped to him from his principal in another state, was amenable thereto. State v. Collins (1900) 45 A. 1080, 70 N. H. 218.

Act N. J. March 22, 1886 (P. L. 1886, p. 107), making penal the sale of oleomargarine colored with annotto, is valid as applied to a sale made in New Jersey by the agent of the manufacturer in Indiana, though the package sold had been sent by the manufacturer from Indiana for sale, being within the police powers of the state. State v. Newton (1888) 50 N. J. Law (21 Vroom) 534, 14 Atl. 604.

In view of section 51, held, that Agricultural Law N. Y. §§ 30, 32, defining skimmed milk as adulterated milk, and prohibiting the sale thereof except as such, even though applicable to milk sold in interstate commerce, is not invalid as an attempted regulation thereof. People v. Abramson (1913) 101 N. E. 849, 208 N. Y. 138, affirming judgment (1911) 131 N. Y. Supp. 798, 147 App. Div. 491.

The object of Laws N. Y. 1893, c. 338, §§ 50–53, prohibiting and imposing a penalty for the manufacture, marking, or sale as cider vinegar of any adulterated vinegar, or any product which is not cider vinegar, is to prevent cheating and deception, and for the preservation of health; hence the act is not in conflict with the interstate commerce clause, though such adulterated or simulated product is sold to citizens of other states. People v. Niagara Fruit Co. (1902) 77 N. Y. Supp. 805, 75 App. Div. 11, affirmed (1903) 66 N. E. 1114, 173 N. Y. 629.

Laws N. Y. 1902, c. 30, §§ 70e, 70f, requiring carcasses of calves shipped in the state to be tagged, is not violative of the interstate commerce provisions of the Constitution. People v. Bishopp (1904) 89 N. Y. Supp. 709, 44 Misc. Rep. 12, affirmed (1905) 94 N. Y. Supp. 773, 106 App. Div. 266.

Laws N. D. 1911, c. 236, specifying that lard not sold in bulk shall be put up in pails holding one, three, or five pounds, or some multiple thereof, held not violative of the commerce clause, as applied to a particular pail of lard sold, though such pail was shipped into the state in a crate containing 20 similar pails, where the original package was broken prior to the sale. State v. Armour & Co. (N. D. 1913) 145 N. W. 1033.

Act Pa. May 21, 1885, § 3, prohibiting the sale within the state of oleomargarine as an article of food, applies to retail sales made by a local agent, a resident of the state, for a principal residing without the state; such prohibition not being a regulation of interstate commerce. Commonwealth v. Schollenberger (1893) 156 Pa. St. 201, 27 Atl. 30, 36 Am. St. Rep. 32.

Act Pa. May 5, 1899 (P. L. 241), regulating the manufacture and sale of oleomargarine, butterine, etc., is not in conflict with or in violation of the interstate commerce clause. Commonwealth v. Vandyke (1900) 13 Pa. Super. Ct. 484.

Act Pa. May 5, 1891, regulating the sale of oleomargarine, does not conflict with the commerce clause. Commonwealth v. McCann (1900) 14 Pa. Super. Ct. 221.

Act Pa. May 29, 1901 (P. L. 327), relating to the sale of oleomargarine, is constitutional. Commonwealth v. Caulfield (1905) 61 A. 243, 211 Pa. 644.

Laws S. D. 1905, c. 114, § 11, providing that "it shall be unlawful for any person to sell, offer or expose for sale any article of prepared foods unless the true name of the manufacturer and the location of the factory where such article of food is prepared is plainly printed or stenciled on the package, box, can, carton or other container," constitutes an unreasonable interference with interstate and foreign commerce. Jewett Bros. & Jewett v. Smail (S. D. 1905) 105 N. W. 738.

The provisions of Laws Vt. 1906, No. 182, § 1, making it punishable to keep with intent to ship out of the state for food purposes the flesh of a calf which was less than four weeks old, or weighed less than 50 pounds, dressed weight, when killed, are not within the police power of the state, since, whatever may be the extent of that power respecting domestic order, morals, health, and safety, it cannot be exercised over a subject confided exclusively to the commercial power of Congress, and are void as conflicting with the commerce clause. State v. Peet (1908) 68 A. 661, 80 Vt. 449.

Laws Vt. 1906, No. 182, § 1, provides that a person who sells or offers to sell, or keeps with intent to sell, for food purposes, or ships out of the state, or keeps with intent to ship out of the state, for food purposes, the flesh of a calf which was less than four weeks old, or weighed less than 50 pounds, dressed weight, when killed, shall be imprisoned, etc. Held, that that part of the statute relating to the keeping with intent to sell for food purposes is to be construed as having only an intraterritorial effect, under the rule that statutes in this respect which use general words are to be so construed, unless they clearly indicate a different intent, and hence such part of the statute is not invalid as in conflict with the interstate commerce clause. Id.

Laws Wash. 1899, c. 43, § 30, prohibiting the sale or keeping for sale of renovated butter unless marked as renovated butter, is not a regulation of interstate commerce, but is a valid police regulation. Hathaway v. McDonald (1902) 68 P. 376, 27 Wash. 659, 91 Am. St. Rep. 889.

Acts W. Va. 1891, c. 8 (Code 1899, p. 1115), relating to the sale of oleomargarine and adulterated or artificial butter, without the same being then and there colored pink, is in contravention of the Constitution and laws of the United States. State v. Bruce (1904) 47 S. E. 146, 55 W. Va. 384.

165. —— Traffic in original packages. —A state has no right to restrain the sale in original packages of liquors brought from another state or from a foreign country. In re Beine (C. C. 1890) 42 Fed. 545; Tuchman v. Welch, Id. 548; M. Schandler Bottling Co. v. Welch, Id. 561; U. S. v. Fiscus (D. C. 1890) Id. 395; State v. Intoxicating Liquors (1890) 82 Me. 558, 19 Atl. 913.

A state has no right to restrain the sale in original packages of liquors brought from another state or from a foreign country. In re Beine (C. C. 1890) 42 Fed. 545; Tuchman v. Welch, Id. 548; M. Schandler Bottling Co. v. Same, Id. 561; U. S. v. Fiscus (D. C. 1890) Id. 395.

Laws Iowa 1888, c. 71, which prohibits the sale of intoxicating liquors within the state, except by a registered pharmacist holding a permit to sell for certain specified purposes, and repeals Code Iowa 1873, § 1524, which allowed importers of foreign liquors to sell the same in original packages, is void, in so far as it prohibits the sale of liquors by a foreign or nonresident importer in original packages, being in conflict with the interstate commerce clause. Leisy v. Hardin (1890) 135 U. S. 100, 10 Sup. Ct. 681, 34 L. Ed. 128; State v. Pfleajor (1890) 81 Iowa, 759, 46 N. W. 1063.

An original package of intoxicating liquors was transported by rail from another state, and upon being unloaded on the depot platform, and before delivery to the consignee, was seized under a search warrant. The condemnation proceedings were begun before the enactment by congress of the "Wilson Bill." Held, that the shipment was a lawful act of interstate commerce, and the liquors were not liable to seizure under the law of Iowa relating to intoxicating liquors. Leisy v. Hardin (1890) 135 U. S. 100, 10 Sup. Ct. 681, 34 L. Ed. 128; State v. Corrick (1891) 82 Iowa, 451, 48 N. W. 808.

The provision that one state may not interfere with the transportation of goods in interstate commerce is not violated by a state law regulating the

sale of intoxicating liquors in original packages after transportation in interstate commerce. Vance v. W. A. Vandercook Co. (1898) 18 Sup. Ct. 674, 677, 170 U. S. 438, 42 L. Ed. 1100.

Congress could lawfully enact the provisions of the food and drugs act (Act June 30, 1906, § 10 [Comp. St. § 8726]), under which adulterated articles of food, the subjects of interstate commerce, may be confiscated by a proceeding in rem in the federal courts after they have reached their destination, and there remain in the hands of the consignee in the original unbroken packages. Hipolite Egg Co. v. U. S. (1911) 31 Sup. Ct. 364, 220 U. S. 45, 55 L. Ed. 364.

The use of the words "original packages" in Laws Kan. 1907, c. 250, making it unlawful to sell, offer for sale, or deliver black powder for use in any coal mines in the state except in original sealed packages containing 12½ pounds of powder, does not necessitate the conclusion that the statute prohibits the importation of black powder from other states in other than 12½-pound packages. Williams v. Walsh (1912) 32 Sup. Ct. 137, 139, 222 U. S. 415, 56 L. Ed. 253, affirming order In re Williams (1908) 98 Pac. 777, 79 Kan. 212.

The requirement that the name and percentage of the diluents shall be stated in the labels, under Code Supp. Iowa 1907, §§ 5077a6–5077a24, relating to the sale in the state of concentrated commercial feeding stuffs, does not, as applied to sales by importers in original packages, amount to an unconstitutional regulation of interstate commerce. Standard Stock Food Co. v. Wright (1912) 32 Sup. Ct. 784, 786, 225 U. S. 540, 56 L. Ed. 1197.

One who sells oleomargarine in the original package, as imported into the state from another state, is not subject to arrest under a law of the state in which the sale occurs entirely forbidding the sale of oleomargarine, as such statute is an unconstitutional interference with interstate commerce. In re Gooch (C. C. 1890) 44 Fed. 276, 10 L. R. A. 830, following Leisy v. Hardin (1889) 135 U. S. 100, 10 Sup. Ct. 681, 34 L. Ed. 128.

Code Md. art. 27, § 90, providing that no person shall have oleomargarine in his possession with intent to sell the same, or shall offer the same for sale, is, as to original packages brought from another state, an interference with interstate commerce. In re McAllister (C. C. 1892) 51 Fed. 282.

Acts N. C. 1891, c. 331, providing that persons selling seed in packages unmarked by the date when such seed were grown, except farmers selling seed in open bulk to other farmers or gardeners, shall be guilty of a misdemeanor, is unconstitutional and void in so far as it applies to the selling of seed in original packages imported from another state. In re Sanders (C. C. 1892) 52 Fed. 802, 18 L. R. A. 549.

In the absence of proof that alum in baking powder is deleterious to health, Gen. Laws Minn. 1889, c. 7, § 1, as amended by Gen. Laws Minn. 1891, c. 119, declaring it a misdemeanor to sell baking powder containing alum, unless the package have a label stating that it contains alum, violates the interstate commerce clause in so far as it relates to original packages imported from another state. In re Ware (C. C. 1892) 53 Fed. 783.

The Ohio statute of March 7, 1890, prohibiting the manufacture or sale of oleomargarine unless it be manufactured and sold in separate and distinct form, and in such manner as will at once advise the consumer of its real character,—free from any coloring matter or other ingredient which would cause it to look like butter,—is invalid as a regulation of interstate commerce, in so far as it would prevent the sale of oleomargarine, colored to look like butter, in the original packages in which it is imported from other states. In re Worthen (C. C. 1893) 58 Fed. 467.

A state cannot forbid the importation of intoxicating liquors, either under the Wilson act of 1890, or independently thereof; and one who merely brings barrels of liquor into a port of South Carolina, and unloads them on the dock, cannot be punished under the state "dispensary" law. Ex parte Edgerton (C. C. 1894) 59 Fed. 115.

Though a state is bound to admit intoxicating liquor imported under the laws of the United States in the original cask or package, yet when it has been sold by the importer in the original cask or package, or broken up for retail sale, it becomes subject to the state laws, and may be taxed or the sale of it prohibited. State v. Allmond (Del. 1863) 2 Houst. 612.

Where liquor purchased at a point outside of the state is put up in bottles securely sealed, and packed in cases, boxes, and barrels, and so transported to a point within the state, the prohibition of the sale of such liquor after it has arrived at its destination, whether of the unopened bottles taken from the boxes and barrels in which they are packed, or of the original packages, themselves, is within the police power of the state, and is not in violation of the interstate commerce clause. Collins v. Hills (1889) 77 Iowa, 181, 41 N. W. 571, 3 L. R. A. 110; Leisy v. Hardin (1889) 78 Iowa, 286, 43 N. W. 188; State v. Bowman (1889) 78 Iowa, 519, 43 N. W. 302.

An injunction forbidding the sale of intoxicating liquors at a certain place in the state is violated by a sale at that place of liquors in the original packages in which they were purchas-

ed outside of, and transported into, the state. Grusendorf v. Howat (1889) 77 Iowa, 187, 41 N. W. 573, following Collins v. Hills (1889) 77 Iowa, 181, 41 N. W. 571, 3 L. R. A. 110.

Laws Kan. 1907, c. 250, forbidding the sale or delivery for use at any coal mine of black powder except in original packages, is not unconstitutional as conflicting with the commerce clause as to a package imported from the state of Missouri. Ex parte Williams (Kan. 1908) 98 P. 777.

R. S. Me. c. 27, prohibiting the illegal sale of intoxicating liquors and imposing penalties therefor, does not apply to sales by an importer in the original packages in which the liquors were imported from a foreign country. State v. Intoxicating Liquors (1890) 82 Me. 558. 19 Atl. 913.

While a locked and sealed box freight car containing, besides other goods, a quantity of intoxicating liquors, in possession of a railroad company as a common carrier, was in transit from Massachusetts, through New Hampshire, to Maine, and, before its arrival in Maine, proceedings were commenced, under the laws of that state, for seizure of the liquors, and, under a warrant issued therein, the car, after its arrival, was broken open, and the liquors seized. Held that, the transportation of the liquors being commerce between the states, the process for their seizure while they were in the possession of the carrier, and before the package was broken or delivered to the consignee, was void. State v. Intoxicating Liquors (1891) 83 Me. 158, 21 Atl. 840.

St. Mass. 1911, c. 397, providing that a barrel of sweet potatoes shall weigh 150 pounds, does not affect interstate commerce, since it does not prohibit selling in the original package or the selling by weight, but merely requires that when the sale is by barrel it shall weigh 150 pounds. Commonwealth v. Gussman (1913) 102 N. E. 342, 215 Mass. 349.

Acts Md. 1847, c. 193, prohibiting the sale of spirituous liquors on the Sabbath day, was intended to embrace only the licensed tavern keepers and the licensed retailers of spirituous liquors and cordials therein designated. The act has no application to the importer, who is authorized to sell spirituous liquors in the form in which they were imported, without obtaining a license from the state of Maryland by force of the constitution of the United States, as expounded in the case of Brown v. State (1827) 25 U. S. (12 Wheat.) 419, 6 L. Ed. 678. Bode v. State (Md. 1848) 7 Gill. 326.

Any state law attempting to prevent the sale of oleomargarine imported from another state by one having a United States license, and intended for sale in the original packages bearing the United States revenue stamp, is void as an interference with interstate commerce. Waterbury v. Egan (N. Y. 1898) 3 Misc. Rep. 355, 23 N. Y. Supp. 115.

Act Aug. 2, 1886, having declared oleomargarine to be a salable article, and having regulated its sale, Act Pa. May 21, 1885, in so far as it prohibits the sale of oleomargarine imported into that state in original packages, is in conflict with the interstate commerce clause, and is therefore void to that extent. Commonwealth v. Paul (1890) 9 Pa. Co. Ct. R. 196.

Act Pa. March 13, 1887, § 17, punishing the sale of liquors to minors and to persons of known intemperate habits, even as applied to sales in original packages, is not an interference with interstate commerce, within the decision in Leisy v. Hardin (1890) 135 U. S. 100, 10 Sup. Ct. 681, 34 L. Ed. 128. Commonwealth v. Silverman (1890) 138 Pa. St. 642, 21 Atl. 13.

The agent of a brewing company located in another state who sells said company's beer in the original packages to minors and men of known intemperate habits can be indicted under Act Pa. May 13, 1887. Commonwealth v. Zelt (1891) 138 Pa. St. 615, 21 Atl. 7, 11 L. R. A. 602; Same v. Silverman (1891) 138 Pa. St. 642, 21 Atl. 13.

Act Pa. May 21, 1885, § 3 (P. L. 22), is void, as affecting interstate commerce, so far as it attempts to impose a penalty for the sale in Pennsylvania, by an agent of a Rhode Island corporation, of oleomargarine manufactured in Rhode Island, and sold in the original package in which it was shipped from Rhode Island, said package being marked, branded, and stamped, and said agent having paid the tax as wholesale dealer in oleomargarine, as required by the United States laws. Commonwealth v. Schollenberger (1892) 12 Pa. Co. Ct. R. 442; Id. (1893) 12 Pa. Co. Ct. R. 535, 2 Pa. Dist. R. 244.

Gen. St. R. I. c. 79, prohibiting the sale and keeping for sale of intoxicating liquors, is invalid, as applied to importers of original packages. State v. Amery (1878) 12 R. I. 64.

A sale by a retail merchant of a sealed package of tobacco purchased from a wholesaler and manufacturer without the state, and containing cigarette papers in violation of law, did not involve any question of interstate commerce. State v. Sbragia (1909) 119 N. W. 290, 138 Wis. 579.

Laws Wis. 1907, c. 557, provides that no person shall sell, offer for sale, or have possession with intent to sell any of the syrups specified therein, or any molasses or glucose, unless it be true to the name under which it is sold, and as defined in the standards of purity promulgated by the Secretary of Agriculture, and unless the original receptacle be distinctly branded or labeled with the true name of its contents, and that no person shall offer for sale, or have possession with intent to sell, any syrup or molasses mixed with glucose, unless the original receptacle be dis-

tinctly branded or labeled so as to plainly show the true name of the ingredients thereof. It then prescribes that a mixture containing not over 50 per cent. of glucose shall be labeled and sold as "Maple Sugar and Glucose," etc., and that not containing over 75 per cent. as "Glucose Flavored with Maple Syrup," etc. Held, as against objection that such statute violated rights secured by the federal Constitution to sell an imported article in cans, unbroken original packages, that such statute did not prohibit the sale in original packages of the articles embraced in the regulation, and is only intended to be operative on the articles mentioned when they have passed out of the channels of interstate commerce and come to rest in the state and are mingled with the rest of property in the state. McDermott v. State (Wis. 1910) 126 N. W. 888.

(D) Transportation

166. Property—In general.—Where a state statute, unconstitutional because repugnant to the constitutional authority of congress to regulate commerce, seeks to exact conditions for allowing the passage or carriage of persons or freight through it into another state, the nature of the exaction is not changed by adding to it similar conditions for allowing transportation wholly within the state. In re State Freight Tax (1872) 82 U. S. (15 Wall.) 232, 21 L. Ed. 146.

Where a railroad extends through several states, and is incorporated in each, it is, as far as concerns the regulation of its business within the state, a domestic corporation; and the establishment of a board of railroad commissioners, with power to regulate traffic, fix charges, and prevent discriminations (Act March 11, 1884) but prohibited from interfering with charges for transportation of persons or property from one state to another (Act March 15, 1884), is not invalid as being a regulation of interstate commerce. Stone v. Farmers' Loan & Trust Co. (1886) 116 U. S. 307, 6 Sup. Ct. 334, 388, 1191, 29 L. Ed. 636; Same v. Illinois Cent. R. Co. (1886) 116 U. S. 347, 6 Sup. Ct. 348, 29 L. Ed. 636; Same v. New Orleans & N. E. R. Co. (1886) 116 U. S. 352, 6 Sup. Ct. 349, 391, 29 L. Ed. 636.

Any state statute which in its direct result regulates the interstate transportation of a single individual carrier violates the commerce clause. Louisville & N. R. Co. v. Eubank (1902) 22 Sup. Ct. 277, 282, 184 U. S. 27, 46 L. Ed. 416.

Congress could properly enact, as a regulation of commerce, so much of the Hepburn Act June 29, 1906 (Comp. St. § 8563[6]), as forbids a carrier from transporting articles or commodities in interstate commerce when they have been manufactured, mined, or produced by the carrier, or under its authority, and, at the time of transportation, such carrier has not, in good faith, before the act of transportation, dissociated itself therefrom, or when the carrier owns the article or commodity to be transported, in whole or in part, or when the carrier, at the time of transportation, has an interest therein, direct or indirect, in a legal or equitable sense, although, by existing state legislation, such carrier may have a lawful right of ownership of or association with the articles or commodities upon which these provisions operate. U. S. v. Delaware & H. Co. (1909) 29 Sup. Ct. 527, 213 U. S. 366, 53 L. Ed. 836, reversing judgment and decree (C. C. 1908) 164 Fed. 215.

The effect on interstate commerce of requiring under state authority that an interstate carrier move local freight between private spurs in the same city is so indirect that it cannot be deemed to deprive the carrier of rights secured by the commerce clause. Louisville & N. R. Co. v. Higdon (1914) 34 Sup. Ct. 948, 234 U. S. 592, 58 L. Ed. 1484, affirming judgment (1912) 148 S. W. 26, 149 Ky. 321.

Act Miss. March 11, 1884, providing for the regulation of freight on railroads in the state, is a regulation of commerce between the states. Farmers' Loan & Trust Co. v. Stone (C. C. 1884) 20 Fed. 270, decree reversed Stone v. Farmers' Loan & Trust Co. (1886) 6 Sup. Ct. 334, 116 U. S. 307, 29 L. Ed. 636.

Acts Ark. 1907, p. 453, to regulate freight transportation by railroad companies doing business in the state of Arkansas, is unconstitutional, in that its provisions were clearly intended to apply to interstate shipments as well as intrastate shipments, and it is therefore an interference with interstate commerce. St. Louis, I. M. & S. Ry. Co. v. Hampton (C. C. 1908) 162 Fed. 693, decree reversed Hampton v. St. Louis, I. M. & S. A. Co. (1913) 33 Sup. Ct. 263, 227 U. S. 456, 57 L. Ed. 596.

Michigan Railroad Commission Act (Pub. Acts 1909, No. 300, as amended by Pub. Acts 1911, No. 139) held to require receipt and transportation of freight locally consigned between points in the same city or town, whether from another railroad or not, and such as is offered at any junction or transfer point for delivery on sidings, without reference to where the shipment originated. Grand Trunk Ry. Co. of Canada v. Michigan Railroad Commission (D. C. 1912) 198 Fed. 1009.

A Railroad Commission's order to enforce Pub. Acts Mich. 1911, No. 139, relating to intercity transportation of car load freight, held not invalid as a matter of law as an interference with interstate commerce. Id.

A state law regulating the shipment of freight to points in other states is in violation of the commerce clause. Carton v. Illinois Cent. R. Co. (1882)

59 Iowa, 148, 13 N. W. 67, 44 Am. Rep. 672.

Laws Minn. 1913, c. 433, prohibiting shipment of cream over any railroad in the state for a greater distance than 65 miles, held to apply to shipments arising without and terminating within the state, and void as an unreasonable interference with interstate commerce. State v. Chicago Great Western R. Co. (Minn. 1914) 147 N. W. 109.

Gen. St. Minn. 1913, § 4498, requiring a tag in each car showing the quantity of grain, held not applicable to shipments originating in another state. Farmers' Elevator Co. of Lansford, N. D., v. Great Northern Ry. Co. (Minn. 1915) 154 N. W. 954.

Laws 1908, c. 122, providing that a foreign railroad corporation engaged in business in a state shall forfeit its right to engage in intrastate commerce within the state on removing any action against it in the state court to the federal court, is not invalid under the commerce clause, on the ground that the prohibition of intrastate commerce will affect injuriously the interstate commerce of the corporation, as the whole earnings of the corporation from all sources must be taken as the basis for measuring the reasonableness of the interstate rates, and deprivation of profits from domestic business will reduce the gross earnings, since the statute does not deal with the regulation of rates, but with the right to engage in domestic business. State v. Louisville & N. R. Co. (1910) 51 South. 918, 97 Miss. 35, Ann. Cas. 1912C, 1150.

The fact that a railroad company carries interstate freight would not deprive the state courts of jurisdiction to compel it to switch cars for a shipper on an industrial siding. Dunlap Lumber Co. v. Nashville, C. & St. L. Ry. Co. (Tenn. 1914) 165 S. W. 224.

167. —— Bills of lading.—Kirby's Dig. Ark. § 530, providing that bills of lading may be transferred in writing thereon and the transferee shall be deemed the owner of the goods specified therein and no goods shall be delivered except on surrender of bills of lading, and section 531, making a violation of the preceding section a criminal offense and authorizing a person aggrieved by a violation to recover the damages sustained, are not, when applied to interstate traffic, in conflict with the commerce clause, and are valid, in the absence of congressional legislation on the subject; the object of the statute being to enforce the existing duty of the carrier to deliver property specified in a bill of lading to the legal holder thereof. Arkansas Southern Ry. Co. v. German Nat. Bank (1906) 92 S. W. 522, 77 Ark. 482, 113 Am. St. Rep. 160.

Laws Kan. 1893, c. 100, making specifications of weights in bills of lading issued by railroads conclusive is not unconstitutional, as assuming to regulate commerce between the states. Missouri, K. & T. Ry. Co. v. Simonson (1902) 68 P. 653, 64 Kan. 802, 57 L. R. A. 765, 91 Am. St. Rep. 248.

Massachusetts Uniform Bills of Lading Act providing what effect domestic indorsements shall have on foreign bills of lading, is not an interference with interstate commerce. Roland M. Baker Co. v. Brown (1913) 100 N. E. 1025, 214 Mass. 196.

Code Miss. 1906, § 4851, providing that every bill of lading acknowledging the receipt of property for transportation shall be conclusive evidence in the hands of a bona fide holder, as against the carrier issuing it, that the property had been received, is not invalid as a regulation of interstate commerce. Yazoo & M. V. R. Co. v. G. W. Bent & Co. (Miss. 1908) 47 So. 805.

168. —— Refusal to receive freight.—Where a car of lumber tendered to a railroad company for transportation was found to have been properly loaded, the carrier was liable for the penalty imposed by Code N. C. 1883, § 1964, as amended by Laws 1903, c. 444, for refusal to receive the same for transportation, notwithstanding the car was to be shipped out of the state. Currie v. Raleigh & A. Air Line R. Co. (1904) 47 S. E. 654, 135 N. C. 535.

Revisal N. C. 1905, § 2631, providing a penalty for refusal to accept freight for shipment, is not invalid as applying to interstate traffic, the gist of the offense being the carrier's refusal to receive the goods for shipment, which is an act done wholly within the state, and no part of the act of transportation. Reid & Beam v. Southern Ry. Co. (1908) 63 S. E. 112, 149 N. C. 423.

Revisal N. C. 1905, § 2631, imposing a penalty for a carrier's refusal to receive freight for shipment, as applied to an intrastate shipment, and in absence of specific action by Congress or the Interstate Commerce Commission, is not invalid as a regulation of interstate commerce, though it may indirectly affect interstate commerce. Garrison v. Southern Ry. Co. (1909) 64 S. E. 578, 150 N. C. 575.

That Revisal N. C. 1905, § 2631, may in certain cases affect interstate shipments, does not invalidate it, but merely gives an additional excuse to the carrier for nonperformance. Id.

Revisal N. C. 1905, § 2631, imposing a penalty upon railroad companies for refusing to accept freight for shipment, is not unconstitutional when applied to an interstate shipment; not being an interference with or burden upon interstate commerce. Reid v. Southern Ry. Co. (1910) 69 S. E. 618, 153 N. C. 490.

169. —— Delays in general.—The rule of the railroad commissioners making a carrier liable to a shipper in the sum of $1 for each day a loaded car is detained has no application to interstate commerce, and cannot legally be so applied as to directly and materially

burden it. State v. Atlantic Coast Line R. Co. (1908) 47 So. 969, 56 Fla. 617.

The state, in the exercise of its police power, may enforce reasonable regulations to prevent unnecessary delays in the transportation of grain within its borders; whether the shipment be regarded as intrastate or interstate in character. Oneida Farmers' Shipping Ass'n v. St. Joseph & G. I. Ry. Co. (1913) 133 P. 883, 90 Kan. 264.

A shipper may sue under Gen. St. Kan. 1909, § 7205, to recover a penalty for delays in the transportation of grain in car load lots between two points within the state, though, unknown to the shipper, there existed between the carrier and the owner of the elevator to which the grain was consigned an arrangement giving the latter milling in transit privileges on grain, when reshipped to points outside the state. Id.

Gen. St. Kan. 1909, § 7205, giving a shipper a right of action against a carrier for a penalty for delays in the transportation of grain, held a proper exercise of police power, and not to place an unreasonable burden upon interstate commerce. Id.

Code N. C. § 1967, imposing a penalty on railroad companies for the detention of freight more than five days after delivery for shipment without the consent of the shipper, as regards freight to be shipped to another state, does not conflict with the interstate commerce clause, since its enforcement would expedite, and not obstruct, interstate traffic. Bagg v. Wilmington, C. & A. R. Co. (1891) 109 N. C. 279, 14 S. E. 79, 14 L. R. A. 596, distinguishing McGwigan v. Wilmington & W. R. Co. (1886) 95 N. C. 432.

Where any part of the transportation of freight from one point in the state to another point therein is outside of the state, the shipment is interstate traffic, and is not within Revisal N. C. 1905, § 2632, imposing a penalty on a carrier for its failure to transport freight within a reasonable time. Davis v. Southern Ry. Co. (1908) 60 S. E. 722, 147 N. C. 68.

Act S. C. (Laws 1904, p. 671), entitled "An act to prevent delays in the transportation of freight by railroads in this state," providing, by section 1, that railroads doing business in the state shall transport freight, received for "transportation within the state," without greater delay than specified, and declaring a penalty for noncompliance, does not apply to interstate commerce, and so does not cover a case of transportation partly out of the state; the delay occurring wholly out of the state (citing Words and Phrases, vol. 8, pp. 7503, 7504). Hunter v. Charleston & W. C. Ry. Co. (1908) 62 S. E. 13, 81 S. C. 169.

The statute subjecting railroads to penalties for delay in shipment of freight within the state is not a burden on interstate commerce, though railroads are liable for those delays in interstate shipments which occur wholly within the state, as the statute instead of creating a burden, aids such commerce by seeking to compel performance by the carrier of its duty to deliver freight with reasonable diligence. Traynham v. Charleston & W. C. Ry. Co. (1911) 71 S. E. 813.

170. —— Furnishing cars.—When applied to interstate shipments, the provision of Rev. St. Tex. arts. 4497–4500, as amended by Acts 1899, p. 67, which penalizes the failure of a railway company to furnish cars to a shipper within a certain number of days after the latter's requisition in writing in the sum of $25 per day for each car not so furnished, and admits of no excuse except such as arises from "strikes or other public calamity," is an unconstitutional regulation of interstate commerce. Houston & T. C. R. Co. v. Mayes (1906) 26 Sup. Ct. 491, 493, 201 U. S. 321, 50 L. Ed. 772, reversing judgment (1904) 83 S. W. 53, 36 Tex. Civ. App. 606.

Interstate commerce is unconstitutionally regulated by Kirby's Dig. Ark. §§ 6803, 6804, making it the carrier's duty to supply cars to shippers on demand, under which a carrier will either be compelled to desist from the interchange of cars with connecting lines for the purpose of moving interstate commerce because of a refusal of the state courts to permit it to avail itself, as causing and excusing its default, of the rules and regulations adopted for the interchange of cars by the American Railway Association, which govern 90 per cent. of the railways in the United States, or will be obliged to conduct such business with the certainty of being subjected to the heavy penalties provided by the statute. St. Louis Southwestern R. Co. v. Arkansas (1910) 30 Sup. Ct. 476, 480, 217 U. S. 136, 54 L. Ed. 698, 29 L. R. A. (N. S.) 802, reversing judgment (1907) 107 S. W. 1180, 85 Ark. 311, 122 Am. St. Rep. 33.

An interstate railway carrier which has refused to furnish cars for intrastate transportation, as required by Act Ark. April 19, 1907 (Laws 1907, pp. 454, 463) §§ 1, 17, cannot test the constitutionality of such statute, as affecting interstate commerce, in a suit in equity to enjoin the bringing of actions at law to recover the penalties prescribed for violations of its provisions, where, as construed by the highest state court, the provisions of the statute which affect interstate commerce are separable from the remaining provisions, and it permits any reasonable excuse for a failure to furnish cars on demand to be interposed in the actions at law. Hampton v. St. Louis, I. M. & S. Ry. Co. (1913) 33 Sup. Ct. 263, 227 U. S. 456, 57 L. Ed. 596.

An order of the state railroad commission requiring a carrier, on demand

of a carrier or shipper, to switch empty cars from any connection with an interstate railroad to a designated side track within its own terminals to be loaded with goods for interstate commerce and to move the same back to the competitor's line, is invalid as a regulation of interstate commerce. Illinois Cent. R. Co. v. De Fuentes (1915) 35 Sup. Ct. 275, 236 U. S. 157, 59 L. Ed. 517.

Requiring an interstate railroad to furnish cars for shippers within a reasonable time after demand required by Hurd's Rev. St. Ill. 1913, c. 114, § 84, held not to directly burden interstate commerce so as to render the statute invalid. Illinois Cent. R. Co. v. Mulberry Hill Coal Co. (1915) 35 Sup. Ct. 760, 238 U. S. 275, 59 L. Ed. 1306, affirming judgment Mulberry Hill Coal Co. v. Illinois Cent. R. Co. (1912) 100 N. E. 151, 257 Ill. 80.

Act Ala. Feb. 28, 1907 (Acts 1907, p. 225), requiring railroad companies to supply shippers with freight cars, held a burden upon interstate commerce, in violation of the commerce clause. Central of Georgia Ry. Co. v. Groesbeck & Armstrong (Ala. 1912) 57 So. 380.

A rule of the Railroad Commission requiring a carrier to furnish cars for intrastate shipments promptly upon request is not void as imposing a burden upon interstate commerce, even if it indirectly or incidentally affects to a limited degree interstate business, where it does not directly burden it. Southern Ry. Co. v. Melton (1909) 65 S. E. 665, 133 Ga. 277.

A state statute requiring railroads to furnish cars within a reasonable time for the transportation of property offered is not violative of the commerce clause. Mulberry Hill Coal Co. v. Illinois Cent. R. Co. (1912) 100 N. E. 151, 257 Ill. 80.

Laws Kan. 1905, c. 345, imposing a penalty of $1 per day on each car for delay in furnishing freight cars ordered, and to permit no excuse therefor except "strikes, unavoidable accidents, and other public calamities," is not invalid, but a reasonable police regulation imposing no considerable burden on interstate commerce. Patterson v. Missouri Pac. Ry. Co. (Kan. 1908) 94 P. 138.

Sess. Laws Okl. 1905, c. 10, art. 2, § 2, imposing on a railroad the penalty of $1 a day for failure to furnish cars within four days after request, but excusing a company in case of certain unavoidable casualties, is not an infringement of the interstate commerce clause. Chicago, R. I. & P. Ry. Co. v. Beatty (Okl. 1911) 118 P. 367.

The Legislature may prescribe a penalty for the failure of railroads to furnish cars for the shipment of freight, although the shipment in contemplation is to be an interstate shipment. Houston & T. C. R. Co. v. Everett (Tex. Civ. App. 1905) 86 S. W. 17, judgment reversed (Sup. 1905) 89 S. W. 761.

R. S. Tex. 1895, art. 4497, requiring railway companies to supply cars, without preference, at the point indicated in an application therefor, within a reasonable time, not to exceed six days, from the receipt thereof, applies to interstate shipments. Texas & P. Ry. Co. v. Smith (Tex. Civ. App. 1905) 118 S. W. 1118.

R. S. Tex. 1895, arts. 4497, 4499, imposing a penalty on carriers for delay in furnishing cars for shipments, are invalid under the federal Constitution, as an interference with interstate commerce. Texas & P. Ry. Co. v. Allen (Tex. Civ. App. 1906) 98 S. W. 450, judgment reversed Allen v. Texas & P. Ry. Co. (Tex. 1907) 101 S. W. 792.

A rule promulgated by the State Corporation Commission required railway companies to furnish cars of the required kind upon four days' application, and provided for a forfeiture for each day's default. By another rule the commission reserved the right at any time or under any circumstances to suspend the operation of the rules whenever justice might demand. Held, that the rule was unreasonable and void as applied to shipments to points outside the state. Southern Ry. Co. v. Commonwealth (Va. 1908) 60 S. E. 70.

171. —— Route for shipment.—Rule 44 of the Railroad Commission of the state of Arkansas, which provides that, "in case of failure on the part of the shipper to give routing instructions, it shall be the duty of the railroad receiving the shipment to forward it via such route as will make the lowest rate," as applied to interstate shipments, is unconstitutional as an interference with interstate commerce. St. Louis & S. F. R. Co. v. Allen (C. C. 1910) 181 Fed. 710.

22 St. at Large S. C. p. 120, providing that a common carrier shall pay a penalty of $500 for shipping freight by a route other than that designated by the shipper, is unconstitutional when applied to goods shipped from a foreign state, as in violation of the interstate commerce clause. Lowe v. Seaboard Air Line Ry. Co. (1902) 41 S. E. 297, 63 S. C. 248, 90 Am. St. Rep. 678.

172. —— Delivery of cars or freight.—An order of a state corporation commission compelling a railway company engaged in interstate commerce to deliver cars containing interstate shipments beyond its right of way to a private siding is an unlawful interference with interstate commerce, whether viewed as an assertion by the commission of its general powers over carriers, or of its power to make the order in a particular case in favor of a given person or corporation. McNeill v. Southern Ry. Co. (1906) 26 Sup. Ct. 722, 725, 202 U. S. 543, 50 L. Ed. 1142,

modifying decree Southern R. Co. v. Greensboro Ice & Coal Co. (C. C. 1904) 134 Fed. 82.

The rule of a state railroad commission under which a per diem penalty may be exacted from a carrier for delay in delivering cars to the consignee at the termination of interstate transportation amounts to an unreasonable burden upon interstate commerce, where the requirement of such rule as to the delivery of the cars "within twenty-four hours after arrival, computing from 7 A. M. the day following the arrival," is absolute, and makes no allowance whatever for any justifiable and unavoidable cause for failure to deliver. Yazoo & M. V. R. Co. v. Greenwood Grocery Co. (1913) 33 Sup. Ct. 213, 227 U. S. 1, 57 L. Ed. 389, reversing judgment (1910) 51 So. 450, 96 Miss. 403.

Where car loads of coal are shipped from one state into another, an order of a state corporation commission directing the railroad company to place the cars on a certain track for unloading, as requested by the consignee, is void as an interference with interstate commerce. Southern Ry. Co. v. Greensboro Ice & Coal Co. (C. C. 1904) 134 Fed. 82, modified McNeill v. Southern R. Co. (1906) 26 Sup. Ct. 722, 202 U. S. 543, 50 L. Ed. 1142.

The State Railroad Commission may fix reciprocal demurrage rules, making the carrier liable for delays in delivery of interstate shipments after arrival at the point of consignment, since this imposes no additional duty on the carrier, but merely compels the fulfillment of a duty that is an incident to the contract of carriage, and is in aid of commerce, rather than an obstruction to it, and operates after the transportation is completed. Yazoo & M. V. R. Co. v. Greenwood Grocery Co. (Miss. 1910) 51 So. 450.

Revisal N. C. 1905, § 2633, requiring a carrier to inform a consignee of the freight charges and to deliver the freight on tender or payment of the charges, subject to a penalty for failure to do so, is not an interference with interstate commerce in case of an interstate shipment. Harrill Bros. v. Southern Ry. (1907) 57 S. E. 383, 144 N. C. 532.

A state regulation intended to facilitate the receipt and delivery of freight by enlarging the carrier's facilities, is not an interference with interstate commerce. North Carolina Corp. Commission v. Southern Ry. Co. (1909) 66 S. E. 427, 151 N. C. 447.

The state, in the exercise of its police power, may confer on an administrative agency power to make reasonable regulations concerning the place, manner, and time of delivery of merchandise moving in interstate commerce. Id.

Acts 17th Leg. Called Sess. Tex. p. 35, imposing a penalty on a railroad company for refusing to deliver freight upon the payment or tender of the charges shown in the bill of lading, is not unconstitutional as a regulation of interstate commerce, though applied to freight shipped from a point without the state. Gulf, C. & S. F. Ry. Co. v. Dwyer (1890) 75 Tex. 572, 12 S. W. 1001; Ft. Worth & D. Ry. Co. v. Lillard (Tex. Civ. App. 1890) 16 S. W. 654.

Acts 17th Leg. Called Sess. Tex. p. 35, imposing a penalty on a carrier for refusing to deliver freight on tender of the charges specified in the bill of lading, is not an attempted regulation of the interstate commerce law, but a valid police regulation, which the state has a right to pass. Gulf, C. & S. F. Ry. Co. v. Nelson (1893) 4 Tex. Civ. App. 345, 23 S. W. 732.

Though Rev. Civ. St. Tex. art. 4258a, requiring railroad companies to deliver freight on tender by the owner of the freight charges, as shown by the bill of lading, applies to shipments from outside the state, it is not repugnant to, or superseded by, the interstate commerce act. Gulf, C. & S. F. Ry. Co. v. McCown (Tex. Civ. App. 1894) 25 S. W. 435.

173. —— **Connecting carriers.**—Laws Or. 1907, p. 82, § 27, requiring all railroads to switch for a reasonable compensation, and to deliver without discrimination or unreasonable delay any freight or cars, loaded or empty, destined to any point on their tracks or connecting lines, includes interstate as well as intrastate commerce, and makes exchange of all kinds of freight mandatory on connecting railroads and is invalid as interfering with interstate commerce, and an order of the State Railroad Commission to enforce the provision is invalid. Southern Pac. Co. v. Campbell (C. C. 1911) 189 Fed. 696.

R. S. Mo. 1889, § 944, making a common carrier receiving goods for shipment liable for his own or a connecting carrier's negligence, if construed to operate outside the state, would be an attempt to regulate interstate commerce. McCann v. Eddy (Mo. 1894) 27 S. W. 541.

Civ. Code S. C. 1902, §§ 1710, 2176, and Laws S. C. 1903, Act No. 1 (24 St. at Large, p. 1), requiring a carrier to trace freight shipped over it or a connecting carrier, and making the carrier liable for shipments over it and connecting lines unless it produces a receipt from a connecting carrier, and making a bill of lading prima facie evidence of liability for loss or damage to goods in transit, are not regulations of interstate commerce and unconstitutional. Skipper v. Seaboard Air Line Ry. (1906) 55 S. E. 454, 75 S. C. 276, 7 L. R. A. (N. S.) 388.

Code S. C. 1902, § 2176, makes the initial carrier liable for loss of goods shipped over its line and connecting

lines unless a receipt in writing is produced from the connecting carrier. Held, that the act is not unconstitutional, as seeking to impose any burden on interstate commerce. Jonesville Mfg. Co. v. Southern Ry. (1907) 58 S. E. 422, 77 S. C. 480.

Act S. C. May 13, 1903 (24 St. at Large, p. 1), making each carrier the agent of its connecting carrier from whom it receives freight, and liable for freight lost, damaged, or destroyed by such connecting carrier, is invalid, as violation of the interstate commerce clause. Winslow Bros. & Co. v. Atlantic Coast Line R. Co. (1908) 60 S. E. 709, 79 S. C. 344.

Civ. Code S. C. 1912, § 2574, making connecting carriers agents of each other, and liable upon any contract of shipment made by any such carrier, held constitutional as to shipments entirely within the state. Glenn v. Atlantic Coast Line R. Co. (1914) 80 S. E. 898, 96 S. C. 357.

Act Tex. March 13, 1905 (Laws 1905, c. 25), providing that when freight has been transported by two or more railroad corporations operating within the state or having an agent therein, or partly by one or more of them, suit for damages may be brought against any one or all of the carriers in any court of competent jurisdiction in any county in which either does business or has an agent, is not invalid as to an interstate carrier as imposing burdens on interstate commerce. Texarkana & Ft. S. Ry. Co. v. Shivel & Stewart (Tex. Civ. App. 1908) 114 S. W. 196.

174. —— Express.—That the delivery wagons of express companies operating in New York and using the public streets were engaged in interstate commerce did not make them immune from the operation of general ordinances adopted under Greater New York Charter (Laws 1901, c. 466) § 50, granting to the board of aldermen power to regulate the use of the streets for animals, vehicles, etc., and to make all such regulations with reference to the running of stages, trucks, and cars as might be necessary for the convenient use and accommodation of the streets, etc. Barrett v. City of New York (C. C. 1910) 183 Fed. 793.

Code of Ordinances of New York, c. 7, art. 3, § 322, requiring a bond of express drivers for each licensed vehicle, conditioned for the safe and prompt delivery of all packages, parcels, and other articles, was a legitimate exercise of the city's police power and applicable to wagons of express companies engaged in interstate commerce. Barrett v. City of New York (C. C. 1911) 189 Fed. 268.

As it is the general duty of a carrier by express to deliver parcels received by it to the consignee at his residence or place of business, Burns' Ann. St. Ind. 1901, § 3312a, requiring express companies to deliver express matter "to persons to whom the same is directed" within the limits of cities having a specified population, merely requires the carrier, under compulsion of a penalty, to observe its general duty, and is not invalid as an attempt to regulate interstate commerce. United States Express Co. v. State (1905) 73 N. E. 101, 164 Ind. 196.

Acts Ind. 1901, c. 62 (Burns' Ann. St. 1901, § 3312a), imposing a penalty on an express company refusing to deliver express matter, is not merely in aid of the common law requiring carriers of goods to make personal delivery and if the act were so construed as applied to interstate shipments, it would be a regulation of interstate commerce and in conflict with the power of regulation reposed in the Interstate Commerce Commission. State v. Adams Express Co. (Ind. 1908) 85 N. E. 966, denying rehearing (1908) 85 N. E. 337.

The New York Sunday laws, so far as they attempt to interfere with the right of an express company to transact its interstate business on Sunday, are void. Dinsmore v. Police Board of New York (N. Y. 1882) 12 Abb. N. C. 436; Adams Exp. Co. v. Same (N. Y. 1883) 65 How. Prac. 72.

Although, under the New York Sunday laws, the interstate business of an express company may not be interfered with, it is otherwise as to business in connection with merchandise as to which New York is the initial or terminal point. The delivery of nonperishable articles may be prohibited on Sunday. Id.

Interstate commerce held not interfered with in violation of the commerce clause by requiring domestic railroad company to grant same facilities and accommodations to an express company afforded another express company pursuant to R. S. Tex. 1911, art. 6616. Trinity & B. V. Ry. Co. v. Empire Express Co. (Tex. Civ. App. 1914) 173 S. W. 217.

175. —— Limitation of and exemption from liability.—A state statute declaring that a common carrier accepting goods for transportation to a point beyond its own terminus assumes an obligation for their safe carriage to that point, unless otherwise provided by a written contract signed by the shipper (Code Va. 1887, § 1295), merely establishes a rule of evidence, and does not restrict the right of the carrier to limit his obligation by contract, and hence is not, as applied to interstate commerce, a regulation thereof so as to be void. Richmond & A. R. Co. v. R. A. Patterson Tobacco Co. (1898) 18 Sup. Ct. 335, 169 U. S. 311, 42 L. Ed. 759, affirming (1896) 24 S. E. 261, 92 Va. 670.

R. S. Mo. 1889, § 944, providing that, where property was received by a common carrier for interstate carriage, or

where a railroad issued receipts in this state, it should be liable for any loss or injury caused by its negligence or that of any other common carrier, construed by the supreme court of the state as not preventing a carrier engaged in interstate commerce from receiving shipments upon through bills of lading from limiting its liability, but as providing the form of contract for interstate carriage, was not unconstitutional as imposing a burden on interstate commerce. Missouri, K. & T. Ry. Co. v. McCann (1899) 19 Sup. Ct. 755, 758, 174 U. S. 580, 43 L. Ed. 1093.

The imposition upon the initial or any connecting carrier by Code Ga. 1895, §§ 2317, 2318, as a condition of availing itself of a valid contract of exemption from liability beyond its own line, of the duty of tracing the freight, and informing the shipper, in writing, when, where, and how, and by which carrier the freight was lost, damaged, or destroyed, and of giving the names of the parties and their official positions, if any, by whom the truth of the facts set out in the information can be established, is, when applied to an interstate shipment, a violation of the commerce clause. Central of Georgia Ry. Co. v. Murphey (1905) 25 Sup. Ct. 218, 219, 196 U. S. 194, 49 L. Ed. 444, 2 Ann. Cas. 514, reversing judgment (1903) 43 S. E. 265, 116 Ga. 863, 60 L. R. A. 817.

A state may regulate and prohibit limitations in bills of lading issued in the state by a railroad company, though the freight is to be transported to other states. Kansas City S. Ry. Co. v. Board of Railroad Com'rs (C. C. 1901) 106 Fed. 353, affirmed (1903) 23 Sup. Ct. 214, 187 U. S. 617, 47 L. Ed. 333.

Code Iowa, § 1308, prohibiting corporations engaged in transporting goods or passengers from limiting their liability as common carriers by contract, is not, as to shipments within the state, a regulation of interstate commerce, and hence it is valid. Hart v. Chicago & N. W. Ry. Co. (1886) 69 Iowa, 485, 29 N. W. 597.

The provision of Const. Ky. § 196, that no common carrier shall be permitted to contract for relief from its common-law liability is not a regulation of interstate commerce. Ohio & M. Ry. Co. v. Tabor (1895) 98 Ky. 503, 32 S. W. 168; Id. (1896) 36 S. W. 18.

Const. Ky. § 196, providing that no common carrier shall be permitted to contract for relief from its common-law liability, applies to a contract for shipment into another state, where the contract is made, and is to be partly performed, in Kentucky. Ohio & M. Ry. Co. v. Tabor (1896) 98 Ky. 503, 36 S. W. 18.

A stipulation as to carriage of freight within the state, limiting the liability of a carrier to its own line, has no application to interstate shipments. Dodge v. Chicago, St. P., M. & O. Ry. Co. (Minn. 1910) 126 N. W. 627.

The designation of a typewriter, dictionary, wearing apparel, trunk, and personal effects as emigrant movables was not a violation of the Interstate Commerce Act and that act does not prevent the state from enforcing its regulations against limitation of liability by carriers. O'Connor v. Great Northern Ry. Co. (Minn. 1912) 136 N. W. 743.

The validity of a limited liability contract of a carrier, in so far as it relates to interstate commerce, is governed by the federal law, and not by the law of the state. O'Connor v. Great Northern Ry. Co. (1913) 139 N. W. 618, 120 Minn. 359.

R. S. Mo. 1889, § 944, providing, as construed by the supreme court, that a carrier contracting to transport property beyond the terminus of its line cannot exempt itself from liability for the negligence of the carrier completing the transportation, is not repugnant to the commerce clause. McCann v. Eddy (1895) 133 Mo. 59, 33 S. W. 71.

R. S. Mo. 1889, § 944, providing that, when a railroad company issues bills of lading in Missouri, it shall be liable for any loss, damage, or injury to the property caused by its negligence or the negligence of any other carrier, when construed as depriving a carrier of the right to contract for a limitation of its liability beyond its own line, is not in conflict with the commerce clause. Western Sash & Door Co. v. Chicago, R. I. & P. R. Co. (1903) 76 S. W. 998, 177 Mo. 641.

Interstate Commerce Act Feb. 4, 1887, § 20, as amended by Act June 29, 1906, § 7 (Comp. St. § 8592 [11]), provides that any common carrier, etc., on receiving property for interstate transportation, shall issue a receipt or bill of lading therefor, and be liable to the holder for any loss, damage, or injury to the property caused by the common carrier, etc., and no contract, receipt, etc., shall exempt the carrier from the liability hereby imposed. Held, that Congress has constitutional power to regulate the right of public or common carriers of interstate commerce to contract, and section 20 is constitutional. Greenwald v. Weir (1908) 111 N. Y. Supp. 235, 59 Misc. Rep. 431.

A limitation of liability in a receipt for an express package is invalid, as to an interstate shipment. Silverman v. Weir (1909) 114 N. Y. Supp. 6.

The Pennsylvania rule that a common carrier cannot contract for exemption from or limitation of liability arising from his negligence or that of his servant is applicable to commerce between Pennsylvania and other states, and the contrary rule permitting a lim-

itation of liability applied by the federal courts is not binding upon the courts of this state, in the absence of congressional action upon the subject. Windolph v. Adams Express Co. (1911) 48 Pa. Super. Ct. 304.

Civ. Code S. C. 1902, § 1710, in so far as it imposes on a common carrier the duty to trace shipments as a condition of exemption from liability for loss, is not unconstitutional, as a violation of the interstate commerce clause. Winslow Bros. & Co. v. Atlantic Coast Line R. Co. (1908) 60 S. E. 709, 79 S. C. 344.

R. S. Tex. art. 278, prohibiting domestic carriers on land within the state, or on waters entirely within the body of the state, from limiting their common-law liability by contract, does not affect interstate carriage or traffic. Missouri Pac. Ry. Co. v. Harris (1882) 1 White & W. Civ. Cas. Ct. App. § 1260.

Act Tex. March 4, 1891, § 1 et seq., providing that any stipulation in a contract shall be void which limits the period in which to sue thereon to less than two years, or which requires notice of claim for damages to be given within less than 90 days after the damage, is applicable to interstate shipments, and is not void as being a regulation and interference therewith. Gulf, C. & S. F. Ry. Co. v. Eddins (1894) 7 Tex. Civ. App. 116, 26 S. W. 161.

Act Tex. March 4, 1891, prohibiting contracts limiting the time within which an action thereon may be brought to a shorter period than two years, applies to actions growing out of contracts for interstate shipments. Galveston, H. & S. A. Ry. Co. v. Johnson (Tex. Civ. App. 1895) 29 S. W. 428.

Act Tex. March 4, 1891, rendering it unlawful to make any contract limiting the period in which to sue to a shorter one than two years, and providing that no stipulation requiring notice of damage to be given in less than ninety days shall be valid, does not violate the commerce clause, so far as it is applicable to contracts of carriers for the transportation of live stock, though it may indirectly affect contracts for interstate shipments. Armstrong v. Galveston, H. & S. A. Ry. Co. (Tex. Civ. App. 1895) 29 S. W. 1117.

Act Tex. March 4, 1891, forbidding the making of any contract limiting the time in which to sue to less than two years, is binding in the case of a contract for interstate shipment, it not being a regulation of interstate commerce. Reeves v. Texas & P. Ry. Co. (1895) 11 Tex. Civ. App. 514, 32 S. W. 920; Galveston, H. & S. A. Ry. Co. v. Herring (Tex. Civ. App. 1896) 36 S W. 129.

A state statute prohibiting common carriers from limiting their common-law liability by contract is not in itself a regulation of interstate commerce, when applied to an interstate shipment, which will enable the carrier to so limit its liability on goods shipped to a point without the state. Pittman v. Pacific Exp. Co. (1900) 59 S. W. 949, 24 Tex. Civ. App. 595.

The statute prohibiting common carriers from limiting their liability by stipulations in a bill of lading is valid, as applied to contracts for interstate transportation of property. Galveston, H. & S. A. Ry. Co. v. Fales (1903) 77 S. W. 234, 33 Tex. Civ. App. 457.

The Texas statute prohibiting railway companies from limiting the common-law liability by provisions in the bill of lading does not prohibit carriers of interstate commerce from doing so. Gulf, C. & S. F. Ry. Co. v. Brackett-Fielder Mill & Grain Co. (Tex. Civ. App. 1914) 162 S. W. 1191.

Code Va. § 1295, providing that a common carrier accepting anything for transportation directed to a destination beyond its line shall be deemed to assume obligation for its safe carriage to such destination, unless, at the time of such acceptance, it be released from such liability by contract in writing, signed by the owner, is not a regulation of commerce. Richmond & A. R. Co. v. R. A. Patterson Tobacco Co. (1896) 92 Va. 670, 24 S. E. 261.

176. —— **Adjustment and payment of claims.**—Penalizing the failure to adjust and pay within a specified time claims for loss or damage, as is done by Act S. C. Feb. 23, 1903 (24 St. at Large, p. 81) § 2, does not unlawfully interfere with interstate commerce, even as applied to shipments from without the state, where the statute is construed by the state courts as affecting only the liability of carriers doing business in the state, for property lost or damaged while in their possession. Atlantic Coast Line R. Co. v. Mazursky (1910) 30 Sup. Ct. 378, 216 U. S. 122, 54 L. Ed. 411, affirming judgments Charles v. Atlantic Coast Line R. Co. (1907) 58 S. E. 927; McTeer v. Southern Express Co. (1907) 58 S. E. 930; Mazursky v. Atlantic Coast Line R. Co. (1907) 78 S. C. 331, 58 S. E. 931; Von Lehe v. Atlantic Coast Line R. Co. (1907) 78 S. C. 167, 168, 59 S. E. 1135.

Gen. St. Minn. 1913, § 4316, penalizing failure of a carrier to make settlement of claims within the time therein stated, does not apply to interstate transactions. Farmers' Elevator Co. of Lansford, N. D., v. Great Northern Ry. Co. (1915) 154 N. W. 954, 131 Miss. 152.

Laws Miss. 1908, c. 196, prescribing a penalty of $25 to be recovered by a shipper from a railroad that fails to settle, within a prescribed time, his claim for damages to freight, is not void as a regulation of, or interference with, interstate commerce. Mobile & O. R. Co. v. Greenwald & Champenois (Miss. 1913) 61 So. 426.

Revisal N. C. 1905, § 2634, subjecting

a carrier to a penalty for failure to adjust and pay a claim for loss of or damage to property within the time prescribed, does not impose an unlawful burden on interstate commerce. Raleigh Iron Works v. Southern Ry. Co. (1908) 62 S. E. 595, 148 N. C. 469.

Act S. C. 1903 (24 St. at Large, p. 81), providing a penalty of $50 to be paid the consignee by a carrier doing business in the state, for failure to adjust and pay within a certain time a claim for loss of freight while in its possession, is not unconstitutionl as an interference with interstate commerce, even in case of an interstate shipment. Charles v. Atlantic Coast Line R. Co. (1907) 58 S. E. 927, 78 S. C. 36; Mazursky v. Same (S. C. 1907) 58 S. E. 931; Von Lehe v. Same (1907) 59 S. E. 1135, 78 S. C. 168.

Act S. C. Feb. 23, 1903 (24 St. at Large, p. 1), imposing a penalty on a carrier failing to adjust and pay within a specified time a claim for loss of freight while in its possession, is not unconstitutional, as an interference with interstate commerce. De Lorme v. Atlantic Coast Line R. Co. (1908) 60 S. E. 440, 79 S. C. 370.

Act S. C. Feb. 23, 1903 (24 St. at Large, p. 81), imposing a penalty of $50 to be paid the consignee by a carrier doing business within the state for failure to adjust and pay a claim for loss of freight while in its possession within a specified time, is not unconstitutional as an attempt to regulate interstate commerce. Winslow Bros. & Co. v. Atlantic Coast Line R. Co. (1908) 60 S. E. 709, 79 S. C. 344.

Act S. C. 1903 (24 St. at Large, p. 81), providing a penalty to be paid the consignee by a carrier for failure to adjust and pay within a certain time a claim for loss of freight while in its possession, does not violate the interstate commerce clause, in case of a shipment from out of the state into it, part of which was delivered by the final carrier to the consignee at destination, so that, in the absence of explanation, it is presumed the loss occurred while the goods were in the possession of such carrier, from whom recovery of the penalty is sought. Colleton Mercantile & Mfg. Co. v. Atlantic Coast Line R. Co. (S. C. 1908) 62 S. E. 6.

Civ. Code S. C. 1912, § 2573, imposing a penalty for the failure of carriers to adjust claims for overcharges of freight, or injuries to property, promptly, held not to unlawfully regulate or unreasonably burden interstate commerce. Varnville Furniture Co. v. Charleston & W. C. Ry. Co. (S. C. 1913) 79 S. E. 700.

The state statute providing a penalty for failure of a railroad company to adjust claims for loss of or damage to property is invalid so far as concerns interstate shipments. Trakas v. Southern Ry. Co. (S. C. 1915) 86 S. E. 492.

R. S. Tex. 1911, art. 5714, relating to contracts requiring notice of claim within a specified time as a condition precedent to the right to sue, held inapplicable to a contract for the transportation of interstate commerce. San Antonio & A. P. Ry. Co. v. Bracht (Tex. Civ. App. 1915) 172 S. W. 1116.

177. —— **Charges.**—A statute of a state which requires each railroad company annually to fix its rates for the transportation of passengers and freight, and to cause a printed copy of the rates to be put up at all stations, and imposing a penalty for failure so to do, or for charging a higher rate than is posted, is a mere police regulation, and does not interfere with interstate commerce. Chicago & N. W. R. Co. v. Fuller (1873) 17 Wall. 560, 567, 21 L. Ed. 710.

Act Iowa establishing rates of charges for the transportation of freight and passengers on the different railroads of the state is not unconstitutional as amounting to a regulation of commerce among the states. Chicago, B. & Q. R. Co. v. Iowa (1876) 94 U. S. 155, 24 L. Ed. 94.

A state law regulating charges, that in express terms prohibits the commissioners appointed thereunder from interfering with the charges of the company for the transportation of persons or property through the state, from one state to another, and makes no mention of person or property taken up without the state and delivered within it, or of such as may be taken up within and carried without the state, will not be held unconstitutional, at least until the commissioners have attempted to make some regulation which will interfere with interstate commerce. Stone v. Farmers' Loan & Trust Co. (1886) 6 Sup. Ct. 334, 347, 116 U. S. 307, 29 L. Ed. 636.

A state has power to limit the amount of charges by railroad companies for the transportation of persons and property within its own jurisdiction, unless restrained by some contract in the charter, or unless what is done amounts to a regulation of foreign or interstate commerce. Id.

A state statute which forbids a railroad company to charge a greater sum for transporting passengers or freight for any distance than it charges for a longer distance is unconstitutional as applied to contracts for transportation from points within the state to points in another state, even as to that part which lies within the state. Wabash, St. L. & P. Ry. Co. v. Illinois (1886) 7 Sup. Ct. 4, 6, 118 U. S. 557, 30 L. Ed. 244.

Any interference with interstate commerce by the enforcement of state laws prohibiting a greater charge for shorter than for longer hauls is too remote and indirect to be regarded as an unconstitutional interference with interstate commerce. Louisville & N. R. Co. v. Kentucky (1902) 22 Sup. Ct. 95, 183 U.

S. 503, 46 L. Ed. 298, affirming judgment (1899) 51 S. W. 164, 1012, 106 Ky. 633, 21 Ky. Law Rep. 232, 90 Am. St. Rep. 236.

An unconstitutional regulation of interstate commerce is made by Const. Ky. § 218, prohibiting common carriers from charging more for a shorter than for a longer haul, so far as its provisions extend to a long haul from a place outside of to one within the state, and a shorter haul between points on the same line and in the same direction, both of which are within the state, as the carrier is thus compelled to adjust, regulate, or fix his interstate rates with some reference to his rates within the state. Louisville & N. R. Co. v. Eubank (1902) 22 Sup. Ct. 277, 279, 184 U. S. 27, 46 L. Ed. 416.

The state legislature may authorize its railroad commission to reduce as unreasonable a joint through rate agreed upon by two or more railroads, and apportion the same among the several railroads interested. Minneapolis & St. L. R. Co. v. Minnesota (1902) 22 Sup. Ct. 900, 902, 186 U. S. 257, 46 L. Ed. 1151.

The state of Mississippi may, so far as the federal Constitution is concerned, establish a flat rate of 3½ cents per 100 pounds on grain and grain products carried from Vicksburg to Meridian over the road of the Alabama & Vicksburg Railway Company, where that company under the guise of a "rebilling rate," gives any Vicksburg merchant receiving a car load of grain or grain products over the Vicksburg, Shreveport & Pacific Railroad a rate of 3½ cents per 100 pounds on any grain he may ship to Meridian. Alabama & V. Ry. Co. v. Railroad Commission of Mississippi (1906) 27 Sup. Ct. 163, 164, 203 U. S. 496, 51 L. Ed. 289, affirming judgment (1905) 38 South. 356, 86 Miss. 667.

An unconstitutional attempt to regulate interstate commerce is made by the Ohio railroad commission establishing a freight rate on "lake-cargo coal" billed from Ohio coal fields to Ohio ports on Lake Erie, applicable only to such coal as is placed on vessels at those ports for carriage to points outside the state. Railroad Commission of Ohio v. Worthington (1912) 32 Sup. Ct. 653, 225 U. S. 101, 56 L. Ed. 1004, affirming decree (1911) 187 Fed. 965, 110 C. C. A. 85.

The federal courts will not disturb, on the theory of any interference with interstate commerce, an order of a state railroad commission suspending an interstate railway company's supplemental tariff, in order to give the commission an opportunity to investigate, where the conclusion that such order does so interfere must rest upon the balancing of conflicting affidavits. Grand Trunk Ry. Co. of Canada v. Michigan R. R. Commission (1913) 34 Sup. Ct. 152, 231 U. S. 457, 58 L. Ed. 310.

Where a railroad company bound itself by a contract with a city not to discriminate in rates against the city or its inhabitants, a resolution of the city council, declaring rates charged by the company between the city and points in other states to be discriminative, and requiring their reduction under penalty of a forfeiture of the contract, is not a law attempting to regulate interstate commerce, but an attempt merely to enforce a lawful contract. Iron Mountain R. Co. of Memphis v. City of Memphis (1899) 96 Fed. 113, 37 C. C. A. 410.

Act Iowa March 23, 1874, providing for a tariff of maximum charges for the transportation of freight and passengers by railroads, in so far as it relates to through shipments over interstate lines, is unconstitutional. Kaeiser v. Illinois Cent. R. Co. (C. C. 1883) 18 Fed. 151.

It is as impossible for a state to make a regulation of interstate commerce by the exercise of its power over the corporations of its creation as by any other power, if it permits them to engage in interstate commerce. Possibly, it may bind the corporations permitted to engage in interstate commerce to schedules of rates agreed upon by them; but this is binding only by force of the contract of the carrier to be so bound, and not as a regulation of the rates under any municipal power of the states over the commerce. A regulation of interstate commerce, as such, is as invalid in a charter as elsewhere in a state statute. Louisville & N. R. Co. v. Railroad Commission of Tennessee (C. C. 1884) 19 Fed. 679.

An act of the legislature which attempts to control the rates for fares and freights of persons and commodities passing over these roads from one state into another, on the theory of regulating the charges for the distances traveled within the state, is invalid as a regulation of interstate commerce, and the railroad commissioners will be enjoined from executing it as to these roads. Id.

A state law creating a commission to supervise railroad rates is null and void so far as it relates to a railroad which extends into two or more states. Farmers' Loan & Trust Co. v. Stone (C. C. 1884) 20 Fed. 270, 275, reversed (1886) 6 Sup. Ct. 334, 388, 1191, 116 U. S. 307, 29 L. Ed. 636.

A state act to fix and regulate transportation charges on railroads not entirely within the state boundaries held valid. Stone v. Illinois Cent. R. Co. (1886) 6 Sup. Ct. 348, 116 U. S. 347, 29 L. Ed. 636, reversing decree Illinois Cent. R. Co. v. Stone (C. C. 1884) 20 Fed. 468.

State statutes fixing maximum fares and rates on shipments on railroads

between intrastate points are not unconstitutional, as regulations of interstate commerce, because between certain cities in the state there are lines of road lying wholly within the state, and other lines which run in part through another state, and by long established custom and from the necessities of competition the latter are compelled to make the same rates as the former, where the statutes have not been construed by the courts of the state to directly apply to the interstate lines. St. Louis & S. F. R. Co. v. Hadley (C. C. 1909) 168 Fed. 317, decree modified Knott v. Chicago, B. & C. R. Co. (1913) 33 Sup. Ct. 975, 230 U. S. 474, 57 L. Ed. 1571, decree reversed Same v. St. Louis, K. C. & C. R. Co. (1913) 33 Sup. Ct. 983, 230 U. S. 512, 57 L. Ed. 1596, and appeal dismissed Same v. St. Louis, Southwestern R. Co. (1913) 33 Sup. Ct. 985, 230 U. S. 509, 57 L. Ed. 1595.

The railroad commission act of Oregon of February 18, 1907 (Laws 1907, p. 67), by its terms is unmistakably limited to the regulation of carriers and rates between points within the state, and an order made by the state railroad commission under its authority is presumptively intended to be subject to the same limitation. The fact that such an order, fixing rates, and limited by its terms to intrastate shipments may incidentally induce a change in the movement of interstate commerce, or a change in interstate rates, does not render it, nor the statute, unconstitutional as a regulation of interstate commerce. Oregon R. & Nav. Co. v. Campbell (C. C. 1909) 173 Fed. 957, decree affirmed (1913) 33 Sup. Ct. 1026, 230 U. S. 525, 57 L. Ed. 1604.

The act of the Legislature of Minnesota of April 18, 1907 (Gen. Laws 1907, c. 232 [Rev. Laws Supp. 1909, §§ 2007-11 to 2007-17]), reducing commodity rates within the state about 7.37 per cent., and the orders of its Railroad and Warehouse Commission of September 6, 1906, reducing general merchandise rates within the state from 20 to 25 per cent., and of May 3, 1907, reducing rates within the state to distributing points, by their natural and necessary effect substantially burden and directly regulate interstate commerce, create undue and unjust discriminations between localities in Minnesota and those in adjoining states, violate the commerce clause, and are void. Shepard v. Northern Pac. Ry. Co. (C. C. 1911) 184 Fed. 765, decree modified Simpson v. Shepard (1913) 33 Sup. Ct. 729, 230 U. S. 352, 57 L. Ed. 1511.

That the enforcement of intrastate freight rates established by a state commission between points within the state will make it necessary for a carrier for the protection of its business to voluntarily reduce certain of its interstate rates does not render the order of the commission invalid as affecting interstate commerce. Northern Pac. Ry. Co. v. Lee (D. C. 1912) 199 Fed. 621.

Code Ala. § 1159, providing that carriers exacting exorbitant charges for freight are guilty of extortion, and liable for double the damages sustained, does not apply to shipments over lines without the state. Mobile & O. R. Co. v. Dismukes (1891) 94 Ala. 131, 10 South. 289, 17 L. R. A. 113.

A state law prohibiting the collection by railroads of more freight than the bill of lading specifies, and affixing penalties for withholding goods for such charges, is a mere police regulation, for the purpose of preventing delay in the delivery of freight, and in no way interferes with interstate commerce. Little Rock & F. S. Ry. Co. v. Hanniford (1887) 49 Ark. 291, 5 S. W. 294.

A state has power to regulate the amount of charges that may be exacted by a railroad for transportation of property within the state, if the rate fixed will afford reasonable compensation, and such regulation does not amount to a regulation of foreign or interstate commerce. Chapman & Dewey Land Co. v. Jonesboro, L. C. & E. R. Co. (Ark. 1911) 133 S. W. 1119.

Order of the State Public Utilities Commission, fixing rates on coal between points in state, rendered on complaint confined to charges on coal shipped from points in state, does not interfere with interstate commerce. Chicago, M. & St. P. Ry. Co. v. State Public Utilities Commission of Illinois (1915) 108 N. E. 729, 268 Ill. 49.

R. S. Ind. 1894, § 5333 (Rev. St. 1881, § 4038), prohibiting railroad companies "doing business in the state of Indiana" from increasing or advancing their rates of freight above, or charging for transportation more than, what they charged at the time the freight was tendered to them, is not invalid as a restriction upon interstate commerce. Chicago, St. L. & P. R. Co. v. Wolcott (1895) 141 Ind. 267, 39 N. E. 451.

Acts Iowa, 1862, c. 169, requiring railroad companies to fix and post rates on passengers and freight, and providing a penalty for overcharging, is not in violation of the commerce clause. Fuller v. Chicago & N. W. R. Co. (1871) 31 Iowa, 187.

Laws Iowa, 1874, c. 68, fixing the rates of freight shipped "over any line of railroads within this state," cannot be applied to contracts for transportation from the state to points in other states, since in that aspect it is in contravention of the constitution, vesting in congress power to regulate interstate commerce. Carton v. Illinois Cent. R. Co. (1882) 59 Iowa, 148, 13 N. W. 67, 44 Am. Rep. 672.

An order of state railroad commissioners requiring a railroad to regulate its interstate tariff rate so as to con-

form to the state local distance rate is an attempt to regulate interstate commerce, and void. State v. Chicago & N. W. Ry. Co. (1886) 70 Iowa, 162, 30 N. W. 398.

The fact that a railroad, over which the commissioners appointed under the Iowa "joint-rate act" are about to fix "joint rates" with another line, traverses a portion of another state in its route between two cities in Iowa, is no ground for declaring the act unconstitutional as an attempt to regulate interstate commerce, since it will be presumed that the commissioners will not fix a rate between those cities if it be unlawful to do so. Burlington, C. R. & N. Ry. Co. v. Dey (1891) 82 Iowa, 312, 48 N. W. 98, 31 Am. St. Rep. 477, 12 L. R. A. 436.

Comp. Laws Kan. 1879, c. 23, § 57, known as the maximum freight rate law of 1868, had no application to fix or limit the charges for transportation of freight from another state into this state; because, if it was intended to apply to such interstate commerce, it was in violation of the commerce clause, and therefore void. Hardy v. Atchison, T. & S. F. R. Co. (1884) 5 P. 6, 32 Kan. 698.

Laws Kan. 1897, c. 167, requiring railroad companies to carry the shipper of a car load or loads of goods to and from the point designated in the bill of lading without extra charge, but not attempting to fix the shipping rate per car, is not an attempt to regulate interstate commerce. Atchison, T. & S. F. Ry. Co. v. Campbell (1899) 56 P. 509, 8 Kan. App. 661, reversed (1900) 59 P. 1051, 61 Kan. 349, 48 L. R. A. 251.

Acts Md. 1906, c. 257, amending the charter of the Cumberland & Pennsylvania Railroad Company so as to prohibit it from allowing its tracks to connect with the tracks of the Baltimore & Ohio Railroad Company, which passes through other states, unless the latter shall arrange its freight charges on coal delivered to it from the former, that the combined freight charges of the two companies shall not exceed the lowest freight charges on coal shipped to the same destination over the line of the Baltimore & Ohio Railroad Company from any point in Pennsylvania or West Virginia, which is as far or further distant from the destination as the point in Allegany county, where the coal is delivered to the Cumberland & Pennsylvania Railroad Company, is invalid as an attempt to regulate interstate commerce. State v. Cumberland & P. R. Co. (Md. 1907) 66 A. 458.

St. Mass. 1885, c. 338, § 2, providing that the railroad commissioners may fix the rates of freight to be charged by a railroad company between points outside the state and points within the state, is invalid, as a regulation of commerce between the states. Commonwealth v. Housatonic R. R. (1887) 143 Mass. 264, 9 N. E. 547.

Act Mo. March 18, 1881, §§ 1, 2, require railroad companies to furnish double-decked cars for the shipment of sheep, and provide that for the shipment of a car load of sheep in a single-decked car they shall receive only half of the legal rate of freight on a car load of stock. Defendant carried sheep for plaintiff to a point in Illinois in single-decked cars, and charged him the full legal rate per car. Held, that plaintiff cannot recover the excess; for the statute, as to shipments out of the state, is void, being an infringement of the power of Congress to regulate interstate commerce. Stanley v. Wabash, St. L. & P. Ry. Co. (1890) 100 Mo. 435, 13 S. W. 709, 8 L. R. A. 549.

A state legislature cannot control or regulate the charges made by railroads for transportation of freight to be carried from one state to another. McGwigan v. Wilmington & W. R. Co. (1886) 95 N. C. 428.

Revisal N. C. 1905, § 2644, subjecting a carrier to a penalty for failure to refund an overcharge within the time prescribed, does not impose an unlawful burden on interstate commerce. Raleigh Iron Works v. Southern Ry. Co. (1908) 62 S. E. 595, 148 N. C. 469.

Revisal N. C. 1905, § 2644, penalizing a carrier for failing to refund overcharges, held void, as conflicting with the commerce clause. Blalock Hardware Co. v. Seaboard Air Line Ry. Co. (N. C. 1915) 86 S. E. 1025.

Laws N. D. 1907, c. 51, amending and reenacting Rev. Codes 1905, § 4395, prescribing maximum coal rates for the transportation of coal in car load lots in the state, is not in violation of the interstate commerce clause. State v. Northern Pac. Ry. Co. (N. D. 1909) 120 N. W. 869; Same v. Minneapolis, St. P. & S. S. M. Ry. Co., Id. 874.

The general railroad law attempts to give to the railroad commissioners power to regulate charges between points within and points without the state, and, so far, is unconstitutional, being an unlawful interference with the exclusive right of congress to regulate commerce. Railroad Com'rs v. Railroad Co. (1884) 22 S. C. 220.

The state cannot fix railroad rates to a point in another state. Hall v. South Carolina R. Co. (1886) 25 S. C. 564.

Laws Vt. 1906, No. 122, §§ 8, 10 (P. S. 4539, 4541), and Laws Vt. 1910, No. 147, § 1, forbidding any railroad to charge demurrage on cars received or placed for loading in this state until four days, after notice to the consignee, without limiting such charges to intrastate commerce, held repugnant to the commerce clause, and to the Interstate Commerce Act, §§ 1, 6, 12, as amended June 29, 1906 (Comp. St. §§ 8563, 8569, 8576), enforced by the Interstate Commerce Commission by demurrage rules allowing a free time of only two days. Sargent v. Rutland R. Co. (Vt. 1913) 85 A. 654.

The rules prescribed by the corpora-

tion commission pursuant to the authority of Const. Va. 1902, § 155, and Act Va. May 16, 1903 (Acts 1902-04, p. 392), with reference to storage, demurrage, car service, and car detention charges, are not void because in their operation they affect incidentally interstate and foreign commerce. Atlantic Coast Line Ry. Co. v. Commonwealth (1904) 46 S. E. 911, 102 Va. 599.

The provisions of Code W. Va. 1906, § 2482, imposing a forfeiture on any railroad, corporation, or agent which shall demand or receive from any person any greater toll for compensation or transportation of freight or for weighing the same than is provided by the act, are void so far as is attempted to apply them to interstate commerce. Jennings v. Big Sandy & C. R. Co. (1907) 57 S. E. 272, 61 W. Va. 664.

The State Railroad Commission does not have jurisdiction to regulate service charges in the conduct of interstate commerce. Duluth-Superior Milling Co. v. Northern Pac. Ry. Co. (1913) 140 N. W. 1105, 152 Wis. 528.

If the State Railroad Commission erroneously assumes jurisdiction to pass on the reasonableness of compensation by a railroad company for services rendered within the state, but forming part of an entire interstate transit, its decision is void. Id.

178. —— **Discrimination.** — A provision of the constitution of Colorado prohibiting railway discriminations is not in conflict with the commerce clause. Denver & N. O. R. Co. v. Atchison, T. & S. F. R. Co. (C. C. 1883) 15 Fed. 650, decree reversed (1884) 4 Sup. Ct. 185, 110 U. S. 667, 28 L. Ed. 291.

R. S. Ill. c. 114, § 112, provides that "if any railroad corporation shall charge, collect, or receive for the transportation of any passenger or freight of any description, upon its railroad, for any distance within this state, the same or a greater amount of toll or compensation than is at the same time charged, collected, or received for the transportation, in the same direction, of any passenger, or like quantity of freight of the same class, over a greater distance of the same railroad," this shall be taken as prima facie evidence of unjust discrimination, and subject such railroad company to a penalty. Defendant charged more for transporting freight from G., in Illinois, to New York City, than it did for transporting the same quantity and class of freight from P., in Illinois, to New York City, though the distance from G. was 86 miles less. Held, that the statute is void as to the transportation in question; for it is commerce between the states, and, as such, within the sole control and regulation of congress, under the commerce clause. Wabash, St. L. & P. Ry. Co. v. Illinois (1886) 118 U. S. 557, 7 Sup. Ct. 4, 30 L. Ed. 244.

Any interference with interstate commerce by the enforcement of state laws prohibiting a greater charge for shorter than for longer hauls is too remote and indirect to be regarded as an unconstitutional interference with interstate commerce. Louisville & N. R. Co. v. Kentucky (1901) 22 Sup. Ct. 95, 101, 183 U. S. 503, 46 L. Ed. 298.

Const. Ky. § 218, prohibiting common carriers from charging more for a shorter than for a longer haul, so far as it extends to a long haul from a place outside of to one within the state, and a shorter haul between points on the same line and in the same direction, both of which are within the state, is unconstitutional, since the carrier is compelled to adjust, regulate, or fix his interstate rates with some reference to his rates within the state. Louisville & N. R. Co. v. Eubank (1902) 22 Sup. Ct. 277, 279, 184 U. S. 27, 46 L. Ed. 416.

An Illinois railroad corporation charged more for carrying the same class of freight from Gilman to New York than from Peoria to New York, though Gilman was nearer to New York than Peoria. Held, that the Illinois act of 1874 prohibiting discrimination in charges applied to cases where the freight was carried to points beyond the state limits. People v. Wabash, St. L. & P. Ry. Co. (1882) 104 Ill. 476.

A statute prohibiting discrimination in freight charges is not void as interfering with the exclusive right of congress to regulate interstate commerce. Id.

Railroad Act Ill. § 87, prohibiting unjust discrimination in freight and passenger charges, held constitutional, not being a regulation of commerce. Wabash, St. L. & P. Ry. Co. v. People (1883) 105 Ill. 236.

Acts Ind. 1901, p. 149 (Burns' Rev. St. 1901, § 3312b et seq.), prohibiting unjust discrimination by any express company against any other company engaged in the same business, and prescribing a penalty for its violation, recoverable by the state, is not invalid as an interference with interstate commerce. Adams Exp. Co. v. State (1903) 67 N. E. 1033, 161 Ind. 328.

Acts Ind. 1901, c. 93 (Burns' Ann. St. 1901, §§ 3312b, 3312e), provides that express companies shall grant to all consignors, including other responsible express companies as consignors, equal terms and accommodations in the carriage and continuance of carriage of goods, and prohibits them from granting to any one carrier any privileges or accommodations not granted to all others, and provides that any carrier failing to comply with the statute may be convicted in a prosecution brought by the state, that it shall be liable in a civil action for damages, and that any person injured by such violation shall have a remedy by injunction. Held, that the statute is not an attempt to regulate interstate commerce. American Express Co. v. Southern Indiana Express

Co. (Ind. 1906) 78 N. E. 1021; Same v. State (Ind. 1906) 79 N. E. 353.

A state cannot authorize a recovery for overcharges for freight on an interstate shipment, involving an unjust discrimination. Gatton v. Chicago, R. I. & P. Ry. Co. (1895) 95 Iowa, 112, 63 N. W. 589, 28 L. R. A. 556.

A railroad doing both interstate and intrastate business held not entitled to claim that performance of certain services without discrimination with reference to intrastate commerce would impose an unjust and unreasonable burden on its interstate business, in violation of the interstate commerce clause. Louisville & N. R. Co. v. Higdon (1912) 148 S. W. 26, 149 Ky. 321.

Code N. C. § 1966, imposing a penalty on railroad corporations for discrimination in freight charges, should not be construed to apply to interstate transportation. McGwigan v. Wilmington & W. R. Co. (1886) 95 N. C. 428.

The federal constitution does not prohibit a discrimination between local freight and that which is extraterritorial when it commences its transit. Shipper v. Pennsylvania R. Co. (1864) 47 Pa. St. (11 Wright) 338.

Act Pa. June 4, 1883, forbids discriminations by common carriers within the state or coming from or going to any other state. Held, that this feature of the act is an unconstitutional interference with the exclusive power of congress to regulate interstate commerce. Wigton v. Pennsylvania R. Co. (1890) 8 Pa. Co. Ct. R. 191.

Pub. St. R. I. c. 139, prohibiting discrimination by common carriers in the transportation of goods, etc., affects contracts made by a railroad company chartered and operated in two states, consolidated and made subject to the laws of Rhode Island, as if wholly located in said state, for transportation of goods to points outside of the state; and is not a regulation of commerce. Providence Coal Co. v. Providence & W. R. Co. (1886) 15 R. I. 303, 4 Atl. 394.

Defendant railroad charged $1.70 per hundred on freight from San Francisco to El Paso, and $2 on freight to the City of Mexico; its line connecting at El Paso, which was about halfway, with the Mexican Central. Held that, even if there was any discrimination in the rates against El Paso in favor of the City of Mexico and points along the Mexican Central, it would not be subject to consideration under a state law, the shipment being from a point without the state. Southern Pac. Ry. Co. v. Haas (Tex. 1891) 17 S. W. 600.

179. —— Fish and game.—The interstate commerce clause of the constitution does not affect the right of a state to prohibit the transportation outside its limits of game killed in the state. Geer v. Connecticut (1896) 16 Sup. Ct. 600, 601, 161 U. S. 519, 40 L. Ed. 793.

Act S. C. Feb. 16, 1904 (24 St. at Large, p. 385), prohibiting the shipment or transportation of "any shad fish beyond the limits of" the state, and declaring that any common carrier shipping or receiving for transportation any shad fish to points beyond the state shall be guilty of a misdemeanor and fined, is unconstitutional and void, as prohibiting the transportation of shad fish caught beyond the limits of the state, which the state has no power to regulate. McDonald & Johnson v. Southern Express Co. (C. C. 1904) 134 Fed. 282.

Act Ala. Feb. 18, 1891, entitled "An act to regulate the planting and taking of oysters in the waters of this state," which makes it unlawful for any person not a resident of the state to take or transport oysters from, in, or through any of the waters of the state, or for any person, whether a citizen of this state or of any other state or country, "to ship beyond the limits of this state any oysters taken from the waters of this state while the same are in the shells," etc., is not a regulation of interstate commerce. State v. Harrub (1892) 95 Ala. 176, 10 South. 752, 15 L. R. A. 761.

Act Ark. April 12, 1889, as amended by Acts 1891, c. 88, prohibiting the exportation of fish and game from the state, does not violate the interstate commerce clause of the constitution. Organ v. State (1892) 56 Ark. 267, 19 S. W. 840.

Under the act known as the "Lacey Act" (Comp. St. § 8708), providing that the game laws of a state may be made equally applicable to game imported into the state as to game killed within the state, Kirby's Dig. Ark. § 3620, prohibiting any express company from transporting or receiving any game for transportation beyond the state, was not unconstitutional because it applied equally to game killed without the state and to game killed therein. Wells Fargo Express Co. v. State (1906) 96 S. W. 189, 79 Ark. 340.

R. S. Idaho § 7193, prohibiting the exportation of fish from the territory, is in conflict with the interstate commerce clause. Territory v. Evans (1890) 2 Idaho, 634, 23 Pac. 115, 7 L. R. A. 288; Same v. Nelson (1890) 2 Idaho, 638, 23 Pac. 116.

R. S. Idaho § 7193, prohibiting the exportation of fish, is in conflict with the commerce clause. Territory v. Evans (1890) 2 Idaho, 634, 23 Pac. 115, 7 L. R. A. 288.

An act of a state legislature which assumes to prohibit and punish the transportation of merchandise out of the state—in this case, a section of a law for protection of game, which forbade any carrier to transport out of the state any of the animals or birds mentioned in the act (Laws Kan. 1876, p. 183, § 6)—is unconstitutional, as infringing the exclusive power of congress to regulate commerce among the

states. State v. Saunders (1877) 19 Kan. 127, 27 Am. Rep. 98.

Act No. 189 of 1910, § 1, prohibiting any person, firm, or corporation from shipping oysters out of the state for canning or packing out of the state, is a discriminatory regulation of interstate commerce. State v. Ferrandau (1912) 58 So. 870, 130 La. 1035.

Gen. Laws Minn. 1891, c. 9, as amended by Gen. Laws 1893, c. 124, prohibiting the shipment out of the state of certain kinds of fish caught within the state, is not an unlawful interference with interstate commerce. State v. Northern Pac. Exp. Co. (1894) 58 Minn. 403, 59 N. W. 1100.

Sess. Laws Okl. 1903, c. 15, § 3, providing that any agent or employé of a common carrier or private individual who shall receive for transportation any birds and animals named shall be guilty of a misdemeanor and fined, is not a violation of the interstate commerce clause. Cameron v. Territory (1906) 86 P. 68, 16 Okl. 634.

180. —— Animals.—See, also, note ante as to "Quarantine and other sanitary regulations."

A contract by a railroad company, containing a positive obligation on its part to transport live stock from a point in Missouri to Chicago, over lines of other companies as well as its own, limited only by reference to subsequent conditions or rules and regulations inserted therein, subjects the carrier to liability under the state statute, as interpreted by its supreme court; but of this the carrier has no constitutional ground of complaint, since the liability is not imposed by the statute on the interstate shipment, but arises from the failure of the contract to conform to the statutory requirements. Missouri, K. & T. Ry. Co. v. McCann (1899) 19 Sup. Ct. 755, 758, 174 U. S. 580, 43 L. Ed. 1093.

A state is without power to compel a railroad company to transfer cars of live stock to a connecting road at a point of connection within the state, where the shipment was received in another state, and is, therefore, a subject of interstate commerce. Central Stock Yards Co. v. Louisville & N. R. Co. (1902) 118 Fed. 113, 55 C. C. A. 63, 63 L. R. A. 213, decree affirmed (1904) 24 Sup. Ct. 339, 192 U. S. 568, 48 L. Ed. 565.

The legislature, in creating a railroad corporation and during its existence, has the undoubted right to increase or lessen the liability of the company in regard to injuries to stock committed upon its road by the company or its agents. O'Bannon v. Louisville, C. & L. R. Co. (1871) 71 Ky. (8 Bush) 348.

Cobbey's Ann. St. Neb. 1907, §§ 10,-606 and 10,607, regulating shipment of live stock, does not interfere with interstate commerce. Cram v. Chicago, B. & Q. R. Co. (1909) 122 N. W. 31, 84 Neb. 607, rehearing denied (Neb. 1909) 123 N. W. 1045.

R. S. S. C. 1893, § 1678, providing, inter alia, that "no railroad company, in the carrying or transportation of animals, shall overload its cars," when applied to shipments made from a point within to a point without the state, is not unconstitutional, as violative of the interstate commerce clause. Crawford v. Southern Ry. Co. (1899) 34 S. E. 80, 56 S. C. 136.

R. S. Tex. art. 284, requiring a common carrier of live stock to feed and water it sufficiently pending carriage, otherwise to be liable to the owner in damages and a penalty, is a police regulation, and, as applied to an interstate shipment, where the default complained of occurred entirely in Texas, is no infringement of the power of congress to regulate interstate commerce, nor in conflict with R. S. § 4386 et seq., forbidding an interstate railroad to confine stock in cars longer than 28 hours without unloading, for rest, water, and feeding, for 5 hours, under penalty recoverable by civil action. Gulf, C. & S. F. Ry. Co. v. Gray (Tex. Civ. App. 1894) 24 S. W. 837.

181. —— Intoxicating liquors.—Code Iowa, § 1553, as amended 1886, c. 65, § 10, forbidding any common carrier to bring within the state, for any person or persons or corporation, any liquor from any other state or territory, without first having been furnished with a certificate under the seal of the county auditor of the county to which such liquor is to be transported, or is consigned for transportation, certifying that the consignee or person to whom said liquor is to be delivered is authorized to sell liquor in such county, is an attempt to regulate interstate commerce. Waite, C. J., and Harlan and Gray, JJ., dissenting. Bowman v. Chicago & N. W. R. Co. (1888) 8 Sup. Ct. 689, 700, 1062, 125 U. S. 465, 31 L. Ed. 700.

Act Aug. 8, 1890 (Comp. St. § 8738), providing that intoxicating liquors transported into any state, or remaining therein "for use, consumption, sale or storage therein shall upon arrival in such state" be subject to the operation of its laws enacted in the exercise of its police powers, attaches to the subject of an interstate shipment only after such shipment has been consummated by the arrival of the goods at their destination and their delivery to the consignee, and a state law which makes a carrier liable to a penalty for transporting such goods within the state before their delivery, except in cases where a certificate has been obtained from state authorities (McClain's Code Iowa, § 2410), is an attempted regulation of interstate commerce, and void. Rhodes v. State of Iowa (1898) 18 Sup. Ct. 664, 666, 170 U. S. 412, 42 L. Ed. 1088, reversing (1894) 58 N. W. 887, 90 Iowa, 496.

The offense of furnishing intoxicating liquor to an inebriate, created by Ky.

St. § 1307, is, as applied to the transportation of liquor from state to state, a regulation of interstate commerce. Adams Exp. Co. v. Kentucky (1909) 29 Sup. Ct. 633, 635, 214 U. S. 218, 53 L. Ed. 972.

A carrier incorporated in Kentucky cannot justify refusal to accept interstate shipments of liquors for local option points created under Acts Ky. 1906, c. 63; such statute being an unlawful regulation of interstate commerce. Louisville & N. R. Co. v. F. W. Cook Brewing Co. (1912) 32 Sup. Ct. 189, 192, 223 U. S. 70, 56 L. Ed. 355, affirming judgment (1909) 172 Fed. 117, 96 C. C. A. 322, 40 L. R. A. (N. S.) 798.

Acts W. Va. 1903, c. 40, being "An act regulating the shipment and sale of intoxicating liquors contrary to law and providing a remedy therefor," and which provides inter alia that any agent or employé of a common carrier who shall deliver to any person, firm or corporation any package containing intoxicating liquors, except to a person having a state license to sell the same, or to the bona fide consignee thereof who has in good faith ordered the same for his own use, shall be deemed to have made a sale thereof contrary to law, and be subject to criminal prosecution, in so far as it endeavors to impose criminal liability upon a carrier or its agents because of the delivery of liquors transported by it to the consignee thereof in the usual course of business, in case such consignee shall not have a license or shall not have ordered the liquors for his own use, is unconstitutional and void, as an attempt to regulate interstate commerce as applied to interstate shipments. Crescent Liquor Co. v. Platt (C. C. 1906) 148 Fed. 894.

Dispensary Act S. C. Jan. 2, 1895, § 38, declaring that any boat or other conveyance transporting liquors at night, other than regular passenger on freight steamers and railroad cars, shall be liable to seizure and confiscation, is, in the case of a boat bringing liquor from another state, void as an interference with interstate commerce. Jervey v. The Carolina (D. C. 1895) 66 Fed. 1013.

The Fuller Bill (Acts Sp. Sess. Ala. 1909, p. 63) prohibits intrastate shipments of intoxicating liquors except for recognized legal purposes, but does not attempt to prohibit interstate shipments. Southern Express Co. v. State (Ala. 1914) 66 So. 115.

27 Del. Laws, c. 139, prohibiting common carriers from transporting intoxicating liquors into local option districts, is constitutional. State v. Van Winkle (Del. 1913) 88 A. 807.

A conviction of violating a city ordinance, which was held invalid in so far as it related to interstate shipments of intoxicating liquors, was unauthorized, where it was admitted that accused was charged with relation to an interstate shipment. Ezell v. City of Atlanta (Ga. App. 1913) 78 S. E. 850, decided in conformity to answer to certified questions Id. (Ga. 1913) 821, 140 Ga. 197.

Under the interstate commerce clause, Acts Ky. 1906, c. 63, which undertake to impede, burden, or regulate the bringing of intoxicating liquors by carriers into the state, is unconstitutional and void. Cincinnati, N. O. & T. P. R. Co. v. Commonwealth (1907) 104 S. W. 394, 31 Ky. Law Rep. 954.

That liquor was taken from a point in Kentucky to a point outside the state and from there shipped back to a consignee in Kentucky, for the purpose of evading the local option law of Kentucky, did not as against the carrier render such shipment subject to state regulation, as not being interstate commerce. Id.

Whether a carrier knew that the commodity presented for transportation from one state to another was malt liquor, or that the point to which shipped was in a local option district, is immaterial as affecting the liability of such shipment to state regulation. Id.

Ky. St. § 2569a, relative to the transportation of intoxicating liquors, is constitutional and operative as to intrastate shipments, but not as to interstate shipments prior to the passage of the Webb-Kenyon Act (Comp. St. § 8739). Adams Express Co. v. Commonwealth (1914) 169 S. W. 603, 160 Ky. 66.

One cannot be prohibited by state law from shipping intoxicating liquors lawfully purchased in another state into the state for the personal use of himself or family; such a law interfering with interstate commerce. Alexander v. State (Okl. Cr. App. 1910) 106 P. 988.

Snyder's Comp. Laws Okl. 1909, § 4180, forbidding the conveying of liquor from one place to another within the state, with certain exceptions, is not in conflict with the interstate commerce clause of the Constitution. Overton v. State (Okl. Cr. App. 1912) 123 P. 175, denying rehearing (Okl. Cr. App. 1911) 114 P. 1132.

Cr. Code S. C. § 584, punishing the carriage and transportation of liquors under any other name than the proper name, is not in violation of the interstate commerce law as applied to the carriage and transportation of liquors, it not applying to liquor transported from another state into the state for private use. State v. Moody (1904) 49 S. E. 8, 70 S. C. 56.

Acts 2d Ex. Sess. Tenn. 1913, c. 1, § 5, prohibiting the delivery by carrier of an interstate shipment of liquor without receiving a certain statement from the consignee, held invalid as a direct interference with interstate commerce, and not to be sustained as an exercise of the police power, or within the

Wilson Act. Palmer v. Southern Exp. Co. (Tenn. 1914) 165 S. W. 236.

Acts 2d Ex. Sess. Tenn. 1913, c. 1, § 9, subsec. 2, providing that the act shall not make it unlawful for one to order for his own use intoxicating liquors in quantities not exceeding one gallon, held invalid as a regulation of interstate commerce when applied to liquor shipped into the state. Id.

Acts 2d Ex. Sess. Tenn. 1913, c. 1, § 3, requiring an interstate carrier of liquor to file a statement with the county court clerk, is not violative of the interstate commerce clause or the federal statute prohibiting carriers from disclosing information to the prejudice of a shipper or consignee. Id.

Allison Act, Tex. § 4, has no application to interstate shipments of intoxicating liquor into prohibition territory, but such shipments are governed by section 5, which is a replica of the Webb-Kenyon Act. Ex parte Peede (Tex. Cr. App. 1914) 170 S. W. 749.

182. —— Natural gas.—Prohibiting the construction of pipe lines for natural gas, or the transportation of the gas by such lines except by domestic corporations, whose charters shall provide that the gas shall only be transported between points in the state, and shall not be transported to, nor delivered to, any person or corporation engaged in transporting or furnishing gas to points outside of the state, and giving to such domestic corporations the exclusive right of eminent domain and the use of the highways, all of which is attempted by Laws Okl. 1907, c. 67, unconstitutionally interferes with interstate commerce, and cannot be justified as an exercise of the police power of the state to conserve its natural resources. West v. Kansas Natural Gas Co. (1911) 31 Sup. Ct. 564, 221 U. S. 229, 55 L. Ed. 716, 35 L. R. A. (N. S.) 1193, affirming decree Kansas Natural Gas Co. v. Haskell (C. C. 1909) 172 Fed. 545.

Affirmance by the supreme court of a decree enjoining enforcement of state legislation as prohibiting transportation of natural gas in lawful channels of interstate commerce does not require modification of the decree to except from its operation certain provisions which might have been valid as to transportation of gas wholly within the state. Haskell v. Kansas Natural Gas Co. (1912) 32 Sup. Ct. 442, 444, 224 U. S. 217, 56 L. Ed. 738.

Decree of federal circuit court enjoining enforcement of state legislation prohibiting transportation of natural gas outside the state does not prevent enforcement of legitimate state legislation not conflicting with interstate commerce, where the decree was confirmed on the ground that complainant had a right to take natural gas out of the state for purposes of interstate commerce. Id.

Laws Okl. 1907, c. 67, preventing all interstate commerce in natural gas by preventing the use of pipe lines across the highways of that state to transport such gas out of the state, is in violation of the interstate commerce clause and void. Haskell v. Cowham (1911) 187 Fed. 403, 109 C. C. A. 235.

Acts of state officers to prevent an owner of natural gas from operating pipes to transport it out of the state across highways of the state will be enjoined. Id.

Neither a state nor its officers may prevent or unreasonably burden interstate commerce in natural gas by preventing the use of pipe lines to transport it across the highways of the state by exercise or refusal to exercise the police powers or the proprietary powers of the state over them. Id.

Acts Okl. 1907, p. 586, c. 67, which prohibits, except for private use, the construction of pipe lines for the transportation of natural gas within the state, except by corporations organized thereunder by charters providing that such gas shall not be transported out of the state, nor sold or delivered to any one else to be taken out of the state, is void as an attempt to interfere with interstate commerce. Kansas Natural Gas Co. v. Haskell (C. C. 1909) 172 Fed. 545, decree affirmed West v. Kansas Natural Gas Co. (1911) 31 Sup. Ct. 564, 221 U. S. 229, 55 L. Ed. 716, 35 L. R. A. (N. S.) 1193.

A state regulation, fixing the price to be charged by gas companies for natural gas furnished to consumers within the state, is not an unlawful regulation of interstate commerce, although some of the gas supplied is piped from other states. Manufacturers' Light & Heat Co. v. Ott (D. C. 1914) 215 Fed. 940.

Order of state public utilities commission requiring pipe line corporation to extend lines in another state so that gas therefrom might be transported into the state in question held void as an attempted regulation of interstate commerce. Fidelity Title & Trust Co. v. Kansas Natural Gas Co. (D. C. 1913) 219 Fed. 614.

Act Ind. March 9, 1889, which makes it unlawful for any person, natural or artificial, to conduct natural gas from the state, and imposes penalties for so doing, is unconstitutional, as it is legislation on interstate commerce, though by other acts it is provided that "mining" shall include the sinking of gas wells, and natural gas companies are authorized to appropriate and condemn property. State v. Indiana & O. Oil, Gas & Mining Co. (1889) 120 Ind. 575, 22 N. E. 778, 6 L. R. A. 579; Avery v. Same (1889) 120 Ind. 600, 22 N. E. 781.

Act Ind. 1891, prohibiting the trans-

portation of natural gas through pipes at a greater pressure than 300 pounds per square inch, or otherwise than by its natural flow, upon its face showing no purpose to usurp federal power over interstate commerce, and applying to all persons without discrimination, and being solely for the purpose of regulating the use of a characteristically local and intrinsically dangerous product, and not a prohibition of its transportation, is not a regulation of interstate commerce, within the meaning of the interstate commerce clause, although its effect may incidentally be to prevent the transportation of gas into another state. Jamieson v. Indiana Natural Gas & Oil Co. (1891) 128 Ind. 555, 28 N. E. 76, 12 L. R. A. 652, distinguishing Leisy v. Hardin (1890) 135 U. S. 100, 10 Sup. Ct. 681, 34 L. Ed. 128, and State v. Indiana & O. Oil, Gas & Mining Co. (1889) 120 Ind. 575, 22 N. E. 778, 6 L. R. A. 579.

Act Ind. Feb. 20, 1889, which grants to companies, corporations, or voluntary associations organized under the laws of the state for the purpose of drilling and mining for petroleum or natural gas, and furnishing the same to patrons within the state, the right to condemn and appropriate land for the purpose of laying their pipes, does not prohibit the piping of petroleum and natural gas out of the state, and is not in conflict with the constitution, as an interference with interstate commerce. Consumers' Gas Trust Co. v. Harless (1892) 131 Ind. 446, 29 N. E. 1062, 15 L. R. A. 505.

Act Ind. March 4, 1891, so far as it prohibits the transportation of natural gas through pipes at a pressure exceeding 300 pounds per square inch, or otherwise than by the natural pressure of the gas flowing from the well, is an interference with interstate commerce, as its effect is to prevent gas from being transported in pipes from the gas fields in the state into other states, and it is not a legitimate police regulation. Benedict v. Columbus Const. Co. (1892) 49 N. J. Eq. (4 Dick.) 23, 23 Atl. 485.

183. Passengers—In general.—Where a state statute, unconstitutional because repugnant to the constitutional authority of congress to regulate commerce, seeks to exact conditions for allowing the passage or carriage of persons or freight through it into another state, the nature of the exaction is not changed by adding to it similar conditions for allowing transportation wholly within the state. In re State Freight Tax (1872) 82 U. S. (15 Wall.) 232, 21 L. Ed. 146.

A state statute forbidding a carrier to make any discrimination as to passengers on account of color is invalid as to interstate carriers. Hall v. De Cuir (1877) 95 U. S. 485, 486, 24 L. Ed. 547.

A state law which requires those engaged in the transportation of passengers among the states to give all persons traveling within the state, upon vessels employed in such business, equal rights and privileges in all parts of the vessel, without distinction on account of race or color, and subjects to an action for damages the owner of such a vessel who excludes colored passengers on account of their color from the cabin set apart by him for the use of whites during the passage, is a regulation of interstate commerce, and therefore to that extent unconstitutional, and void. If the public good requires such legislation, it must come from congress, and not from the states. Id.

Where a railroad extends through several states, and is incorporated in each, it is, as far as concerns the regulation of its business within the state, a domestic corporation; and the establishment of a board of railroad commissioners, with power to regulate traffic, fix charges, and prevent discriminations (Act Miss. March 11, 1884), but prohibited from interfering with charges for transportation of persons or property from one state to another (Act Miss. March 15, 1884), is not invalid as being a regulation of interstate commerce. Stone v. Farmers' Loan & Trust Co. (1886) 116 U. S. 307, 6 Sup. Ct. 334, 388, 1191, 29 L. Ed. 636 (reversing Farmers' Loan & Trust Co. v. Stone [C. C. 1884] 20 Fed. 270); Same v. Illinois Cent. R. Co. (1886) 116 U. S. 347, 6 Sup. Ct. 348, 29 L. Ed. 636; Same v. New Orleans & N. E. R. Co. (1886) 116 U. S. 352, 6 Sup. Ct. 349, 391, 29 L. Ed. 636.

A state statute providing that no contract or regulation shall exempt any corporation carrying persons or property by rail from its liability as a common carrier is not void as an attempt to regulate interstate commerce, as applied to a contract of interstate transportation, whereby the carrier attempts to limit its liability for personal injuries resulting from the negligence of its servants to the sum of $500. Chicago, M. & St. P. Ry. Co. v. Solan (1898) 18 Sup. Ct. 289, 169 U. S. 133, 42 L. Ed. 688, affirming judgment (1895) 63 N. W. 692, 95 Iowa, 260, 28 L. R. A. 718.

Congress, in the exercise of its power over commerce, could enact Act June 29, 1906, § 6 (Comp. St. § 8585), which rendered unenforceable a prior contract, valid when made, by which an interstate carrier agreed to issue annual passes for life in consideration of a release of a claim for damages. Louisville & N. R. Co. v. Mottley (1911) 31 Sup. Ct. 265, 219 U. S. 467, 55 L. Ed. 297, 34 L. R. A. (N. S.) 671, reversing decree (1909) 118 S. W. 982, 133 Ky. 652.

Municipal regulation of a street railway company principally engaged in

interstate commerce, as to passengers riding on platforms, unless provided with suitable barriers and with reference to cleanliness, does not infringe on the federal authority over such commerce. South Covington & C. St. R. Co. v. City of Covington (1915) 35 Sup. Ct. 158, 235 U. S. 537, 59 L. Ed. 350, reversing decree South Covington & C. R. Co. v. Same (1912) 143 S. W. 28, 146 Ky. 592.

An ordinance providing that the temperature of cars of a street railway engaged in interstate commerce shall never be permitted to be below 50 degrees Fahrenheit is invalid, as unreasonable, where it is impossible so to do, owing to the opening of the doors and other interferences. Id.

A state statute which abrogates all common-law remedies for the wrongful exclusion of a passenger from the cars of a railroad company is unconstitutional, so far as it relates to railroads running between two or more states; it being a regulation of interstate commerce that the state has no power to make. Brown v. Memphis & C. R. Co. (C. C. 1880) 5 Fed. 499, 501.

A provision of the constitution of Colorado prohibiting railway discriminations is not in conflict with the commerce clause. Denver & N. O. R. Co. v. Atchison, T. & S. F. R. Co. (C. C. 1883) 15 Fed. 650, decree reversed (1884) 4 Sup. Ct. 185, 110 U. S. 667, 28 L. Ed. 291.

A state may regulate the heating of passenger cars, though used in interstate transportation. Kansas City S. Ry. Co. v. Board of Railroad Com'rs (C. C. 1901) 106 Fed. 353, affirmed (1903) 23 Sup. Ct. 214, 187 U. S. 617, 47 L. Ed. 333.

Safety and comfort of passengers, whether intrastate or interstate, may be provided for by state authority when not in conflict with regulations of Congress, and may not be subordinated to freight traffic. State v. Louisville & N. R. Co. (Fla. 1912) 57 So. 673.

The Kentucky statutes of 1824 and 1828, which forbid slaves being carried away as passengers in boats on the Ohio river, which is the boundary line of the state, did not conflict with the power of congress to regulate commerce. Church v. Chambers (1835) 33 Ky. (3 Dana) 274.

Regulation by a municipality of a street railway operated by a state corporation and which carried passengers only to the state line where they were delivered to a foreign corporation is not an interference with interstate commerce. South Covington & C. R. Co. v. City of Covington (1912) 143 S. W. 28, 146 Ky. 592.

Act La. No. 38 of 1869, forbidding common carriers of passengers from discriminating against passengers on account of race and color, is not in conflict with the interstate commerce clause. Decuir v. Benson (1875) 27 La. Ann. 1.

R. S. Me. c. 24, § 50, requiring common carriers who bring into the state persons not having a settlement therein to remove them beyond the state if they fall into distress within a year, is a regulation of foreign and interstate commerce, in violation of the commerce clause. City of Bangor v. Smith (1891) 83 Me. 422, 22 Atl. 379.

Laws Wis. 1911, c. 272, applicable only to intrastate commerce, requiring the upper berth in a sleeping car to be kept closed till engaged or occupied, when the lower berth is engaged and occupied, is not an interference with interstate commerce carried on in cars doing both intrastate and interstate business. State v. Chicago, M. & St. P. R. Co. (1913) 140 N. W. 70, 152 Wis. 341.

Notwithstanding the regulation by the Interstate Commerce Commission of the rates for sleeping car berths in interstate traffic, Laws Wis. 1911, c. 272, applicable only to intrastate commerce, requiring the upper berth in a sleeping car to be kept closed till engaged or occupied, when the lower berth is engaged or occupied does not conflict with the interstate commerce act. Id.

184. —— **Operation of trains.**—Rev. St. Ill. 1889, c. 114, § 88, providing that all regular passenger trains shall stop a sufficient length of time at the railroad stations and county seats to receive and let off passengers with safety, as construed by the state supreme court, requiring a fast-mail train, carrying interstate passengers and the United States mail from Chicago to places south of the Ohio river, over an interstate highway established by authority of congress, to turn aside from the direct interstate route, and run to the station in Cairo, three miles and a half away from that route, and back again, in order to receive and discharge passengers at that station, for the interstate travel to and from which the railroad company furnishes other and ample accommodation, is an unconstitutional obstruction of interstate commerce. Illinois Cent. R. Co. v. Illinois (1896) 163 U. S. 142, 16 Sup. Ct. 1096, 1099, 41 L. Ed. 107.

Laws Minn. c. 60, requiring every regular passenger train running wholly within the state to stop at all stations at county seats directly in its course a sufficient length of time to take on and discharge passengers, is not an interference with interstate commerce. Gladson v. Minnesota (1897) 17 Sup. Ct. 627, 628, 166 U. S. 427, 41 L. Ed. 1064, affirming State v. Gladson (1894) 57 Minn. 385, 59 N. W. 487, 24 L. R. A. 502.

Rev. St. Ohio 1890, § 3320, requiring all railroad companies operating lines within the state to cause three, each way, of its regular passenger trains, if so many are run daily, to stop at a city or village containing over 3,000 inhabitants to receive and discharge

passengers, etc., is a valid exercise of the police power of the state, and applies to an interstate railroad incorporated by and operating through such state, the federal government not having taken any affirmative action on the subject, under its powers to regulate interstate commerce. Lake Shore & M. S. Ry. Co. v. State of Ohio (1899) 19 Sup. Ct. 465, 173 U. S. 285, 43 L. Ed. 702.

Rev. St. Ohio 1890, § 3320, is not inconsistent with R. S. § 5258 (Comp. St. § 10058), authorizing every railroad company to carry over its road, etc., all passengers, troops, government supplies, mails, freight, and property, on their way from one state to another, and to connect with roads of other states so as to form continuous lines for transportation to the place of destination, since that section was not intended to interfere with the state's authority to enact regulations designed to subserve public convenience, which only incidentally or remotely affected interstate commerce, and were not in themselves regulations thereof. Id.

The requirement that all regular passenger trains must stop at county seats, which is made by Act Ill. March 21, 1874, § 26, constitutes a direct burden upon interstate commerce, so far, at least, as that statute requires through interstate passenger trains to stop at such stations when adequate train service has been provided for local traffic. Cleveland, C., C. & St. L. Ry. Co. v. Illinois (1900) 20 Sup. Ct. 722, 724, 177 U. S. 514, 44 L. Ed. 868, reversing judgment (1898) 51 N. E. 842, 175 Ill. 359.

Interstate commerce is unconstitutionally interfered with by an order of the Mississippi railroad commission, made in the exercise of its discretionary authority, under Code Miss. 1892, §§ 3550, 4302, requiring a railway company to stop its interstate mail trains at a specified county seat, where proper and adequate railway passenger facilities are otherwise afforded that station. Mississippi Railroad Commission v. Illinois Cent. R. Co. (1906) 27 Sup. Ct. 90, 94, 203 U. S. 335, 51 L. Ed. 209, affirming judgment Illinois Cent. R. Co. v. Mississippi Railroad Commission (1905) 138 Fed. 327, 70 C. C. A. 617.

An order made under state authority, requiring a railroad company to stop two of its through fast mail trains running between Jersey City, New Jersey, and Tampa, Florida, at a small town in South Carolina which is also the junction point with a small branch road, is void as a direct regulation of interstate commerce, where, in addition to several local trains daily, the residents of such town are furnished daily one slower through train each way. Atlantic Coast Line R. Co. v. Wharton (1907) 28 Sup. Ct. 121, 123, 207 U. S. 328, 52 L. Ed. 230, reversing judgment Railroad Com'rs v. Atlantic Coast Line R. Co. (1906) 54 S. E. 224, 74 S. C. 80.

A state may direct a railway company operating a branch line which, so far as it lies within the state, was built under the authority of a charter from that state, to afford passenger train service between the terminus of such line within the state and the state line, provided that such requirement does not amount to such an arbitrary and unreasonable exercise of power as to cause it to be, in fact, not a regulation, but an infringement upon the right of ownership, or, considering the surrounding circumstances, operate as a direct burden, upon interstate commerce. Missouri Pac. Ry. Co. v. State (1910) 30 Sup. Ct. 330, 216 U. S. 262, 54 L. Ed. 472, affirming judgment State v. Missouri Pac. Ry. Co. (1907) 92 P. 606, 76 Kan. 467.

Interstate commerce is not directly burdened, by an order of a state railroad commission, directing an interstate railway company to discharge its corporate duty by affording passenger train service between the terminus of a branch line within the state and the point of intersection with the state line, although, to avoid the useless expense of establishing terminal facilities at that point, the passenger service directed by the order must be operated not only to the state line, but some 20 miles beyond, where such facilities do exist. Id.

The requirement that passenger trains shall stop at all junction points of other roads, which is made by Act Mo. March 19, 1907 (Laws 1907, p. 185), amending Rev. St. Mo. 1899, § 1075 (Ann. St. 1906, p. 923), amounts to an unnecessary and unlawful burden upon interstate commerce if such requirement is construed to necessitate the stoppage of through interstate trains for the transfer of passengers from one road to another, when ample facilities for the traveling public are already provided, and severe detriment and hindrance to interstate traffic will result. Herndon v. Chicago, R. I. & P. R. Co. (1910) 30 Sup. Ct. 633, 638, 218 U. S. 135, 54 L. Ed. 970; Swanger v. Atchison, T. & S. F. R. Co. (1910) 30 Sup. Ct. 639, 218 U. S. 159, 54 L. Ed. 978, affirming decree Chicago, R. I. & P. R. Co. v. Swanger (C. C. 1908) 157 Fed. 783.

Requirement that certain villages must be given two passenger trains each way each day under St. Wis. 1898, § 1801, as amended by Laws 1911, c. 483, without regard to the adequacy of the existing passenger service, is an unlawful burden on interstate commerce as applied to road running only interstate trains. Chicago, B. & Q. R. Co. v. Railroad Commission of Wisconsin (1915) 35 Sup. Ct. 560, 237 U. S. 220, 59 L. Ed. 926, reversing judgment (1913) 140 N. W. 296, 152 Wis. 654.

A state may require a reasonable

number of passenger trains to stop at cities of a certain size, though the trains may be engaged in interstate transportation. Kansas City S. Ry. Co. v. Board of Railroad Com'rs (C. C. 1901) 106 Fed. 353, affirmed (1903) 23 Sup. Ct. 214, 187 U. S. 617, 47 L. Ed. 333.

A public service commission may compel an interstate railroad to put on additional trains in certain cases, as well as companies operating wholly within the state. Delaware, L. & W. R. Co. v. Stevens (C. C. 1909) 172 Fed. 595.

An order of the Public Service Commission directing a railroad company to stop two of its interstate trains at D., being legislative in character, was not res judicata, and hence the railroad company's failure to object at the hearing, before the commission, that such an order would be unconstitutional and an unwarranted interference with interstate commerce, did not estop the railroad company from insisting thereon as a basis of a bill to restrain the enforcement of the order. Id.

A bill alleged that complainant railroad company operated an interstate line of road to and through the city of Mobile, Ala., where it maintained a passenger station; that upon its trains it carried the mails and interstate passengers; that it transported more passengers to and from Mobile and more interstate passengers through that city than the three other roads entering the city combined, and that the number passing through was greatly in excess of the number taking or leaving its trains there; that, by an order of the Railroad Commission of Alabama, it was required to stop all of its passenger trains at a so-called union station, built by an independent local corporation, which would require all of its trains to leave its own tracks and run over the tracks of another company with heavy curves for more than a mile, entailing a delay of 40 minutes or more, or to build tracks of its own, at a cost of at least $50,000, across the yards and tracks of another company, in which case its trains would be subjected to irregular delays which would derange its time schedules; that the cost of said union station and the facilities afforded thereby were greatly in excess of the demands of the business; and that, owing to the greater number of complainant's trains and cars, it would be subjected to a greater part of the expense of maintaining said station. Held that, on such facts, admitted by demurrer, the order of the commission was an unreasonable regulation in violation of the interstate commerce clause. Louisville & N. R. Co. v. Railroad Commission of Alabama (C. C. 1911) 191 Fed. 757.

An order of a State Railroad Commission which requires a railroad company, operating a road continuously into an adjoining state, to operate each way daily a passenger train, in addition to the trains in operation, between the state line to a point in the state, does not interfere with the interstate commerce. Chicago, B. & Q. R. Co. v. Oglesby (D. C. 1912) 198 Fed. 153.

Whether state Railroad Commission's order for stopping interstate trains is valid is to be decided by considering needs of interstate and state travel, and, after adequate provision for latter, order granting more to embarrassment of rapid interstate transit and road's competition is unwarrantable. Railroad Commission of Alabama v. St. Louis & S. F. R. Co. (Ala. 1916) 70 So. 645.

Order of state Railroad Commission compelling stoppage of fast through interstate trains at four way stations of from 600 to 1,800 population, resulting in loss of interstate connections maintained under competition, held unwarrantable interference with interstate commerce, where complainant already served such stops with three trains daily each way. Id.

A statute of a state requiring the stoppage at a given station of a train engaged in interstate commerce is void, where it appears from the undisputed evidence that there are eight daily trains carrying passengers on defendant's road which stop at such town, and are such as to afford adequate and reasonable facilities for the accommodation of travel to and from that place. St. Louis, I. M. & S. Ry. Co. v. State (1908) 107 S. W. 989, 85 Ark. 284.

The duty imposed on railroad companies to make written application to Railroad Commissioners for consent before discontinuing intrastate passenger trains is not an unlawful burden on interstate commerce. State v. Atlantic Coast Line R. Co. (Fla. 1911) 54 So. 900.

A statute providing that "all regular passenger trains shall stop a sufficient length of time at the railroad station of county seats to receive and let off passengers with safety," applied to a train employed in interstate commerce, is not a regulation of such commerce. Chicago & A. R. Co. v. People (1883) 105 Ill. 657; Illinois Cent. R. Co. v. Same (1892) 143 Ill. 434, 33 N. E. 173, 19 L. R. A. 119.

Act Ind. March 9, 1889, requiring railroads to post notices as to whether trains are on time, is not void, as a regulation of interstate commerce. State v. Indiana & I. S. R. Co. (1892) 133 Ind. 69, 32 N. E. 817, 18 L. R. A. 502; Same v. Pennsylvania Co. (1892) 133 Ind. 700, 32 N. E. 822.

An order of the board of railroad commissioners requiring a railroad company to operate separate passenger service within the state is in the exercise of its police power, and is not an attempt to regulate interstate commerce, nor does it directly cast a burden on such commerce. State v. Missouri Pac. Ry. Co. (1907) 92 P. 606, 76 Kan. 467.

Act Ky. March 19, 1912 (Laws 1912, c. 128), requiring all passenger trains to stop at stations where penitentiaries are located, as applied to the stopping of fast interstate trains, at a small place already provided with reasonable facilities, held to be an invalid interference with interstate commerce. Illinois Cent. R. Co. v. Commonwealth (1913) 157 S. W. 687, 154 Ky. 332.

The provision of Act Ky. March 19, 1912 (Laws 1912, c. 128), forbidding railroads in complying with its provisions as to stopping trains at stations where penitentiaries are located to curtail the service now being rendered at any other station in the same county, is invalid. Id.

Act Mo. March 19, 1907 (Laws 1907, p. 180), requiring the running of at least one regular passenger train each way every day over all railroad lines, is not invalid as a regulation of interstate commerce. State v. Chicago, B. & Q. R. Co. (1912) 143 S. W. 785, 239 Mo. 196.

Rev. St. Ohio § 3320, directing that railroad companies shall cause three each way of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at stations, cities, or villages having over 3,000 inhabitants long enough to receive and let off passengers, is not in violation of the interstate commerce act. Lake Shore & M. S. Ry. Co. v. State (1894) 8 Ohio Cir. Ct. R. 220.

Where a railroad has provided reasonable facilities from a certain place, an order of the Corporation Commission requiring it to stop another train engaged in interstate commerce at such point is unreasonable. St. Louis & S. F. R. Co. v. Pollard (Okl. 1911) 116 P. 784.

The requirement (2 Pasch. Dig. Tex. art. 6532), under penalty upon conductors, that every passenger train shall stop at each way station five minutes, is within the police power of the legislature, and is constitutional. Davidson v. State (1878) 4 Tex. App. 545, 30 Am. Rep. 166.

A state regulation, which required a railroad company to stop through trains engaged in interstate commerce at a particular point, was not invalid as an interference with interstate commerce, where the railroad company, as a public carrier, owed the inhabitants of that locality the duty of stopping its trains there. Gulf, C. & S. F. Ry. Co. v. State (Tex. Civ. App. 1914) 169 S. W. 385.

Under Rev. St. Tex. 1911, art. 6676, subd. 2, the Railroad Commission has jurisdiction to order a railroad company to stop through trains engaged in interstate commerce at a county seat station, where the stopping of such trains is necessary to furnish the inhabitants of that locality with adequate train service. Id.

The state, under Rev. St. Tex. 1911, art. 6676, may require the stoppage of interstate trains at a county seat within its limits, where the carrier has not otherwise provided sufficient railway facilities for it. Gulf, C. & S. F. Ry. Co. v. State (Tex. 1916) 181 S. W. 685.

St. Wis. 1911, § 1801, requiring at least two passenger trains daily each way to be stopped at stations having 200 or more inhabitants, if four trains daily each way are run, was neither illegal as to an interstate railroad, as interfering with interstate commerce nor unreasonable. Chicago, B. & Q. R. Co. v. Railroad Commission of Wisconsin (1913) 140 N. W. 296, 152 Wis. 654.

185. —— Separate coaches or accommodations for white and colored passengers.—Act Miss. March 2, 1888, providing that "all railroads carrying passengers in this state, other than street railroads, shall provide equal, but separate, accommodation for the white and colored races, by providing two or more passenger cars for each passenger train, or by dividing the passenger cars by a partition so as to secure separate accommodations," since it operates only on the carriage of passengers from one point to another within the state, is not an interference with interstate commerce. Louisville, N. O. & T. Ry. Co. v. Mississippi (1890) 133 U. S. 587, 10 Sup. Ct. 348, 33 L. Ed. 784.

Separate coach provisions of Act Okl. Dec. 18, 1907 (Rev. Laws 1910, § 860, et seq.), apply to transportation wholly intrastate in absence of a different construction by the state courts and do not contravene the commerce clause. McCabe v. Atchison, T. & S. F. R. Co. (1914) 35 Sup. Ct. 69, 235 U. S. 151, 59 L. Ed. 169, affirming decree (1911) 186 Fed. 966, 109 C. C. A. 110.

Act Ky. May 24, 1892, requiring separate cars to be furnished for white and colored passengers on railroads of the state, embracing all passengers, whether their passage commences and ends within the state or otherwise, violates the interstate commerce clause. Anderson v. Louisville & N. R. Co. (C. C. 1894) 62 Fed. 46.

The question of the right to assign on a steamboat plying between the port of one state and ports in the state of another colored female passengers to a different sleeping cabin from that assigned to white female passengers is a matter affecting interstate commerce, and cannot be regulated by state law, and where congress has refrained from legislation on the subject, the owners of the boat may adopt such reasonable regulations as the common law allows. The Sue (D. C. 1885) 22 Fed. 843, 844.

A statute requiring passengers of the different races to occupy separate coaches is not rendered invalid as a violation of the interstate commerce clause of the constitution by reason of the fact that a railroad in the state has a terminus without the state, as

such statute can only apply to transportation within the state. Ohio Val. Ry.'s Receiver v. Lander (1898) 104 Ky. 431, 47 S. W. 344, 882, 20 Ky. Law Rep. 913, rehearing denied (1898) 48 S. W. 145, 104 Ky. 431, 20 Ky. Law Rep. 913.

Act La. No. 111 of 1890, requiring railway companies carrying passengers on their trains in this state to provide equal, but separate, accommodations for the white and colored races, is valid if applied to passengers to be carried wholly within the state; but if applied to passengers taken up within the state, to be carried into another state, is an unconstitutional regulation of interstate commerce. State v. Hicks (1892) 44 La. Ann. 770, 11 South. 74.

Though Acts Md. 1904, c. 109, requiring carriers to provide separate coaches for the transportation of white and colored passengers, and making it an offense for a passenger to refuse to occupy the car to which he is assigned by the conductor, is valid in so far as it affects commerce wholly within the state, it is invalid as to interstate passengers under the commerce clause of the Constitution. Hart v. State (1905) 60 A. 457, 100 Md. 595.

Code Pub. Gen. Laws Md. art. 27, §§ 398–403, requiring electric railroads to provide separate seats for white and colored passengers, is valid in so far as it affects commerce wholly within this state, but not as to interstate commerce. State v. Jenkins (1914) 92 A. 773, 124 Md. 376.

Act Miss. March 2, 1888, § 1, provides "that all railroads carrying passengers in this state (other than street railroads) shall provide equal but separate accommodations for the white and colored races, by providing two or more passenger-cars for each passenger train, or by dividing the passenger-cars by a partition so as to secure separate accommodations." Held that, as this act operates only upon the carriage of passengers from points within the state to other points also within the state, it is not an interference with interstate commerce. Louisville, N. O. & T. Ry. Co. v. State (1889) 66 Miss. 662, 6 South. 203, 14 Am. St. Rep. 599, 5 L. R. A. 132.

Code Miss. 1906, § 4059, relating to separate accommodations for the white and colored races on trains, construed to apply to interstate travelers, held a reasonable exercise of police power and not invalid as an interference with interstate commerce. Alabama & V. Ry. Co. v. Morris (Miss. 1912) 60 So. 11.

Laws Tenn. 1891, c. 52, providing for the separate accommodation of the white and colored races on railroad trains, so far as it applies to interstate passengers, violates the interstate commerce clause. Carrey v. Spencer (Sup. 1895) 36 N. Y. Supp. 886.

Acts Tenn. 1891, c. 52, providing under penalty that railroads shall provide equal, but separate accommodations for the white and colored races, and attend to the separation of the passengers of the two races, though applying both to intra and inter state travel, is not objectionable as a "regulation" of interstate commerce. Smith v. State (1898) 46 S. W. 566, 100 Tenn. 494, 41 L. R. A. 432.

Laws Tex. 1891, c. 41, requiring every railroad to provide separate coaches for white and negro passengers, is not in conflict with the federal Constitution, as the act applies only to railroads doing business in the state. Southern Kansas Ry. Co. of Texas v. State (Tex. Civ. App. 1906) 99 S. W. 166.

186. —— Charges.—A statute of a state which requires each railroad company annually to fix its rates for the transportation of passengers and freight, and to cause a printed copy of the rates to be put up at all stations, and imposing a penalty for failure so to do, or for charging a higher rate than is posted, is a mere police regulation, and does not interfere with interstate commerce. Chicago & N. W. R. Co. v. Fuller (1873) 17 Wall. 560, 567, 21 L. Ed. 710.

Act Iowa establishing rates of charges for the transportation of freight and passengers on the different railroads of the state is not unconstitutional as amounting to a regulation of commerce among the states. Chicago, B. & Q. R. Co. v. Iowa (1876) 94 U. S. 155, 24 L. Ed. 94.

A state law regulating charges that in express terms prohibits the commissioners appointed thereunder from interfering with the charges of the company for the transportation of persons or property through the state, from one state to another, and makes no mention of person or property taken up without the state and delivered within it, or of such as may be taken up within and carried without the state, will not be held unconstitutional; at least until the commissioners have attempted to make some regulation which will interfere with interstate commerce. Stone v. Farmers' Loan & Trust Co. (1886) 6 Sup. Ct. 334, 347, 116 U. S. 307, 29 L. Ed. 636.

A state has power to limit the amount of charges by railroad companies for the transportation of persons and property within its own jurisdiction, unless restrained by some contract in the charter, or unless what is done amounts to a regulation of foreign or interstate commerce. Id.

State statutes fixing maximum fares and rates on shipments on railroads between intrastate points are not unconstitutional, as regulations of interstate commerce, because between certain cities in the state there are lines of road lying wholly within the state, and other lines which run in part through another state, and by long established custom and from the neces-

sities of competition the latter are compelled to make the same rates as the former, where the statutes have not been construed by the courts of the state to directly apply to the interstate lines. Knott v. Chicago, B. & C. R. Co. (1913) 33 Sup. Ct. 975, 230 U. S. 474, 57 L. Ed. 1571, modifying decree St. Louis & S. F. R. Co. v. Hadley (C. C. 1909) 168 Fed. 317, decree reversed Same v. St. Louis, K. C. & C. R. Co. (1913) 33 Sup. Ct. 983, 230 U. S. 512, 57 L. Ed. 1596, and appeal dismissed Same v. St. Louis Southwestern R. Co. (1913) 33 Sup. Ct. 985, 230 U. S. 509, 57 L. Ed. 1595.

Act Iowa March 23, 1874, providing for a tariff of maximum charges for the transportation of freight and passengers by railroads, in so far as it relates to through shipments over interstate lines, is unconstitutional. Kaeiser v. Illinois Cent. R. Co. (C. C. 1883) 18 Fed. 151.

An act of the legislature which attempts to control the rates for fares and freights of persons and commodities passing over these roads from one state into another, on the theory of regulating the charges for the distances traveled within the state, is invalid as a regulation of interstate commerce, and the railroad commissioners will be enjoined from executing it as to these roads. Louisville & N. R. Co. v. Railroad Commission of Tennessee (C. C. 1884) 19 Fed. 679.

The act of the Legislature of Minnesota of April 4, 1907 (Gen. Laws 1907, c. 97 [Rev. Laws Supp. 1909, §§ 2007—1 to 2007—2]), reducing passenger fares within the state about 33⅓ per cent. by its natural and necessary effect substantially burden and directly regulate interstate commerce, create undue and unjust discriminations between localities in Minnesota and those in adjoining states, violate the commerce clause, and are void. Shepard v. Northern Pac. Ry. Co. (C. C. 1911) 184 Fed. 765, decree modified Simpson v. Shepard (1913) 33 Sup. Ct. 729, 230 U. S. 352, 57 L. Ed. 1511.

Laws Mich. 1891, p. 103, providing the rate of compensation that railway companies shall charge for the transportation of passengers, is not a regulation of interstate commerce, as such law applies only to the rates to be charged within the state on domestic commerce. Osborn v. Wabash R. Co. (1900) 82 N. W. 526, 123 Mich. 669, 7 Detroit Leg. N. 67.

An order of the Public Utility Commission, requiring railroads affording intrastate commutation service at certain points to publish and file schedules of such rates, and to sell tickets for such service designating both termini, is not invalid as an interference with interstate commerce. Delaware, L. & W. R. Co. v. Board of Public Utility Com'rs (1913) 87 A. 801, 84 N. J. Law. 619.

Where a carrier, in the unrestrained course of business, adopted a lower schedule of charges for intrastate and interstate passenger service than the rate allowed by the State Corporation Commission for intrastate business, it cannot object to the rates fixed by the commission as substantially burdening interstate commerce. Washington Southern Ry. Co. v. Commonwealth (Va. 1911) 71 S. E. 539.

187. —— **Sale of tickets or mileage books.**—An order of the Railroad Commission, requiring all railroads selling mileage or penny scrip books to pull same on the train of the company selling them, except in cities of a certain population, in which the mileage shall be exchanged for tickets, held not invalid on the ground that it directly affects interstate commerce. Railroad Commission of Georgia v. Louisville & N. R. Co. (1913) 80 S. E. 327, 140 Ga. 817.

Act Ill. April 19, 1875, prohibiting persons from selling railroad or steamboat tickets without a certificate of authority from the company, is not unconstitutional, as interfering with interstate commerce. Burdick v. People (1894) 149 Ill. 600, 36 N. E. 948, 41 Am. St. Rep. 329, 24 L. R. A. 152; Id. (1894) 149 Ill. 611, 36 N. E. 952.

Act Ind. March 9, 1875, regulating the issuing and taking up of tickets and coupons of tickets by common carriers, does not violate the commerce laws. Fry v. State (1878) 63 Ind. 552, 30 Am. Rep. 238.

Act Ind. March 9, 1875 (1 R. S. 1876, p. 259), prohibiting the sale of railroad tickets by brokers, does not violate the interstate commerce clause. Id.

A state statute which makes a ticket for a passage on any railroad binding on the company for six years from its date, and gives the holder the right to stop off at usual stopping places as often as he pleases during that period, does not apply to a ticket purchased in Canada for a continuous passage, on a particular day, from that province through portions of the states of Vermont and New Hampshire into Maine, as such an application of the statute would work an interference with both foreign and interstate commerce. Lafarier v. Grand Trunk Ry. of Canada (1892) 84 Me. 286, 24 Atl. 848, 17 L. R. A. 111.

It is not a sufficient objection to St. Mass. 1892, c. 389, requiring railroad corporations to provide mileage tickets which shall be accepted for passage and fare upon all railroad lines in this commonwealth, that it may incidentally affect commerce between the states, if it does not attempt to regulate such commerce. Attorney General v. Old Colony R. Co. (1893) 160 Mass. 62, 35 N. E. 252, 22 L. R. A. 112.

Laws Minn. 1893, c. 66, making it unlawful for any person to sell railroad or steamboat tickets without having a

certificate of authority to do so from the carrier, is not unconstitutional, as an interference with interstate commerce. State v. Corbett (1894) 57 Minn. 345, 59 N. W. 317, 24 L. R. A. 498.

Laws N. Y. 1895, c. 1027, § 1, as amended by Laws 1896, c. 835, which provides that railroads operating "in this state" shall sell mileage books at a certain rate, does not, as regards a railroad whose lines extend beyond the state, interfere with interstate commerce, as it applies only to carrying passengers between points in the state. Dillon v. Erie R. Co. (Sup. 1897) 43 N. Y. Supp. 320, 19 Misc. Rep. 116; Beardsley v. New York, L. E. & W. R. Co. (1897) 44 N. Y. Supp. 175, 15 App. Div. 251 (judgment reversed [1900] 56 N. E. 488, 162 N. Y. 230).

Laws N. Y. 1897, c. 506, prohibiting the sale of tickets for passage on railroads or vessels by persons not authorized agents of the carriers, is not void as an attempted regulation of interstate commerce. People v. Warden of City Prison (1898) 50 N. Y. Supp. 56, 26 App. Div. 228, order reversed (1898) 51 N. E. 1006, 157 N. Y. 116, 43 L. R. A. 264, 68 Am. St. Rep. 763.

Laws N. Y. 1895, c. 1027, amended by Laws 1896, c. 835, requiring railroads operating "in this state" to issue mileage books entitling the holder "to travel 1,000 miles on the lines of such railroad," are intended to make such mileage books good only for passage between points within the state, and therefore do not, as regards railroads extending beyond the state, interfere with interstate commerce. Purdy v. Erie R. Co. (1900) 56 N. E. 508, 162 N. Y. 42, 48 L. R. A. 669, affirming judgment (1898) 54 N. Y. Supp. 1114, 33 App. Div. 643

Laws Or. 1905, p. 422, requiring railroads to provide agents authorized to sell tickets with a certificate of authority, and making it unlawful for a person not possessed of such a certificate from a railroad to sell tickets or operate a ticket office, is not repugnant to Const. art. 1, § 8, giving Congress power to regulate commerce among the several states, because it relates to tickets of railroads without, as well as those of railroads within, the state. State v. Thompson (1906) 84 P. 476, 47 Or. 492, 4 L. R. A. (N. S.) 480; Same v. Bollam (1906) 84 P. 479, 47 Or. 639.

Act Pa. May 6, 1863 (P. L. 582), as amended by Act April 10, 1872 (P. L. 51; Purd. Dig. p. 220), prohibiting any person from selling railroad tickets without a certificate of authority from the railroad company, does not conflict with the commerce clause, since it is but a police regulation relating to the sale of tickets within the state. Commonwealth v. Wilson (Pa. 1880) 37 Leg. Int. 484, 14 Phila. 384.

Act Pa. May 6, 1863 (P. L. 582), entitled "An act to prevent fraud upon travelers," and making it unlawful for any person not an authorized agent of the carriers to sell a passenger ticket, is not violative of the commerce clause in attempting to regulate the commerce among the several states, as it is not an attempt to make a rule affecting interstate commerce. Commonwealth v. Keary (1901) 48 A. 472, 198 Pa. 500.

A regulation as to the hours for opening a ticket office is not invalid, as a regulation of commerce. Hall v. South Carolina Ry. Co. (1886) 25 S. C. 564.

Rev. St. Tex. 1895, art. 4560d, requiring railroad companies to provide for the redemption of unused tickets on presentation in due time, and imposing a penalty for a failure to redeem, does not apply to any ticket for continuous passage from points within the state of Texas to any place beyond its limits, but to tickets issued by railroads in the state for passage from and to points within the state, and in such cases is valid. Missouri, K. & T. Ry. Co. of Texas v. Fookes (Tex. Civ. App. 1897) 40 S. W. 858.

(E) Licenses and Taxes

188. Licenses and privilege taxes—In general.—Act June 30, 1864 (13 Stat. 223), providing that no persons should be engaged in certain occupations without obtaining licenses from the United States, and imposing penalties for not taking out and paying them, is not unconstitutional. License Tax Cases (1866) 72 U. S. (5 Wall.) 462, 18 L. Ed. 497.

An ordinance requiring carriers to pay a license to transact in a city a business extending beyond the limits of the state held not repugnant to this clause. Osborne v. Mobile (1872) 16 Wall. 479, 480, 21 L. Ed. 470.

That a discriminatory tax is imposed in the form of requiring a license fee, makes no difference. Where the business or occupation consists in the sale of goods, the license tax required for its pursuit is, in effect, a tax upon the goods themselves. If such a tax is within the power of the state to levy, it matters not whether it be raised directly from the goods, or indirectly from them through the license to the dealer; but, if such tax conflicts with any power vested in congress by the constitution of the United States, it will not be any the less invalid because enforced through the form of a personal license. Welton v. State (1875) 91 U. S. 275, 23 L. Ed. 347.

The levying of a tax on vessels or other water craft, or the exaction of a license fee by the state within which the property subject to the exaction has its situs, is not a regulation of commerce. Wiggins Ferry Co. v. City of East St. Louis (1883) 2 Sup. Ct. 257, 263, 107 U. S. 365, 27 L. Ed. 419.

A city cannot make a charge as the price of the privilege of navigating a river in accordance with the terms of the party's license from the United States as it violates the commerce clause. Moran v. New Orleans (1884) 5 Sup. Ct. 38, 39, 112 U. S. 69, 28 L. Ed. 653.

Order imposing a license tax on every railroad agency is a regulation of interstate commerce, in so far as it applies to an agent who solicits passenger traffic over a road operated outside the state, but who sells no tickets. His business being carried on to assist the traffic of his road, is within the protection of the commerce clause, though it may not be essential to such traffic. McCall v. California (1890) 10 Sup. Ct. 881, 882, 136 U. S. 104, 34 L. Ed. 391, distinguishing Pembina Consol. Silver Min. & Mill. Co. v. Pennsylvania (1888) 8 Sup. Ct. 737, 125 U. S. 181, 31 L. Ed. 650.

The limitation on the power of a state to tax interstate commerce extends to all such commerce, though it may not actually pass through its territory. Id.

No state can interfere with interstate commerce through the imposition of a tax, by whatever name called, which is in effect a tax for the privilege of transacting such commerce; but this restriction does not in the least abridge the right of a state to tax, at their full value, all the instrumentalities used for such commerce. Adams Express Co. v. Ohio State Auditor (1897) 17 Sup. Ct. 604, 605, 166 U. S. 185, 41 L. Ed. 965.

The fact that grain stored in an elevator is to be shipped out of the state does not make a state statute requiring a license for conducting the business of such elevator in the state amount to a regulation of interstate commerce. W. W. Cargill Co. v. State of Minnesota (1901) 21 Sup. Ct. 428, 180 U. S. 452, 45 L. Ed. 619, affirming judgment State v. W. W. Cargill Co. (1899) 79 N. W. 962, 77 Minn. 223.

No state can compel a party, individual, or corporation to pay for the privilege of engaging in interstate commerce. Atlantic & P. Tel. Co. v. Philadelphia (1903) 23 Sup. Ct. 817, 818, 190 U. S. 160, 47 L. Ed. 995.

The Texas statute imposing an occupation tax of $500 upon every person, firm, or association engaged in selling the Sunday Sun, the Kansas City Sunday Sun, or other publications of like character, being applicable to all persons, whether residents of the state or not, engaged in selling "publications of like character" with those specifically mentioned, is not a discrimination either against the person or the property of the owners of the publications named, and is therefore not invalid as a regulation of interstate commerce. Preston v. Finley (C. C. 1896) 72 Fed. 850.

When a law of a state imposes a tax under such circumstances and with such effect as to constitute it a regulation of interstate commerce, it is void on that account. In re Tinsman (C. C. 1899) 95 Fed. 648, 649.

No state can levy a tax on interstate commerce, whether by duties laid on the transportation of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on. Postal Telegraph-Cable Co. v. City of Mobile (C. C. 1909) 179 Fed. 955.

A person engaged in conducting an interstate express cannot be required by the state or municipal authorities to take out a local license as a prerequisite to conducting his interstate business within the state or municipality. Barrett v. City of New York (C. C. 1911) 189 Fed. 268.

One trading in interstate commerce under a valid coasting license is not subject to a state or municipal license. Ex parte Eaglesfield (D. C. 1910) 180 Fed. 558.

A cargo in interstate commerce is not subject to taxation by a state. Id.

Interstate commerce is equally burdened whether by direct tax on the property imposed by state statute or by an indirect tax on the person engaging in interstate commerce or his agent in the form of a licensed fee imposed by state statute for carrying on the business. Jewel Tea Co. v. Lee's Summit, Mo. (D. C. 1912) 198 Fed. 532.

This clause and section 10 of the same article forbids any state without the consent of Congress to lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws, and hence interstate commerce cannot be taxed by the state. Smith v. Farr (1909) 104 P. 401, 46 Colo. 364.

The doing of business constituting interstate commerce by one who is at the same time engaged in business of the same kind constituting state or local commerce is not a bar or exemption to the local or state commerce business from taxation or regulation by state authority. Osborne v. State (1894) 14 So. 588, 33 Fla. 162, 25 L. R. A. 120, 39 Am. St. Rep. 99.

A state cannot tax or regulate interstate commerce, or make the payment of a tax or the taking out of a license a condition precedent to carrying on interstate commerce, and a state statute which does so to that extent is void, as in violation of the commerce clause. Id.

A state statute taxing or regulating interstate or foreign commerce or imposing an occupation tax thereon offends the commerce clause. Id.

The specific tax levied, under Act 1866, upon persons engaged in a particular business, is not violative of the

commerce clause, as being an interference with interstate commerce, where the property employed in the business taxed has been brought into Georgia, and has itself become subject to taxation therein. Singer Mfg. Co. v. Wright (1895) 25 S. E. 249, 97 Ga. 114, 35 L. R. A. 497.

A statute requiring payment of a license tax by a person residing on a boat, though it applies to the Ohio and Mississippi rivers, is not an interference with interstate commerce. Robertson v. Commonwealth (1897) 101 Ky. 285, 40 S. W. 920, 19 Ky. Law Rep. 442.

State held authorized to levy tax on carrying on of business, if not discriminatory against persons residing in another state or the products or manufactures of another state. City of Newport v. Wagner (Ky. 1916) 182 S. W. 834.

A license tax interferes with interstate commerce if it taxes a person engaged in selling articles of commerce not yet brought into the state and mingled with the mass of property within the state. State v. Schofield (1915) 67 So. 557, 136 La. 702.

The giving of a license by a municipal corporation for a fee is not a regulation of commerce. Chilvers v. People (1862) 11 Mich. 43.

Acts Mo. 1903, p. 110, to regulate the business of persons or concerns engaged in making or issuing contracts to be redeemed or fulfilled in the order of their issue by the accumulation of funds arising from the contributions made by the holders of such contracts, requiring those engaged therein to make a specified deposit with the State Treasurer as security for holders of such contracts, and to obtain a license from the Supervisor of Building and Loan Associations, who is made ex officio supervisor of such business, with visitorial powers, etc., is not a regulation of interstate commerce. State ex rel. Hickman v. Preferred Tontine Mercantile Co. (1904) 82 S. W. 1075, 184 Mo. 160, dismissed (1905) 26 Sup. Ct. 748, 199 U. S. 613, 50 L. Ed. 334.

The right to engage in interstate commerce may be exercised under the Constitution and laws of the United States and does not depend on a license or permission of a state. Kansas City v. McDonald (Mo. 1915) 175 S. W. 917.

The state may not tax the right to carry on interstate commerce or to conduct the business of the government. State v. Western Union Telegraph Co. (1911) 117 P. 93, 43 Mont. 445.

Buffalo City Ordinances, c. 7, § 35, prohibiting the sale of farm products in the city without previously obtaining a license therefor, except retail sales from vehicles, or on premises of the seller or buyer, or by residents of the state who are owners or lessees of lands within the city, or sales of products grown by the sellers on their lands, not being a police regulation, or intended to conserve the public health, is repugnant to the commerce clause. City of Buffalo v. Reavey (1899) 55 N. Y. Supp. 792, 37 App. Div. 228.

No state has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived therefrom, or on the business of carrying it on. State v. Northern Express Co. (1914) 141 P. 757, 80 Wash. 309, reversing judgment on rehearing (1913) 136 P. 1160, 76 Wash. 636.

When a business sought to be taxed is wholly within the state, and that business is but a mere incident to interstate commerce, that fact furnishes no obstacle to the valid taxation by the state of the business which is entirely local. Id.

189. —— Circuses and other exhibitions.—The provision in 1 Gav. & H. p. 424, concerning licenses to exhibit any caravan, menagerie, circus, etc., is not in violation of the commerce clause. Sears v. Warren County Com'rs (1871) 36 Ind. 267.

A tax imposed by a town, under authority of the state, on a public exhibition given on board a steamboat, the owner whereof has obtained a coasting license from the federal government, is a mere police regulation, necessary to the order of cities and towns, and not a regulation of commerce. Board of Selectmen v. Spalding (1853) 8 La. Ann. 87.

190. —— Importers.—A state law requiring importers to take out license held to be unconstitutional. Brown v. Maryland (1827) 12 Wheat. 419, 436, 6 L. Ed. 678.

191. —— Engineers.—New York City Charter, § 343, makes it a misdemeanor for one to act as an engineer for the purpose of operating a steam boiler, save for private dwellings for heating purposes or for locomotives, without a certificate of qualification. Held that, though applicable to one acting as engineer of a boiler situated on a scow on the East river, and used for blasting purposes, the statute did not impose a burden on commerce. People v. Prillen (1902) 76 N. Y. Supp. 821, 73 App. Div. 207, reversed (1903) 65 N. E. 947, 173 N. Y. 67.

192. —— Bill posters.—A foreign corporation, although engaged in interstate commerce, is bound by reasonable police regulations in force in a city where it does business, and designed to promote the health, peace, and morals of the community, such as a statutory regulation requiring bill posters to pay a license fee of $20. International Text-Book Co. v. District of Columbia (1910) 35 App. D. C. 307.

193. —— Pilots.—The act "regulating the licensing of pilots at the falls of

the Ohio river" (1 Gav. & H. p. 473) provides that the governor shall appoint the pilots, who shall execute bonds, etc., conditioned, etc., and that any owner or navigator of a boat ascending or descending the river may navigate said falls at his own risk. Held, that said law is valid, at least so far as commercial intercourse may be carried on between the parts of the state named in said act by citizens of the state, and therefore does not conflict with the provision in the United States constitution providing that congress shall have power to regulate commerce with foreign nations and among the several states, etc. Barnaby v. State (1863) 21 Ind. 450.

194. —— Steamboat agents. — Acts Tenn. 1879, c. 84, § 7, subd. 36, imposing a privilege tax on agents of steamboats, etc., is not an invalid regulation of commerce. Lightburne v. Taxing Dist. (1880) 72 Tenn. (4 Lea) 219.

195. —— Masters of vessels.—State statutes requiring from the masters of vessels engaged in the foreign and coasting trade the payment of a sum of money for hospital purposes, for each of the officers and crew of such vessel, are unconstitutional and void, but enactments requiring payment from shipmasters on account of passengers are constitutional and valid. People v. Brooks (N. Y. 1847) 4 Denio, 469.

196. —— Towing vessels or owners thereof.—The New Orleans city ordinance imposing a license tax on "every agency, person, or corporation owning or running towboats to and from the Gulf of Mexico" violates the commerce clause. Moran v. City of New Orleans (1884) 112 U. S. 69, 5 Sup. Ct. 38, 28 L. Ed. 653.

Steam tugs engaged in the business of towing vessels from the Chicago river into the harbor and lake, and in bringing vessels from the lake into the river, are engaged in interstate and foreign commerce, and if they possess a license to engage in the coasting and foreign trade, under R. S. § 4321 (Comp. St. § 8069), they cannot be compelled to pay any further license fee to the city of Chicago, and a city ordinance requiring the same is void, notwithstanding extensive improvements to the river and harbor made by the city in aid of navigation. Harmon v. Chicago (1893) 13 Sup. Ct. 306, 309, 147 U. S. 396, 37 L. Ed. 216, reversing (1892) 29 N. E. 732, 140 Ill. 374, which reversed on rehearing (1891) 26 N. E. 697.

The ordinance of the city of Chicago requiring licenses for tugboats plying within the waters of the city held, by a divided court, not invalid, as a regulation of commerce. Harmon v. City of Chicago (1890) 37 Ill. App. 496, reversed (1891) 26 N. E. 697.

Tugboats licensed by the United States for the coasting trade, and employed in towing vessels engaged in interstate commerce in and out of the Chicago river, are engaged in interstate commerce, though their operations are in fact confined largely to the corporate limits of the city of Chicago. But a city ordinance prohibiting the use of such tugboats, except under license from the city, is unconstitutional, as being a toll for the use of the river in its condition as improved by the city at its own expense. Harmon v. City of Chicago (1892) 140 Ill. 374, 29 N. E. 732, reversing (1891) 26 N. E. 697.

The ordinance of the city of New Orleans imposing a license tax upon the owners of towboats running on the Mississippi river to and from the Gulf of Mexico is not a regulation of commerce, and it is not, therefore, in conflict with the constitution of the United States. New Orleans v. Eclipse Towboat Co. (1881) 33 La. Ann. 647, 39 Am. Rep. 279.

Act La. No. 150 of 1890, § 8, par. 19, imposing a license tax on every person engaged in the business of operating towboats on the Mississippi river and its tributaries, to be graduated according to the gross annual receipts, is void because it is a regulation of interstate commerce. Frere v. Von Schoeler (1894) 47 La. Ann. 324, 16 South. 808, 27 L. R. A. 414.

Vessels licensed for coasting trade, as provided by R. S. § 4321 (Comp. St. § 8069), and engaged in transporting freight upon the Mississippi river from Illinois to Missouri, and unloading the same into vessels moored at the improved wharf of the city of St. Louis, cannot be compelled to pay the license fee exacted by St. Louis City Ordinance, § 232, which does not exact such fee as compensation for the use of the city's wharf, but for the privilege "of towing boats or other water crafts into or out of the harbor of the city, or from one place to another within said harbor," such ordinance being void as an interference with interstate commerce. City of St. Louis v. Consolidated Coal Co. (1900) 158 Mo. 342, 59 S. W. 103, 51 L. R. A. 850, 81 Am. St. Rep. 310.

197. —— Ferries and ferryboats.—The granting of ferry licenses on boundary rivers is within the police powers of a state, provided it be not so exercised as to interfere with general commercial transportation, as distinguished from ferriage. Conway v. Taylor (1861) 66 U. S. (1 Black) 603, 17 L. Ed. 191.

When the state expressly grants an incorporated city the power to license, tax, and regulate ferries, the latter may impose a license tax on the keepers of ferries, though their boats ply between landings lying in two different states, and the act by which this exaction is authorized will not be held to be a regulation of interstate commerce. Wiggins Ferry Co. v. City of

East St. Louis (1883) 2 Sup. Ct. 257, 264, 107 U. S. 365, 27 L. Ed. 419.

An annual license tax of a fixed sum, imposed by a municipal corporation on each boat of a ferry company located within its limits, is a valid exercise of the police power, and, though the other landing of the ferry is in another state, cannot be considered as a regulation of interstate commerce. Id.

An unconstitutional burden is imposed on interstate commerce by Rev. Laws Ill. 1874, c. 55, penalizing the carrying on of a ferry without a license, when applied to the transportation of loaded or unloaded railroad cars across the Mississippi river from the Illinois to the Missouri shore, even assuming that a state may regulate a ferry upon a navigable stream forming the boundary between two states, where such statute makes the granting of the license discretionary, with citizens of Illinois preferred, and compels the licensee to conduct a general ferry business. St. Clair County v. Interstate Sand & Car Transfer Co. (1904) 24 Sup. Ct. 300, 192 U. S. 454, 48 L. Ed. 518, affirming judgment St. Clair County v. Interstate Car Transfer Co. (C. C. 1901) 109 Fed. 741.

A state, or a municipality, acting under its authority, may not, consistently with the commerce clause, require a Canadian corporation, operating a ferry over the boundary stream between such state and Canada, to take out a license and pay a license fee as a condition precedent to receiving and landing persons and property at its wharf in such municipality. City of Sault Ste. Marie v. International Transit Co. (1914) 34 Sup. Ct. 826, 234 U. S. 333, 58 L. Ed. 1337, affirming decree International Transit Co. v. City of Sault Ste. Marie (D. C. 1912) 194 Fed. 522.

A state has no power to exact a license fee for the operation of a ferry for the transfer of railroad cars across a navigable river between a point within such state and a point in another state, where the corporation owning and operating such ferry is a citizen and resident of the latter state, and the vessels employed have their situs in such state for purposes of taxation, and the only property of the company within the state seeking to impose the license consists of its landing place and facilities. As applied to such case, the license fee is a direct burden upon interstate commerce. St. Clair County v. Interstate Car Transfer Co. (C. C. 1901) 109 Fed. 741, judgment affirmed Same v. Interstate Sand & Car Transfer Co. (1904) 24 Sup. Ct. 300, 192 U. S. 454, 48 L. Ed. 518.

An ordinance requiring keepers of ferries to pay a license fee, enacted in pursuance of a power conferred upon the city by the legislature to "license, tax and regulate ferries," is not in restraint of interstate commerce. Wiggins Ferry Co. v. City of East St. Louis (1882) 102 Ill. 560.

The acts of 1793, 1838, or 1852, requiring steamboats to be licensed, etc., do not relate to ferryboats. Congress has not assumed the control over ferries, or over the state legislation in regard to that subject. Newport v. Taylor (1855) 55 Ky. (16 B. Mon.) 699.

The owner of a ferryboat plying between the United States and Canada, on the Detroit river, may be convicted under an ordinance of the city of Detroit forbidding the operation of ferryboats without a license, though the boat was duly enrolled and licensed for the coasting and foreign trade under the laws of the United States. Chilvers v. People (1862) 11 Mich. 42.

A tax on the privilege of operating a ferry, where the ferry company is exclusively engaged in ferrying passengers across a river from one state to another, is a burden on interstate commerce, which a state may not impose. Helena-Glendale Ferry Co. v. State (Miss. 1912) 57 So. 362.

198. —— **Vehicles.**—Requirements of Laws Md. 1910, c. 207, for registering automobiles at a cost varying according to the horse power, and for the driver to obtain a license, and that nonresidents, to have a limited use of the highways without cost, must have complied with a similar law in their respective states and have secured a tag, are not unreasonable as to vehicles moving in interstate commerce. Hendrick v. State of Maryland (1915) 35 Sup. Ct. 140, 235 U. S. 610, 59 L. Ed. 385.

Rights of citizens to pass through the several states held not unconstitutionally interfered with by Laws Md. 1910, c. 207, § 140a, relating to use of highways of the state by nonresident owners of automobiles. Id.

Gen. St. N. J. p. 2236, § 532, grants to the common council of any borough power to enact ordinances to license and regulate cartmen, carriages, and vehicles used for the transportation of goods and chattels, and to fix rates of compensation to be paid for such licenses, for purposes of revenue. The borough of Atlantic Highlands passed an ordinance imposing an arbitrary annual license tax of $10 on every two-horse truck or vehicle engaged in the transportation of merchandise, and a tax of $7.50 on every one-horse vehicle similarly engaged. Held, that such ordinance was not an exercise of police power, but a revenue measure, and was inapplicable to interstate commerce, though it operated equally on both interstate and domestic commerce; interstate commerce not being subject to taxation by the states. Simpson-Crawford Co. v. Borough of Atlantic Highlands (C. C. 1908) 158 Fed. 372.

New York City ordinances, regulating express wagons using the streets of the city, requiring that they be licensed and marked with the word "express" and with their official numbers, that they be regularly inspected and

pay a license fee of $5 for each wagon, that the drivers shall also be licensed and pay a license fee of 50 cents, were reasonable and applicable to delivery wagons of express companies engaged in interstate commerce. Barrett v. City of New York (C. C. 1911) 189 Fed. 268.

The provisions of P. L. N. J. 1908, p. 615, § 4, which fixes an annual fee of $3 for registering an automobile of less than 30 horse power and a fee of $5 for each automobile of 30 horse power and more, and which fixes a fee of $1 for a license for the driver of the first, and $2 for a license for the driver of the second class of automobiles, imposed as a charge for the use of highways and to raise revenue to defray their cost and repair, is without discrimination against nonresidents, and, while applying to persons engaged in interstate commerce, is not unconstitutional, as contravening the commerce clause. Kane v. Titus (N. J. 1911) 80 A. 453.

Act Ohio April 16, 1883, as amended Act March 25, 1884, § 20, requiring owners of vehicles using the streets of a city to pay an annual license fee, and providing that the fees be placed to the credit of the street-repairing fund of the public treasury of said city, is not in violation of the interstate commerce clause, when enforced against owners who are nonresidents of the state, and not engaged in business in the state, for vehicles used by them upon such streets in interstate transportation, and in prosecution of interstate commerce. The license fees must be regarded as compensation for the advantages and improved facilities afforded by the city for such transportation. Bogart v. State (Ohio Com. Pl. 1888) 20 Wkly. Law Bul. 458.

199. —— **Fishermen.**—The license tax imposed by Act Va. March 3, 1898 (Acts 1897–98, p. 864), on residents of the state for the privilege of fishing in the waters belonging to the state, does not encroach on the authority of the United States to regulate commerce and navigation. Morgan v. Commonwealth (1900) 35 S. E. 448, 98 Va. 812.

200. —— **Planting, taking, and canning oysters.**—Laws Md. 1886, c. 296, providing that having instruments for oyster dredging on board of any vessel within the state, without having first obtained for such vessel a license for oyster dredging, shall be prima facie evidence of an intention to use the vessel contrary to law, was not unconstitutional, as an attempted regulation of interstate commerce or an interference with freedom of navigation, though it might have unjustly averted suspicion to a vessel of a sister state, found within the waters of Maryland, having dredging tools aboard her, but the law was intended as a reasonable provision, for the proper enforcement of the oyster law. Dize v. Lloyd (C. C. 1888) 36 Fed. 651.

Acts Ala. 1911, p. 466, § 9, which is for the protection of oysters, and imposes a tax upon all oysters canned, packed, shipped, or sold in and from the state, is not invalid as an interference with interstate commerce; property bought without the state being subject to taxation when it comes to rest in the state. Mangeldorf v. State (1913) 62 So. 373, 8 Ala. App. 302.

Code Md. art. 72, as re-enacted by Laws 1894, c. 380, §§ 66, 67, imposing a license upon packers and canners of oysters for "sale or transportation," does not seek to regulate interstate commerce, in violation of the constitution. State v. Applegarth (1895) 81 Md. 293, 31 Atl. 961, 28 L. R. A. 812.

Acts Md. 1894, c. 380, § 66, requiring every one engaged in packing oysters to pay a tax, which applies to oysters caught in and shipped from another state, is within the police power of the state, and is not an interference with interstate commerce. Applegarth v. State (1899) 42 A. 941, 89 Md. 140.

Code Miss. 1906, § 3498, as amended by Laws 1908, c. 192, imposing a privilege tax fee per barrel on oysters canned in the state in addition to the privilege tax on canning factories imposed by section 3497, does not interfere with interstate commerce in violation of Const. art. 1, § 8. Barataria Canning Co. v. State (Miss. 1912) 58 So. 769.

An act to enforce, in Maurice River Cove and Delaware Bay, an act for the preservation of clams and oysters, requiring a license from all boats engaged in planting or taking oysters there, is not an unconstitutional interstate regulation. Johnson v. Loper (1884) 46 N. J. Law (17 Vroom) 321.

Act N. J. March 24, 1899 (P. L. p. 506), relating to the regulation of oyster planting in certain tidal waters within the state, and providing in sections 10 and 11 for the licensing of boats to engage in the business, etc., does not violate this clause; the oyster beds being the property of the state, and the regulation thereof not being affected by the constitutional provision. State v. Corson (1901) 50 A. 780, 67 N. J. Law, 178.

201. —— **Mercantile business in general.**—A statute of a state legislature requiring importers of foreign goods by the bale, etc., and others who sell them by wholesale, bale, package, etc., to take out a license, for which they shall pay $50, and, in case of neglect or refusal to take out such license, subjecting them to certain forfeitures and penalties, is repugnant to the provision of the constitution. Brown v. Maryland (1827) 25 U. S. (12 Wheat.) 419, 6 L. Ed. 678.

A state may impose a uniform tax on all sales made in it, whether such sales be made by one of its own citizens

or the citizen of another state, and whether the goods sold are the produce of the state imposing the tax or of some other. Woodruff v. Parham (1868) 75 U. S. (8 Wall.) 123, 19 L. Ed. 382.

A municipal ordinance imposing a license fee upon sales of a particular description of goods within the city cannot be held unconstitutional as amounting to a regulation of commerce, unless the proof shows that the goods in respect to which the objection is made are the produce of another state, or of some foreign country. Downham v. Alexandria Council (1869) 77 U. S. (10 Wall.) 173, 19 L. Ed. 929.

Acts Md. 1868, c. 413, which provides that no person not a permanent resident of the state shall offer for sale within the state any merchandise not the produce of the state, without first obtaining a license to do so, and paying a fee therefor, is unconstitutional, as infringing the exclusive power of congress to regulate commerce among the states. Ward v. Maryland (1870) 79 U. S. (12 Wall.) 418, 20 L. Ed. 449.

An ordinance requiring payment of a license to transact in the city a business extending beyond the limits of the state, is not repugnant to the interstate commerce clause. Osborne v. Mobile (1872) 83 U. S. (16 Wall.) 479, 21 L. Ed. 470.

A statute requiring a license for selling articles manufactured in other states and territories, but not to sell articles manufactured in the state, was held to be a regulation of interstate commerce exceeding a state's authority. Webber v. Virginia (1880) 103 U. S. 344, 349, 26 L. Ed. 565, reversing (1880 Va.) 33 Grat. 898.

The provision of the Maryland Code, as amended in 1880, requiring any one, not the grower, maker, or manufacturer, selling goods within the state, to pay a license tax proportioned to the amount of his stock in trade, whether situated in the state or out of it, is a regulation of interstate commerce, invalid as applied to persons living out of the state, and selling by sample within it. Corson v. Maryland (1887) 120 U. S. 502, 7 Sup. Ct. 655, 30 L. Ed. 699.

The privilege tax imposed on merchants by the Tennessee revenue law of 1897 (chapter 2), to the extent of 15 cents "on each $100 worth of taxable property," is not an interference with interstate commerce. Oliver Finney Grocery Co. v. Speed (C. C. 1898) 87 Fed. 408.

The fact that grain stored in an elevator is to be shipped out of the state does not make a state statute requiring a license for conducting the business of such elevator in the state amount to a regulation of interstate commerce. W. W. Cargill Co. v. Minnesota (1901) 21 Sup. Ct. 423, 429, 180 U. S. 452, 45 L. Ed. 619, affirming judgment State v. W. W. Cargill Co. (1899) 79 N. W. 962, 77 Minn. 223.

The license or occupation tax imposed in each county upon the business of selling or delivering sewing machines, under Act Ala. March 31, 1911, § 32, is not an unconstitutional interference with interstate commerce as applied to a foreign corporation which maintains a store or regular place of business in each county, from which all of the local agents in such county are supplied with sewing machines and appurtenances to be taken into the rural districts for sale or rent, all transactions entering into such sale or renting being completed within a single county. Singer Sewing Mach. Co. v. Brickell (1914) 34 Sup. Ct. 493, 233 U. S. 304, 58 L. Ed. 974.

The license or occupation tax imposed in each county by Act Ala. March 31, 1911, §§ 32, 33f, upon the business of selling or delivering sewing machines, may be construed, in order to avoid an unconstitutional meaning, as not intended to apply to that portion of the business conducted by a foreign corporation which involves transactions in interstate commerce, where its business as generally conducted is wholly intrastate and free from any element of interstate commerce, the single exception being the business conducted in a border county. Id.

The invalidity, if applied to the interstate business conducted by a foreign corporation in a border county, of the license or occupation tax imposed by Act Ala. March 31, 1911, §§ 32, 33f, upon the business of selling or delivering sewing machines, does not affect the validity of the tax as applied to the business conducted by such corporation in the other counties in the state in which there is no element of interstate commerce, the statute dealing separately with the business as conducted in each county in the state, and providing for separate taxes to be laid for each county. Id.

A city ordinance allowing persons to sell meat of their own raising without restrictions or license, and imposing on other meat dealers restrictions as to the time and place of selling and requiring them to pay a license tax, is unconstitutional, as discriminating against interstate commerce. Georgia Packing Co. v. City of Macon (C. C. 1893) 60 Fed. 774, 22 L. R. A. 775, appeal dismissed City of Macon v. Georgia Packing Co. (1893) 60 Fed. 781, 9 C. C. A. 262.

Acts Va. 1889–90, §§ 108, 109, imposing a license tax on a person who sells manufactured articles by retail, unless he owns the same and is licensed as a merchant, or takes orders therefor on commission—the tax being $30 for the county in which the license is taken out, and $10 for each additional county in which goods are sold, and the person paying an annual tax to the

state of $30 on capital invested in the manufacture of such articles being permitted to sell the same by himself or by agents without license tax—are not a regulation of commerce between the states. American Harrow Co. v. Shaffer (C. C. 1895) 68 Fed. 750, appeal dismissed (1897) 17 Sup. Ct. 991, 166 U. S. 718, 41 L. Ed. 1187.

An ordinance governing and fixing fees of mercantile licenses and regulating the businesses licensed, expressly authorized by Laws N. J. 1902 (P. L. p. 293) § 14, par. 27, providing for the government of cities, would be valid as a regulation of intrastate business. Clark v. Atlantic City (C. C. 1910) 180 Fed. 598.

Laws Kan. 1907, c. 407, § 2, which requires every brand of concentrated feeding stuff sold or offered for sale within the state to be registered in the office of the director of the experiment station of the State Agricultural College, and provides that such director shall register a brand where it is shown by a statement of the ingredients presented by the manufacturer or seller that none of the same are unwholesome, deleterious, or fraudulent, and on payment of an annual registration fee of not less than $10, as applied to products made in another state and shipped to dealers in Kansas for sale, is unconstitutional and void as imposing a tax on interstate commerce. George H. Lee Co. v. Webster (C. C. 1911) 190 Fed. 353.

Revenue Act N. C. § 22, requiring all merchants to pay "as a license tax one-tenth of one per centum on the total amount of purchases in or out of the state, (except purchases of farm products from the producer,) for cash or on credit," is not a tax on the privilege of purchasing goods, but on the goods themselves, as part of the general mass of property in the state, and does not, in its application to purchases outside the state, operate as an interference with interstate commerce. Ex parte Brown (D. C. 1891) 48 Fed. 435.

Rev. St. Ariz. tit. 42, par. 2239, § 9, as amended by Act No. 83, Laws 1893, which require dealers in wares and merchandise, "except in agricultural or horticultural products of this territory, when vended by the producer thereof and except when sold by auctioneers or commission merchants, under license or permission according to law," to pay a license tax, is valid as to merchants not dealing in agricultural or horticultural products of foreign states, or in like products of Arizona territory not produced by them, since as to such merchants, it does not conflict with the interstate commerce clause. Sydow v. Territory (Ariz. 1894) 63 Pac. 214.

An ordinance imposing a license tax for vending goods other than the manufactures or productions of the state is in violation of the federal constitution. Ex parte Thomas (1886) 71 Cal. 204, 12 Pac. 53.

Mills' Ann. St. Colo. §§ 2828, 2829, fixing a penalty for selling goods without a license, but excepting those selling goods manufactured within the state, are void, as discriminating against goods manufactured outside the state. Ames v. People (1898) 55 P. 725, 25 Colo. 508.

Although a state may require a license to engage in business, such license must not attempt to regulate interstate commerce. Leonard v. Reed (1909) 104 P. 410, 46 Colo. 307.

A state statute imposing a tax on the doing of specified kinds of business in the state, and requiring that a license shall be taken out before any such business shall be engaged in, should not be construed to apply to any business that may constitute interstate commerce, but only to business that is domestic or state commerce, and to persons engaged in such business. Osborne v. State (1894) 14 So. 588, 33 Fla. 162, 25 L. R. A. 120, 39 Am. St. Rep. 99.

A tax on "sales" is not a tax on commerce, nor a regulation of commerce, within the prohibition of the constitution of the United States. Padelford v. City of Savannah (1854) 14 Ga. 438.

The mere imposition of a license tax on a business not of itself noxious is not sufficient to support the inference that the tax was imposed for regulation; but to support such a presumption there must be provision for inspection, supervision, or control of the traffic to be affected, or the provision will be treated as a mere revenue measure. Loh v. City of Macon (1911) 70 S. E. 149, 8 Ga. App. 744.

The statute imposing a fine upon any person who shall, without having a license as required by law, vend any foreign merchandise within the state, is not in violation of the constitution of the United States. Beall v. State (Ind. 1835) 4 Blackf. 107.

An ordinance imposing a higher tax or license on the business of a merchant of another state is invalid. Fecheimer v. City of Louisville (1886) 84 Ky. 306, 2 S. W. 65, 8 Ky. Law Rep. 310.

The state cannot prohibit or regulate by licenses or restrictions, except for the protection of the public health, the bringing into the state from any other state of any article of commerce; but it may prevent, license, or regulate the sale of any such article by a corporation after it has been brought into the state. Commonwealth v. Read Phosphate Co. (1902) 67 S. W. 45, 113 Ky. 32, 23 Ky. Law Rep. 2284.

Though the state cannot compel persons of other states to pay a tax for the privilege of having their goods transported through that state by the ordinary agencies of commerce, a li-

cense imposed on their carrying on a local business in the state is not a regulation of commerce. State v. Hammond Packing Co. (1903) 34 So. 368, 110 La. 180, 98 Am. St. Rep. 459.

Acts Md. 1868, c. 413, which provides that no person not a permanent resident of the state shall offer for sale, within the state, any merchandise not the produce of the state, without first obtaining a license to do so, does not infringe the power of congress to regulate commerce among the states. It is a tax upon a particular trade or business merely—that of selling goods by sample, etc.—carried on in a particular mode, within the limits of the state, by a particular class of persons. Ward v. State (1869) 31 Md. 279, 1 Am. Rep. 50.

A state statute requiring persons not residents to obtain a license to sell merchandise not the product of the state, is not a tax upon goods or merchandise imported into the state. Id.

The provisions of Code Md. art. 56, §§ 41–56, relating to licenses to traders, as amended by Acts 1880, c. 349, which require the same rate of license from citizens as from nonresidents, are not violative of the interstate commerce clause. The license required is not a tax upon the goods constituting the trader's capital stock. The value of the stock is adopted as a standard merely. Corson v. State (1881) 57 Md. 251.

Laws merely imposing a tax on the sale of merchandise are not in restraint of trade. Harrison v. City of Vicksburg (1844) 11 Miss. (3 Smedes & M.) 581.

The importer of goods from a foreign country may sell the same, so long as they remain in the original unbroken package, although not licensed so to do, under Rev. Code Mo. 1855, p. 1072, by the state authorities. State v. Shapleigh (1858) 27 Mo. 344.

A state cannot require a merchant dealing in manufactures of sister states to take out a license, and pay a tax thereon, while it levies no such tax on those who deal in articles of its own manufacture and growth. State v. North (1858) 27 Mo. 464.

Act Mo. Dec. 11, 1855, to tax and license merchants, making a discrimination between manufactured articles of Missouri and of the other states of the Union, is unconstitutional, being in violation of the commerce clause. Id.

The act to tax and license merchants approved December 11, 1855 (Rev. Code Mo. 1855, p. 1072), so far as the same requires merchants dealing in the manufactures of sister states to take out licenses from the state authorities and to pay a tax on the same, is repugnant to the commerce clause. Id.

A license tax imposed on goods manufactured within the state and sold to persons outside the state is not in violation of the commerce clause; for such tax is not a tax on interstate commerce. American Mfg. Co. v. City of St. Louis (Mo. 1911) 142 S. W. 297.

St. Louis Ordinance, § 2198, providing that there shall be levied and collected an ad valorem tax on all merchandise situated within the limits of the city, and every merchant, mercantile firm, or corporation shall pay a license tax of $1 on each $1,000 of sales, being a revenue law, should receive a reasonably strict construction, and so does not apply to sales to nonresidents of property manufactured or remaining without the state, for a sale by a merchant or manufacturer ordinarily means the delivery of the goods so sold at the place of the vendor's business, and, as so construed, is not an interference with interstate commerce. Id.

A law requiring a license for selling goods is not a restriction upon commerce, and in so far repugnant to the constitution of the United States. Territory v. Farnsworth (1885) 5 Mont. 324, 5 Pac. 869–878.

Pol. Code Mont. 1895, § 4064, as amended by Laws 1901, p. 144, § 2, imposing a license tax on dealers in oleomargarine, etc., held not to violate the interstate commerce clause. State v. Hammond Packing Co. (Mont. 1912) 123 P. 407.

A tax upon business carried on within a state, and without discrimination between its citizens and the citizens of other states, even if it incidentally affects interstate commerce, is in no sense a regulation of such commerce, and its imposition is not a violation of the federal constitution. Kolb v. Town of Boonton (1899) 44 A. 873, 64 N. J. Law, 163.

Act N. M. March 15, 1899 (Sess. Laws 1899, p. 101) § 2, providing that no corporation, either foreign or domestic, shall have the right to sell petroleum or coal oil, or the products thereof, for illuminating purposes within the territory, without first obtaining a license, in so far as it applies to sales of coal oil within the territory by the importer in original packages, is void and unconstitutional as in restraint of interstate commerce. In re Wilson (1900) 60 P. 73, 48 L. R. A. 417, 10 N. M. 32.

The state cannot discriminate in favor of purchases made from wholesale dealers resident in the state, who have paid their privilege tax, and against purchases made from those who have not, and from nonresidents. Albertson v. Wallace (1879) 81 N. C. 479.

Laws N. C. 1891, c. 323, § 22, which provides that every "merchant, jeweler, grocer, druggist, or other dealer" who shall buy and sell goods not specially taxed elsewhere in the act shall, in addition to his ad valorem tax on his stock, pay a license tax "on the total amount of his purchases in or out of the state," though imposing the tax on purchases "out of the state," is not repugnant to the interstate commerce clause, since the occupation taxed is

entirely intrastate. State v. French (1892) 109 N. C. 722, 14 S. E. 383; Same v. Stevenson (1892) 109 N. C. 730, 14 S. E. 385.

The provisions of Act Gen. Assem. Ohio May 19, 1894, that all persons in the state dealing in convict goods made in the prisons of other states shall procure a license therefor, violate the interstate commerce clause of the constitution. In re Yanders (Com. Pl. 1892) 2 Ohio S. & C. P. Dec. 126, 1 Ohio N. P. 190.

Act Ohio May 19, 1894, prohibiting any person from offering for sale within the state without a license goods made by convicts in other states, is unconstitutional, as a regulation of interstate commerce. Arnold v. Yanders (1897) 47 N. E. 50, 56 Ohio St. 417, 60 Am. St. Rep. 753.

The Pennsylvania statutes imposing a duty on retailers of foreign merchandise are not repugnant to the constitution of the United States. Biddle v. Commonwealth (Pa. 1825) 13 Serg. & R. 405.

Act Pa. April 8, 1861 (P. L. 258), punishing the buying without a license of certain articles of produce in Berks and Franklin counties, "with intent to send the same for sale or barter to any other market out of said counties," is not in violation of the interstate commerce clauses; the license fee, at most, being only a tax on the articles before they begin to move as an article of trade from one state to another. Even if the act were obnoxious to the interstate commerce clauses, in the case of a purchase of goods to be sold in another state it would still be valid as to business wholly within the state. Rothermel v. Meyerle (1890) 136 Pa. 250, 20 Atl. 583, 26 Wkly. Notes Cas. 422, 9 L. R. A. 366.

A borough ordinance imposing a license tax on nonresidents doing transient retail business in the state is void as a regulation of interstate commerce. Danville Borough v. Leiberman (Com. Pl. 1895) 16 Pa. Co. Ct. R. 394, 4 Pa. Dist. R. 475.

A statute requiring local merchants to pay, in addition to the ad valorem tax on their capital, a license tax equal in amount to the ad valorem tax, is not in conflict with the commerce clause. Jenkins v. Ewin (1871) 55 Tenn. (8 Heisk.) 456.

Act Tex. 1873, designating and taxing merchants in five classes, does not contravene the commerce clause. Galveston County v. Gorham (1878) 49 Tex. 279.

The commerce clause does not apply to the levy of occupation taxes on a business carried on wholly within the state, though including sales and deliveries outside the state. Texas Co. v. Stephens (Tex. 1907) 103 S. W. 481.

To construe Rev. St. Tex. 1911, art. 3989, as amended by Acts 33d Leg. c. 146 (Vernon's Sayles' Ann. Civ. St. 1914, art. 3989), imposing a license tax on fish and oysters handled, so as to require that the tax be computed on the "quantity purchased without the state," would render the statute invalid as imposing a burden on interstate commerce. Adams Fish Market v. Sterett (Tex. 1915) 172 S. W. 1109.

State laws which undertake to enforce a tax upon interstate or foreign commerce in any form, or any law of a state which imposes a burden or hindrance upon commerce, or which tends to embarrass commercial intercourse and transactions, or which under any disguise or in any manner seeks to give the citizens of one state any advantage over the citizens of other states engaged in interstate commerce, are regulations of commerce. Richmond & A. R. Co. v. R. A. Patterson Tobacco Co. (1896) 92 Va. 670, 24 S. E. 261, 41 L. R. A. 511, affirmed 18 Sup. Ct. 335, 169 U. S. 311, 42 L. Ed. 759.

Tax Law Va. § 45, as amended by act March 19, 1915, providing for a tax on manufacturers who sell their goods at places other than that of manufacture, though applied to nonresident manufacturers, is not an interference with interstate commerce in violation of the commerce clause. Commonwealth v. Armour & Co. (Va. 1916) 87 S. E. 610.

A city ordinance which provided a fine for any person keeping a store or selling goods without a license, but which excepted from its operation merchants or other persons selling goods who paid an annual tax on such goods under the revenue laws of such city, also traveling agents selling exclusively by sample or otherwise to regular merchants doing business in the city, is void, as in restraint of interstate commerce. State v. Willingham (1900) 62 P. 797, 52 L. R. A. 198, 9 Wyo. 290, 87 Am. St. Rep. 948.

Comp. St. Wyo. 1910, §§ 3004, 3005, regulating sale of nursery stock, is not invalid as an interference with interstate commerce for imposing a license on the business of selling nursery stock, though it applies to nonresidents. Welch v. Nelson (Wyo. 1915) 152 P. 788.

202. —— Sale of trading stamps.— A city ordinance making it unlawful for any person to sell goods and merchandise by selling trading stamps to merchants, without first procuring a license and paying $600, and requiring the merchant using trading stamps to procure a license and pay $100, was not void as an interference with interstate commerce, as applied to a nonresident corporation soliciting by an agent business for a business man, a resident of the state. Oilure Mfg. Co. v. Pidduck-Ross Co. (1905) 80 P. 276, 38 Wash. 137.

A nonresident company selling on mail orders trading stamps to merchants in West Virginia, and redeeming same with premiums shipped from the state of its residence, being engag-

ed in interstate commerce, within the commerce clause, cannot be required to pay a state license tax under Code W. Va. 1913, c. 32, § 2, cl. j (sec. 1114). Sperry & Hutchinson Co. v. Hill (W. Va. 1915) 86 S. E. 748.

203. —— **Sale of fertilizers.**—Code N. C. § 2190, as amended by Act March 7, 1877, § 8, declares that no commercial fertilizers shall be sold or offered for sale until the manufacturer or importer obtain a license from the treasurer of the state, for which shall be paid a privilege tax of $500 per annum for each separate brand. Sections 22 and 23 appropriate the revenues arising from the tax to an industrial association and other purposes. Held, that the statute interferes with interstate commerce. American Fertilizing Co. v. Board of Agriculture (C. C. 1890) 43 Fed. 609, 11 L. R. A. 179.

204. —— **Slaughterhouses or packing houses and agents thereof.**—The tax of $200 upon resident managing agents of nonresident meat-packing houses which is imposed by Act Ga. Dec. 21, 1900, regardless of the fact that the greater portion of the business may be interstate in its character, does not conflict with the commerce clause of the federal Constitution, where the tax is construed by the highest state court to apply only to the business of selling to local customers from the stock of original packages shipped into the state without a previous sale or contract to sell, and kept and held for sale in the ordinary course of trade, and this domestic business is not shown to be a mere incident to the interstate business. Kehrer v. Stewart (1905) 25 Sup. Ct. 403, 404, 197 U. S. 60, 49 L. Ed. 663, affirming judgment (1903) 44 S. E. 854, 117 Ga. 969.

The tax imposed by Pub. Laws N. C. 1903, c. 247, as construed by the state courts, upon such local business of a foreign meat-packing house as its sales within the state of products already stored there on orders received after these products are thus stored, is not invalid as an interference with interstate commerce. Armour Packing Co. v. Lacy (1906) 26 Sup. Ct. 232, 234, 200 U. S. 226, 50 L. Ed. 451, affirming judgment Lacy v. Armour Packing Co. (1904) 47 S. E. 53, 134 N. C. 567.

Where an agent of a packing house was engaged in business within the state and in interstate business, the interstate clause of the Constitution of the United States did not relieve him from liability for tax on the state business. Smith v. Clark (1905) 50 S. E. 480. 122 Ga. 528.

The licensing of slaughterhouses by state authority is within the police power, and a statute providing for the licensing of slaughterhouses is not invalid as interfering with foreign commerce where the meat is intended only for export. Board of Health of New Jersey v. Schwarz Bros. Co. (Sup. 1913) 87 A. 147, 84 N. J. Law, 500.

205. —— **Auctioneers.**—The statute of Pennsylvania of May 20, 1853 (P. L. p. 683), modified by that of April 9, 1859 (P. L. p. 436), requiring every auctioneer to collect and pay into the state treasury a tax on his sales, is, when applied to imported goods in the original packages, by him sold for the importer, is void, as being a regulation of commerce. Cook v. Pennsylvania (1878) 97 U. S. 566, 24 L. Ed. 1015.

206. —— **Advertising in railroad cars.**—A license tax upon display advertising in railway cars operating wholly within a municipality in the state is not invalid as a burden on interstate commerce because the corporation displaying the advertising made the contracts therefor in a foreign state. Pacific Rys. Advertising Co. v. Conrad (Cal. 1914) 141 P. 916.

207. —— **Sale of intoxicating liquors.**—See, also, note under Const. art. 4, § 2.

The laws of Massachusetts providing that no person shall retail liquors in less than certain quantities without a license is not unconstitutional as an unlawful attempt to regulate commerce. Thurlow v. Massachusetts (1847) 46 U. S. (5 How.) 504, 12 L. Ed. 256.

A city license tax on dealers in beer or ale by the cask, not manufactured in the city, is not obnoxious to this clause, where it is not shown that the articles in question, which were sold by such dealers, were manufactured in another state or a foreign country. Downham v. Alexandria (1869) 10 Wall. 173, 175, 19 L. Ed. 929.

Act Tex. June 3, 1873, levying a tax on persons selling liquors, but exempting from taxation the sale of liquors manufactured within the state, is invalid so far as it discriminates against imported liquors. Tiernan v. Rinker (1880) 102 U. S. 123, 26 L. Ed. 103.

Laws Mich. 1875, No. 226, which imposes a specific tax on persons selling liquors at wholesale, to be shipped into the state from places out of the state, not having their principal place of business in the state, without imposing a like tax upon persons engaged in such sale of liquors manufactured in the state, is a regulation of commerce between the states, and unconstitutional and void. Walling v. People (1886) 6 Sup. Ct. 454, 116 U. S. 446, 29 L. Ed. 691, reversing People v. Walling (1884) 53 Mich. 264, 18 N. W. 807.

A law subsequently passed, imposing a greater tax upon all persons engaged in any city, township, or village in the business of manufacturing or selling liquors in the state, does not have the effect of divesting the first law of its objectionable character, not being imposed upon the same class of persons, but being imposed on the principal deal-

ers, and not on their servants, clerks, or drummers. Id.

Pub. Acts Mich. 1887, No. 313, imposing an annual tax of $300 on the business of selling only brewed or malt liquors at wholesale or retail, and a tax of $65 on the business of manufacturing such liquors, and providing that a manufacturer may sell without paying anything but the manufacturers' license, is a regulation of interstate commerce in so far as it prevents a nonresident manufacturer from sending such liquor into the state, and there disposing of it, in the original packages, through a clerk located there. Lyng v. Michigan (1890) 135 U. S. 161, 10 Sup. Ct. 725, 727, 34 L. Ed. 128, reversing (1889) 42 N. W. 139, 74 Mich. 579, and following Leisy v. Hardin (1890) 135 U. S. 100, 10 Sup. Ct. 681, 34 L. Ed. 128.

The annual license charge imposed by a state law upon the business of selling or offering for sale intoxicating liquors within the state by any traveling salesman who solicits orders in quantities of less than five gallons cannot be regarded, when applied to interstate transactions, repugnant to the commerce clause in view of the provisions of Wilson Act Aug. 8, 1890 (Comp. St. § 8738), that intoxicating liquors coming into the state shall be as completely under its control as if manufactured therein. Delamater v. State of South Dakota (1907) 27 Sup. Ct. 447, 205 U. S. 93, 51 L. Ed. 724, 10 Ann. Cas. 733, affirming judgment State v. Delamater (S. D. 1905) 104 N. W. 537.

Interstate character of business prevents a state from imposing privilege tax on business of soliciting by mail orders for intoxicating liquors from persons in other states and delivery to a carrier within the state from the stock on hand in the state. Heyman v. Hays (1915) 35 Sup. Ct. 403, 236 U. S. 178, 59 L. Ed. 527; Southern Operating Co. v. Same (1915) 35 Sup. Ct. 405, 236 U. S. 188, 59 L. Ed. 531.

A municipal ordinance, requiring manufacturers of liquors maintaining a place for their sale within the municipality district from their manufactory to pay a license tax, is not invalid as in violation of the interstate commerce clause of the Constitution, as against a manufacturer of another state, who maintains a depot within the city, from which sales are made in the original packages, in view of the Wilson Act (Act Aug. 8, 1890 [Comp. St. § 8738]), where it is in its terms such as to bring it within the police power of the state to regulate the business; and the fact that a license fee of $500 per year is required is not sufficient in itself to show that its purpose is to raise revenue, and not to regulate. Duluth Brewing & Malting Co. v. City of Superior (1903) 123 Fed. 353, 59 C. C. A. 481.

Code Iowa 1873, §§ 1523, 1526, limiting the giving of licenses to certain classes of citizens of Iowa to buy and sell intoxicating liquors for mechanical, medical, culinary, and sacramental purposes only, do not, by preventing citizens of other states from selling liquors in that state, interfere with the freedom of interstate commerce. Kohn v. Melcher (C. C. 1887) 29 Fed. 433.

A city ordinance, prohibiting the sale or offering for sale of vinous liquors without a license, is not an exercise of the police power of the state, but is an attempt to regulate one of the products of interstate commerce, and is therefore void. In re Lebolt (C. C. 1896) 77 Fed. 587.

Sess. Laws S. D. 1897, c. 72, § 1, imposes a license tax upon the business of selling only brewed or malt liquors at wholesale of $600 per annum; "said license to be paid in each township, precinct, town or city in which said wholesaler has or operates a warehouse or depository." It further provides that "no person, firm, or corporation having a manufacturer's license in this state on brewed or malt liquors under this act shall be liable to pay a wholesale dealer's license on the product of such manufactory." The manufacturers' license under such act is $400. Held, that such act, in permitting a manufacturer in the state to maintain warehouses for the sale of his product without license, while requiring a license on each warehouse maintained for the sale of brewed or malt liquors produced in other states, imposes a discriminating tax upon interstate commerce, which renders the provision for a license on wholesale dealers unconstitutional and void. Minneapolis Brewing Co. v. McGillivray (C. C. 1900) 104 Fed. 258.

Act Ala. April 6, 1911, regulating the sale of liquors and imposing a license tax on agencies of foreign breweries in the state, held constitutional. Evansville Brewing Ass'n v. Excise Commission of Jefferson County, Ala. (D. C. 1915) 225 Fed. 204.

The provisions of Order No. 1,589 of the city of San Francisco, as amended by Order No. 1,845, relative to liquor licenses, making the issuance of a license dependent upon the permission of a majority of the board of police commissioners, and the approval of adjacent property owners, is not in violation of the commerce clause; there being no question of interstate commerce. Ex parte Christensen (1890) 85 Cal. 208, 24 Pac. 747.

The provisions of the ordinance making the issuance of a license dependent upon the permission of a majority of the board of police commissioners, and the approval of adjacent property owners, is not in violation of the federal constitution, there being no question of interstate commerce. Id.; Ex parte Holmquist (1891) 27 Pac. 1099.

Since Act Ga. Dec. 24, 1890 (1 Acts 1890–91, p. 128), makes it unlawful to sell intoxicating liquors in any quantity

without a license, the general tax act of 1892 (section 2, cl. 15), imposing a certain tax on "dealers in spirituous liquors," applies to one who wholesales, in the original packages, corn whisky of his own manufacture. Fincannon v. State (1893) 93 Ga. 418, 21 S. E. 53.

Act Ga. Aug. 10, 1906, fixing the license fee for the sale of liquors in Irwin county, discriminates against wines made outside of the state, but the effect of the omission to exempt from license wines made outside of the state is not to render the act invalid, but to place all wines on the same basis, whether made within or without the state. Glover v. State (1906) 55 S. E. 592, 126 Ga. 594.

Since Act La. No. 171 of 1898, the general license law, is purely a taxing law, and not a police regulation, it is not applicable to impose a license on sales of beer which constitute interstate commerce. State v. Pabst Brewing Co. (1911) 55 So. 349, 128 La. 770.

An act requiring dealers in intoxicants to obtain licenses, although applicable to manufacturers retailing liquor within the state, is not a regulation of commerce. Keller v. State (1857) 11 Md. 525, 69 Am. Dec. 226.

The provisions of Rev. St. Mass. c. 47, that no person shall presume to be a retailer or seller of spirituous liquors in a less quantity than 28 gallons, unless he is first licensed as a retailer of spirits, and that every person thus licensed shall pay one dollar therefor, in their application to a sale not made by the importer, nor in the original package in which the spirit was imported, are not repugnant to the constitution of the United States. Commonwealth v. Kimball (1837) 41 Mass. (24 Pick.) 359, 35 Am. Dec. 326.

Rev. Laws Mass. c. 100, § 1, prohibiting the sale of intoxicating liquors without a license, is unconstitutional as an unwarranted interference with the power of Congress to regulate interstate commerce in so far as it excepts "sales by the makers thereof of native wine or of cider manufactured in this commonwealth." Commonwealth v. Petranich (1905) 66 N. E. 807, 183 Mass. 217.

St. Mass. 1906, c. 421, § 1, providing that no person or corporation, except a railroad or street railway corporation, shall transport liquors for hire in a city in which licenses of the first five classes for the sale of intoxicating liquors are not granted without a permit so to do, and Rev. Laws Mass. c. 100, § 49, as amended by St. 1907, c. 517, providing that no person or corporation not regularly conducting a general express business, except a railroad corporation or a street railway corporation authorized to carry freight or express, shall receive liquors for transportation for hire for delivery in such cities, are constitutional, so far as they apply to intrastate business. Commonwealth v. People's Express Co. (1909) 88 N. E. 420, 201 Mass. 564.

Comp. Laws Mich. §§ 5379, 5380, provide that in all townships, cities, and villages a tax of $500 per annum shall be paid on the selling of liquor at wholesale, and a tax of $65 on the brewing of liquor. It is provided that no person paying a manufacturer's tax on brewed liquor shall pay a wholesale dealer's tax on the same, and that wholesale dealers are those who sell liquor in quantities of more than three gallons, or more than one dozen quart bottles at a time, to any person. It was contended that the statute was violative of the federal constitution, as in restraint of interstate commerce, in that wholesalers of malt liquor were required to pay an annual tax, while manufacturers were only required to pay $65, and not required to pay any wholesalers' tax. Held, that the contention was of no merit, inasmuch as the selling of liquor at a brewery is not a selling at wholesale, and under the statute a brewer may not establish a warehouse or place of sale elsewhere than at the brewery without a payment of the tax. People v. Voorhis (1902) 91 N. W. 624, 9 Detroit Leg. N. 377, 131 Mich. 398.

Comp. Laws Mich. §§ 5379, 5380, provide that in all townships, cities, and villages a tax of $500 per annum shall be paid on the selling of liquor at wholesale, and that wholesale dealers are those who sell liquor in quantities of more than three gallons or more than one dozen quart bottles at a time to any person. Act approved August 8, 1890, provides that all liquors transported into any state, and remaining there for sale or storage, shall upon arrival be subject to the laws of the state enacted in the exercise of its police powers. A foreign brewery sent liquor to its agent in Michigan for storage and sale by him. Held, that the business was within the state law. Id.

Comp. Laws Mich. 1897, § 4018, providing that every person who shall come into or bring into the state or sell intoxicating liquors to citizens thereof at wholesale, or solicit or take orders for such liquors to be shipped into the state or furnished at wholesale to any person within the state by any person not a resident of the state nor having his principal place of business within the state, shall pay a tax specified, is unconstitutional. Sloman v. William D. C. Moebs Co. (1905) 102 N. W. 854, 139 Mich. 334, 11 Detroit Leg. N. 857.

Laws Mo. 1909, p. 654, imposing a license on manufacturers of, and dealers in, intoxicating liquors, based on the volume of business done, and excepting from the operation of the act wines and spirits produced from grapes or fruits grown in the state, attempts to license persons to sell intoxicating liquors in the state manufactured in other states, and to manufacture and sell intoxicating

liquors in the state not made of grapes and fruits grown therein, and to impose on the licensee the fees prescribed, without requiring a license for the manufacture or sale of wines or spirits made of grapes or fruits grown in the state, and discriminates in favor of wines and spirits made from grapes or fruits grown in the state, and against the same kind of wines and spirits made from grapes or fruits grown elsewhere, and thereby imposes burdens in the form of license fees on interstate commerce, in violation of the interstate commerce clause, when considered in connection with Amendment 14. State v. Parker Distilling Co. (Mo. 1911) 139 S. W. 453.

State statute, imposing on parties handling liquors C. O. D. an annual occupation tax of $5,000 for each place maintained for that purpose, held valid as applied to an interstate carrier, and to excuse its failure to make delivery of a C. O. D. shipment. Rosenberger v. Pacific Express Co. (1914) 167 S. W. 429, 258 Mo. 97; Same v. Wells Fargo & Co. (1914) 167 S. W. 433, 258 Mo. 112.

Act N. H. July 4, 1838, "regulating the sale of wine and spirituous liquors," and providing that any person selling wine, or spirituous liquors, or mixed liquors any part of which is spirituous, without a license from the selectmen, shall for each offense forfeit and pay a certain sum of money, for the use of the county, is a constitutional exercise of the powers of the legislature, even when applied to the sale of an original package purchased in another state. Pierce v. State (1843) 13 N. H. 536; State v. Moore (1843) 14 N. H. 451.

A state cannot impose a license on the sale of liquors in another state, delivered to the purchaser in the state. State v. Stilsing (1890) 52 N. J. Law (23 Vroom) 517, 20 Atl. 65.

The provisions of the statute requiring a license for selling strong and spirituous liquors in small quantities do not conflict with any provision in the constitution of the United States. Ingersoll v. Skinner (N. Y. 1845) 1 Denio, 540.

The state may prohibit the sale without a license of liquors imported into the state equally with domestic liquors. Smith v. People (N. Y. 1854) 1 Parker, Cr. R. 583.

Acts N. C. 1868–69, c. 108, § 32, declaring that every nonresident who shall sell any spirituous liquors by sample or otherwise shall pay an annual tax of $50, and a tax of like amount as is payable by residents on their purchases and sales of similar liquors, is void as an attempted regulation by the state of commerce among the several states. Sinclair v. State (1873) 69 N. C. 47.

Sess. Laws S. D. 1897, c. 72, imposing an annual tax on parties without the state who have wholesale establishments for the sale of liquors in this state, to be paid in every precinct, township, or city where they have such wholesale establishments, and providing that manufacturers of such liquors within the state shall pay a certain manufacturer's license, and be exempt from the payment of the wholesale tax, is unconstitutional, as in conflict with the commerce clause. State v. Zophy (1900) 84 N. W. 391, 14 S. D. 119, 86 Am. St. Rep. 741.

The state has power to prohibit the sale of intoxicating liquors by nonresidents within its borders, unless the seller shall have paid a license and procured requisite authority therefor. Jones v. Yokum (S. D. 1909) 123 N. W. 272.

The fact that a wholesale liquor dealer purchased all of his stock without the state would not under Wilson Act Aug. 8, 1890 (Comp. St. § 8738), render a wholesaler's privilege tax imposed by a state statute violative of the commerce clause. Logan v. Brown (1911) 141 S. W. 751, 125 Tenn. 209.

Where a liquor dealer, having his place of business in this state, receives liquor produced without the state, and stores the same in this state, and here prepares it for reshipment, this state may declare his acts a privilege, and tax it as such, irrespective of where he sells the liquor. Id.

The fact that a dealer, engaged in a business or occupation, imports his goods from another state will not relieve him from an occupation tax. Id.

An occupation tax may be imposed upon one engaged in selling liquors without imposing a burden on interstate commerce, even though all his purchases and sales were made without the state; his business being situated within the state. Southern Operating Co. v. City of Chattanooga (Tenn. 1913) 159 S. W. 1091.

An annual tax, imposed by a state on persons, etc., pursuing the business of selling intoxicating liquors, except wines or beer manufactured within the state, held void; but, on rehearing, sustained, as to the objections of violating the provisions of the federal constitution, giving congress power to regulate commerce among the states. Higgins v. Rinker (1877) 47 Tex. 381, 393.

Acts Va. 1910, c. 190, authorized the issuance of a retail license and a retail and shipper's license, for the sale of intoxicants, and provides that a retail license shall permit the sale of intoxicants to any individual, to be delivered at the place of purchase, or to any place within the city, town, county, or district, or within one mile outside of where the license is granted, and nowhere else within the state, and that the retail and shipper's license shall confer the additional privilege of shipping by express or otherwise. Held, that the Legislature had

power to regulate the sale of liquor by the imposition of a reasonable license, even though it be intended for shipment without the state, and the statute was valid though construed as prohibiting one merely having a retail license from shipping liquor without the state. Ferrimer v. Commonwealth (Va. 1911) 72 S. E. 699.

208. —— **Sale of cigarettes.**—Act W. Va. Feb. 21, 1895, amending and reenacting Code, c. 32, § 66, so as to provide that a license fee shall be paid for selling cigarettes at retail, so far as it applies to cigarettes imported from another state and sold by the importer in West Virginia in the original package, and to cigarettes manufactured in another state and by the manufacturer sent into West Virginia in the original package, for sale by the agent of the manufacturer, and so sold in such package by such agent, is not an exercise of the police power of the state, but a regulation of interstate commerce, and therefore void. In re Minor (C. C. 1895) 69 Fed. 233.

Cigarettes manufactured in another state, and imported into the state in the original package, may be sold in such package; and Act W. Va. Feb. 21, 1895, amending and re-enacting the Code W. Va. § 66, so as to provide that a certain license fee shall be paid for selling cigarettes at retail, so far as it applies to cigarettes so imported and sold by the importer in the state is a regulation of interstate commerce, and void. State v. Goetze (1897) 27 S. E. 225, 43 W. Va. 495, 64 Am. St. Rep. 871.

209. —— **Buying timber.**—Acts Miss. 1900, c. 43, § 8, imposing a privilege tax on each land timber mill company, or individual, providing the section shall not apply to sawmill operators who do not ship timber or lumber out of the state, is invalid as a tax on interstate commerce. Adams v. Mississippi Lumber Co. (1904) 36 So. 68, 84 Miss. 23.

210. —— **Brokers and factors.**—A tax imposed by a state upon all money or exchange brokers is not void for repugnance to the constitutional power of congress to regulate commerce, notwithstanding foreign bills of exchange are instruments of commerce. Nathan v. Louisiana (1850) 49 U. S. (8 How.) 73, 80, 12 L. Ed. 993, affirming (La. 1845) 12 Rob. 332.

It is not an interference with interstate commerce for a state statute to require resident dealers in merchandise to pay an annual license tax, and, if he employ no capital, a percentage on his gross yearly commissions or charges, though the business for the year consisted entirely in taking orders for nonresident merchants. Ficklen v. Taxing Dist. of Shelby County (1892) 12 Sup. Ct. 810, 811, 145 U. S. 1, 36 L. Ed. 601.

A privilege tax imposed by a state statute upon residents of that state as merchandise brokers, whose business is exclusively confined to soliciting orders from jobbers and wholesale dealers within the state, as agents for nonresident parties, firms, or corporations, for goods to be shipped by such nonresident principals to such jobbers or dealers, is an unconstitutional invasion of the commerce clause of the constitution of the United States. Stockard v. Morgan (1902) 22 Sup. Ct. 576, 578, 185 U. S. 27, 46 L. Ed. 785, reversing judgment (1900) 58 S. W. 1061, 105 Tenn. 412.

Interstate commerce is not unconstitutionally regulated by Act Mo. March 8, 1907 (Acts 1907, p. 392), under which the keeping of a place where corporate stocks and bonds, and grains, provisions, and other commodities are bought and sold, but not paid for and delivered at the time, is made criminal unless a complete record of the transaction, including a minute of the time of delivery, is made in a book kept for the purpose, and the purchaser is given a memorandum of the sale, properly stamped, although the grains, provisions, and other commodities sold may be, at the time of sale, in the course of transportation as articles of interstate commerce. Broadnax v. Missouri (1911) 31 Sup. Ct. 238, 219 U. S. 285, 55 L. Ed. 219, affirming judgment State v. Broadnax (1910) 128 S. W. 177, 228 Mo. 25, 137 Am. St. Rep. 613.

A municipal ordinance which imposes a license tax on every merchandise broker who maintains a warehouse or office within the city limits is void as to a broker whose sole business is making contracts by sample for the sale and delivery to citizens of the state of merchandise which, at the time of making the contract, is the property of citizens of other states, and is situated therein; being a regulation of interstate commerce. In re Rozelle (C. C. 1893) 57 Fed. 155, distinguishing Ficklen v. Shelby County Taxing Dist. (1892) 145 U. S. 1, 12 Sup. Ct. 810, 36 L. Ed. 601.

A municipal license tax, imposed on brokers selling merchandise by sample for nonresident principals exclusively, is unconstitutional, as a regulation of interstate commerce. Stratford v. City Council of Montgomery (1895) 110 Ala. 619, 20 South. 127.

The California revenue act of May, 1853, provides that all goods, wares, etc., brought into the state from any other state or foreign country, to be sold within the state, owned by any person not domiciled in the state, shall be declared consigned goods, and that every person selling such consigned goods shall be taxed 60 cents on every

$100 worth of goods so sold, such tax to be paid by the person selling such goods; he having a lien for the same. Held not in violation of those provisions of the commerce clause. People v. Coleman (1854) 4 Cal. 46, 60 Am. Dec. 581.

Neither a state law nor city ordinance providing for a tax on "sales" made within the state refers to commerce "with foreign nations" or "among the states," and is therefore valid. Padelford v. City of Savannah (1854) 14 Ga. 438.

A city ordinance levying a tax on moneys received from commission sales of merchandise and personal property is not unconstitutional on the ground that when applied to goods brought from foreign states and countries it interferes with interstate commerce, as the tax is on the proceeds of the sale, and not on the property, and does not attach until by the sale the property has become mingled with the property of the state. Id.

Persons engaged on their own account in a "commercial street-brokerage business," in the course of which they take orders for goods to be filled by nonresident dealers, the brokers, unless otherwise directed, placing these orders, at their own option, with any of their "correspondents," and reselling any goods rejected after their arrival in this state, are not, by virtue of the "interstate commerce clause," exempt from a municipal tax imposed upon commercial street brokers by the authorities of the city in which they do business. Walton v. City Council of Augusta (1898) 30 S. E. 964, 104 Ga. 757.

As to interstate commerce transactions, an ordinance of the city of Chicago making it unlawful for brokers to conduct a brokerage business without a license is of no force and effect. Shead v. Louisiana Lumber Co. (1913) 182 Ill. App. 310.

Laws Minn. 1899, c. 225, entitled "An act to license and regulate and define business of commission merchants or persons selling agricultural products and farm produce, on commission," is not an unlawful interference with interstate commerce; it not in terms applying to interstate business. State v. Wagener (1899) 80 N. W. 633, 778, 1134, 77 Minn. 483, 46 L. R. A. 442, 77 Am. St. Rep. 681.

Stamp Act Mo. March 8, 1907 (Laws 1907, p. 392), imposing a stamp tax on sales at exchanges, etc., is not invalid as an illegal interference with interstate commerce, the tax not being on property, but on the privilege of transacting the particular business in a particular place; it being immaterial whether the contract is between residents of different states or with reference to property situated in other states. State v. Brodnax (1910) 128 S. W. 177, 228 Mo. 25, 137 Am. St. Rep. 613.

The act (2 Laws 1866, p. 1187, amending Laws 1846, c. 62) by which a duty on brokers' sales of imported merchandise is imposed, is in contravention of the commerce clause. People v. Moring (N. Y. 1867) 3 Abb. Dec. 539.

Act N. Y. April 13, 1866, subjecting sales of foreign merchandise by brokers to taxation, is not a tax upon brokers as engaged in an avocation within the state, but upon merchandise, and, where merchandise still retains the character of an import, the Constitution prohibits state taxation therof. People v. Maring (1867) *42 N. Y. (3 Keyes) 374.

Act N. Y. April 13, 1866, subjecting sales of foreign merchandise by brokers to taxation, does not contravene any of the sections of the Constitution of the state of New York, but is in conflict with provisions of the Constitution of the United States, in so far as it imposes a duty upon imports. Id.

A state license tax on the interstate business of merchandise brokers would be violative of the commerce clause. Pennywitt v. Blue (W. Va. 1914) 81 S. E. 399.

211. —— Buying and selling futures. Acts Ga. 1888, p. 22, taxing the business of buying and selling "futures," is not a violation of the interstate commerce clause of the constitution. Alexander v. State (1890) 86 Ga. 246, 12 S. E. 408, 10 L. R. A. 859.

212. —— Employment agents. — Act Ala. Jan. 22, 1879, requiring the payment of a license tax by persons who induce laborers to leave the state under contracts of employment, is void. Joseph v. Randolph (1882) 71 Ala. 499, 46 Am. Rep. 347.

An act requiring persons engaged in hiring laborers in this state, for employment outside of it, to procure a license, and pay $100 therefor, under a penalty, is constitutional. Shepperd v. Sumter County Com'rs (1877) 59 Ga. 535.

Laws N. C. 1901, c. 9, § 84, imposing a tax of $25 on every person engaged in procuring laborers to accept employment in another state, does not violate the constitution, or interfere with interstate commerce. State v. Hunt (1901) 40 S. E. 216, 129 N. C. 686, 85 Am. St. Rep. 758.

213. —— Emigrant agents.—A burden on interstate commerce is not imposed by Laws Ga. 1898, p. 21, par. 10, § 4, imposing a license tax on emigrant agents engaged in the business of hiring persons to labor outside the state. Williams v. Fears (1900) 21 Sup. Ct. 128, 130, 179 U. S. 270, 45 L. Ed. 186, affirming judgment (1900) 35 S. E. 699, 110 Ga. 584, 50 L. R. A. 685.

214. —— Commercial agents, canvassers, and solicitors.—A state law imposing a license tax on drummers and others selling goods by sample or oth-

erwise, or soliciting trade, is a regulation of commerce, and unconstitutional as applied to citizens of other states. Asher v. State of Texas (1888) 9 Sup. Ct. 1, 128 U. S. 129, 32 L. Ed. 368 (following Robbins v. Taxing Dist. [1887] 7 Sup. Ct. 592, 120 U. S. 489, 30 L. Ed. 694, and Leloup v. Port of Mobile [1888] 8 Sup. Ct. 1380, 127 U. S. 640, 32 L. Ed. 311); Richardson v. State (Miss. 1892) 11 South. 934.

A city ordinance which requires payment of a license tax for soliciting or taking orders for goods, books, paintings, wares, or merchandise from persons other than manufacturers or licensed merchants, and which on its face declares the same to be a license for "general revenue purposes," is not, in its application to an agent soliciting for a nonresident manufacturer, a mere police regulation, simply inconveniencing one engaged in interstate commerce, but is a direct burden on such commerce, and therefore invalid. Brennan v. City of Titusville (1894) 153 U. S. 289, 14 Sup. Ct. 829, 38 L. Ed. 719 (reversing [1891] 145 Pa. 504, 22 Atl. 893); Ex parte Holman (1896) 36 Tex. Cr. App. 255, 36 S. W. 441.

A statute of Virginia requires that an agent for the sale of articles manufactured in other states must first obtain a license, for which he is required to pay a specific tax for each county in which he sells or offers to sell them, while the agent for the sale of articles manufactured in that state, if acting for the manufacturer, is not required to obtain a license or pay any license tax. Held, that the statute is in conflict with the commerce clause of the United States constitution, and void. Webber v. Virginia (1880) 103 U. S. 344, 26 L. Ed. 565.

A state statute, imposing a license tax upon drummers selling by sample within a certain "taxing district," is unconstitutional, as a regulation of interstate commerce, as applied to citizens of other states, though applied equally to citizens of the state enacting the statute. Robbins v. Shelby County Taxing Dist. (1887) 120 U. S. 489, 7 Sup. Ct. 592, 593, 30 L. Ed. 694, reversing (1884) 81 Tenn. (13 Lea) 303.

The District of Columbia has no power to impose a license upon persons soliciting the sale of goods on behalf of individuals doing business outside of the District. Stoutenburgh v. Hennick (1889) 129 U. S. 141, 9 Sup. Ct. 256, 32 L. Ed. 637.

An ordinance under which a license fee may be required from an agent of a nonresident portrait company, who receives from such company pictures and frames manufactured by it to fill orders previously obtained, and, after breaking bulk and placing each picture in the frame designed for it, delivers them to the respective purchasers, is invalid as an attempt to interfere with and regulate interstate commerce. Caldwell v. North Carolina (1903) 23 Sup. Ct. 229, 238, 187 U. S. 622, 47 L. Ed. 336, reversing judgment State v. Caldwell (1900) 37 S. E. 138, 127 N. C. 521.

The license tax imposed by Laws N. C. 1901, c. 9, § 52, upon all those "engaged in the business of selling" sewing machines in the state, is an unconstitutional interference with interstate commerce, so far as applied to the sale of a single machine shipped into the state by a nonresident manufacturing corporation, upon the written order of a customer, under an ordinary C. O. D. consignment. Norfolk & W. Ry. Co. v. Sims (1903) 24 Sup. Ct. 151, 154, 191 U. S. 441, 48 L. Ed. 254, reversing judgment Sims v. Norfolk & W. R. Co. (1902) 41 S. E. 673, 130 N. C. 556.

Interstate commerce is unlawfully burdened by a municipal ordinance exacting a license fee from a person employed by a foreign corporation to solicit, within the municipality, orders for groceries, which the company fills by shipping goods to him for the delivery to, and collection of the purchase price from, the customer, who has the right to refuse the goods if not equal to samples; such goods always being shipped in distinct packages, corresponding to the several orders, except in the case of brooms, which, after being tagged and marked, like the other articles, according to the number ordered, are then tied together in bundles of about a dozen, and wrapped up conveniently for shipment. Rearick v. Pennsylvania (1906) 27 Sup. Ct. 159, 203 U. S. 507, 51 L. Ed. 295, reversing judgment Commonwealth v. Rearick (1904) 26 Pa. Super. Ct. 384.

An annual state license charge imposed on the business of a traveling liquor salesman soliciting orders in quantities of less than five gallons is not, when applied to interstate transactions repugnant to this clause. Delamater v. South Dakota (1907) 27 Sup. Ct. 447, 205 U. S. 93, 51 L. Ed. 724, 10 Ann. Cas. 733.

The business of traveling and taking orders and transmitting them to a nonresident manufacturer, when the articles are shipped in interstate commerce, cannot under commerce clause be subjected to the license tax authorized by Act Ark. April 1, 1909 (Laws 1909, p. 292). Crenshaw v. State of Arkansas (1913) 33 Sup. Ct. 294, 227 U. S. 389, 57 L. Ed. 565, reversing judgment (1910) 130 S. W. 569, 95 Ark. 464; Rogers v. Same (1913) 33 Sup. Ct. 298, 227 U. S. 401, 57 L. Ed. 569.

Attorneys on guaranteed list of foreign corporation furnished to subscribers who were to report on the credit of persons doing business in the state are not engaged in interstate commerce, so as to relieve the corporation from liability for license tax imposed under Ky. St. § 4224, on commercial agencies, though some inquiries may be received from nonresident merchants in anticipation of interstate transactions. Unit-

ed States Fidelity & Guaranty Co. of Baltimore, Md., v. Commonwealth of Kentucky (1913) 34 Sup. Ct. 122, 231 U. S. 394, 58 L. Ed. 283, affirming judgment (1910) 129 S. W. 314, 139 Ky. 27.

A state may not, under the commerce clause, impose a license tax on a nonresident merchant traveling and soliciting orders by sample and catalogues for goods shipped into the state in car load lots of his order, and which he delivers to the person ordering them. Stewart v. People of State of Michigan (1914) 34 Sup. Ct. 476, 232 U. S. 665, 58 L. Ed. 786, reversing judgment People v. Stewart (1911) 132 N. W. 1071, 167 Mich. 417.

The license or occupation tax imposed in each county on the business of selling or delivering sewing machines, under Act Ala. March 31, 1911 (Laws 1911, p. 180) § 32, held not an unconstitutional interference with interstate commerce as applied to a foreign corporation, maintaining a store in each county from which local agents of such county were supplied with sewing machines; all transactions being completed within a single county. Singer Sewing Mach. Co. v. Brickell (1914) 34 Sup. Ct. 493, 233 U. S. 304, 58 L. Ed. 974.

The license tax imposed in each county by Act Ala. March 31, 1911 (Laws 1911, p. 180), §§ 32, 33f, on business of selling sewing machines, may be construed to avoid an unconstitutional meaning, as not applying to that proportion of the business of a foreign corporation involving transactions in interstate commmerce, where its business generally is wholly intrastate. Id.

The business of selling lightning rods within corporate limits as the agent of a nonresident manufacturer from whom the agent had received the rods may be subjected to a municipal license tax without violating the commerce clause, though the contract required the seller at his own expense to attach them to the house of the person who ordered them. Browning v. City of Waycross (1914) 34 Sup. Ct. 578, 233 U. S. 16, 58 L. Ed. 828, affirming judgment (1912) 74 S. E. 564, 11 Ga. App. 46.

A statute of Nevada provided that "every traveling merchant, agent, drummer, or other person selling or offering to sell any goods, wares, or merchandise of any kind, to be delivered at some future time," or carrying samples and selling or offering to sell goods, wares, or merchandise of any kind similar to such samples, to be delivered at some future time, should obtain a license, and pay $25 a month for the same. The statute further provided that any person without such license "so offering any goods, wares or merchandise for sale, shall be guilty of a misdemeanor, and on conviction shall be fined in any sum not less than $50, nor more than $500." Held, that such statute did not violate the interstate commerce clause. In re Rudolph (C. C. 1880) 2 Fed. 65, 66.

An act of the legislature taxing each additional sample agent a certain sum and a merchant a certain sum for every additional $50,000 of goods sold by him does not discriminate against foreign residents, or against the goods held in another state for sale, in favor of a resident of the same class and goods held within the state for sale, so as to be obnoxious to the commerce clause. Ex parte Thornton (C. C. 1882) 12 Fed. 538.

An agent of a foreign corporation, selling ranges which have been previously shipped into the state, and there stored, cannot avoid the payment of the license required of stove-range agents by Mansf. Dig. Ark. § 5589, on the ground that he is engaged in interstate commerce. Hynes v. Briggs (C. C. 1890) 41 Fed. 468.

The borough ordinance of Union City, Pa., requiring all persons canvassing from house to house for the purpose of selling, inter alia, books, or soliciting orders therefor from the general public, to take out a license, and pay to the borough a fee for doing such business, in so far as it touches a citizen of another state, who, as the agent of a person engaged in the book trade in such other state, simply so canvassed and took orders for the sale of a book, the orders to be sent to and filled by his principal, is a regulation of commerce among the states, and is void. In re White (C. C. 1890) 43 Fed. 913, 11 L. R. A. 284.

A state statute which authorizes legal process to be issued for the collection of a penalty for the nonpayment of taxes on sale by sample of goods not then within the state is repugnant to the United States constitution, as being a regulation of interstate commerce. In re Flinn (C. C. 1893) 57 Fed. 496.

Soliciting agents of an Illinois fertilizer manufacturer sending orders obtained in Louisiana to their principal to ship the goods direct to the purchaser in Louisiana are engaged in interstate commerce, and are not subject to the license required of dealers in commercial fertilizers, under Act La. No. 51, 1886. State v. Lagarde (C. C. 1894) 60 Fed. 186.

Acts N. C. 1895, c. 116, § 25, requiring every one, before engaging in selling pianos or organs by sample, list, or otherwise, in the state, to pay $250 for a license, is, in the case of one selling by sample and list, as agent for a manufacturer and dealer located in another state, void, as a regulation of interstate commerce. Ex parte Hough (C. C. 1895) 69 Fed. 330.

An ordinance of a municipal corporation requiring persons or firms soliciting orders on behalf of manufacturers of goods to take out a license and pay a tax is an exercise, not of the police

power, but of the taxing power; and, when enforced against a person or firm soliciting orders for a manufacturer of goods in another state, it imposes a tax upon, and is a regulation of, interstate commerce. In re Tinsman (C. C. 1899) 95 Fed. 648.

Anything which is a direct burden on interstate commerce cannot be imposed by a state without the assent of congress, and a municipal ordinance imposing tax on a solicitor seeking orders for a nonresident manufacturer is invalid as a restriction on interstate commerce. Lowry v. Tile, Mantel & Grate Ass'n (C. C. 1900) 106 Fed. 38, 44, affirmed (1902) 115 Fed. 27, 52 C. C. A. 621, 63 L. R. A. 58.

Any restriction or limitation imposed by state laws, whether by way of licenses, taxes, or otherwise, on traveling salesmen coming from one state to another for the purpose of soliciting orders for the sale of any commodity which is a proper subject on interstate commerce, is a burden on interstate commerce, and void in the absence of permissive congressional legislation. In re Bergen (C. C. 1900) 115 Fed. 339.

A city ordinance imposed a license tax of $5 per day on "each itinerant person or peddler traveling from residence to residence soliciting orders for, or selling directly or indirectly, goods, wares or merchandise to, the consumer," etc. Petitioner was agent for a party living in another state, and solicited orders for various goods from persons in the city, the goods ordered being shipped direct from the other state to the purchaser. Held, that petitioner was not liable for the tax, and could not be imprisoned for nonpayment thereof, as in so far as the ordinance applied to him it was a tax on interstate commerce, and invalid. Ex parte Green (C. C. 1902) 114 Fed. 959.

A corporation of one state there engaged in the manufacture of portraits and frames therefor has the right to send agents into another state to solicit orders for its work, and other agents to deliver the portraits made upon such orders and collect therefor, and, the entire transaction being one exclusively of interstate commerce, neither the state nor a municipality has power to impose license taxes upon either class of such agents. Chicago Portrait Co. v. City of Macon (C. C. 1906) 147 Fed. 967.

A state statute imposing a license tax on persons soliciting orders for the enlargement of photographs or for picture frames, etc., within the state, but declaring that the act shall not apply to merchants or dealers having a permanent place of business within the state, and who kept picture frames as a part of their stock in trade, was invalid as an unjust discrimination in restraint of interstate commerce in favor of merchants residing within the state and having a permanent place of business therein. Ex parte Hull (C. C. 1907) 153 Fed. 459.

A state statute imposing a license on persons soliciting orders for pictures, picture frames, etc., who were not merchants or dealers having a permanent place of business within the state, etc., constituted an invalid restriction on interstate commerce in so far as it affected an agent of a foreign art company who delivered pictures, frames, etc., and collected the money due on orders previously taken by another agent of the corporation and sent to another state where the corporation resided to be filled. Id.

A merchant in Chicago employed an agent, who solicited orders for merchandise in a city in Missouri and reported the orders. The merchant put up each article ordered in a package, and all the packages were shipped to the agent, who took the goods from the depot and delivered them to the customers and collected the price. Held, that the transaction was interstate commerce, and that an ordinance imposing a license for selling merchandise in that manner was invalid as an interference with interstate commerce. Jewel Tea Co. v. Lee's Summit, Mo. (C. C. 1911) 189 Fed. 280.

A city ordinance requiring every person who goes from place to place soliciting the purchase of goods, without reference to the place of their production, or offering to sell or deliver the same, by sample or otherwise, to take out a license and pay therefor, does not discriminate against the products of other states, is not a regulation of commerce, but only a tax, and its character is not affected by the fact that the tax must be paid largely or wholly by products of other states. Ex parte Hanson (D. C. 1886) 28 Fed. 127.

Rev. St. Tex. art. 4665, providing that every commercial traveler soliciting trade by sample or otherwise shall pay an annual occupation tax, and if he does not, on demand, exhibit to the proper officers the comptroller's receipt therefor, he shall be guilty of a misdemeanor, is an unconstitutional regulation of commerce between the states as to a citizen of another state, selling goods by sample, and having no goods in the state. Ex parte Stockton (D. C. 1887) 33 Fed. 95.

Ordinance 116 of the city of Austin, Minn., requiring all persons engaged in going from house to house, and selling or taking orders for any merchandise not of their own manufacture, to take out a license therefor, and providing penalty of fine or imprisonment for its violation, in so far as it applies to persons in the state making sales and taking orders for persons residing within another state, is repugnant to the interstate commerce clause. In re Kimmel (D. C. 1890) 41 Fed. 775.

Rev. St. Wis. § 1570, imposing a license tax on persons traveling from

place to place for the sale of goods, "at retail or to consumers," by sample or otherwise, is void as an interference with interstate commerce so far as it applies to agents soliciting orders by sample for goods which belong to a resident of another state. In re Mitchell (D. C. 1894) 62 Fed. 576.

The revenue law, which imposes a license tax on "itinerant dealers in fruit trees, vines," etc. (Sess. Acts Ala. 1886–87, p. 36, § 5, subd. 10), so far as it applies to a foreign traveling agent selling goods only by sample for his principal, who resides in another state, is an attempted regulation of interstate commerce. State v. Agee (1887) 83 Ala. 110, 3 South. 856.

A law imposing a license tax on peddlers, so far as it applies to a foreign traveling agent, who goes from house to house, and sells goods by sample for his principal, also residing in another state, is a regulation of interstate commerce, and unconstitutional. Ex parte Murray (1890) 93 Ala. 78, 8 South. 868.

A nonresident corporation, engaged in enlarging photographs and in the manufacture of picture frames, solicited orders by agents traveling in the state, which orders stated that the customer thereby ordered a portrait, unframed, and that it was also undestood that the portrait was to be delivered in an appropriate frame, which the customer was entitled to accept at factory price. Attached to the order was an agreement to deliver the portrait unframed, and reciting that all portraits were delivered in appropriate frames, which the contract entitled the customer to accept at factory price. Held, that the sale of the frames for the pictures was made and completed in the state after the frames came into the state, and was not interstate, but intrastate, commerce, and hence the sale thereof is subject to Act Ala. March 7, 1907, § 17 (Acts 1907, p. 469), imposing on any person selling picture frames a license tax of $25 for each county in which business is done. Dozier v. State (Ala. 1908) 46 So. 9.

Code Ala. 1907, § 2361, subd. 58, imposing a license on persons engaging in the business of selling or delivering lightning rods, will be construed to apply to intrastate commerce only. Clark v. State (1912) 59 So. 236, 4 Ala. App. 202.

Where a foreign corporation, without office or place of business in the state, employed agents to solicit orders for lightning rods, according to sample, rods ordered were shipped from the sister state to the nearest railway point of the buyers, and agents of the corporation delivered the same, the transactions were interstate commerce, and not within Code Ala. 1907, § 2361, subd. 58. Id.

Agent for sale of pianos, whose orders were filled by his principal by shipping them from its place of business in another state, held engaged in interstate commerce and not required to take out a license under a municipal ordinance. Ineichen v. City of Anniston (1914) 65 So. 710, 10 Ala. App. 605.

Filling of orders for pianos taken by agent of seller, having its place of business in another state, by having him deliver pianos shipped to other purchasers and rejected after inspection, held an act of interstate commerce, and hence the agent was not required to procure a license under a municipal ordinance. Id.

An agent, through persons employed for that purpose, solicited and secured orders for goods manufactured and then situated in another state. The orders were filled by the principal and the goods shipped to Colorado, and by the agent delivered to the buyers. Held, that the agent was engaged in interstate commerce, and could not be compelled to pay a license under Laws Colo. 1905, p. 274, exacting a license from itinerant vendors. Wilcox v. People (1909) 104 P. 408, 46 Colo. 382.

Act D. C. Aug. 23, 1871, imposing a license tax upon commercial agents, or drummers, whose business it is, as agents for nonresident manufacturers or wholesale dealers, to offer merchandise for sale, is unconstitutional and void as a restriction upon interstate commerce. In re Hennick (D. C. 1887) 5 Mackey, 489.

The manufacturer of "Soapine," in Rhode Island, sold the same in quantities to a wholesale dealer in Washington City, and, without being delivered to the dealer, it was repurchased from him by the manufacturer, and sent directly to a salaried agent of the manufacturer, who opened the original packages, and peddled the contents from door to door; the sale to the wholesale dealer being an advertising scheme. Held a sufficient incorporation of the goods with the mass of property in the district to exempt a license tax on the peddler from the operation of the interstate commerce law. In re Wilson (1890) 19 D. C. 341.

Act July 1, 1902, c. 1352, § 7, par. 36, 32 Stat. 627, imposing a license tax on brewers' agents and others, was not intended to regulate the commercial intercourse between the District of Columbia and the states, nor to affect the agencies employed in such commerce, but was intended as a regulation of purely municipal character; and it is to be presumed, if it had been the intention of Congress to make the provision apply to soliciting agents for nonresident owners of goods, that intention would have been expressly declared. Beitzell v. District of Columbia (1903) 21 App. D. C. 49.

Where orders by samples are taken in one state for the sale of goods in another state, and pursuant to the orders so taken the goods are shipped to the agent of the seller in the receiving

state, in one large package, containing the smaller packages for each purchaser, wrapped separately, and the large package is broken by the agent of the seller who delivers the smaller packages to those who had given specific orders for them, such business is interstate commerce, and the agent of the seller is not subject to a municipal license tax upon salesmen who shall sell goods within the corporate limits of the municipality. Cason v. Quinby (Fla. 1910) 53 So. 741.

Code Ga. §§ 533, 1631, 1635, requiring peddlers to obtain a license, and prescribing a forfeiture in case of failure to do so, are void as to the citizen of another state employed by a foreign corporation to sell goods by sample in Georgia, as being in conflict with the provision of the federal constitution vesting in congress power to regulate commerce between the states. Wrought-Iron Range Co. v. Johnson (1890) 84 Ga. 754, 11 S. E. 233, 8 L. R. A. 273.

Acts Ga. 1898, p. 26, imposing, for the purpose of raising revenue, a license tax on persons who, as traveling agents for principals residing in other states, make executory contracts for the sale of goods, and when the same are shipped into this state receive them in bulk, break the original packages in which they are contained, and distribute them among the customers with whom such contracts had been made, is not obnoxious to the interstate commerce clause. Racine Iron Co. v. McCommons (1900) 36 S. E. 866, 111 Ga. 536, 51 L. R. A. 134.

A municipal ordinance imposing a license tax upon agents of nonresident corporations which manufacture for sale an article of commerce not of itself noxious, but without imposing any supervision or restriction upon such sale in aid of the public health, peace, or morality, places a burden upon interstate commerce, and is violative of the interstate commerce clause. Loh v. City of Macon (1911) 70 S. E. 149, 8 Ga. App. 744.

A manufacturer of goods, who carries on his business in another state, may send his agents into the state to solicit orders without paying to the state a license tax therefor, and is protected in so doing by the federal Constitution. In re Kinyon (1904) 75 P. 268, 9 Idaho, 642.

Sess. Laws Idaho 1901, p. 155, § 4, requiring every peddler or solicitor taking orders for mercantile establishments to pay a license, and section 8 (page 156), providing that the act shall not apply to runners traveling for wholesale houses and taking orders from merchants only, is in violation of Const. art. 1, § 8, cl. 3, when applied to persons acting as agents and solicitors for citizens of other states in the sale of property not at the time within the state, as affecting interstate commerce. Id.

The charter of the city of Bloomington, which confers on the common council power to license and tax hawkers and peddlers, and the ordinances passed pursuant thereto, imposing a license tax, in so far as they operate on persons soliciting orders for goods for a principal in another state, are void; being in contravention of the federal constitution, vesting in congress the authority to regulate commerce between the states. City of Bloomington v. Bourland (1891) 137 Ill. 534, 27 N. E. 692.

An ordinance forbidding traveling merchants or peddlers from selling or offering to sell any merchandise, without having obtained a license, cannot be enforced against one who sells by sample merchandise situated and owned in another state. McLaughlin v. City of South Bend (1891) 126 Ind. 471, 26 N. E. 185; Martin v. Town of Rosedale (1891) 130 Ind. 109, 29 N. E. 410.

A city cannot be empowered, by the laws of its own state, to impose a license tax upon a commercial traveler of another state for offering to sell goods within the city by sample, where the goods are to be brought from another state, and their owner does not reside in the state where they are offered for sale. City of Ft. Scott v. Pelton (1888) 39 Kan. 764, 18 Pac. 954.

The Kentucky statute of March 2, 1860 (2 Stant. Rev. St. 805), prohibiting sales by sample in the city of Louisville by nonresidents without a license, is not unconstitutional. Commonwealth v. Smith (1869) 69 Ky. (6 Bush) 303; Mork v. Commonwealth, Id. 397.

A citizen of another state may come into this state, and solicit and receive work to be done in that state, without being required to pay a license tax. Commonwealth v. Pearl Laundry Co. (1899) 105 Ky. 259, 49 S. W. 26, 20 Ky. Law Rep. 1172.

That part of section 12 of Act (La.) No. 101 of 1886 which declares that "all traveling agents offering any species of merchandise in this state for sale, or selling by sample, or otherwise, shall pay * * * a license of $50," is unconstitutional, as a regulation of commerce among the several states. Simmons Hardware Co. v. McGuire (1887) 39 La. Ann. 848, 2 South. 592.

If a manufacturer in another state sends an agent into Louisiana to solicit purchasers for his manufactured goods still at the factory, and he takes orders, and the goods are shipped directly to the agent, to be delivered to the purchaser, the goods do not become a part of the general mass of taxable property in the state until delivered to the purchaser; and to make the agent liable to pay the license tax imposed by Act No. 150 of 1890, § 23, would be in violation of the constitutional provision giving congress the power to regulate interstate commerce. McClellan v. Pettigrew (1889) 44 La. Ann. 356, 10 South. 853.

A license imposed on the agent of a

foreign corporation selling articles of commerce which at the time of the sale are in another state operates in restraint of interstate commerce. State v. Schofield (1915) 67 So. 557, 136 La. 702.

The ordinance of the city of Vicksburg which provides for the payment of a privilege tax by all transient peddlers doing business in the city, so far as it applies to a traveling agent, a citizen of another state, selling goods only by sample for his principal, who resides in such other state, is an attempted regulation of interstate commerce, and unconstitutional. Overton v. State (1892) 70 Miss. 558, 13 South. 226.

Act Nev. Feb. 20, 1877, which imposes a license fee upon merchants who go from place to place soliciting orders is not unconstitutional, as a regulation of commerce, or unequal taxation, but it is a legitimate tax upon a business. Ex parte Robinson (1877) 12 Nev. 263, 28 Am. Rep. 794.

Gen. St. Nev. § 1269, which provides for the licensing of traveling salesmen, commonly known as "drummers," and forbids their exercising their trade without a license, is void as to a citizen of California who is taking orders for goods to be delivered within that state. Ex parte Rosenblatt (1887) 19 Nev. 439, 14 Pac. 298.

An ordinance, prohibiting the taking of orders and delivering of goods therefrom without a license, being an exercise, not of police power, but of taxing power, when enforced against an agent, sent by a nonresident publisher to solicit orders in this state, imposes a tax upon interstate commerce in violation of the federal Constitution. People v. Ericson (Co. Ct. 1914) 147 N. Y. Supp. 226.

Acts N. C. 1887, c. 135, § 25, imposing a license tax in certain cases for selling goods, wares, and merchandise, is, in so far as it applies to nonresident commercial travelers and all nonresidents selling goods by wholesale or by sample, inconsistent with the constitution. State v. Bracco (1889) 103 N. C. 349, 9 S. E. 404.

Orders for drugs and patent medicines were taken by an agent of a nonresident drug company, and forwarded to and accepted by the latter at its place of business in another state. Each order was separately wrapped, with the name of the purchaser marked thereon, and all were packed in one crate and shipped to defendant, another agent of the drug company, in North Carolina, who delivered the packages to the purchasers in their original form. Held, that the transaction constituted interstate commerce, and that defendant was therefore not liable for selling or offering to sell patent medicines and drugs without having obtained a license, in violation of Revisal N. C. 1905, §§ 5150, 5151. State v. Trotman (1906) 55 S. E. 599, 142 N. C. 662.

Rev. Codes N. D. §§ 1738–1743, are unconstitutional and void so far as they attempt to tax persons engaged in the occupation of offering for sale by samples in North Dakota goods to be shipped into it from another state, to fill the orders for goods so obtained, as unlawfully interfering with interstate commerce. State v. O'Connor (1896) 5 N. D. 629, 67 N. W. 824.

Coshocton City Ordinance, § 125, making it unlawful for any person to canvass within the city limits for orders for portrait photographing without first procuring a license from the mayor, where the work is not done within the city limits, and is not a product of such person's own hands, is in conflict with the commerce clause, as such ordinance is not a police regulation, but is an attempt to prevent the importation and sale of goods manufactured in another state. In re Julius (1904) 26 Ohio Cir. Ct. R. 423.

An occupation tax imposed by ordinance on all persons engaged in the city in selling goods, or offering them for sale, is unconstitutional as against one soliciting the sale of goods in the city on behalf of a business house nonresident in the state. Baxter v. Thomas (1896) 46 P. 479, 4 Okl. 685.

Sales of carriages by agents passing through the country, constituting interstate commerce, held not so inherently harmful as to entitle the state to regulate the same in the exercise of police power. Spaulding v. McNary (Or. 1913) 130 P. 391, rehearing denied Id. 1128.

A city ordinance requiring solicitors and peddlers to take out a license, excepting persons selling by sample to resident merchants, is a valid exercise of the police power; and such ordinance is applicable to a person who, with sample pictures and picture frames, goes from house to house soliciting orders for a dealer in another state. City of Titusville v. Brennan (1891) 143 Pa. St. 642, 22 Atl. 893, 14 L. R. A. 100.

A resident of Pennsylvania, representing a grocery firm in Ohio, went from house to house taking orders for the delivery of groceries. It was arranged between the salesman and his firm that the orders be taken for such quantities of goods as could be filled by delivering small packages. The goods were shipped in one car, and were consigned to the firm; none of the packages being marked with the name of the purchaser. A member of the firm delivered the goods to the salesman, who loaded them in a wagon and delivered them to the purchasers. The city in which such deliveries were made enacted an ordinance imposing a license tax on peddlers and persons traveling from house to house with goods for sale, and on persons soliciting orders for goods. Held, that such

ordinance was not repugnant to the interstate commerce clause of the United States constitution, as the goods brought from Ohio became incorporated and mixed with the mass of property in Pennsylvania, and hence the commerce in them had become the domestic commerce of the latter state. City of New Castle v. Cutler (1901) 15 Pa. Super. Ct. 612.

Laws S. D. 1897, c. 102, imposing a license fee on solicitors taking orders for mercantile establishments, violates the interstate commerce clause of the constitution, as against a salesman for a house in another state selling clothing by sample, to be made up from measurements taken by the salesman; and this although there is no discrimination as to the amount of the fee between resident and nonresident establishments. State v. Rankin (1898) 76 N. W. 299, 11 S. D. 144.

The Tennessee revenue act of 1891 makes the occupation of "sample sellers and solicitors" a privilege, and all persons selling to consumers by sample or taking orders from consumers are required to pay an annual license fee. Held that, in so far as such act applies to a nonresident drummer of a nonresident manufacturer, who sells by sample goods not within the state at the time of the sale, it is an attempt to levy a tax on interstate commerce. Hurford v. State (1892) 91 Tenn. 669, 20 S. W. 201.

Laws Tenn. 1895 (2d Sess.) c. 4, § 3, requiring all persons, other than photographers of the state, who shall solicit pictures to be enlarged outside of the state, to pay a privilege tax of $25 in every county where so engaged, as applied to agents soliciting pictures to be enlarged in another state, is unconstitutional, as imposing a burden on interstate commerce. State v. Scott (1897) 39 S. W. 1, 98 Tenn. 254, 36 L. R. A. 461.

Acts Tenn. 1899, c. 432, § 4, imposing a privilege tax on the agents in the state for laundries located in another state, is not in violation of Const. art. 1, § 8, giving congress the power to regulate interstate commerce, since such a transaction is not commerce. Smith v. Jackson (1899) 54 S. W. 981, 103 Tenn. 673. 47 L. R. A. 416.

Gen. Laws Tex. c. 17, imposing an occupation tax upon commercial travelers, drummers, or solicitors of trade, selling by sample, is not an unconstitutional regulation of commerce between the states. Ex parte Asher (1887) 23 Tex. App. 662, 5 S. W. 91, 59 Am. Rep. 783.

A tax on the occupation of canvassing for the sale of lightning rods for the manufacturer, whose place of business was in another state, was a tax on interstate commerce, and therefore void. Talbutt v. State (1898) 44 S. W. 1091, 39 Tex. Cr. R. 64, 73 Am. St. Rep. 903.

Where accused was employed by a nonresident firm of grocers and druggists to canvass and take orders for groceries and medicines, by sample and brand, which were forwarded to the firm and filled on approval, and the firm shipped the goods back in boxes consigned to themselves in Texas, where they were unpacked and delivered to the purchasers from the car, accused was engaged in interstate commerce, and hence was not subject to conviction for nonpayment of an occupation tax, imposed on traveling salesmen engaged in selling patent or other medicines. Turner v. State (1900) 55 S. W. 834, 41 Tex. Cr. R. 545.

Where a traveling salesman for a nonresident grocery firm, selling groceries directly to consumers, took orders which he stated, would be sent to the firm, and the goods shipped to the purchasers, such salesman was engaged in interstate commerce, and was not subject to a fine for pursuing the occupation of a merchant without obtaining a license therefor and paying the occupying tax. Turner v. State (Tex. Cr. App. 1900) 55 S. W. 835.

A foreign manufacturer made buggies and shipped them into the state in original packages, some of which contained buggies complete, others containing parts thereof. The buggies were then put together by the manufacturer's agent, and peddled by him throughout the state. When a buyer desired a vehicle not in stock, the agent sent the order to the manufacturer, who shipped to the buyer. Held not to constitute interstate commerce, so as to relieve such agent from the payment of occupation taxes. Saulsbury v. State (1901) 63 S. W. 568, 43 Tex. Cr. Rep. 90, 96 Am. St. Rep. 837.

Acts Va. 1870–71, c. 193, prohibiting the sale of goods by sample by any person not a resident merchant, is not a regulation of commerce, but is simply a revenue law. Speer v. Commonwealth (Va. 1873) 23 Grat. 935, 14 Am. Rep. 164.

A provision of a revenue law (Acts Va. 1883–84, p. 582) discriminating against publishers of books, etc., in other states, is unconstitutional, as a regulation of interstate commerce. Ex parte Rollins (1885) 80 Va. 314.

A city ordinance requiring a resident sales agent for nonresident principals to pay a license tax for the privilege of prosecuting his business, confined exclusively to the negotiation of sales by the exhibition of samples of goods which are in other states, is a regulation of interstate commerce, and therefore void, as repugnant to Const. art. 1, § 8, cl. 3, giving congress the power to regulate commerce among the several states. Adkins v. City of Richmond (1900) 34 S. E. 967, 98 Va. 91, 47 L. R. A. 583, 81 Am. St. Rep. 705.

So much of Code W. Va. 1891, c. 32,

§ 1, as requires agents soliciting orders for spirituous liquors, to be shipped from points outside to points within the state, to procure a license, is unconstitutional and void. State v. Lichtenstein (1897) 28 S. E. 753, 44 W. Va. 99.

A town ordinance prohibiting agents and salesmen for nonresidents from selling by sample and taking orders for goods to be delivered in the town without first procuring a license, but providing that the ordinance shall not apply to those who sell exclusively to regular merchants of such town, conflicts with the interstate commerce clause. Clements v. Town of Casper (1894) 4 Wyo. 494, 35 Pac. 472.

215. —— **Hawkers and peddlers and itinerant vendors.**—A statute of a state which requires the payment of a license tax from persons who deal in the sale of goods, wares, and merchandise which are not the growth, produce, or manufacture of the state, by going from place to place to sell the same in the state, and requires no such license tax from persons selling in a similar way goods which are the growth, produce, or manufacture of the state, is in conflict with the commerce clause. Welton v. State (1875) 91 U. S. 275, 23 L. Ed. 347, reversing (1874) 55 Mo. 288; Morrill v. Wisconsin (1877) 23 L. Ed. 1009; Vines v. State (1880) 67 Ala. 73; Rodgers v. McCoy (1889) 6 Dak. 238, 44 N. W. 990; State v. Browning (1876) 62 Mo. 591; State v. Pratt (1887) 59 Vt. 590, 9 Atl. 556.

A state law imposing an annual tax on all peddlers of sewing machines, without regard to the place of manufacture, is not unconstitutional, as a regulation of interstate commerce, in imposing a tax on one who imports such machines from another state on his own account. Howe Mach. Co. v. Gage (1879) 100 U. S. 676, 25 L. Ed. 754; State v. Wessell (1892) 109 N. C. 735, 14 S. E. 391.

The trade or business of parties who reside and do business in one state, and as traveling merchants and peddlers vend foreign merchandise in another state, is purely internal traffic in the latter state, and does not come within the meaning of the interstate commerce clause. Sears v. Warren County (1871) 36 Ind. 267, 10 Am. Rep. 62; Ward v. State (Md. 1870) 9 Am. Law Reg. (N. S.) 424.

A state law taxing peddlers, exempting those selling goods which were the growth, product, or manufacture of the state, held to be an invalid discrimination under this clause. Welton v. Missouri (1875) 91 U. S. 275, 277, 23 L. Ed. 347.

A state law construed as taxing all peddlers of sewing machines without regard to the place of growth or produce of material or of manufacture does not violate this clause. Howe Mach. Co. v. Gage (1879) 100 U. S. 676, 25 L. Ed. 754.

Rev. St. Mo. § 6471, declaring any person who deals in selling goods, by going from place to place to sell the same, to be a peddler, and section 6472, prohibiting peddling without a license, which section 6473 provides shall state how the dealing is to be carried on, and which, by section 6479, must be exhibited on demand of a sheriff, collector, constable, or citizen householder of the county, is not an invasion of the power of congress to regulate interstate commerce, as applied to one who, as agent of a manufacturer in another state, thus sells and delivers sewing machines, which he has with him at the time of soliciting purchases. Emert v. Missouri (1895) 15 Sup. Ct. 367, 156 U. S. 296, 39 L. Ed. 430, affirming State v. Emert (1891) 15 S. W. 81, 103 Mo. 241, 11 L. R. A. 219, 23 Am. St. Rep. 874.

A conviction in a state court for peddling without a license cannot be deemed to rest upon a non-Federal ground adequate to sustain it, independently of the ruling adverse to rights asserted under the commerce clause, because there was evidence that the defendant made some sales from a railway car or storeroom not under previous orders, and not within the protection of the commerce clause, since peddling being the only charge made against defendant, this latter ground, if upheld, would amount to a condemnation without hearing, and therefore constitute a denial of due process of law. Stewart v. Michigan (1914) 34 Sup. Ct. 476, 232 U. S. 665, 58 L. Ed. 786.

Laws N. C. 1889, c. 216, § 24, which provides that "every person, a citizen of the United States, authorized to do business in this state, who, as principal or agent, peddles * * * goods, wares, or merchandise, shall pay a license tax as follows, * * *" is unconstitutional as to citizens of other states, as regulating interstate commerce. In re Spain (C. C. 1891) 47 Fed. 208, 14 L. R. A. 97.

Kansas merchants employed citizens of that state as agents to solicit purchases in Missouri. The agents were furnished with samples, and sent orders obtained by them to their employers, who shipped to the agents the goods ordered, and the agents delivered them to purchasers. One agent, however, offered to sell and deliver to one person, and did sell to another, a single article, one of his samples, and delivered it immediately to the purchaser, without taking an order therefor on his employers. Held, that this did not constitute him a peddler, within the statute of Missouri declaring "whoever shall deal in the selling of" goods, with certain exceptions, "by going from place to place to sell the same," to be a peddler, and making punishable such peddling without a li-

cense, and that his arrest and imprisonment for violation of that statute were in contravention of the interstate commerce clause. In re Houston (C. C. 1891) 47 Fed. 539, 14 L. R. A. 719.

The statute of Washington (Laws 1909, p. 737, § 3) requiring peddlers, with certain exceptions, to procure a license in each county where they do business, except in cities and towns which have ordinances regulating the business, to pay a license fee of from $100 to $250 per year and to make a special deposit of $500, to remain until after the year's term of the license shall have expired, is a valid police regulation and revenue statute, within the power of the state, and does not create an invidious burden on interstate commerce. Ex parte Crowder (C. C. 1909) 171 Fed. 250.

A statute exempting persons selling goods manufactured within the state from the provision of a law requiring peddlers to procure a license violates the interstate commerce clause. In re Watson (D. C. 1882) 15 Fed. 511.

A state statute requiring all persons engaged in peddling to procure a license for the privilege of selling their goods within the state, and discriminating against goods, wares, and merchandise manufactured without the state, and which further provides that no person shall be licensed as a peddler who has not resided in the state one year next preceding his application for a license, thereby discriminating against nonresidents, is in violation of the interstate commerce clause. Id.

Code Ala. 1907, § 2361, subd. 58, imposing a license tax on persons engaged in the business of selling lightning rods, held inapplicable to transactions in interstate commerce. Ex parte State (Ala. 1913) 61 So. 901, denying certiorari Clark v. State (1912) 59 So. 236, 4 Ala. App. 202.

Laws Ark. 1909, p. 292, providing that, before any person either as owner, employé, or agent shall travel through any county and peddle or sell enumerated articles, he shall procure a license, did not impose any burden on interstate commerce, as the license is not demanded merely for soliciting orders but for peddling. Crenshaw v. State (Ark. 1910) 130 S. W. 569.

Acts Ark. 1909, p. 292, held not invalid as imposing a burden on interstate commerce. Rogers v. State (Ark. 1912) 144 S. W. 211.

Laws Colo. 1905, p. 274, being an act to prevent and punish fraud in sales of manufactured goods by itinerant vendors, provides (section 3 [page 275]) that one engaged in the business of an itinerant vendor shall be licensed, except as otherwise provided. Section 1 defines the term "itinerant vendor" to include any person who engages in either a temporary or transient business in the state, selling manufactured goods; and section 2 exempts commercial travelers or merchants selling in the usual course of business. Held, that the act is violative of the interstate commerce clause. Smith v. Farr (1909) 104 P. 401, 46 Colo. 364.

Acts Fla. 1895, c. 4322, § 9, subd. 11, providing that "hawkers and peddlers shall each pay for license tax $300," is not inoperative, as an interference with interstate commerce, when applied to a peddler who brings his goods from another state into Florida for sale at retail, where the goods are in this state when offered for sale, when orders are taken for them, and deliveries made, and when all negotiations prior to and attending sales are had, and the goods are not sold in original packages, but at retail, in small quantities. Hall v. State (1897) 23 So. 119, 39 Fla. 637.

Pen. Code Ga. § 600, making it a misdemeanor for any peddler, save such as are exempted by law, to sell any goods without a license, is not operative against one engaged in interstate commerce. Stone v. State (1903) 43 S. E. 740, 117 Ga. 292.

An ordinance requiring payment of a license by all itinerant merchants, which makes no distinction between merchants whose goods are imported into the state and those whose goods are manufactured in this state, and which does not require a license for sale of goods in the original packages, is not unconstitutional, as a regulation of interstate commerce. City of Carrollton v. Bazette (1896) 159 Ill. 284, 42 N. E. 837.

1 Gav. & H. Ind. p. 424, requiring a license fee to be paid by traveling merchants and peddlers who are not residents of the state to vend merchandise, is not in conflict with the powers of congress to regulate commerce. Sears v. Warren County Com'rs (1871) 36 Ind. 267.

An ordinance prohibiting peddling without a license is not an interference with interstate commerce, in the case of a person who takes about with him articles sent to him, as agent, to sell, by one manufacturing in another state, and delivers them as sales are made; and it is immaterial that the sales are on the installment plan, and that the title remains in the manufacturer till payment of the price. City of South Bend v. Martin (1895) 142 Ind. 31, 41 N. E. 315.

A city ordinance, requiring a license from peddlers except where "they reside in, and the goods are manufactured in, a certain county," is in conflict with the interstate commerce clause. City of Marshalltown v. Blum (1882) 58 Iowa, 184, 12 N. W. 266.

Acts 18th Gen. Assem. Iowa, c. 75, § 10, amended by Acts 19th Gen. Assem. c. 137, § 2, and 21st Gen. Assem. c. 83, § 3, imposing a license on all itinerant vendors of drugs, does not, as imposing a license on articles brought in original packages from another state, violate the interstate commerce clause.

State v. Wheelock (1895) 95 Iowa, 577, 64 N. W. 620, 30 L. R. A. 429.

A license tax imposed on peddlers by a city does not burden the trade relations of a merchant in another state with the person who is required by such merchant to pay for goods purchased before they are delivered to him in the state. In re Pringle (1903) 72 P. 864, 67 Kan. 364.

Peddlers bringing goods from another state into Kentucky for sale are subject to the license tax imposed by the statute of that state, as the statute does not conflict with the constitutional power of congress to regulate interstate commerce. Rash v. Farley (1891) 91 Ky. 344, 15 S. W. 862, 34 Am. St. Rep. 233.

A city ordinance imposing a license tax on "peddlers or itinerant retailers of goods" is not in violation of the interstate commerce law. West v. City of Mt. Sterling (1901) 65 S. W. 120, 23 Ky. Law Rep. 1670.

A license tax imposed upon peddlers is not repugnant to the provisions of the constitution of the United States concerning regulation of commerce. The Stella Block v. Parish of Richland (1874) 26 La. Ann. 642.

The Louisiana act of 1872 imposing a license tax on transient persons doing business within the state does not violate that provision of the United States constitution vesting in congress the exclusive power to regulate commerce among the several states, etc. Cole v. Randolph (1879) 31 La. Ann. 535.

A state law cannot impose license taxes upon persons passing through or coming into it merely for a temporary purpose, especially if connected with interstate commerce as commercial travelers; nor can it impose such taxes upon property imported into it from abroad, or from another state, and not yet become part of the common mass of property therein. Simmons Hardware Co. v. McGuire (1887) 39 La. Ann. 848, 2 South. 592.

Rev. St. Me. c. 44, permitting goods manufactured in the state to be peddled free, and exacting a license fee from those who peddle similar goods not manufactured in the state, is void as an interference by the state with the exclusive power of congress to regulate commerce among the several states. State v. Furbush (1881) 72 Me. 493.

Where an employé in the state receives picture frames from a foreign corporation, and breaks the packages, and exposes such frames for sale as a peddler, a statute requiring a license for such peddling is not a regulation of interstate commerce. State v. Montgomery (1899) 43 A. 13, 92 Me. 433.

A city ordinance, providing that no person should sell or offer for sale any foreign-grown fruit from any vehicle in any public street or place of the city, unless under a written permit and payment of a license fee of $20, is a discrimination against foreign-grown fruit, and an attempt to regulate interstate commerce, which cannot be upheld by legislation enacted in the exercise of the police power of the state. State v. Bornstein (Me. 1910) 78 A. 281.

St. Mass. 1846, c. 244, concerning hawkers and peddlers, is not in violation of any provision of the constitution. Commonwealth v. Ober (1853) 66 Mass. (12 Cush.) 493.

St. Mass. 1890, c. 448, requiring itinerant vendors to pay a license tax, having been passed as an exercise of the police power of the state, and not for revenue, the enforcement of the tax against vendors of goods imported by a foreign corporation, the goods being sold in the form in which they are imported, is not a taxation of interstate commerce. Commonwealth v. Newhall (1895) 164 Mass. 338, 41 N. E. 647.

Rev. Laws Mass. c. 65, §§ 15, 16, permitting the sale by peddlers of agricultural products of the United States without a license, but forbidding unlicensed sales of agricultural products of other countries, are a regulation of commerce in conflict with the commerce clause. Commonwealth v. Caldwell (1906) 76 N. E. 955, 190 Mass. 355, 112 Am. St. Rep. 334.

A municipal ordinance requiring peddlers to obtain a license is not an interference with federal authority as to a peddler who is a manufacturer and patentee of articles sold; such ordinance being merely a police regulation within the authority of the state to adopt. People v. Russell (1883) 14 N. W. 568, 49 Mich. 617, 43 Am. Rep. 478.

A municipal ordinance imposing a license fee on peddlers will not be held invalid as contravening the commerce clause, in the case of one who is a resident of this state, and who does not sell goods in the original package, but from a general stock kept within the state. People v. Sawyer (1895) 64 N. W. 333, 106 Mich. 428.

An ordinance imposing a license tax on peddlers or persons going about the city on foot, selling or offering to sell any goods, wares, or supplies by sample or otherwise, is unconstitutional, in so far as it affects those engaged in interstate commerce, as in violation of Const. art. 1, § 8. People v. Bunker (1901) 87 N. W. 90, 128 Mich. 160, 8 Detroit Leg. N. 570.

The act imposing a tax on venders of merchandise and peddlers, passed in 1825 (Rev. Code Mo. p. 531), and the supplement thereto passed January 22, 1829 (pages 38, 39), are constitutional so far as they apply to retailers and do not conflict with the commerce clause. Tracy v. State (1829) 3 Mo. 3.

Wag. St. Mo. p. 979, § 127, relating to peddlers' licenses, is not an attempting to regulate interstate commerce. State v. Welton (1874) 55 Mo. 288,

reversed Welton v. State of Missouri (1875) 91 U. S. 275, 23 L. Ed. 347.

Rev. St. Mo. § 7212, requiring all peddlers to pay a license fee, and section 7211, declaring that whoever sells certain classes of goods by going from place to place shall be deemed a peddler, is not a regulation of interstate commerce as applied to one who, as the agent of a manufacturer in another state, thus sells and delivers sewing machines which have already been sent into the state. State v. Emert (1891) 103 Mo. 241, 15 S. W. 81, 11 L. R. A. 219.

Rev. St. Mo. 1889, § 7211, which provides that "whoever shall deal in the selling of * * * patent or other medicines, * * * by going from place to place to sell the same, is hereby declared to be a peddler," and section 7212, which provides that no person shall deal as a peddler without a license, the tax on which is regulated by section 7217, are not in conflict with the interstate commerce clause. State v. Smithson (1891) 106 Mo. 149, 17 S. W. 221.

The interstate commerce clause cannot be invoked by one vending single bottles of medicine manufactured in another state, and taken from a package in which several bottles were shipped into the state, as against Rev. St. Mo. 1889, §§ 7211–7218, defining a peddler, and imposing a fine for dealing as such without a license. State v. Parsons (1894) 124 Mo. 436, 27 S. W. 1102, 46 Am. St. Rep. 457.

It is not an interference with interstate commerce to impose a peddler's license on one selling goods of a foreign manufacture, sometimes by sample and sometimes by delivery of goods in his possession. State v. Snoddy (1895) 128 Mo. 523, 31 S. W. 36.

Where, in a prosecution for violating a city ordinance requiring a peddler's license, defendants were citizens of Missouri, and were acting as agents for citizens of the state, the constitutional objection to the ordinance that it is obnoxious to the commerce clause, cannot be invoked. City of Brookfield v. Kitchen (1901) 163 Mo. 546, 63 S. W. 825.

Comp. St. Neb. 1903, c. 77, art. 1, §§ 62–64, providing that peddlers plying their vocations in the state shall pay a license tax for the privilege, are inapplicable to transactions constituting interstate commerce. Menke v. State (1904) 97 N. W. 1020, 70 Neb. 669.

Act Nev. Feb. 20, 1877, which imposes a license fee upon merchants who go from place to place soliciting orders, is not unconstitutional as involving a regulation of commerce, or unequal taxation, but is a legitimate tax upon a business. Ex parte Robinson (1877) 12 Nev. 263, 28 Am. Rep. 794.

Rev. Laws Nev. §§ 3890–3894, inclusive (act approved March 24, 1905 [St. 1905, c. 153] §§ 1–5), making it unlawful for an itinerant merchant to offer goods for sale without a license, and providing that the act shall not apply to commercial travelers representing wholesale houses or to the sale of farm products, held to violate the interstate commerce clause. Ex parte Stoddard (Nev. 1913) 131 P. 133.

Laws N. M. 1903, c. 16, forbidding the sale by an itinerant vender of any except certain classes of articles without first obtaining a license, making no distinction between articles produced in the territory and those produced elsewhere, is not in violation of the interstate commerce clause. Territory v. Russell (N. M. 1906) 86 P. 551.

Act N. C. 1822 (Taylor's Revisal, c. 1129), imposing a tax on itinerant peddlers, is not repugnant to the interstate commerce clause, though the goods sold may have been imported from another state. Wynne v. Wright (1834) 18 N. C. (1 Dev. & B.) 19.

Section 27, c. 294, Acts N. C. 1893, providing for a license tax "on every itinerant who puts up lightning rods," imposes no burden on interstate commerce. State v. Gorham (1894) 115 N. C. 721, 20 S. E. 179, 44 Am. St. Rep. 494, 25 L. R. A. 810.

Acts N. C. 1895, c. 116, imposing a license tax on peddlers, and declaring any person carrying a wagon, cart, or buggy for the purpose of exhibiting or delivering any wares or merchandise to be a peddler, is not void, as an interference with interstate commerce, as applied to a foreign corporation, there being no discrimination against nonresidents in favor of citizens of the state. Wrought-Iron Range Co. v. Carver (1896) 118 N. C. 328, 24 S. E. 352.

Laws N. C. 1901, c. 9, § 54, requiring a peddler's license, is not a violation of the interstate commerce clause, as applied to a publishing company shipping books in original packages from without the state to its agents within, and by them delivered to purchasers previously obtained by other employés of the company. P. F. Collier & Son v. Burgin (1902) 41 S. E. 874, 130 N. C. 632.

The license tax imposed by Revenue Act 1903, § 36 (Pub. Laws N. C. 1903, c. 247), on every itinerant person or company peddling stoves or ranges in the state, levied for purely revenue purposes, is void in so far as sales by sample of goods manufactured in another state, shipped into the state, and delivered in their original packages, are concerned, as a restriction on interstate commerce. Wrought Iron Range Co. v. Campen (1904) 47 S. E. 658, 135 N. C. 506.

Where plaintiff received large interstate shipments of proprietary medicines, which were opened, and the separate articles disposed of, Pub. Laws N. C. 1913, c. 201, § 44, imposing a peddler's tax upon him for the vending of such medicines, is not a burden on

interstate commerce. Smith v. Wilkins (N. C. 1913) 80 S. E. 168.

Laws N. D. 1903, c. 165, entitled "An act taxing the occupation of hawking and peddling," is not open to the objection that it authorizes a tax on interstate commerce. In re Lipschitz (1903) 95 N. W. 157, 14 N. D. 622.

A village ordinance requiring a license fee from nonresidents only to vend goods within the corporation limits is an unconstitutional restraint of trade. Radebaugh v. Village of Plain City (Ohio Com. Pl. 1893) 28 Wkly. Law Bul. 107.

L. O. L. Or. §§ 4961, 4963, defining peddlers, and imposing a license tax thereon, in so far as it attempted to tax agents for nonresidents selling goods in interstate commerce, imposed a tax on such commerce and was therefore void. Spaulding v. McNary (Or. 1913) 130 P. 391, rehearing denied Id. 1128.

Act Pa. April 8, 1861, imposing a penalty for buying or bartering, by hawkers or peddlers, certain articles of produce, with intent to send for sale or barter to any other market out of the two counties to which the act applies, without a license, the cost of which is more for nonresidents of these counties than for residents, is unconstitutional, as an unlawful interference with interstate commerce. And, as the void provisions of the act are inseparable from the rest, it is wholly void. Rothermel v. Zeigler (1890) 7 Pa. Co. Ct. R. 505; Same v. Meyerle, Id. 616.

An ordinance practically prohibiting peddling and selling of goods from house to house by sample or otherwise, by requiring too high a license to be obtained, which excepts from its operation residents of a borough, is not a valid exercise of police power. Sayre Borough v. Phillips (1892) 148 Pa. St. 482, 24 Atl. 76, 33 Am. St. Rep. 842, 16 L. R. A. 49.

A license tax by a borough on peddlers for revenue purposes only, cannot be enforced against a citizen of another state, whose business is not in violation of any police regulations. Commonwealth v. Walker (Com. Pl. 1894) 14 Pa. Co. Ct. R. 586, 3 Pa. Dist. R. 534.

Act Pa. Feb. 6, 1830 (P. L. 39), requiring all persons desiring to peddle clocks to make proof before the court of quarter sessions of their good moral character, and to obtain a license, being general and reasonable, is a proper police regulation, and not in violation of the interstate commerce clause. Commonwealth v. Harmel (1895) 166 Pa. St. 89, 30 Atl. 1036, 36 Wkly. Notes Cas. 1, 27 L. R. A. 388.

Act Pa. April 17, 1846 (P. L. 364), prohibiting peddling wares or merchandise within a certain county without a license, is not unconstitutional as a violation of the interstate commerce clause. Commonwealth v. Dunham (1899) 43 A. 84, 191 Pa. St. 73, 44 Wkly. Notes Cas. 101.

It is within the police power of the state to pass a law requiring a peddler of goods to take out a license, though these goods may have been brought from another state and are still the property of the importer, since when goods are sent from one state to another for sale, or in consequence of a sale, they become a part of its general property and amenable to its laws, provided that no discrimination be made against them as goods from another state, and that they be not taxed by reason of being brought from another state, but only taxed in the usual way, as other goods are. City of New Castle v. Cutler (1901) 15 Pa. Super. Ct. 612.

The provisions of the constitution conferring the right to tax merchants, peddlers, and privileges, and providing that no article manufactured of the produce of the state shall be taxed otherwise than to pay the inspection fees, and Act Tenn. March 13, 1868, providing that all peddlers of sewing machines by sample shall pay a tax of $10, is not a regulation of commerce as applied to foreign manufacturers. There is a distinction between the tax upon an article and a tax upon the privilege of peddling it. Howe Mach. Co. v. Cage (1876) 68 Tenn. (9 Baxt.) 518.

Gen. Laws Tex. 1889, p. 27, which provides for the collection of an occupation tax from every person or firm who peddles out cooking stoves or ranges over the county, $250 for the state, and $100 for each county in which they make a sale, does not restrict commerce between the states, within the meaning of Const. art. 1, § 8. In re Butin (1889) 28 Tex. App. 304, 13 S. W. 10.

Where a person traveling in a two-horse rig was agent for a foreign corporation, having no office within the state, for the sale of organs, which were shipped from such corporation to the agent, and by him delivered to purchasers at their various places of residence, from the wagon, the purchasers in each instance paying for the organs in cash and notes made payable to the corporation, the fact that the agent in one instance sold an organ which had previously been brought into the state and left at the house of another, and which he took from such house, and delivered to the purchaser, did not render the agent amenable to the state occupation tax act prohibiting peddlers from selling goods within the state without a license, since the fact that the property had been shipped into the state and deposited with a bailee, instead of being deliv-

ered at once to the purchaser, did not the less render it a subject of interstate commerce. French v. State (1900) 58 S. W. 1015, 42 Tex. Cr. R. 222, 52 L. R. A. 160.

Defendant took orders to erect lightning rods, and the rods and equipments were shipped to him from another state, but he often completed work on contracts immediately after making them, and before he could have received the goods from the consignor. Under defendant's contract with the consignor he had a salary and shared in the profits, he paying all freights and expenses of the business. The liability of the consignor was limited to the acts of the defendant in furnishing the goods on orders taken by him. Held, that defendant was either an independent dealer or a partner residing and doing business in the state, and was not engaged in interstate commerce, but was liable to the occupation tax. Camp v. State (1901) 61 S. W. 401, 42 Tex. Cr. R. 499.

In so far as Comp. Laws Utah 1907, §§ 1710x, 1710x1, make it unlawful, without first obtaining a license, to peddle or hawk enumerated goods, or to engage in or conduct as an itinerant vender, peddler, hawker, or traveling merchant, the business of peddling, selling, or bartering any such goods, regardless of the residence of the persons or the source of the goods, they do not discriminate against persons or property of other states, and so do not affect or interfere with interstate commerce. State v. Bayer (1908) 97 P. 129, 34 Utah, 257.

The portion of Comp. Laws Utah 1907, §§ 1710x, 1710x1, which requires a license to canvass or sell by sample enumerated goods after being shipped into the state, and which permits, without license, the canvassing or selling in such manner goods not shipped into the state, though such selling without a license is prohibited only in case of sale to users and consumers, violates the commerce clause; the mere fact that the goods have been shipped into the state being not alone conclusive that they have lost their character as articles of interstate commerce. Id.

The right of a state to impose a license tax upon peddlers, where it operates uniformly upon all citizens, and does not discriminate in favor of citizens of Virginia as against citizens of other states, or where the tax imposed is in the exercise of the police power, and is not a regulation of commerce under cover of that power, although incidentally it may have that effect, has been uniformly maintained; but where any injurious discrimination is discovered in favor of the resident as against a nonresident, or with respect to the sales of articles manufactured in this state over similar articles manufactured abroad, the state laws are declared to be void, as repugnant to the Constitution of the United States. Commonwealth v. Myer (1896) 92 Va. 809, 23 S. E. 915, 31 L. R. A. 379.

Code W. Va. c. 32, § 2, as amended by Acts 1885, c. 17, which reads, "nor shall any agent traveling with one or more horses sell any lightning-rod, sewing-machine, or organ or other musical instrument without a state license therefor," is not unconstitutional, as applied to such agents selling Singer sewing machines manufactured outside of this state. State v. Richards (1889) 32 W. Va. 348, 9 S. E. 245, 3 L. R. A. 705.

The interstate commerce clause is inapplicable to, and is not violated by, Laws Wis. 1870, c. 72, imposing a penalty upon every person found traveling from place to place within the state for the purpose of carrying to sell or exposing for sale any goods, etc., without having obtained a hawker's and peddler's license, as provided in that act. Morrill v. State (1875) 38 Wis. 428, 20 Am. Rep. 12. CONTRA, Van Buren v. Downing (1876) 41 Wis. 122.

Wyoming Itinerant Vendor's Act imposes a burden on interstate commerce by requiring agents who take orders for sales by a foreign principal to take out a license. State v. Byles (Wyo. 1913) 136 P. 114.

216. —— Corporate franchises and privileges in general.—A state law requiring foreign insurance companies to obtain a license before doing business in the state held not violative of this clause. Paul v. Virginia (1868) 8 Wall. 168, 177, 19 L. Ed. 357.

Corporations foreign to a state may be taxed for the privilege of conducting their corporate business within the latter. Liverpool Ins. Co. v. Massachusetts (1870) 77 U. S. (10 Wall.) 566, 19 L. Ed. 1029.

Act Pa. June 7, 1879, prohibiting foreign corporations, except insurance companies, which do not invest or use their capital in that state, from keeping an office in that state for the use of its officers, stockholders, agents, or employés, unless it have obtained a license by paying one mill on each dollar of its authorized capital stock, is not an attempt to regulate commerce among the states, since it does not prohibit the transportation or sale of the corporation's products in the state. Pembina Cons. Silver Mining & Milling Co. v. Pennsylvania (1888) 8 Sup. Ct. 737, 738, 125 U. S. 181, 31 L. Ed. 650.

A state statute which prohibits foreign corporations, except insurance companies which do not invest or use the capital of the state, from keeping an office in the state unless it shall have first obtained a license therefor by paying one mill on each dollar on its authorized capital stock, is not invalid as regulating interstate commerce, there being no attempt to prohibit the trans-

portation or sale in the state of the products of the corporation. Pembina Cons. Silver Mining & Milling Co. v. Pennsylvania (1891) 8 Sup. Ct. 737, 738, 125 U. S. 181, 31 L. Ed. 650.

Act N. Y. May 26, 1881, exacting from all corporations doing business in the state a tax proportioned to the total amount of their capital stock, without regard to what part thereof is employed within the state, or to the amount or kind of business done there, imposes purely a franchise tax, and, even as applied to a corporation engaged in bringing the products of other states into New York for sale, cannot be considered as a tax upon interstate commerce. Horn Silver Min. Co. v. New York (1892) 143 U. S. 305, 12 Sup. Ct. 403, 36 L. Ed. 164.

The exaction on a consolidation of an Ohio corporation with corporations of other states, of the fees required by Rev. St. Ohio, § 148a, to be collected on filing articles of agreement of consolidation of corporations, proportioned to the capital stock of the new corporation, constitutes no tax on interstate commerce, or the right to carry on the same, or the instruments thereof, and involves no attempt on the part of the state to extend its taxing power beyond its territorial limits; the charge being a condition imposed by the state on the grant of privileges dependent solely on its will, and the liability therefor being entirely optional. Ashley v. Ryan (1894) 153 U. S. 436, 14 Sup. Ct. 865, 38 L. Ed. 773, affirming (1892) 49 Ohio St. 504, 31 N. E. 721.

A proportional state tax on the intangible property, within the state, of a bridge company owning a bridge over a river between adjoining states, is not a tax on interstate commerce, when the business of transportation is not carried on by the bridge company, but by persons and corporations who pay tolls to the bridge company. The fact that the tax may tend to increase the tolls is too remote and incidental to make it a tax on the business transacted. Henderson Bridge Co. v. Commonwealth of Kentucky (1897) 17 Sup. Ct. 532, 166 U. S. 150, 41 L. Ed. 953, affirming (1895) 31 S. W. 486, 99 Ky. 623, 29 L. R. A. 73.

The acts of congress prescribing the height, width of span, etc., of bridges to be erected over the Ohio, and declaring that they shall be post roads, do not affect the power of the states to tax the intangible property of the bridge companies. Id.

There is nothing in the nature of things or in the limitations of the federal constitution which restrains a state from taxing at its real value intangible property. Adams Express Co. v. Ohio State Auditor (1897) 17 Sup. Ct. 604, 605, 166 U. S. 185, 41 L. Ed. 965.

A state franchise tax upon private corporations, based on the amount of capital employed by the corporation in the state, is not affected by the character of the property in which the capital is invested, and is therefore not rendered illegal by the fact that such capital is employed in interstate or foreign commerce. New York v. Roberts (1898) 19 Sup. Ct. 58, 60, 70, 171 U. S. 658, 43 L. Ed. 323, reversing judgment U. S. v. Hopkins (C. C. 1897) 82 Fed. 529.

No corporation, even though engaged in interstate commerce, can appropriate to its own use property, public or private, without liability to charge therefor and a state is not prohibited from so charging by this section. Atlantic & P. Tel. Co. v. Philadelphia (1903) 23 Sup. Ct. 817, 818, 190 U. S. 160, 47 L. Ed. 995.

The franchise of a corporation, though it be the business of interstate commerce, is subject to state taxation, providing, at least, the franchise is not derived from the United States. Id.

The federal circuit courts have no jurisdiction of an original action in mandamus to compel the return of a franchise tax collected under the authority of a state statute, although the basis of the relief sought is the alleged repugnancy of the tax to this clause. Covington & Cincinnati Bridge Co. v. Hager (1906) 27 Sup. Ct. 24, 203 U. S. 109, 51 L. Ed. 111.

Excise tax exacted from foreign corporations under St. Mass. 1909, c. 490, for the privilege of doing business in the state, as applied to corporations carrying on a business not of itself interstate commerce, though their products are sold and shipped in such commerce and which are carrying on a local business, is not invalid under the commerce clause. Baltic Min. Co. v. Commonwealth of Massachusetts (1913) 34 Sup. Ct. 15, 231 U. S. 68, 58 L. Ed. 127, affirming judgments (1911) 93 N. E. 831, 207 Mass. 381; S. S. White Dental Mfg. Co. v. Same (1912) 98 N. E. 1056, 212 Mass. 35.

Annual franchise tax imposed by Laws Ark. 1911, p. 67, on a foreign corporation on a percentage of the outstanding capital stock represented by the property used in business in the state, held not repugnant to the commerce clause. St. Louis Southwestern Ry. Co. v. State of Arkansas ex rel. Norwood (1914) 35 Sup. Ct. 99, 235 U. S. 350, 59 L. Ed. 265, affirming decree (1913) 152 S. W. 110, 106 Ark. 321.

Threatened enforcement by proper officers of Code Supp. Va. 1910, §§ 1104, 1105, requiring foreign corporations doing business in the state to obtain a license, will not be enjoined, where it is only claimed that it may be enforced so as to violate the commerce clause. Dalton Adding Mach. Co. v. State Corporation Commission of Commonwealth of Virginia (1915) 35 Sup. Ct. 480, 236 U. S. 699, 59 L. Ed. 797, affirming decree (D. C. 1913) 213 Fed. 889.

The franchise tax act of Michigan of

1891 (Comp. Laws 1897, § 8574) requires every foreign corporation which shall hereafter be permitted to transact business in the state to pay a franchise fee, and provides that all contracts made in the state by any corporation which has not first complied with the provisions of the act shall be wholly void. As construed by the supreme court of the state, such statute has no application to a foreign corporation, whose business relates entirely to interstate commerce, but imposes a tax on the franchise or privilege of carrying on business in the state. Held that, as so construed, the statute is within the power of the state, and enforceable as applied to a foreign private business corporation, which commenced business in the state with the purpose of transacting or carrying it on, and, if it does so without first paying the required tax, the act renders all contracts made in the state in the conduct of such business void. Oakland Sugar Mill Co. v. Fred W. Wolf Co. (1902) 118 Fed. 239, 55 C. C. A. 93.

Sewing-machine companies are proper subjects of state taxation, and the assessment of a specific tax on their business within the state is not a regulation of commerce among the states. Singer Mfg. Co. v. Wright (C. C. 1887) 33 Fed. 121.

The New York statute imposing a tax upon foreign corporations doing business within the state should be given such a construction as not to render it invalid as interfering with interstate commerce, and therefore should not be construed to levy a tax upon the commercial privilege of soliciting orders without the state. Southern Cotton Oil Co. v. Wemple (C. C. 1890) 44 Fed. 24, 26.

Act Mich. 1891, No. 182, as amended by Act 1893, No. 79, providing that contracts made in Michigan by any foreign corporation which has not paid the secretary of state the franchise fee prescribed by the act as a prerequisite to doing business, is void as a regulation of interstate commerce, as applied to the business of a foreign corporation selling its wares in Michigan by itinerant agents. Aultman, Miller & Co. v. Holder (C. C. 1895) 68 Fed. 467, judgment affirmed Holder v. Aultman, Miller & Co. (1898) 18 Sup. Ct. 269, 169 U. S. 81, 42 L. Ed. 669.

A foreign corporation, whose vessels, while en route between the ports of two different states, stop at a port of a third state, is not liable for a license tax at that port because it there leases a wharf or landing; has plant and machinery for the taking in and discharge of freight and passengers; engages stevedores and longshoremen, who are in its sole employment; has there an agent and subordinate clerks, an office, with furniture, books, and appliances; and keeps a bank account and occasionally purchases supplies there,—since all such operations are an essential and integral part of its interstate commerce business. Clyde S. S. Co. v. City Council of Charleston (C. C. 1896) 76 Fed. 46.

Rev. St. Tex. 1911, arts. 3837, 7394, attempting to impose on foreign corporations franchise taxes for the right to do business in Texas, consisting of a percentage of capital and surplus, whether within or without the state, held unconstitutional. Crane Co. v. Looney (D. C. 1914) 218 Fed. 260.

Act Ala. March 7, 1907, p. 418, § 1 (Code 1907, § 2391), requiring a foreign corporation to pay an annual franchise tax for use of the state, based on the amount of capital employed therein, is not invalid as interfering with interstate commerce. Southern Ry. Co. v. Greene (Ala. 1909) 49 So. 404; Central of Georgia Ry. Co. v. Gaston (Ala. 1909) Id. 412.

Foreign corporations may engage in transactions in the state which involve only interstate commerce without obtaining the permit required by Code Ala. 1907, §§ 3642 and 3653, which are predicated upon Const. Ala. 1901, § 232, providing that no foreign corporation shall do business in the state without a license. Ewart Lumber Co. v. American Cement Plaster Co. (Ala. App. 1913) 62 So. 560.

A mortgage to a foreign corporation in an interstate transaction is valid, though the corporation had not complied with the Constitution or statutes governing the right of such corporations to do business in the state. Padgett v. Gulfport Fertilizer Co. (1914) 66 So. 866, 11 Ala. App. 366.

Civ. Code Cal. § 409, and Pol. Code Cal. § 416, subd. 4, in so far as they provide for and impose on corporations doing an interstate business an annual license tax for the right to do business in California, held invalid as imposing a burden on interstate commerce. H. K. Mulford Co. v. Curry (1912) 125 P. 236, 163 Cal. 276.

A license or privilege tax for the conduct of intrastate business of a corporation doing both inter and intra state business, based on the corporation's total capital or capital stock, is unconstitutional as violating the commerce clause. Id.

The refusal of the Secretary of State to accept for filing articles of incorporation of a domestic corporation, organized to guarantee mortgages on real estate in various states, without payment of the filing fee and license tax contemplated by Pol. Code Cal. § 416, and Civ. Code Cal. § 409, does not interfer with interstate commerce. City Properties Co. v. Jordan (1912) 126 P. 351, 163 Cal. 587.

Taxes imposed by Pol. Code Cal. § 409, and by St. Cal. 1905, p. 493, are excise taxes, and their imposition on a foreign corporation selling its merchan-

dise in the state though manufactured elsewhere, is not an interference with interstate commerce. Albert Pick & Co. v. Jordan (Cal. 1914) 145 P. 506; Melville Clark Piano Co. v. Same (1914) Id. 516.

Laws Colo. 1911, p. 254, prescribing the fees to be paid by foreign corporations as a prerequisite to doing business in the state, does not apply to corporations engaged solely in interstate commerce. Savage v. Central Electric Co. (Colo. 1915) 148 P. 254.

Where a city grants an electric railway company, exclusively engaged in the transportation of interstate freight and passengers, permission to use certain of its streets by running its cars over the tracks of a local street railway company under conditions specified in the contract between the two companies, it cannot impose a special annual tax on the business of such railway; it being a tax on interstate commerce, and the regulation of it under the federal Constitution belongs alone to Congress. City Council of Augusta v. Augusta & A. Ry. Co. (1908) 61 S. E. 992, 130 Ga. 815.

The provisions of Rev. St. Idaho 1887, § 2653, as to corporations doing business in the state, were not intended to and do not interfere with interstate commerce. Belle City Mfg. Co. v. Frizzell (1905) 81 P. 58, 11 Idaho, 1.

A license tax imposed on a foreign corporation engaged in both interstate and intrastate business must be so imposed upon the intrastate business as not to impair the corporation's right to continue to carry on its interstate business. Northern Pac. Ry. Co. v. Gifford (1913) 136 P. 1131, 25 Idaho, 196.

Laws Idaho Ex. Sess. 1912, c. 6, § 3, imposing a corporation tax, held not invalid as imposing a burden on interstate commerce, in violation of the commerce clause. Id.

Rev. St. Ill. c. 64, requiring foreign corporations to pay licenses for carrying on business within the state, does not violate the commerce clause. People v. Thurber (1852) 13 Ill. (3 Peck) 554.

The fee imposed on corporations for filing articles, which they must file before they can be deemed legally incorporated or consolidated, is not a tax on interstate commerce, though they be engaged in such business, but on the right to exist as a corporation. Chicago & E. I. R. Co. v. State (1898) 51 N. E. 924, 153 Ind. 134.

Chapter 76, Laws 21st Gen. Assem. Iowa, providing that foreign corporations, other than those organized for mercantile or manufacturing purposes, shall take out permits before doing business in that state, and shall not be allowed to exercise the right of eminent domain, or other corporate privileges, unless they take out such permit, and that if any such foreign corporation, when sued in the state courts of that state, removes the cause to a federal court, on the ground of local prejudice or nonresidence, it shall forfeit its permit, and no new one shall be issued for the space of three months, held not a regulation of commerce between the states. Goodrel v. Kreichbaum (1886) 70 Iowa, 362, 30 N. W. 872.

Laws Kan. 1913, c. 135, requiring a foreign corporation to file annual statements and pay an annual fee as a condition to doing business in the state, does not apply to corporations engaged solely in interstate commerce, and, as to those doing both local and interstate business, relates only to the conditions on which intrastate business may be done. State v. Sessions (1915) 147 P. 789, 95 Kan. 272.

That Laws Kan. 1913, c. 135, imposes on a domestic corporation a franchise tax measured by its capital stock, though a large part of its business consists of interstate commerce, does not render the statute invalid. Kansas City. Ft. S. & M. Ry. Co. v. Sessions (1915) 147 P. 791, 95 Kan. 261.

The states have the power to impose upon foreign corporations a privilege tax, without subjecting domestic corporations to the same burden. Commonwealth v. Milton (1851) 51 Ky. (12 B. Mon.) 212, 54 Am. Dec. 522.

St. Mass. 1909, c. 490, pt. 3, § 56, imposing an excise tax on foreign corporations, held not an interference with interstate commerce. S. S. White Dental Mfg. Co. v. Commonwealth (1912) 98 N. E. 1056, 212 Mass. 35.

Under circumstances, held, that the interstate and intrastate business of a foreign corporation could be reasonably separated, so that an excise tax could be legally imposed on the latter. Id.

Foreign Corporation Tax Law Mass. 1909, imposing an excise upon foreign corporations, does not apply to those solely engaged in foreign commerce, although it be a commercial business. Marconi Wireless Telegraph Co. of America v. Commonwealth (1914) 106 N. E. 310, 218 Mass. 558.

A foreign corporation which maintained a local office, from whence salesmen were sent to take orders for the benefit of its wholesale customers, and from which small orders were filled, held not engaged wholly in interstate commerce and subject to Foreign Corporation Tax Law of 1909. Id.

A foreign holding company which maintained a local office, held not engaged in interstate commerce and to be subject to the Foreign Corporation Tax Law of 1909. Id.

A foreign mining company which maintained a Boston office held not engaged in interstate commerce, and to be subject to the excise prescribed by

Foreign Corporation Tax Law of 1909. Id.

A foreign corporation engaged in the automobile business, which maintained a local sales and repair office, held not wholly engaged in interstate commerce and subject to Foreign Corporation Tax Law of 1909. Id.

A foreign corporation which maintained a local office held not engaged in local business, and hence not subject to Foreign Corporation Tax Law of 1909. Id.

Where a foreign corporation which does an interstate commerce business within the state also does a domestic business, the state may levy an excise tax upon it. Id.

Where a foreign corporation does both an intrastate and interstate business, an excise tax levied by the state upon its intrastate business is not invalid, because the profit on the intrastate business alone is not sufficient to meet it. Id.

A foreign corporation which maintained a local office held not wholly engaged in interstate commerce, and hence subject to the excise tax imposed by Foreign Corporation Tax Law of 1909. Id.

A foreign corporation which maintained a local sales office, where repair parts were kept and sold, held not wholly engaged in interstate commerce and subject to Foreign Corporation Tax Law of 1909. Id.

Laws Mich. 1893, No. 79, requiring corporations to pay a franchise fee, and declaring all contracts made by them void, until such be paid, is, as applied to foreign corporations selling goods in the state through itinerant agents, unconstitutional, in that it imposes a restraint on interstate commerce. Coit & Co. v. Sutton (1894) 102 Mich. 324, 60 N. W. 690, 25 L. R. A. 819.

Pub. Acts Mich. 1893, No. 79, in providing that every foreign corporation which shall hereafter be permitted to transact business in this state shall pay a franchise fee, does not violate the interstate commerce clause. Moline Plow Co. v. Wilkinson (1895) 105 Mich. 57, 62 N. W. 1119.

The provision in Rev. St. Mo. 1899, § 1025 (Ann. St. 1906, p. 888), which requires a foreign corporation, carrying on solely interstate commerce in Missouri, to make out, deliver, and file with the Secretary of State a statement as to its property and business within the state and to pay a license tax thereon, is unconstitutional. International Text-Book Co. v. Gillespie (Mo. 1910) 129 S. W. 922.

Rev. Codes Mont. § 165, imposing certain graduated charges, based upon the amount of capital stock of the corporation, to be collected by the Secretary of State, for the filing of each certified copy or article of incorporation of any foreign corporation, held unconstitutional as imposing a burden on interstate commerce, when applied to foreign interstate corporations. Chicago, M. & St. P. Ry. Co. v. Swindlehurst (Mont. 1913) 130 P. 966.

The New Jersey tax law of 1884, providing that "all other corporations under the laws of this state" shall pay a certain yearly license fee or tax, but excepting from the provisions of the act manufacturing or mining companies doing business in the state, is not an unconstitutional interference with interstate commerce, as it is a mere modification of the corporation act to the extent of limiting the privileges thereby conferred to manufacturing companies who are incorporated and do business in the state. State v. Underground Cable Co. (N. J. Ch. 1889) 18 Atl. 581.

A yearly franchise tax, imposed upon a company as the price of the right and privilege of being a corporation, may be exacted by the state granting the franchise, no matter how the corporate property may be invested or employed, or where it may be situate, though it may be engaged in interstate and foreign commerce. Honduras Commercial Co. v. State Board of Assessors (1892) 54 N. J. Law (25 Vroom) 278, 23 Atl. 668.

The federal constitution will not invalidate a state tax upon a corporation having power to engage in foreign or interstate commerce, unless it is actually engaged in such commerce. Id.

Act N. J. April 18, 1884 (Supp. Revision, p. 1016), imposing an annual license fee on certain corporations, imposes such fee on the right of the company to exist in corporate form, regardless of the powers it may exercise under such form, and hence is constitutional, even as against a domestic corporation created for the purpose of engaging in commerce with an adjoining state. Lumberville Delaware Bridge Co. v. State Board of Assessors (1893) 55 N. J. Law (26 Vroom) 529, 26 Atl. 711.

Corp. Tax Act N. J. 1888 (Supp. Revision, p. 1016), applied to foreign pipeline companies engaged in the transportation of oil from points in Pennsylvania and New York to points in New Jersey, is not an interference with interstate commerce. Tide Water Pipe Co. v. State Board of Assessors (1895) 57 N. J. Law (28 Vroom) 516, 31 Atl. 220.

The tax provided for by Laws N. Y. 1880, c. 542, § 3, as amended by Laws 1881, c. 361, providing that "every corporation, joint-stock company, or association whatever, now or hereafter incorporated or organized under any law of this state, * * * and doing business in this state" shall pay a certain tax on its corporate franchise, to be computed on its capital stock or dividends, is not an unconstitutional interference with foreign or interstate com-

merce. People v. Wemple (1889) 117 N. Y. 136, 22 N. E. 1046.

The imposition of a tax on foreign corporations doing business in the state (Laws N. Y. 1880, c. 542, § 3) is not an interference with interstate commerce, and is therefore not unconstitutional. People v. Wemple (1891) 61 Hun, 83, 15 N. Y. Supp. 446.

The license tax and franchise tax imposed on foreign corporations for the privilege of doing business in the state, based on the amount of capital employed therein, are not a burden on interstate commerce, notwithstanding the capital is used in a business which in its nature constitutes commerce between the states. People v. Glynn (1908) 109 N. Y. Supp. 868, 125 App. Div. 328.

The state may tax a corporation on its special franchises, granted to it by the state, or by authority from the state wholly within its limits, though the corporation is engaged in interstate commerce, because the tax is not on the business of the corporation. People v. State Board of Tax Com'rs (1911) 127 N. Y. Supp. 918, 143 App. Div. 26.

Whether a state statute providing a license fee for foreign corporations based upon the whole amount of capital stock, whether employed within the state or not, violates the United States Constitution, is a federal question, and a holding of the United States Supreme Court is controlling on the state courts. Hirschfeld v. McCullagh (Or. 1913) 130 P. 1131, affirming judgment on rehearing (1912) 127 P. 541.

The state may exclude foreign corporations from its limits by the imposition of an exorbitant license tax. Commonwealth v. Standard Oil Co. (1882) 101 Pa. St. 119.

If a corporation, although engaged in the business of interstate commerce, so carries on its business as to justify at the hands of any municipality a police supervision of the property and instrumentalities used therein, the municipality is not bound to furnish such supervision for nothing, and may, in addition to ordinary property taxation, subject the corporation to a charge for the expense of the supervision. Borough of Norwood v. Western Union Tel. Co. (1904) 25 Pa. Super. Ct. 406.

A state can impose a tax on the privilege of a foreign corporation to do business within the state, measured by the capital or receipts on property used by the corporation in interstate commerce. Atlas Powder Co. v. Goodloe (1915) 175 S. W. 547, 131 Tenn. 490.

Acts Tenn. 1909, c. 504, imposing a privilege tax on a foreign corporation manufacturing and selling goods in interstate commerce, held not a regulation of interstate commerce, contrary to Const. art. 1, § 8. Id.

For a foreign corporation to sell goods, and ship them into the state, is a matter of interstate commerce, and not subject to the state statute requiring permits for foreign corporations to do business in the state. Lewis v. W. R. Irby Cigar & Tobacco Co. (Tex. Civ. App. 1898) 45 S. W. 476.

Sayles' Rev. Civ. St. Tex. 1897, art. 5243i, provides, inter alia, that every foreign corporation doing business in the state, which fails to pay annually a specified franchise tax, shall forfeit its right to do business in the state, and shall be denied the right to sue or defend in any of the courts of the state. Held, that the act is unconstitutional and void, in so far as it attempts to tax interstate commerce. Woessner v. H. T. Cottam & Co. (1898) 47 S. W. 678, 19 Tex. Civ. App. 611.

Though a foreign corporation violates Rev. St. Tex. 1911, art. 1314, prohibiting such a corporation from doing business unless it obtain a permit, etc., it may sue on a contract if its execution and performance constitute interstate commerce. York Mfg. Co. v. Colley (Tex. Civ. App. 1915) 172 S. W. 206.

Where a foreign corporation which did an interstate business was as a condition precedent to doing business, within the state required to pay a license tax on its entire corporate stock, held, that such license was not an imposition on interstate commerce. General Ry. Signal Co. v. Commonwealth (Va. 1916) 87 S. E. 598.

A foreign corporation held entitled to enforce a guaranty contract in this state as a contract pertaining to interstate commerce, though it had not secured a license pursuant to St. Wis. 1913, § 1770b. International Text-Book Co. v. Mabbott (1915) 150 N. W. 429, 159 Wis. 423.

217. —— Telegraph and telephone companies.—Where a telegraph company is doing the business of transmitting messages between different states, and has accepted and is acting under the telegraph law passed July 24, 1866, no state within which it sees fit to establish an office can impose upon it a license tax, or require it to take out a license for the transaction of such business. Leloup v. Port of Mobile (1888) 127 U. S. 640, 8 Sup. Ct. 1380, 32 L. Ed. 311.

Where a tax levied by a state upon a telegraph company consists of taxes on messages between points within the state and on messages between points out of the state and points in the state, and on messages between points in different states, but passing through the state, and the record discloses the amount assessed on each class, no recovery can be had, except in respect to messages transmitted wholly within the state. Western Union Tel. Co. v. Commonwealth of Pennsylvania (1888) 9 Sup. Ct. 6, 128 U. S. 39, 32 L. Ed. 345, following Ratterman v. Western Union Tel. Co. (1888) 8 Sup. Ct. 1127, 127 U. S. 411, 32 L. Ed. 229.

An ordinance compelling a telegraph

company to pay five dollars per annum for every pole within the city "for the privilege of using the streets, alleys, and public places" is a charge in the nature of a rental, and is not a privilege or license tax, which would be invalid as applied to a corporation doing interstate business. City of St. Louis v. Western Union Tel. Co. (1893) 148 U. S. 92, 13 Sup. Ct. 485, 37 L. Ed. 380, reversing (C. C. 1889) 39 Fed. 59.

A license tax imposed by a city upon telegraph companies "for business done exclusively within the city, * * * and not including any business done to or from points without the state" or "for the United States," is not invalid as applied to a company partly engaged in transmitting interstate messages, and which has accepted the provisions of the act of July 24, 1866, and thereby become an agency of the United States. Postal Tel. Cable Co. v. City Council of Charleston (1894) 153 U. S. 692, 14 Sup. Ct. 1094, 38 L. Ed. 871, affirming (C. C. 1893) 56 Fed. 419.

A state privilege tax of a certain amount per mile of wires operated within the state, imposed on all telegraph companies therein operating, in lieu of all other state, county, and municipal taxes, and amounting to less than the ordinary ad valorem tax, is substantially a mere tax on property, to which a foreign corporation operating within the state is subject, notwithstanding it is engaged in interstate commerce, and has accepted the rights conferred on telegraph companies by R. S. § 5263, Comp. St. § 10072. Postal Telegraph Cable Co. v. Adams (1895) 155 U. S. 688, 15 Sup. Ct. 268, 360, 39 L. Ed. 311, affirming (1893) 71 Miss. 555, 14 South. 36, 42 Am. St. Rep. 476.

An ordinance imposing a license fee on telegraph poles and wires within the limits of the municipality is not obnoxious to the commerce clause, when applied to poles and wires used for interstate business, although it yields a return in excess of the amount necessary to reimburse the municipality for the cost of supervision and inspection. Western Union Tel. Co. v. New Hope (1903) 23 Sup. Ct. 204, 205, 187 U. S. 419, 47 L. Ed. 240, affirming judgment Borough of New Hope v. Western Union Tel. Co. (1901) 16 Pa. Super. Ct. 306.

A telegraph company, though engaged in interstate commerce, may be compelled by a municipality to pay a reasonable license fee for the enforcement of local government supervision of its poles and wires. Atlantic & P. Tel. Co. v. Philadelphia (1903) 23 Sup. Ct. 817, 819, 190 U. S. 160, 47 L. Ed. 995.

A judgment of a state court in an action to recover license fees on poles and wires of an interstate telegraph company, which awards to a municipality a considerably less sum than was due if the ordinance imposing such fees was valid, being for the same sum found to be due by the verdict of the jury to whom the question of the reasonableness of the ordinance had been submitted for the court's guidance, with directions to give a verdict for the full sum if they thought the ordinance was reasonable, otherwise to find for defendant, will, on writ of error from the Supreme Court of the United States, be held illegal and void because based upon an exercise of the police power which the court and jury by their action must be deemed to have determined to be unreasonable, and therefore invalid. Postal Telegraph-Cable Co. v. Taylor (1904) 24 Sup. Ct. 208, 210, 192 U. S. 55, 48 L. Ed. 338.

The exaction from a foreign telegraph company for the benefit of the permanent school fund, under the authority of Gen. St. Kan. 1901, § 1261, of a "charter fee" of a given per cent. of its entire authorized capital stock, as a condition of continuing to do local business in the state, is invalid under the commerce clause of the federal Constitution, as necessarily amounting to a burden and tax on the company's interstate business and on its property located or used outside the state. Western Union Telegraph Co. v. Kansas ex rel. Coleman (1910) 30 Sup. Ct. 190, 216 U. S. 1, 54 L. Ed. 355, reversing decree State v. Western Union Telegraph Co. (1907) 90 Pac. 299, 75 Kan. 609.

An illegal burden on the interstate business of a foreign telegraph company, as well as a tax on its property beyond the jurisdiction of the state, is imposed by Laws Ark. 1907, p. 744, under which such company, as a condition of continuing to do a local business in the state, and of escaping the heavy penalties therein prescribed, must pay a given amount, based on all its capital stock, merely for filing its articles of incorporation with the Secretary of State. Ludwig v. Western Union Tel. Co. (1910) 30 Sup. Ct. 280, 284, 216 U. S. 146, 54 L. Ed. 423, affirming decree Chicago, R. I. & P. Ry. Co. v. Ludwig (C. C. 1907) 156 Fed. 152.

A city license tax on right of interstate telegraph company to do local business does not impose unconstitutional burden on its interstate business because its intrastate business was done at the loss of 86 cents. Williams v. City of Talladega (1912) 33 Sup. Ct. 116, 226 U. S. 404, 57 L. Ed. 275, reversing judgment (1909) 51 So. 330, 164 Ala. 633.

Pub. St. Mass. c. 13, § 40, providing for the taxation of railroad and telegraph companies, is not a regulation of interstate commerce. Attorney General v. Western Union Tel. Co. (C. C. 1887) 33 Fed. 129, appeal dismissed (1892) 12 Sup. Ct. 239, 145 U. S. 628, 36 L. Ed. 854.

Telegraphs are instruments of inter-

state commerce, and, as defendant's lines in the city of St. Louis are used to transmit messages to all parts of the United States, neither the state nor the city can impose a privilege or license tax on defendant. City of St. Louis v. Western Union Tel. Co. (C. C. 1889) 39 Fed. 59.

The city of Philadelphia has no power to impose pole and wire taxes upon a telegraph company doing interstate business, in excess of the reasonable expense to the city of the inspection and regulation thereof. City of Philadelphia v. Western Union Tel. Co. (C. C. 1897) 82 Fed. 797.

A telegraph company by its acceptance of Act July 24, 1866, c. 230, 14 Stat. 221, permitting such companies to construct and operate their lines over any portion of the public domain and any military or post road of the United States, derives no rights therefrom which exempts it from taxation by a state other than that in which it is incorporated in the same manner in which other foreign corporations doing business in the state are taxed, and it is immaterial that the tax imposed is designated by the state statute as a franchise tax. Western Union Telegraph Co. v. Wright (C. C. 1908) 158 Fed. 1004.

A city ordinance imposing a license tax on telegraph companies for the privilege of doing business in the city held not invalid, as imposing a burden on interstate commerce. Postal Telegraph Co. v. City of Portland (D. C. 1915) 228 Fed. 254.

A license tax on telegraph companies having an agent within the state, though receiving and transmitting messages from and to other states, is not an unconstitutional regulation of interstate commerce. City of Mobile v. Leloup (1884) 76 Ala. 401.

A city ordinance requiring telegraph companies engaged in business within the state in which such city is located, and which have a place of business in such city, to pay a license tax, is valid, in that it can be enforced without interfering with or violating any rights such companies may have under the interstate commerce law. Moore v. City of Eufaula (1892) 97 Ala. 670, 11 South. 921.

An ordinance of the city of Miami, imposing a license tax on telegraph companies, held to relate solely to intrastate business done in the city, and hence not in conflict with federal law. Ferguson v. McDonald (1913) 63 So. 915, 66 Fla. 494.

That a telegraph company was engaged in sending interstate and governmental messages did not exempt an agent of the company from arrest for a violation of a city ordinance imposing a license tax. Id.

A city ordinance made under the taxing power imposing a tax on telegraph companies on business done within the city, and not including business done to and from points without the state, and not including any business done for the United States, does not levy a tax on interstate business, and is not an interference with interstate commerce. Atlantic Postal Telegraph-Cable Co. v. City of Savannah (1909) 65 S. E. 184, 133 Ga. 66.

A tax by city ordinance of $100 on every telegraph company doing business within the city or in lieu thereof $2 for each pole within the city, which affects the entire business of the companies, both interstate and domestic, is void as to a company doing interstate business. Postal Telegraph-Cable Co. v. City of Cordele (Ga. 1912) 76 S. E. 744.

The act of the Kentucky legislature providing that telegraph companies within the state shall pay a yearly tax of $1 per mile for the line of poles and first wire, and 50 cents for each additional wire, is void, as a regulation of interstate commerce. Commonwealth v. Smith (1891) 92 Ky. 38, 17 S. W. 187.

A foreign wireless company held engaged wholly in interstate commerce and not subject to the excise tax imposed by Foreign Corporation Tax Law Mass. 1909. Marconi Wireless Telegraph Co. of America v. Commonwealth (1914) 106 N. E. 310, 218 Mass. 558.

Pol. Code Mont. § 4071, as amended by Act March 6, 1897, providing that every corporation "doing business in this state" as a telephone company must pay a license, in each county where such business is transacted, of 75 cents per year on each instrument in use, is not invalid as regards a telephone company doing business within the state, also engaged in interstate traffic, the statute being intended only to apply to instruments used solely in business within the state. State v. Rocky Mountain Bell Tel. Co. (1903) 71 P. 311, 27 Mont. 394.

Where an agreed statement states that assessment on the franchise of a telegraph company represents the valuation on the right or privilege of carrying on "the said telegraph business within the said county," the business having been described as including interstate private messages, intrastate private messages, and government messages, interstate and intrastate, the assessment includes interstate business and government messages, and, no separate valuation being fixed on the right to do intrastate private business only, the entire assessment is void. State v. Western Union Telegraph Co. (1911) 117 P. 93, 43 Mont. 445.

The imposition of an occupation tax on a telegraph company, a part of whose business is carried on wholly within the state, is not an interference with interstate commerce. Western Union Tel. Co. v. City of Fremont (1894) 39 Neb. 692, 58 N. W. 415, 26 L. R. A. 698.

A city ordinance imposing a tax on the business of a telegraph company ex-

clusively within the state is not in violation of the interstate commerce clause. Western Union Tel. Co. v. City of Fremont (1895) 43 Neb. 499, 61 N. W. 724, 26 L. R. A. 706, affirming (1894) 39 Neb. 692, 58 N. W. 415.

A village occupation tax on telegraph companies should not include any interstate business or business of the government transacted by such company. Western Union Tel. Co. v. Village of Wakefield (1903) 95 N. W. 659, 69 Neb. 272.

License fees imposed by a city on telegraph poles and wires within its limits do not violate the interstate commerce clause. City of Philadelphia v. Postal Tel. Cable Co. (1893) 66 Hun, 633, 67 Hun, 21, 21 N. Y. Supp. 556.

City ordinances imposing an annual charge on the poles and wires of a telegraph company within the city are not regulations of interstate commerce. City of Philadelphia v. American Union Tel. Co. (1895) 167 Pa. St. 406, 31 Atl. 628.

The allegation that the imposition of a license tax on telegraph poles is a regulation of interstate commerce, within constitutional prohibition, is no defense to the tax, a city being entitled to levy such tax for inspection purposes. Borough of North Braddock v. Central District & Printing Tel. Co. (1899) 11 Pa. Super. Ct. 24.

A city of the third class has power to impose by ordinance an annual license tax on a telephone company, though such company is engaged in both local and interstate commerce business, if there is nothing in the language of the ordinance indicating a municipal intention to tax interstate commerce. Johnstown v. Central District & Printing Telegraph Co. (1903) 23 Pa. Super. Ct. 381.

Telegraph companies are subject to pay legitimate occupation taxes to the state, and such taxes upon business done in part without the state are not invalid, as a regulation of interstate commerce. Western Union Tel. Co. v. State (1881) 55 Tex. 314.

A city council has no authority to pass an ordinance levying a license fee for telephone instruments in the city which are used by a telephone company for the purpose of carrying on interstate business of the company. City of Ogden City v. Crossman (1898) 53 P. 985, 17 Utah, 66.

There is nothing in the laws of the state or the United States which forbids a reasonable tax by a municipal corporation upon a foreign telegraph company having an agency located and doing business in the city. Western Union Tel. Co. v. Richmond (Va. 1875) 26 Grat. 1.

A city ordinance imposing a license tax on a foreign corporation operating a system of lines extending through the several states, which is not confined to business done exclusively within the city and state, but which recites that it is in lieu of an ad valorem tax on the property of the company located in the city, and which exceeds the amount which could be levied thereon under the city property tax law, and which makes the payment thereof a condition precedent to the company's right to do business in the city, is a state regulation of interstate commerce, and void. Postal Tel. Cable Co. v. City of Richmond (1901) 37 S. E. 789, 99 Va. 102, 3 Va. Sup. Ct. Rep. 39, 86 Am. St. Rep. 877.

Norfolk City Ordinance No. 126 provides that any corporation engaged in sending telegrams to or from the city of Norfolk to or from points within the state of Virginia, excepting telegrams sent to or received by the government of the United States or of the state or its agents or officers, shall pay a license tax of $250, and in addition $1 for each pole, and $1 for each 100 feet of conduits on the streets or alleys of the city owned by such person or corporation. Ordinance No. 138 declares that nothing contained therein shall be construed as imposing a license tax on, or otherwise regulating or restricting, foreign or interstate commerce, and any business or portion thereof which is embraced in the term "interstate commerce" or in the term "foreign commerce." Held, that ordinance No. 126 only attempted to license state business, and was, therefore, not in violation of the interstate commerce clause. Postal Tel. Cable Co. v. City of Norfolk (1903) 43 S. E. 207, 101 Va. 125.

Evidence held insufficient to show that a license tax upon the intrastate business of a telegraph company was an illegal burden on interstate commerce. Postal Telegraph-Cable Co. of Norfolk v. City of Norfolk (Va. 1916) 87 S. E. 555.

218. —— **Express companies.**—Act Ky. March, 1860, as amended by Act 1866, requiring the agent of a foreign express company doing business in the state to pay a license fee of five dollars, and deposit with the auditor a statement of the company's assets and liabilities, showing that it has an actual capital of at least $150,000, is unconstitutional, as an interference with interstate commerce, in so far as it applies to companies transporting goods between points in the state and points in other states, though the company may also transport between points within the state. Crutcher v. Kentucky (1891) 11 Sup. Ct. 851, 141 U. S. 47, 35 L. Ed. 649, reversing (1889) 12 S. W. 141, 89 Ky. 6.

A statute which in effect imposes a license tax on express companies doing any local business, but none on those doing interstate business only, is not void as regulating interstate commerce. Osborne v. Florida (1897) 17 Sup. Ct. 214, 164 U. S. 650, 41 L. Ed. 586, affirming (1894) 14 South. 588, 33 Fla. 162, 25 L. R. A. 120, 39 Am. St. Rep.

99; United States Exp. Co. v. Hemmingway (C. C. 1889) 39 Fed. 60.

The ordinance of the city of Mobile requiring payment for a license by an express company, to transact in that city a business extending beyond the limits of the state, is not repugnant to the provision of the United States constitution vesting in congress the power "to regulate commerce among the several states." Osborne v. City of Mobile (1872) 83 U. S. (16 Wall.) 479, 21 L. Ed. 470.

Ky. St. §§ 4077, 4081, taxing the intangible property of express companies in proportion to mileage in the state, as compared with total mileage, is not an interference with interstate commerce. Weir v. Norman (1897) 17 Sup. Ct. 527, 530, 166 U. S. 171, 41 L. Ed. 960.

The intangible property of an express company, created by the acquisition of franchises or privileges and the combined use of its tangible property within several states, is distributed wherever the tangible property is located and the work is done. The situs of such intangible property for taxation is not confined to the state by which the company was chartered or in which its home office is located. Adams Express Co. v. Ohio State Auditor (1897) 17 Sup. Ct. 604, 607, 166 U. S. 185, 41 L. Ed. 965.

Annual privilege tax levied by city on business of express company, excluding interstate business, is not invalid because transportation is over a route for a short distance passing out of the state. Ewing v. City of Leavenworth (1913) 33 Sup. Ct. 157, 226 U. S. 464, 57 L. Ed. 303, affirming judgment City of Leavenworth v. Ewing (1909) 101 P. 664, 80 Kan. 58.

An annual privilege tax levied by a municipality upon the business of an express company, expressly excluding commerce of an interstate character and business done for the government, and covering solely the local business done at that point in receiving packages transported from other points in the state, and in transporting packages to like points, is not invalid because such transportation is over a route which, for a short distance, passes out of the state. Id.

A municipal ordinance requiring a local license to be obtained as a condition precedent to conducting an express business within the municipality should be construed, in the absence of a controlling decision of the courts of the state, as not applicable to the transaction by an express company of its interstate business, since, construed otherwise, the ordinance would be invalid as an unconstitutional regulation of commerce. Barrett v. New York (1914) 34 Sup. Ct. 203, 232 U. S. 14, 58 L. Ed. 483.

A municipality cannot require an express company to obtain a local license as a condition precedent to transacting within the city its interstate business, nor, so far as interstate business is concerned, can it exact an annual license fee from such company. Id.

The requirement of a municipal ordinance that every owner of a public express must give a bond "for each and every vehicle licensed," to be conditioned "for the safe and prompt delivery of all baggage, packages," etc., intrusted to the owner or driver "of any such licensed express," must fall, as applied to the interstate business of an express company, with the invalid provisions of such ordinance, under which the obtaining of a local license may be made a condition precedent to the transaction within the city by the express company of its interstate business. Id.

The invalidity of the license scheme of a municipal ordinance as applied to the interstate business of an express company doing business in New York city renders invalid also, as applied to the wagons and drivers employed in such commerce, the further provisions of such ordinance for the licensing of drivers of a "licensed hack or express," upon the indorsement of two reputable residents of the city, and for the marking of the vehicles with the designation of the business and with the official license numbers, the exhibition of licenses upon demand, and the inspection of "licensed vehicles and places of business." Id.

An ordinance imposing a license tax on every express company having an office in a certain city and state, and there receiving goods and forwarding them to points in that state, or receiving goods in that state and delivering them in that city, is repugnant to the interstate commerce law, and void. Webster v. Bell (1895) 68 Fed. 183, 15 C. C. A. 360.

Ky. St. § 4077 et seq., imposing an alleged franchise tax on corporations which, in effect, is not a franchise tax, but a tax on the intangible property of the corporation not otherwise taxed, is not unconstitutional in its application to an interstate express company as an unwarrantable interference with interstate commerce. Coulter v. Weir (1904) 127 Fed. 897, 62 C. C. A. 429.

A license or privilege tax imposed by a state on the business of an express company engaged solely in interstate commerce, where there is no intention by this means to obstruct or prohibit the business, is not invalid. Memphis & L. R. R. Co. v. Nolan (C. C. 1882) 14 Fed. 532.

An express company engaged in transportation from one state to another is engaged in interstate commerce, and no territory or state can impose upon it any conditions, by way of license or otherwise, to engage in this commerce by passing through its limits; but such company will have no

right to do a mere local business within a state or territory without complying with the territorial or state law. Wells Fargo & Co. v. Northern Pac. Ry. Co. (C. C. 1884) 23 Fed. 469.

The Mississippi act imposing a tax on express companies doing business in the state is void as to all interstate transportation, but valid as to all business to be exclusively performed within the state. Held, that a levy of a tax on a company doing both a local and interstate business will be enjoined until a separation between the two kinds of business can be made. United States Exp. Co. v. Hemmingway (C. C. 1889) 39 Fed. 60.

Act Miss., imposing a tax on express companies doing business in the state, is void as to all interstate transportation, being in violation of the interstate commerce clause, but valid as to all business to be exclusively performed within the state. Id.

Act Tenn. March 29, 1887, imposing a license tax upon express companies, is unconstitutional, as invading the exclusive power of congress to regulate interstate commerce, as against an express company engaged in interstate transportation. United States Exp. Co. v. Allen (C. C. 1889) 39 Fed. 712, decree reversed Shelton v. Platt (1891) 11 Sup. Ct. 646, 139 U. S. 591, 35 L. Ed. 273, and Allen v. Pullman's Palace Car Co. (1891) 11 Sup. Ct. 682, 139 U. S. 658, 35 L. Ed. 303.

Act Tenn. April 8, 1889, providing that a license tax shall be paid by express companies for transporting one or more packages between points within the state, the amount of such tax being regulated by the length of the company's lines, is, in effect, a tax on interstate business, and is unconstitutional. Id.

An ordinance of a city, requiring an express company doing a local and interstate business to pay a license fee, and declaring it unlawful for such company to transact any business in such city until such fee is paid, is unconstitutional, as an unlawful exaction on interstate commerce. Southern Exp. Co. v. City of Ensley (C. C. 1902) 116 Fed. 756.

The ordinance of the city of Mobile passed March 2, 1866, providing that every express or railroad company doing business within the city, and whose business extends beyond the state, must pay a license fee, under penalty, etc., does not conflict with the constitution of the United States. Osborne v. City of Mobile (1870) 44 Ala. 493.

Neither is it a tax "to regulate commerce," which is prohibited to the states. To regulate commerce is to prescribe a rule by which it is to be governed. The express company can conduct its business as it pleases, and charge what rate of fees for transportation it pleases. Express companies are common carriers, and this ordinance does not interfere with their duties as such in the slightest. It is simply a tax for a license to do business in Mobile. Id.

The city ordinance of Mobile of 1866 requiring any express company whose business extends out of the state to pay an annual license of $500, "if within the limits of the state, $100," and "if within the limits of the city of Mobile, $50," is constitutional and valid. Southern Exp. Co. v. City of Mobile (1873) 49 Ala. 404.

General Revenue Law Fla. (Laws 1893, c. 4115) § 9, prohibiting any person from engaging in any business without first securing a state license and paying the occupation tax and license fee, authorizing cities and counties to impose further taxes, and requiring that express companies doing business in the state shall pay in cities and towns of a specified population certain license taxes, does not tax or regulate interstate commerce as distinguished from state or domestic commerce; and an express company confining its operations to business constituting interstate or foreign commerce is exempt from such taxation, but, if it is engaged in domestic business, as distinguished from interstate commerce, it is subject to such taxation, though it be engaged at the same time in interstate commerce. Osborne v. State (1894) 14 So. 588, 33 Fla. 162, 25 L. R. A. 120, 39 Am. St. Rep. 99.

An occupation tax imposed on express companies under an ordinance expressly providing that it shall only apply to domestic business and not to interstate, is not a regulation of interstate commerce. City of Leavenworth v. Ewing (1909) 101 P. 664, 80 Kan. 58.

An occupation tax may be imposed on an express company on intrastate business, though in carrying packages from one point to another within the state it passes for a short distance through another state. Id.

It is not an objection to an occupation tax on an express company on business done in the state that much the larger part of its business is interstate. Id.

Act Ky. March, 1860, as amended by Act 1866, which requires the agents of foreign express companies doing business in that state to take out a license, and to pay a fee of five dollars for issuing the license, is not unconstitutional, as placing a burden upon interstate commerce. Crutcher v. Commonwealth (1889) 89 Ky. 6, 12 S. W. 141, following Woodward v. Commonwealth (Ky. 1887) 7 S. W. 613.

The act of the Kentucky legislature providing that express companies within the state shall pay a license tax of $500 or $1,000 per annum, according as the lines over which they operate are less or more than 100 miles in length, is void, as a regulation of inter-

state commerce, within the inhibition of the commerce clause, in that it seeks to lay a burden upon the business of such companies, rather than upon their property. Commonwealth v. Smith (1891) 92 Ky. 38, 17 S. W. 187.

An express company transacting interstate and intrastate business is not liable for an occupation tax, under Pol. Code Mont. § 4074, imposing such a tax on "any carrier" transmitting goods "from one place to another," since the statute, not making any discrimination between local and interstate business, contravenes the interstate commerce clause. State v. Northern Pac. Exp. Co. (1903) 71 P. 404, 27 Mont. 419, 94 Am. St. Rep. 824.

219. —— Railroad companies. — A stipulation in a railroad company's charter that it shall pay a bonus to the state from time to time is not invalid as a tax on the transportation of passengers or as infringing the power of Congress to regulate commerce. Baltimore & O. R. Co. v. Maryland (1874) 21 Wall. 456, 469, 22 L. Ed. 678.

A state statute does not violate the federal constitution, although it prescribes a different rule of taxation for railroad companies from that for individuals. State Railway Company Tax Cases (1875) 92 U. S. 575, 23 L. Ed. 663.

The state board of equalization of California included in their assessment all the franchises of a railroad company, among which were franchises conferred by the United States, of constructing a railroad from the Pacific ocean across the state as well as across the territories of the United States, and of taking toll thereon. Held repugnant to the power given to congress to regulate interstate commerce. California v. Central Pac. R. Co. (1888) 8 Sup. Ct. 1073, 1080, 127 U. S. 1, 32 L. Ed. 150.

Order No. 1589 of the board of supervisors of the city and county of San Francisco, which imposes a license tax of $25 per quarter on every railroad agency, is a regulation of interstate commerce, in so far as it applies to an agent who solicits passenger traffic in San Francisco over a railroad operated between Chicago and New York, but who sells no tickets, and neither receives nor pays out any money or other valuable consideration on account thereof. The agent's business, being carried on to assist, or with the purpose to assist, the traffic of his road, is within the protection of the commerce clause though it may not be essential to such traffic. McCall v. California (1890) 136 U. S. 104, 10 Sup. Ct. 881, 34 L. Ed. 391, distinguishing Pembina Consol. Silver Mining & Milling Co. v. Pennsylvania (1888) 125 U. S. 181, 8 Sup. Ct. 737, 31 L. Ed. 650.

The fact that a road represented by an agent is wholly outside the state of California does not justify imposing a tax on its traffic. The limitation on the power of a state to tax interstate commerce extends to all such commerce, though it may not actually pass through its territory. Id.

A tax assessed against a railroad company which is a link in a through line of road, and carries freight and passengers in and out of the state, by the state through which the through line passes, as a condition precedent to its keeping an office in such state for the use of its officers, agents, and employés, is a tax on the means by which the company is enabled to carry on its business of interstate commerce, and is in violation of interstate commerce clause. Norfolk & W. R. Co. v. Pennsylvania (1890) 136 U. S. 114, 10 Sup. Ct. 958, 34 L. Ed. 394, reversing (1886) 114 Pa. St. 256, 6 Atl. 45.

A franchise tax, imposed under appropriate statutes of the state of New York upon the Pennsylvania Railroad Company for carrying on a cab service wholly within the state, for the purpose of conveying its passengers to and from its ferry landing in New York City, the charges for which are entirely separate from those for other transportation, is not an unconstitutional burden on interstate commerce, but is a tax upon an independent local service, preliminary or subsequent to any interstate transportation. New York ex rel. Pennsylvania R. Co. v. Knight (1904) 24 Sup. Ct. 202, 203, 192 U. S. 21, 48 L. Ed. 325, affirming judgment People ex rel. Pennsylvania R. Co. v. Knight (1902) 64 N. E. 152, 171 N. Y. 354, 98 Am. St. Rep. 610.

Interstate commerce is not unconstitutionally interfered with by the franchise tax imposed upon a domestic railway corporation by Laws N. Y. 1896, c. 908, § 182, because no deduction is allowed from the capital stock, taken as the basis of the tax, on account of the considerable proportion of its rolling stock which, by the familiar course of railway business, is always absent from the state. New York ex rel. New York Cent. & H. R. R. Co. v. Miller (1906) 26 Sup. Ct. 714, 716, 202 U. S. 584, 50 L. Ed. 1155, affirming judgment (1904) 69 N. E. 1129, 177 N. Y. 584, and (1906) 76 N. E. 1104, 183 N. Y. 574.

A franchise tax imposed locally on a railroad doing an interstate business is invalid as a burden on interstate commerce. King County, Wash., v. Northern Pac. Ry. Co. (1912) 196 Fed. 323, 116 C. C. A. 143.

The privilege tax imposed on railroad companies by Act Miss. March 16, 1912 (Acts 1912, c. 102), held unconstitutional and void, as imposing a tax on interstate commerce. Illinois Cent. R.

Co. v. Mississippi Railroad Commission (D. C. 1914) 229 Fed. 248.

The imposition by a city, of a license tax, on railroad companies whose lines extend through it, and which have places of business therein, is not an interference with interstate commerce. City of Anniston v. Southern Ry. Co. (1896) 20 So. 915, 112 Ala. 557; Alabama G. S. R. Co. v. City of Bessemer, (1896) 21 So. 64, 113 Ala. 668.

A city ordinance imposing a privilege tax on a railroad company running cars through the city, for the business of transporting freight or passengers between the city and other points in the state, does not interfere with interstate commerce. Nashville, C. & St. L. Ry. Co. v. Alabama City (1902) 32 So. 731, 134 Ala. 414.

Taxation by a territory of the franchise of a railway granted by act of congress is not in conflict with the constitutional grant to congress of the power to regulate commerce among the several states, nor is such taxation unconstitutional, as the taxation of a federal agency, in the absence of restriction in the grant of the taxing power. Atlantic & P. R. Co. v. Lesueur (Ariz. 1888) 19 Pac. 157.

Acts Ark. 1911, p. 67, imposing an annual franchise tax on all the corporations doing business in the state upon the proportion of their outstanding capital stock represented by property owned and used in business transacted in the state, held as to a railroad engaged in interstate transportation, not invalid as a taxation of interstate commerce. St. Louis Southwestern Ry. Co. v. State (Ark. 1913) 152 S. W. 110.

A city situated on a branch line, and not the main line, of a foreign railway corporation engaged in business involving interstate commerce, cannot impose on the company a license tax on the privilege of engaging in the business of a common carrier within its limits. City of San Bernardino v. Southern Pac. Co. (1895) 107 Cal. 524, 40 Pac. 796, 29 L. R. A. 327.

A foreign railway corporation engaged in both local and interstate commerce may be required to pay a state tax on the privilege of doing an intrastate business, based on the proportion of its total capital stock devoted to that business. State v. Sessions (1915) 147 Pac. 789, 95 Kan. 272.

In view of Code Miss. 1906, §§ 4382, 4384, and Laws Miss. 1912, c. 102, providing for classification of railroad companies for license taxes, is not invalid as imposing a burden on interstate commerce contrary to the commerce clause. New Orleans, M. & C. R. Co. v. State (Miss. 1915) 70 So. 355.

An ordinance imposing an occupation tax on railroads having a depot within the city, and excepting from the levy all interstate traffic commerce of such corporations, is not invalid, as imposing a burden on interstate commerce. City of York v. Chicago, B. & Q. R. Co. (1898) 76 N. W. 1065, 56 Neb. 572.

A railroad company, whose only business within the state is discharging freight and passengers brought over its line from without the state, receiving freight and passengers to be sent out over its line, and maintaining terminal facilities, such as wharves and piers, and buildings in connection therewith, and the employment of agents, clerks, and laborers, is not subject to a tax on its "corporate franchise and business," under Laws N. Y. 1880, c. 542, and acts amendatory thereof; such business being interstate commerce. People v. Wemple (1893) 138 N. Y. 1, 33 N. E. 720, affirming (1892) 65 Hun, 252, 20 N. Y. Supp. 287, 29 Abb. N. C. 85.

A railroad company received a patent from the state of a right of way, 160 feet wide and 40 feet high under the Hudson river for the construction of tunnels for operation of a railroad underneath the river. Held, that the franchise, being largely used for local traffic within the state, could be taxed by the state, though used partly in interstate commerce. People v. State Board of Tax Com'rs (1910) 125 N. Y. Supp. 895, 69 Misc. Rep. 1.

Since no one may use the streets of a city for railroad purposes, except by virtue of a franchise from the state, a franchise so granted is property and cannot be revoked, except for cause, unless the right of revocation is reserved in the grant, and is subject to taxation as other property, notwithstanding the owner is engaged in interstate commerce. People ex rel. Hudson & M. R. Co. v. State Board of Tax Com'rs (1911) 96 N. E. 435, 203 N. Y. 119, reversing orders (Sup. 1911) 126 N. Y. Supp. 1063 and (Sup. 1911) 127 N. Y. Supp. 918.

A municipal ordinance imposing a tax of a specified amount on every railroad company operating within the corporate limits, when imposed under legislative authority, is valid. Such tax does not interfere with interstate commerce as to a railroad extending into another state. Piedmont R. Co. v. Town of Reidsville (1888) 101 N. C. 404, 8 S. E. 124, 2 L. R. A. 284.

Acts Tenn. 1879, c. 84, § 7, subsec. 36, imposing a privilege tax on railroad companies, and railroad agents, other than officers of railroads terminating in the taxing district, is not an attempt to regulate commerce in a manner in contravention to the federal constitution. Lightburne v. Taxing Dist. (1880) 72 Tenn. (4 Lea) 219.

An act does not interfere with interstate commerce because imposing a privilege tax on railroad companies according to mileage, as follows: "Each company operating or controlling 400 miles or more of road in this state, for taking up and transporting freight and passengers from one point to another

in this state, per annum $10,000; each company operating or controlling from 100 to 400 miles of road in this state, for taking up and transporting freight and passengers from one point in this state to another point in this state, per annum $5,000;" and in like language imposing such a tax on railroads operating or controlling a less number of miles of road in the state, for the same privilege. Knoxville & O. R. Co. v. Harris (1897) 43 S. W. 115, 99 Tenn. 684, 53 L. R. A. 921.

220. —— **Sleeping, and palace car companies.**—Act Tenn. March 16, 1877, § 6 (Laws 1877, c. 16), imposing a privilege tax upon sleeping cars, owned by a foreign corporation, and leased a Tennessee railroad corporation, which received the transit fare, while the fee for sleeping accommodation was paid to the owner, and used for the transportation of passengers into or out of or across the state, is void, as an interference with interstate commerce. Pickard v. Pullman Southern Car Co. (1886) 6 Sup. Ct. 635, 117 U. S. 34, 29 L. Ed. 785; State v. Same (1886) 6 Sup. Ct. 643, 117 U. S. 51, 29 L. Ed. 791, affirming judgment Pullman Southern Car Co. v. Nolan (C. C. 1884) 22 Fed. 276.

A privilege tax imposed upon sleeping cars, the property of a corporation having no domicile in the state imposing the tax, the cars themselves having no situs for the purposes of taxation in such state, is an interference with interstate commerce, and cannot be enforced when such cars are used in passing and repassing through the state. Id.

The privilege tax imposed by Code Miss. 1892, §§ 3317, 3387, on sleeping and palace car companies carrying passengers from one point to another within the state, cannot be deemed an unconstitutional regulation of commerce, because of the declaration in Const. Miss. § 195, that sleeping car companies are common carriers and subject to liability as such, where such provision is regarded by the state courts as imposing no obligation on the company to transport local passengers. Pullman Co. v. Adams (1903) 23 Sup. Ct. 494, 495, 189 U. S. 420, 47 L. Ed. 877, affirming judgment Pullman Palace Car Co. v. Adams (1901) 30 South. 757, 78 Miss. 814, 84 Am. St. Rep. 647.

The annual tax of $3,000 imposed by a state statute upon sleeping car companies which carry one or more local passengers on cars operating within the state is not void as a burden on interstate commerce, where the company is free to decline all local business if it sees fit. Allen v. Pullman's Palace Car Co. (1903) 24 Sup. Ct. 39, 191 U. S. 171, 48 L. Ed. 134.

Taxes exacted from a sleeping car company engaged in both interstate and intrastate traffic, under a state statute imposing an annual tax of $500 per car upon sleeping car companies doing business in the state, which makes no distinction between cars used in interstate traffic or in traffic wholly within the borders of the state, are void as an attempt by the state to impose a burden upon interstate commerce. Id.

The act of a state comptroller in imposing a privilege tax only upon cars running between points within the state, under a statute which by its terms permits the privilege tax to be levied upon cars which run through the state to points in other states, does not prevent the statute from being void as a burden upon interstate commerce, since the comptroller's acts are not binding upon the state in the future. Id.

A foreign sleeping car company cannot be restrained from doing local business in the state because of its refusal to pay the "charter fee" of a given per cent. of its entire capital stock, imposed by Gen. St. Kan. 1901, § 1264, for the benefit of the permanent school fund, as a condition of doing such business, since such requirement amounts to a burden or tax on the company's interstate business and on its property located and used outside the state. Pullman Co. v. Kansas ex rel. Coleman (1910) 30 Sup. Ct. 232, 216 U. S. 56, 54 L. Ed. 378, reversing judgment State ex rel. Coleman v. Pullman Co. (1907) 90 Pac. 319, 75 Kan. 664.

The interstate transportation of passengers is beyond the reach of a state legislature, and therefore the legislature of Tennessee has no power to impose upon the Pullman Southern Car Company a privilege tax of $75 per annum for running or using sleeping cars in the transportation of interstate passengers, notwithstanding such cars may enter or cross the territory of that state. Pullman Southern Car Co. v. Nolan (C. C. 1884) 22 Fed. 276, judgment affirmed Pickard v. Pullman Southern Car Co. (1886) 6 Sup. Ct. 635, 117 U. S. 34, 29 L. Ed. 785.

Acts Tenn. 1877, c. 16, § 6, declaring the running of sleeping cars not owned by the railroad upon which they are used to be a privilege, and imposing a tax thereon, is constitutional; and this, although the owner is a foreign corporation, and the cars are used for the accommodation of passengers traveling through the state. Pullman Southern Car Co. v. Gaines (1877) 3 Tenn. Ch. 587.

221. —— **Corporate receipts, earnings, and dividends.**—The state may impose a tax on the gross receipts on the transportation of goods and passengers by continuous carriage from one point in the state to another point in the same state, although part of the route is over the soil of another state. Lehigh Val. Ry. Co. v. Pennsylvania (1892) 145 U. S. 192, 12 Sup. Ct. 806, 36 L. Ed. 672, affirming (Pa. 1888) 17

Atl. 179; Id. (1892) 145 U. S. 205, 12 Sup. Ct. 809, 36 L. Ed. 672; Id. (1889) 129 Pa. 308, 18 Atl. 125.

A statute of a state imposing a tax upon the gross receipts of railroad companies is not repugnant to the commerce clause, though the gross receipts are made up in part from freights received for the transportation of merchandise from the state to another, or into the state from another. In re State Tax on Railway Gross Receipts (1872) 82 U. S. (15 Wall.) 284, 292, 21 L. Ed. 164.

A tax by a state on freights carried between states differs from a tax on receipts from such transportation, the former being a tax because of the carriage, and the latter being upon the carrier's property. Id.

Act Del. April 8, 1869, § 1, provides for a tax upon the net earnings of railroad and canal companies, with a proviso that, when a line of road or canal lies partly within the state and partly without, only such part of the net earnings shall be subject to the tax as is in that proportion to the whole net earnings which the length of the road or canal within the limits of the state bears to the length of the whole road or canal; and section 4 provides for a tax upon the actual cash value of every share of capital stock of such companies, with a proviso that, when a line of road or canal lies partly within and partly without the state, the company shall be required to pay the tax on only such number of shares of stock as is in that proportion to the whole number of shares which the length of the road or canal within the state bears to its whole length. Held, that such statute does not unlawfully interfere with interstate commerce, since there is no discrimination against rights held in other states. Minot v. Philadelphia, W. & B. R. Co. (1873) 85 U. S. (18 Wall.) 206, 21 L. Ed. 888.

A condition, in a charter granted by a state to a railroad company, that the company shall pay a bonus to the state from time to time, is not invalid as amounting to a tax upon the transportation of passengers, or as infringing the exclusive power of congress to regulate commerce among the states. Baltimore & O. R. Co. v. Maryland (1874) 88 U. S. (21 Wall.) 456, 22 L. Ed. 678.

A state tax on telegraph messages sent out of the state, or for the government on public business, is unconstitutional, as an attempt to regulate foreign and interstate commerce. Western Union Tel. Co. v. Texas (1881) 105 U. S. 460, 26 L. Ed. 1067.

A state statute which levies a tax upon the gross receipts of railroads for the carriage of freight and passengers into, out of, or through the state, is a tax upon commerce between the states. Fargo v. Stevens (1887) 7 Sup. Ct. 857, 121 U. S. 230, 30 L. Ed. 888.

The imposition of a tax under the acts of Pennsylvania of March 20, 1877, and June 7, 1879, upon a steamship company incorporated under the laws of Pennsylvania, upon the gross receipts of such company, derived from the transportation of persons and property by sea between different states, and to and from foreign countries, is an invalid regulation of interstate and foreign commerce. Philadelphia & Southern Mail S. S. Co. v. Commonwealth of Pennsylvania (1887) 7 Sup. Ct. 1118, 122 U. S. 326, 30 L. Ed. 1200.

A single tax assessed under the laws of Ohio upon the receipts of a telegraph company, derived partly from interstate commerce and partly from commerce within the state of Ohio, but returned and assessed in gross, and without separation or apportionment, is invalid only in proportion to the extent that such receipts were derived from interstate commerce. Ratterman v. Western Union Tel. Co. (1888) 8 Sup. Ct. 1127, 1130, 127 U. S. 411, 32 L. Ed. 229.

Where a tax levied by a state upon a telegraph company consists of taxes on messages between points within the state and on messages between points out of the state and points in the state, and on messages between points in different states, but passing through the state, and the record discloses the amount assessed on each class, no recovery can be had, except in respect to messages transmitted wholly within the state. Western Union Tel. Co. v. Commonwealth of Pennsylvania (1888) 128 U. S. 39, 9 Sup. Ct. 6, 32 L. Ed. 345, following Ratterman v. Western Union Tel. Co. (1888) 127 U. S. 411, 8 Sup. Ct. 1127, 32 L. Ed. 229.

Telegraph companies which have accepted the provisions of Rev. St. §§ 5263–5268, in regard to the use of the public domain by telegraph companies, cannot be taxed by the state authorities on messages and receipts therefrom between points within and points without the state, as this is interstate commerce, but may be so taxed on messages carried wholly within the state. Western Union Tel. Co. v. Alabama State Board of Assessors (1889) 132 U. S. 472, 10 Sup. Ct. 161, 33 L. Ed. 409.

The statute of Maine, requiring every railroad in the state to pay an annual excise tax for the privilege of exercising its franchises, proportionate to the average gross earnings per mile within the state for the preceding year, is not a tax upon the receipts themselves, and hence, as applied to railroads coming into the state from outside, does not amount to a regulation of interstate or foreign commerce. Maine v. Grand Trunk R. Co. (1891) 12 Sup. Ct. 121, 122, 142 U. S. 217, 35 L. Ed. 994.

A state cannot lay a tax upon interstate commerce in any form, whether by way of duties laid on the transportation of the subject of that commerce, or the receipts derived from the transportation, or on the occupation or busi-

ness of carrying it on. Pacific Exp. Co. v. Seibert (1892) 12 Sup. Ct. 250, 252, 142 U. S. 339, 35 L. Ed. 1035, affirming decree (C. C. 1890) 44 Fed. 310.

Act Mo. May 16, 1889, which imposes on companies carrying goods "by express, on contract with any railroad or steamboat company," a tax on their "receipts for business done within this state," is not an interference with interstate commerce. Id.

Where a foreign corporation owns a railroad lying partly within and partly without a state, the state may tax such portion of the tolls received for the use of the road as was received for the use of the portion within the state. New York, L. E. & W. R. Co. v. Pennsylvania (1895) 15 Sup. Ct. 896, 900, 158 U. S. 431, 39 L. Ed. 1043, affirming (1891) 145 Pa. St. 38, 22 Atl. 212.

Act Pa. June 7, 1879, imposing a tax on the gross receipts of transportation companies for tolls and transportation, is not, in so far as it imposes a tax on tolls paid by a company engaged in interstate transportation to another company for the use of its railroad in the state, an interference with interstate commerce. Id.

No unconstitutional interference with interstate commerce is made by Act Mich. June 4, 1897, No. 228, levying a specific tax upon the property and business of any railroad corporation operated within the state and providing that "when the railroad lies partly within and partly without this state, prima facie the gross income of said company from such road for the purposes of taxation shall be on the actual earnings of the road in Michigan, computed by adding to the income derived from the business transacted by said company entirely within this state such proportion of the income of said company arising from the interstate business as the length of the road over which said interstate business is carried in this state bears to the entire length of the road over which said interstate business is carried." Wisconsin & M. Ry. Co. v. Powers (1903) 24 Sup. Ct. 107, 109, 191 U. S. 379, 48 L. Ed. 229. See, also, Grand Rapids & I. R. Co. v. Osborn (1904) 24 Sup. Ct. 310, 314, 193 U. S. 17, 48 L. Ed. 598.

The state cannot impose the tax levied by Act Tex. April 17, 1905, c. 141, upon railway companies whose lines lie wholly within the state, "equal to 1 per centum of their gross receipts," where a part, and, in some cases, much the larger part, of these gross receipts, is derived from the carriage of passengers and freight coming from, or destined to, points without the state. Galveston, H. & S. A. Ry. Co. v. State of Texas (1908) 28 Sup. Ct. 638, 210 U. S. 217, 52 L. Ed. 1031, reversing judgment State v. Galveston, H. & S. A. Ry. Co. (1906) 97 S. W. 71, 100 Tex. 153.

The earnings of nonresident express company carrying goods between two points within the state over route incidentally traversing portion of another state, derived from carriage within the state, held within the gross receipts upon which tax under Rev. Laws Minn. 1905, §§ 794–1038, is based, without burdening interstate commerce. United States Express Co. v. State of Minnesota (1912) 32 Sup. Ct. 211, 213, 223 U. S. 335, 56 L. Ed. 459, affirming judgment State v. United States Express Co. (1911) 131 N. W. 489, 114 Minn. 346.

Including in gross receipts of nonresident express company under Rev. Laws Minn. 1905, §§ 794–1038, earnings from interstate shipments, where transportation was performed wholly within the state, held not an unconstitutional burden on interstate commerce. Id.

A nonresident express company, whose receipts are largely derived from interstate commerce and investments in bonds and lands outside the state, held not subject to the gross revenue tax exacted by Laws Okl. 1910, c. 44. Meyer v. Wells Fargo & Co. (1912) 32 Sup. Ct. 218, 223 U. S. 298, 56 L. Ed. 445.

Intention to tax receipts from foreign commerce will not be imputed to Act May 31, 1911 (102 Ohio Laws, p. 224), imposing excise tax on gross receipts of railroads because such commerce is not expressly excepted by the provisions of sections 83 and 88 in view of section 97, providing for measuring the tax only by the earnings on intrastate business. Ohio Tax Cases (1914) 34 Sup. Ct. 372, 232 U. S. 576, 58 L. Ed. 737, affirming decree Ohio River & W. Ry. Co. v. Dittey (D. C. 1913) 203 Fed. 537.

Amending a state law imposing excise tax on gross railway earnings so as to exclude interstate earnings while making an increase in the tax decimal is not evidence of an unlawful effort to burden a privilege not a proper subject of state taxation. Id.

Annual excise tax equal to five-tenths of 1 per cent. on gross earnings from transportation originating and terminating within the state, imposed by Tax Law N. Y. § 184, is not an invalid regulation of commerce as applied to a navigation company engaged in towing on the Hudson river under a license granted by the United States. People of State of New York ex rel. Cornell Steamboat Co. v. Sohmer (1915) 35 Sup. Ct. 162, 235 U. S. 549, 59 L. Ed. 355, affirming judgment (1912) 99 N. E. 1115, 206 N. Y. 651.

No taxation of interstate commerce results from including the earnings by a New York corporation from towing vessels between ports in that state over the Hudson river lying partly in the state of New Jersey in computing the annual tax equal to five-tenths of 1 per cent. on the gross earnings from transportation originating and termi-

nating within the state imposed by Tax. Law N. Y. § 184. Id.

A state tax upon receipts for transportation through the state of goods carried from and to points outside the state is unconstitutional. Indiana v. American Exp. Co. (C. C. 1876) Fed. Cas. No. 7,021.

Section 87 of the act of the legislature of Indiana of March 29, 1881, entitled "An act concerning taxation," imposing a certain proportionate tax according to distance traveled in Indiana on the gross receipts of foreign sleeping-car companies conveying passengers to, from, and through Indiana, is unconstitutional. Indiana v. Pullman Palace-Car Co. (C. C. 1883) 16 Fed. 193.

Act Mo. May 16, 1889, which imposes on companies carrying goods "by express, on contract with any railroad or steamboat company," a tax on their "receipts for business done within this state," is not an interference with interstate commerce. Pacific Exp. Co. v. Seibert (C. C. 1890) 44 Fed. 310, decree affirmed (1892) 12 Sup. Ct. 250, 142 U. S. 339, 35 L. Ed. 1035.

Act N. C. March 13, 1895, § 42, subd. 6, authorizing a city to levy on every railroad company doing business or having an office in the city a license tax not to exceed 1 per cent. of the gross receipts of its business, being invalid as against a railroad whose business extends to points out of the state, as a regulation of interstate commerce, a tax levied thereunder is invalid, though it is limited to business of the railroad done within the state. Southern Ry. Co. v. City of Asheville (C. C. 1895) 69 Fed. 359.

Act Ohio May 31, 1911 (102 Ohio Laws, pp. 224–260), imposing an excise tax based on gross intrastate earnings of railroads and other public utilities, being by express limitation levied on intrastate earnings only, is not unconstitutional, as imposing a burden on interstate commerce. Ohio River & W. Ry. Co. v. Dittey (D. C. 1913) 203 Fed. 537, decree affirmed Ohio Tax Cases, In re (1914) 34 Sup. Ct. 372, 232 U. S. 576, 58 L. Ed. 737.

Sess. Acts Ala. 1884–85, p. 10, § 6, subd. 6, providing for a tax on the gross receipts of a telegraph company "derived from business done by it in this state," is not an interference with interstate commerce, though it includes receipts on messages sent to or from places beyond the limits of the state. Western Union Tel. Co. v. State Board of Assessment (1885) 80 Ala. 273, 60 Am. Rep. 99, reversed in (1889) 132 U. S. 472, 10 Sup. Ct. 161.

The Dakota act for the levy and collection of taxes upon railroad property, approved March 9, 1883, is unconstitutional, in so far as it attempts to levy a tax upon the earnings of railroad companies derived from interstate transportation; being to that extent an interference with interstate commerce. Northern Pac. R. Co. v. Raymond (1888) 5 Dak. 356, 40 N. W. 538, 1 L. R. A. 732.

Act Del. 1864, imposing on any carrier of passenger across any portion of the state a tax of 10 cents for each passenger, except soldiers and sailors of the United States, in so far as it operates upon persons entering into, departing from, or passing through the state, is, in effect, an act regulating commerce between this and other states, and is therefore void, as conflicting with the provisions of the federal constitution conferring upon congress the power to regulate commerce among the several states. Clarke v. Philadelphia, W. & B. R. Co. (Del. 1870) 4 Houst. 158.

Illinois Central Railroad Charter (Priv. Laws 1851, p. 72) § 22, requiring the company to pay to the state an amount equal to 7 per cent. of its gross receipts in lieu of taxes, was a mere charter method of fixing an equivalent for a tax that would otherwise ordinarily be levied on the property of the corporation; and hence, notwithstanding it required the payment of such percentage on the receipts of the railroad company's charter lines from interstate commerce, was not invalid as an attempt to regulate or impose a tax on interstate commerce itself. State v. Illinois Cent. R. Co. (1910) 92 N. E. 814, 246 Ill. 188.

The Indiana statute which provides that every sleeping-car company doing business in the state shall report to the auditor the gross amount of all its receipts for fares earned in business done in the state for the preceding year, and shall pay into the state treasury two dollars on every one hundred dollars of such receipts, is invalid. State v. Woodruff S. & P. Coach Co. (1887) 114 Ind. 155, 15 N. E. 814.

Ky. St. § 4228, requiring foreign building and loan associations doing business in the state to pay to the state 2 per cent. of their gross receipts, is not unconstitutional as an interference with interstate commerce. Southern Building & Loan Ass'n v. Norman (1895) 98 Ky. 294, 32 S. W. 952.

The effect of a condition, in the charter of a railway company, that the company shall pay over to the state a certain percentage of all moneys received for the transportation of passengers, is not to impose a capitation tax, or a tax upon the passengers' right of transit through the state. It operates only as a tax imposed upon the company, with its consent, and therefore does not violate any provision of the constitution of the United States. State v. Baltimore & O. R. Co. (1871) 34 Md. 344.

The defendant railroad company was

organized under a charter from the state of Maryland, and its line was operated partly in that state and partly in another. Held, that a tax by the state of Maryland on such proportion of the entire gross receipts of the road as the length of its line in Maryland bears to the whole length of its line was not invalid as an interference with interstate commerce. Cumberland & P. R. Co. v. State (1901) 48 A. 503, 92 Md. 668, 52 L. R. A. 764.

The Michigan act approved March 27, 1867, regulating express companies and requiring the payment of a specific state tax of 1 per cent. on the gross amount of current business in this state, is not in conflict with the federal constitution, giving to congress the power to regulate commerce among the several states. Walcott v. People (1868) 17 Mich. 68.

A tax upon the property within the state of an express company engaged in interstate commerce, based upon its gross earnings within the state on interstate shipments, is not a regulation of or interference with interstate commerce. State v. United States Exp. Co. (1911) 131 N. W. 489, 114 Minn. 346, 37 L. R. A. (N. S.) 1127.

The commerce clause is not violated by a tax levied by the state upon the gross receipts of an express company whose business consists in receiving goods to be tranported to points outside the state, to which its line does not extend. American Union Exp. Co. v. City of St. Joseph (1877) 66 Mo. 675, 27 Am. Rep. 382.

Civ. Code Mont. § 681, declaring that every insurance corporation or company transacting business in the state must be taxed on the excess of premiums received over losses and ordinary expenses incurred within the state during the year, applying as it does only to business transacted within the state, is not objectionable as interfering with interstate commerce. Northwestern Mut. Life Ins. Co. v. Lewis and Clarke County (1903) 72 P. 982, 28 Mont. 484, 98 Am. St. Rep. 572.

Rev. Codes Mont. § 4073, providing that every insurance company transacting business in the state must be taxed upon the excess of premiums over losses and ordinary expenses within the state during the previous year, applies only to business transacted within the state, and is not objectionable as an interference with interstate commerce. New York Life Ins. Co. v. Deer Lodge County (1911) 115 P. 911, 43 Mont. 243.

The state may tax intrastate business of a corporation engaged in intrastate and interstate commerce, but may not tax interstate business by a tax on gross receipts. State v. Wells Fargo & Co. (Nev. 1915) 150 P. 836.

The New Jersey tax act of 1862, taxing foreign corporations doing business in this state by making them pay a duty upon every passenger and ton of freight brought into or carried out of this state, was not in violation of the commerce clause. State v. Delaware, etc., R. Co. (1864) 30 N. J. Law (1 Vroom) 473; Erie R. Co. v. State (1864) 31 N. J. Law (2 Vroom) 531, 86 Am. Dec. 226.

A telephone company will not be enjoined from transmitting messages from one state to another on the ground of its refusal to pay taxes on business so transacted across state lines, as such business constitutes interstate commerce. In re Pennsylvania Tel. Co. (1890) 48 N. J. Eq. (3 Dick.) 91, 20 Atl. 846.

The annual franchise tax which P. L. N. J. 1906, pp. 645, 646, §§ 4, 5, require the state board of assessors to levy upon such proportion of the annual gross receipts of street railroad corporation as the length of its line in this state upon any street, highway, road, lane, or other public place, bears to the length of its whole line, is not levied on the gross receipts of the corporation, nor on the business of the corporation, but is merely an excise tax on the franchise of the corporation, viz., the franchise to exist and the franchise to occupy the streets, which is measured in part by the gross receipts, and therefore such franchise tax is not a regulation of interstate commerce, and the act under which it is levied is not in conflict with the interstate commerce clause. Phillipsburg Horse Car Co. v. State Board of Assessors (N. J. 1911) 81 A. 1121.

Laws N. Y. 1880, c. 542, imposing a tax upon premiums received for insuring imports, held constitutional, not being a regulation of commerce. People v. National Fire Ins. Co. (N. Y. 1882) 27 Hun, 188.

Laws N. Y. 1880, c. 542, as amended by Laws 1881, c. 361, provides that "every corporation, joint-stock company, or association whatever, now or hereafter incorporated or organized under any law of this state," shall pay a certain tax on dividends, or, if there are no dividends, on the valuation of the capital stock; also an additional tax upon the gross earnings within the state, of every corporation, joint-stock company, or association, etc., engaged in transporting freight or passengers. Held, that the tax provided for by the act is not an unconstitutional interference with interstate commerce. People v. Wemple (1889) 52 Hun, 434, 5 N. Y. Supp. 581.

Laws N. Y. 1881, c. 361, § 6, providing that every transportation company shall pay a tax on its corporate franchise or business, at a certain rate on its gross earnings, for business transacted in this state, does not, in the case of a railroad company extending into another state, impose a tax on interstate commerce, but the tax is on the franchise of the corporation, the amount thereof being measured by the receipts

of its business. People v. Campbell (1893) 74 Hun, 210, 26 N. Y. Supp. 832.

A domestic railroad corporation owning land within the state, upon which it has a grain elevator and freight warehouse, and several lines of railroad tracks to afford access to the buildings, but which owns no rolling stock, its entire business consisting in loading, unloading, and storing grain and other freight in process of interstate transportation, which it receives from other companies, is liable to a gross earnings tax on its franchise under Laws N. Y. 1896, c. 908, § 184, and Laws 1881, c. 361, § 6, taxing railroad companies, it not being engaged in interstate commerce. People v. Miller (1903) 82 N. Y. Supp. 582, 84 App. Div. 174, affirmed (1904) 70 N. E. 472, 178 N. Y. 194.

Where the entire business of a domestic corporation consists in the transportation of grain and other products from ports outside of the state to ports and places in the state, and of personal property from ports in the state to ports in other states, and its entire gross receipts from its business are derived from such transportation, and not otherwise, its earnings are "earnings derived from business which is of an interstate character" within Laws N. Y. 1894, c. 562, § 11, and Laws N. Y. 1896, c. 908, § 184, which forbid the imposition of any tax on the business of interstate commerce, and are not subject to the franchise tax imposed by Laws N. Y. 1880, c. 542, § 6; Laws N. Y. 1881, c. 361, § 6; Laws N. Y. 1896, c. 908, § 184. People v. Miller (1904) 70 N. E. 472, 178 N. Y. 194, affirming order (1903) 82 N. Y. Supp. 582, 84 App. Div. 174.

Tax Law N. Y. (Laws 1896, c. 908) § 184, provides for a franchise tax to be assessed on the gross earnings of a transportation corporation within the state, which shall include its gross earnings from its transportation or transmission business originating and terminating within the state, but shall not include earnings derived from business of an interstate character. Held, that where it appeared that a domestic railway company's assessment under such section included receipts from express business beginning in the state and transferred within the state for delivery in another state, or shipped outside the state for delivery within the state, such business being interstate commerce, and not taxable, the corporation was entitled to a revision of its assessment. People v. Miller (1904) 88 N. Y. Supp. 373, 94 App. Div. 587.

Act N. D. 1883 (Sess. Laws, c. 99) providing that in lieu of any and all other taxes upon the property of any railroad company, etc., there shall be paid a certain percentage "of all the gross earnings of the corporation owning or operating such railroad, arising from the operation of such railroad as shall be situated within this territory," refers only to the earnings arising from traffic within the state, and is not unconstitutional, as imposing a tax on the earnings derived from interstate commerce. Northern Pac. R. Co. v. Barnes (1892) 2 N. D. 310, 51 N. W. 386; Id. (1892) 2 N. D. 395, 51 N. W. 786; Northern Pac. R. Co. v. Brewer (1892) 2 N. D. 396, 51 N. W. 787; Same v. Strong (1892) 2 N. D. 395, 51 N. W. 787; Same v. Tressler (1892) 2 N. D. 397, 51 N. W. 787.

A state tax on the gross receipts of an express or telegraph company for the year next preceding the assessment returns is not a tax on commerce between the several states, although they arose chiefly from messages pertaining to such commerce, or from messages originating or terminating outside the state, or were earned on the lines of such companies outside the state. Western Union Tel. Co. v. Mayer (1876) 28 Ohio St. 521.

L. O. L. Or. § 3544 et seq., taxing alike the gross earnings of resident and nonresident oil companies, is not void as a regulation and taxation of interstate commerce. State v. Standard Oil Co. (Or. 1912) 123 P. 40.

Laws Or. 1907, p. 9, § 1 (L. O. L. § 3544), provides that all oil companies doing business in the state shall pay a gross earnings tax. Section 4 (Laws 1907, p. 10; L. O. L. 3547) provides that nonresident persons or corporations engaged in buying and selling petroleum in its various products within the state, and persons and corporations acting as agents of such nonresidents, and any persons or corporations resident in the state engaged in buying and selling such products of such nonresidents, and whose business amounts to 25 per cent. of the total annual gross receipts of such person or corporation from all lines in which he or it deals, shall be deemed an oil company. Held, that the statute exempts all oil companies or persons whose business in oil in this state does not amount to 25 per cent. of such total annual gross products, and hence does not discriminate in favor of residents, so as to be obnoxious to the commerce clause. Id.

Act S. C. Dec. 1866, imposing a tax on the gross receipts of express companies, is not in contravention of the constitution, as regulating the "commerce among the states." Southern Exp. Co. v. Hood (S. C. 1867) 15 Rich. Law, 66, 94 Am. Dec. 141.

A clause in the charter of a railroad company, providing that all tonnage of whatsoever kind or description, except the ordinary baggage of passengers, carried or conveyed on said railroad, in each and every year, shall be subject to a toll or duty, far the use of the commonwealth, of three mills per ton per mile, is simply a mode of taxing the company according to the mag-

nitude of its business, and is not intended as a tax on commerce. Such a tax is not in violation of the commerce clause. Pennsylvania R. Co. v. Commonwealth (Pa. 1860) 3 Grant, Cas. 128.

The acceptance by a railroad company of a charter, with the provision that all tonnage, of whatsoever kind or description, except the ordinary baggage of passengers carried or conveyed on said road, shall be subject to the yearly toll or duty, etc., is equivalent to an express contract to pay the tax. Treated as a contract, therefore, between the state and the corporation, it is not to be tested by the constitution as a law of the state. Regarded as a law, the company cannot complain of its unconstitutionality in that it violates the provisions that congress shall have exclusive power to regulate commerce. Id.

A state law requiring transportation companies having lines within the state to pay a tax upon freights is not void for infringing the power of congress to regulate commerce between the states. Commonwealth v. Erie R. Co. (1869) 62 Pa. St. (12 P. F. Smith) 286, 1 Am. Rep. 399, reversed in (1872) 82 U. S. (15 Wall.) 232, 21 L. Ed. 146.

Tonnage Tax Law Pa. (Act April 25, 1864), laying a charge on certain classes of common carriers for freight carried over their lines, levied on all and rated equitably according to the character of the freight and expense of moving it, is an exercise of the rights of taxation and eminent domain, as an incident to which a state may require companies operating public works and exercising franchises under her grant to contribute to her revenues, and is not invalid, as an attempt to regulate commerce. Id.

Act Pa. 1877, imposing a tax on the entire amount of premiums to be received by insurance companies, by which it was intended to tax all the business of such companies as evidenced by the entire premiums received by them from all sources, whether within or without the state, is not repugnant to the provisions of the United States constitution prohibiting any interference with interstate commerce. North American Ins. Co. v. Commonwealth (1878) 87 Pa. St. 173, 30 Am. Rep. 352.

A state tax on the gross receipts of a state corporation engaged in transporting freight and passengers between this and foreign countries held not within the constitutional inhibition as to the regulation of foreign commerce. Philadelphia & S. Mail S. S. Co. v. Commonwealth (1883) 104 Pa. St. 109.

Act Pa. June 7, 1879, imposing a tax on the gross receipts of foreign corporations, held not an unconstitutional interference with the congressional jurisdiction over interstate commerce, though the receipts were partly derived from passengers traveling in cars of such corporations passing into, through, and out of the state. Pullman Palace-Car. Co. v. Commonwealth (1884) 107 Pa. St. 148.

A state tax on the gross receipts of a telegraph company from messages between points within and points outside of the state, and from messages between points in other states, which pass over lines partly within the state, is not in conflict with the interstate commerce clauses of the federal constitution. Western Union Tel. Co. v. Commonwealth (1885) 110 Pa. St. 405, 20 Atl. 720.

Act Pa. June 7, 1879, § 7 (P. L. 116), imposing a tax upon the receipts of railway and transportation companies, is in violation of interstate commerce clause, so far as it levies a tax upon receipts derived from commerce between points within and points without the state, and between points without the state, but passing through it; and it is immaterial that goods destined for points without the state were temporarily detained in the state after transportation had actually begun. Delaware & H. Canal Co. v. Commonwealth (Pa. 1888) 17 Atl. 175, 1 L. R. A. 232.

The receipts from continuous transportation between points in the same state may be taxed in that state, though the route lies partly in another state. Such transportation is not interstate commerce. Commonwealth v. Lehigh Val. R. Co. (Pa. 1888) 17 Atl. 179.

Gross receipts of a railroad company from transportation between terminal points, one or both of which are without the state, by route lying partly within or wholly without the state, are not subject to taxation by such state, though the company's franchises were derived from it. Id.

Where a railroad for whose use toll is paid by another road lies wholly within the state, the tax on such tolls does not constitute a tax on interstate commerce, by reason merely of the fact that the lessee road is engaged in interstate transportation, and it is for this use that tolls are paid. Commonwealth v. New York, P. & O. R. Co. (1891) 145 Pa. St. 38, 22 Atl. 212.

A statute imposing a tax on telegraphic messages is invalid as to interstate messages. Western Union Tel. Co. v. State (1884) 62 Tex. 630.

Sess. Laws Tex. 1905, c. 141, imposing a tax on railroads equal to a certain per cent. of their "gross receipts from all sources whatsoever," includes receipts from interstate commerce, as well as from local traffic. Galveston, H. & S. A. Ry. Co. v. Davidson (Tex. Civ. App. 1906) 93 S. W. 436 (judgment reversed Stephens v. Texas & P. Ry. Co. [Sup. 1906] 97 S. W. 309); State v. Galveston, H. & H. Ry. Co. of 1882 (Civ. App. 1906) 93 S. W. 460, 469; Texas & P. Ry. Co. v. State

(Civ. App. 1906) Id. 461, 469; Missouri, K. & T. Ry. Co. of Texas v. Same (Civ. App. 1906) Id. 462, 469; Houston & T. C. R. Co. v. Same (Civ. App. 1906) Id. 463, 469; Galveston, H. & S. A. Ry. Co. v. Same (Tex. Civ. App. 1906) Id. 464 (judgment reversed State v. Galveston, H. & S. A. Ry. Co. [Sup. 1906] 97 S. W. 71); International & G. N. R. Co. v. Same (Civ. App. 1906) 93 S. W. 465, 469; Chicago, R. I. & G. Ry. Co. v. Same (Civ. App. 1906) Id. 466, 469; State v. St. Louis, B. & M. R. Co. (Civ. App. 1906) Id. 467, 469; Texas Midland R. Co. v. Same (Civ. App. 1906) Id. 468, 469; State v. Texas & P. Ry. Co. (Sup. 1907) 98 S. W. 834.

Sess. Laws Tex. 1905, c. 141, imposing a tax on the gross receipts of railroads from both state and interstate commerce, is unconstitutional as a regulation of interstate commerce. Id.

The tax on railroads imposed by Gen. Laws Tex. 1905, c. 141, imposing on railroad companies a tax equal to 1 per cent. of their gross receipts, is an occupation tax, and is not a tax on the gross receipts of railroads, and is not an interference with interstate commerce clause; the reference to the gross receipts being merely a means by which to ascertain the amount of the tax. State v. Galveston, H. & S. A. Ry. Co. (Tex. 1906) 97 S. W. 71, reversing judgment Galveston, H. & S. A. Ry. Co. v. State (Civ. App. 1906) 93 S. W. 464.

Rev. St. Tex. 1911, art. 7384, imposing a tax on terminal railway companies equal to 1 per cent. of their gross receipts, held to impose an occupation tax, and not invalid as imposing a burden on interstate commerce, as applied to a terminal company doing domestic and interstate business. State v. Houston Belt & Terminal Ry. Co. (Tex. Civ. App. 1914) 166 S. W. 83.

The state has power to levy a valid occupation tax upon the domestic business of a company owning and operating a terminal railway within the state and transacting both interstate and domestic business. Id.

Corporation Tax Law Vt. (Acts 1882, No. 1, §§ 1, 11, 12), imposing a tax upon the entire gross earnings of all railways operated in the state, and providing that, if a railway be situated partly within and partly without the state, the tax shall be proportionate to the mileage of trains run within the state, is unconstitutional, as an interference with interstate commerce. Vermont & C. R. Co. v. Vermont Cent. R. Co. (1890) 63 Vt. 1, 21 Atl. 262, 721, 10 L. R. A. 562, following Fargo v. Michigan (1886) 121 U. S. 230, 7 Sup. Ct. 857, 30 L. Ed. 888.

Laws Wash. 1907, c. 54, § 7, requiring the state treasurer to collect from each express company doing business in the state "a sum in the nature of an excise or privilege tax," computed by taking 5 per cent. of the amount fixed by the tax commissioners as the gross receipts of the company for business within the state for the preceding year provided that its tangible property shall not be relieved from taxation, violates the commerce clause. State v. Northern Express Co. (1913) 136 P. 1160, 76 Wash. 636, judgment reversed on rehearing (1914) 141 P. 757.

Laws Wash. 1907, c. 54 (Rem. & Bal. Code, §§ 9161 to 9168), defining express companies and imposing upon all companies, whether doing an interstate or purely local business, a privilege tax of 5 per cent. of the gross receipts of local business, is not in violation of the commerce clause not being a burden on interstate commerce. State v. Northern Express Co. (1914) 141 P. 757, 80 Wash. 309, reversing judgment on rehearing (1913) 136 P. 1160, 76 Wash. 636.

A foreign express company entering the state to do interstate business is not, by Const. Wash. art. 12, § 13, and the Public Service Commission Law Wash. 1911, deprived of the right to forego intrastate business; hence Laws Wash. 1907, c. 54, imposing a privilege tax upon express companies, computed upon their gross local earnings, is not invalid as a regulation of interstate commerce, for foreign companies doing an interstate business may abandon the local business. Id.

Acts Wash. 1907 (Rem. & Bal. Code, §§ 9161–9168), imposing upon interstate express companies a privilege tax of 5 per cent. of the gross receipts within the state, is not void as a regulation of interstate commerce, in violation of Const. art. 1, § 8. State v. Northern Express Co. (Wash. 1914) 143 P. 99.

St. Wis. 1913, c. 51, § 51.32, imposing a gross earnings tax on domestic life insurance companies, is not an interference with interstate commerce in so far as it affects receipts on foreign investments, since the receipts themselves are not thereby taxed. Northwestern Mut. Life Ins. Co. v. State (Wis. 1915) 155 N. W. 609.

222. Taxation of property—Property employed in commerce in general.—A state cannot tax interstate commerce. Postal Telegraph-Cable Co. v. City of Mobile (C. C. 1909) 179 Fed. 955; Smith v. Farr (1909) 104 Pac. 401, 46 Colo. 364; Wilcox v. People (1909) 104 Pac. 408, 46 Colo. 382; State v. Pabst Brewing Co. (1911) 55 So. 349, 128 La. 770.

The state has the right to tax property, although it is used in interstate commerce. Yost v. Lake Erie Transp. Co. (1901) 112 Fed. 746, 50 C. C. A. 511; St. Louis Southwestern Ry. Co. v. State (Ark. 1913) 152 S. W. 110; State v. Northern Exp. Co. (1914) 141 Pac. 757, 80 Wash. 309, reversing judgment on rehearing (1913) 136 Pac. 1160, 76 Wash. 636.

Acts Md. 1872, c. 274, imposing a tax

on all coal mined in the state and transported to any place in the state or elsewhere for sale, is unconstitutional, as an attempt to regulate commerce among the several states. Osborne v. City of Mobile (1872) 83 U. S. (16 Wall.) 479, 21 L. Ed. 470; State v. Cumberland & P. R. Co. (1873) 40 Md. 22, approving In re State Freight Tax (1872) 82 U. S. (15 Wall.) 232, 21 L. Ed. 146.

The law of Louisiana providing that every person, not being domiciliated in that state, and not being a citizen of any state or territory in the Union, who shall be entitled, whether as heir, legatee, or donee, to the whole or any part of the succession of a person deceased, shall pay a tax to the state of 10 per cent. of the value thereof, is not repugnant to the constitution of the United States, as an attempted regulation of foreign commerce by a state. Mager v. Grima (1850) 49 U. S. (8 How.) 490, 494, 12 L. Ed. 1168.

A state law imposing a tax on products of a sister state held not an attempt to regulate commerce. So, where the law imposing a state tax on spirituous liquors prescribed different methods for collecting the tax, according as the goods were produced within the state or some other state, but did not impose any higher amount upon the latter class, it was a legitimate exercise of the taxing power, and not an attempt to regulate commerce. Hinson v. Lott (1868) 75 U. S. (8 Wall.) 148, 19 L. Ed. 387.

A state statute which requires transportation companies doing business within the state to pay a tax upon all merchandise carried by them, estimated by the weight of the merchandise, cannot be enforced upon merchandise in course of transportation from such state to another, or from another state to it. So applied, the statute is in conflict with the commerce clause. In re State Freight Tax (1872) 82 U. S. (15 Wall.) 232, 21 L. Ed. 146, reversing (1869) 62 Pa. St. (12 P. F. Smith) 286, 1 Am. Rep. 399.

No state can impose a tax upon freight transported from state to state or upon the transporter because of such transportation. Id.

A statute of a state imposing a tax upon freight taken up within a state and carried out of it, or taken up without the state and brought into it, is repugnant to the commerce clause. Id.

A tax upon freight transported from state to state is a regulation of commerce among the states. Id.

A tax by a state upon freight carried between states differs from a tax upon the receipts from such transportation, since the former is a tax because of the carriage, and the latter is upon the property of the company. In re State Tax of Railway Gross Receipts (1872) 82 U. S. (15 Wall.) 284, 21 L. Ed. 164.

A state tax on a railroad company chartered by the federal government in part to subserve its purposes is not invalid as a tax on a federal agency, where it leaves the railroad company free to discharge the duties which it undertook to perform; the sole limitation upon the taxing power of the state being the inhibition upon duties of tonnage or imposts upon exports or imports. Union Pac. R. Co. v. Peniston (1873) 18 Wall. 5, 36, 21 L. Ed. 787.

A tax upon an interstate railroad company imposed by the state is not an interference with Congress' right to regulate the interstate commerce. Minot v. Philadelphia, W. & B. R. Co. (1873) 18 Wall. 206, 232, 21 L. Ed. 888.

Taxation by a state of a debt held by a resident citizen against a nonresident secured by real estate where the debtor resides does not violate this clause. Kirtland v. Hotchkiss (1879) 100 U. S. 491, 499, 25 L. Ed. 558.

Revision Conn. 1866, p. 709, tit. 64, c. 1, § 8, declaring that personal property in that state "or elsewhere" should be deemed to include the moneys, credits, bonds, etc., and should be assessed in the tax list of the town where the owner resides, does not constitute an attempt by the state to regulate commerce among the several states, although it resulted in the taxation of bonds executed in other states, and expressly subject to their laws. Id.

Whether a state may tax the capital of her citizens when, on the day on which the assessment is made, it is invested in products on shipboard for exportation to foreign countries or in transit from one state to another for purposes of exportation, quære. People v. Commercial Com'rs (1881) 104 U. S. 466, 26 L. Ed. 632.

The taxation in one state, under general laws imposing such tax on all property alike, of goods from another state, arrived in the taxing state as their place of destination, is not a regulation of interstate commerce, though such goods are, on arrival, sold from the vessel on which they were transported, without being landed, for the purpose of being shipped on a vessel bound to a foreign port. Brown v. Houston (1885) 5 Sup. Ct. 1091, 1095, 114 U. S. 622, 29 L. Ed. 257.

The products of a state (in this case timber cut in its forests) are liable to be taxed like other property within the state though intended for exportation to another state, and partially prepared for that purpose by being deposited at a place or port of shipment within the state; such products being owned by person residing in another state. Coe v. Town of Errol (1886) 6 Sup. Ct. 475, 476, 116 U. S. 517, 29 L. Ed. 715.

The exemption of interstate and foreign commerce from state regulation does not prevent a state from taxing the property of those engaged in such commerce located within the state as the

property of other citizens is taxed, nor from regulating matters of local concern which may incidentally affect commerce, such as wharfage, pilotage, and the like. Leloup v. Port of Mobile (1888) 8 Sup. Ct. 1380, 1384, 127 U. S. 640, 32 L. Ed. 311.

A state cannot lay a tax upon interstate commerce in any form, whether by way of duties laid on the transportation of the subject of that commerce, or the receipts derived from the transportation, or on the occupation or business of carrying it on. Pacific Exp. Co. v. Seibert (1892) 12 Sup. Ct. 250, 252, 142 U. S. 339, 35 L. Ed. 1035.

Assessment of the part within one state, of a railroad which extends into another state, at a valuation on a mileage basis, does not place a burden on interstate commerce, although the value of the road as a whole is created partly by its interstate commerce. Cleveland, C., C. & St. L. Ry. Co. v. Backus (1894) 14 Sup. Ct. 1122, 1124, 154 U. S. 439, 38 L. Ed. 1041, affirming (1893) 33 N. E. 421, 133 Ind. 513, 18 L. R. A. 729.

Coal transported to Louisiana from a foreign state on the navigable waters of the United States, and owned by a citizen of such foreign state, may be taxed while afloat in barges on the Mississippi river, in Louisiana, as other property in such state is taxed, without violating the interstate commerce clause, where it has reached its destination for the purpose of use or sale. Pittsburgh & S. Coal Co. v. Bates (1895) 15 Sup. Ct. 415, 418, 156 U. S. 577, 39 L. Ed. 538.

A state may tax telegraph property within its borders, though it is employed in interstate or foreign commerce. Western Union Tel. Co. v. Taggart (1896) 16 Sup. Ct. 1054, 163 U. S. 1, 41 L. Ed. 49.

A state statute requiring a telegraph company to pay a tax upon its property within the state valued at such proportion of the whole value of its capital stock as the length of its lines within the state bears to the length of all its lines everywhere, deducting a sum equal to the value of its real estate and machinery subject to local taxation within the state, is not violative of the commerce clause. Id.

Original packages of imported goods, which cannot be assessed for local taxation, consist of the boxes, cases, or bales in which the goods were shipped, and not the smaller packages therein contained, although these are the packages in which the goods are put up by the manufacturer; and when the packages in which the goods are shipped reach their destination for use or trade, and are opened and the separate packages therein exposed or offered for sale, these become subject to local taxation like other property in the state. F. May & Co. v. City of New Orleans (1900) 20 Sup. Ct. 976, 980, 178 U. S. 496, 44 L. Ed. 1165, reversing judgment May v. City of New Orleans (1899) 25 So. 959, 51 La. Ann. 1064.

An assessment for taxation under state authority of the original packages in which goods in smaller separate packages are imported, before they have by the act of the importer become incorporated into the mass of property of the state and are held for use or sale, is void. Id.

Logs which have been cut and floated down a stream and its tributaries to a boom or sorting gap, from which they are to be shipped by rail as needed to a point outside the state, are not, while awaiting delivery to the railroad company, the subject of interstate commerce, so as to be exempt from state taxation. Diamond Match Co. v. Village of Ontonagon (1903) 23 Sup. Ct. 206, 188 U. S. 82, 47 L. Ed. 328.

Property actually in transit between states is exempt from local taxation, but if it be stored for an indefinite time during such transit, at least for other than natural causes or lack of facilities for immediate transportation, it may be lawfully assessed by the local authorities. Kelley v. Rhoads (1903) 23 Sup. Ct. 259, 261, 188 U. S. 1, 47 L. Ed. 359, reversing judgment (1901) 63 Pac. 935, 9 Wyo. 352, 87 Am. St. Rep. 959.

A flock of 10,000 sheep which is being driven from the territory of Utah by a direct route across the state of Wyoming to the state of Nebraska at a rate of about nine miles per day, is the subject of interstate commerce, and is therefore exempt from taxation under Laws Wyo. 1895, c. 61, authorizing the taxing of live stock brought into the state for grazing purposes, although the sheep may, while actually in transit, have been permitted incidentally to support themselves by grazing over land one-fourth of a mile in width, and might have been transported by rail. Id.

Property shipped into a state destined for a point therein may be taxed by the state, though it has not yet reached its final destination. Diamond Match Co. v. Ontonagon (1903) 23 Sup. Ct. 266, 271, 188 U. S. 82, 47 L. Ed. 349.

Property intended to be shipped out of a state remains subject to local taxation until it has started on its final journey from the state. Id.

Logs which have been cut and floated down a stream and its tributaries to a boom or sorting gap, from which they are to be shipped by rail as needed to a point outside the state, are not, while awaiting delivery to the railroad company, the subject of interstate commerce, so as to be exempt from state taxation. Id.

The constitution does not prohibit the taxation of substantially the same property in different jurisdictions. Kidd v. Alabama (1902) 23 Sup. Ct. 401, 402, 188 U. S. 730, 47 L. Ed. 669.

A state tax on the property within the state belonging to a foreign telegraph corporation, the value of which was determined by regarding it as a part of a system operated in other states, is not invalid because such corporation is engaged in interstate business, and has accepted the provisions of Act July 24, 1866 (Comp. St. § 10072), giving it the privilege of operating a line over military and post roads, and was not created by such state or given any franchise by it. Western Union Tel. Co. v. Missouri (1903) 23 Sup. Ct. 730, 733, 190 U. S. 412, 47 L. Ed. 1116, affirming judgment State ex rel. Gottlieb v. Western Union Tel. Co. (1901) 65 S. W. 775, 165 Mo. 502.

A state may impose ordinary property taxes upon property having a situs within its territory, though employed in interstate commerce. Atlantic & P. Tel. Co. v. Philadelphia (1903) 23 Sup. Ct. 817, 818, 190 U. S. 160, 47 L. Ed. 995.

A state is not precluded by the commerce clause of the federal Constitution from imposing a merchants' tax upon a nonresident manufacturing corporation which has selected a city of that state as a distributing point, and has secured a local transfer company to take charge of its products when shipped to that point, assort them, store them in a warehouse, and make delivery in the original packages to the customers of the manufacturer, either as expressly directed by it, or under general directions in favor of its recognized and approved customers, whose names were furnished to the transfer company, since, under such circumstances, the goods, when stored in the warehouse, were no longer in transit, but had reached their destination, and were held in the state for sale. American Steel & Wire Co. v. Speed (1904) 24 Sup. Ct. 365, 370, 192 U. S. 500, 48 L. Ed. 538, affirming judgment (1903) 75 S. W. 1037, 110 Tenn. 524, 100 Am. St. Rep. 814.

While a state cannot tax the privilege of carrying on commerce among the states, it can tax property permanently within its jurisdiction, although used in commerce among the states. Fargo v. Hart (1904) 24 Sup. Ct. 498, 500, 193 U. S. 490, 48 L. Ed. 761.

A tax upon property within the state which is the product of the soil of other states, imposed under the authority of Const. Tenn. 1870, art. 2, §§ 28–30, and Acts Tenn. 1903, c. 258, §§ 1, 2, which exempt like property when produced from the soil of Tennessee, directly interferes with interstate commerce. I. M. Darnell & Son Co. v. City of Memphis (1908) 28 Sup. Ct. 247, 248, 208 U. S. 113, 52 L. Ed. 413, reversing decree (1906) 95 S. W. 816, 116 Tenn. 424.

Oil shipped from Pennsylvania and Ohio, and destined ultimately for points in Arkansas, Louisiana, and Mississippi, is not property in interstate commerce, so as to be exempt from state tax or inspection laws while it is held at a distributing point maintained by the shipper in Tennessee, at which point such oil is unloaded from tank cars into various tanks, barrels, and other receptacles, and from which it is forwarded to its final destination. General Oil Co. v. Crain (1908) 28 Sup. Ct. 475, 209 U. S. 211, 52 L. Ed. 754, affirming judgment (1906) 95 S. W. 824, 117 Tenn. 82.

The taxation of distilled spirits in bonded warehouses in the state, provided for by Act Ky. March 29, 1902, under which the warehouseman is made liable for the tax and is given a lien on the property for the amount paid, is within the power of the state, where the legislation does not contemplate the collection of the taxes so long as the spirits are in the custody or under the lien of the federal government. Thompson v. Kentucky (1908) 28 Sup. Ct. 533, 209 U. S. 340, 52 L. Ed. 822.

Personal property in transit in interstate commerce is not subject to local taxation because within the limits of a county in which the owner resides. Bacon v. People of the State of Illinois (1913) 33 Sup. Ct. 299, 227 U. S. 504, 57 L. Ed. 615, affirming judgment People v. Bacon (1910) 90 N. E. 686, 243 Ill. 313.

Grain shipped from Western states to Eastern cities, purchased in transit by a resident of Illinois to have forwarded according to shipping contracts, after removal from cars at Chicago for inspection, etc., may be assessed for local taxation while actually in his private grain elevator in Chicago. Id.

Pennsylvania coal shipped by its owner to its own order at a New Jersey tide-water port, where if no vessels were available for its transportation it was dumped into a storage yard to be transferred to vessels as occasion required, held subject to local taxation while in such yard, though it was destined ultimately for ports in other states. Susquehanna Coal Co. v. City of South Amboy (1913) 33 Sup. Ct. 712, 228 U. S. 665, 57 L. Ed. 1015, affirming judgment (C. C. 1911) 184 Fed. 941.

Act Ohio April 27, 1893, imposing a tax on telegraph, telephone, and express companies, is not invalid under the constitution, either because the assessment is made on property largely used in interstate commerce, or because the rule of assessment requires the property to be valued as a unit profit-producing plant, or because the assessors are required to look to the value of the capital stock as a factor in determining the assessment. Sanford v. Poe (1895) 69 Fed. 546, 16 C. C. A. 305, decree affirmed (1897) 17 Sup. Ct. 305, 165 U. S. 194, 41 L. Ed. 683, and affirming Western Union Tel. Co. v. Same (C. C. 1894) 64 Fed. 9.

A state may impose taxes on property owned and used within it by a for-

eign corporation engaged in interstate commerce. Philadelphia v. Western Union Telegraph Co. (1898) 89 Fed. 454, 460, 32 C. C. A. 246.

The fact that a corporation of one state derived its franchise from the United States under Act July 24, 1866, c. 230, 14 Stat. 221, providing for the establishment of telegraph lines along post roads, etc., did not relieve the corporation from the burdens of taxation in another state in which it had property. Western Union Telegraph Co. v. Trapp (1911) 186 Fed. 114, 108 C. C. A. 226.

Property is not exempted from liability to an equal and uniform property tax by the fact that it is used either partially or exclusively for interstate commerce. Pullman's Palace Car Co. v. Twombly (C. C. 1887) 29 Fed. 658, 662.

The state may tax such real or personal property of a telegraph company engaged in interstate commerce as is located within its borders at such just rate and in such manner as the legislature may prescribe consistently with the laws of the state. City of St. Louis v. Western Union Tel. Co. (C. C. 1889) 39 Fed. 59, 60, reversed (1893) 13 Sup. Ct. 485, 148 U. S. 92, 37 L. Ed. 380.

A statute providing that any transportation company whose sleeping cars run over any line lying partly within the state, or partly within another state or states, shall be assessed in the state in the ratio which the number of miles of the line within the state has to the total number of miles of the entire line, applies alike to resident and nonresident companies, and is not an imposition on interstate commerce, when just and reasonable. Pullman's Palace-Car Co. v. Board of Assessors (C. C. 1893) 55 Fed. 206, 209, affirmed (1894) 60 Fed. 37, 8 C. C. A. 490.

The act of Indiana of March 6, 1893, relating to taxation, violates no provision of the Constitution of the state or of the United States. Western Union Tel. Co. v. Henderson (C. C. 1895) 68 Fed. 588.

The revenue law of Tennessee of 1897 (chapter 1), imposing upon all merchants an "ad valorem tax upon the capital invested in their business equal to that levied upon taxable property," and which provides that the amount assessed against the merchant shall not be less than the average of his stock during the preceding year, to be ascertained by adding together the highest and lowest amounts of stock on hand at any time, and dividing the sum by 2, is not a tax upon the goods, and not an interference with interstate commerce. Oliver Finney Grocery Co. v. Speed (C. C. 1898) 87 Fed. 408.

The action of state authorities in taking the entire valuation of the property of a railroad company, without as well as within the state, and dividing it upon a mileage basis for the purpose of fixing the value of that within the state for purposes of taxation, is not in violation of the commerce clause. St. Louis, I. M. & S. Ry. Co. v. Davis (C. C. 1904) 132 Fed. 629.

A city as a part of a state cannot by a pretended taxation control the shipment of interstate freight and the sale thereof in the original packages. Jewel Tea Co. v. Lee's Summit, Mo. (C. C. 1911) 189 Fed. 280.

A tax or charge imposed equally on the products of the state imposing it and those introduced from other states is only an exercise of the taxing power of the state, and not a regulation of commerce. Ex parte Hanson (D. C. 1886) 28 Fed. 127. But a tax which in purpose or effect discriminates in favor of its own products is a regulation of commerce among the states, and void. Id.

Interstate commerce is equally burdened whether by direct tax on the property imposed by state statute or by an indirect tax on the person engaging in interstate commerce or his agent in the form of a licensed fee imposed by state statute for carrying on the business. Jewel Tea Co. v. Lee's Summit, Mo. (D. C. 1912) 198 Fed. 532.

That the lines of a railroad company were built and are operated under grants by Congress does not affect the right of the state to tax its property, where the tax does not interfere with the performance of any service to the government which may have been made a condition of the grants. Missouri, K. & T. Ry. Co. v. Meyer (D. C. 1913) 204 Fed. 140.

Act Okl. May 26, 1908, §§ 2, 3, and section 6 as amended by Act March 27, 1909, being Comp. Laws Okl. 1909, §§ 7702, 7703, 7706, imposing a gross revenue tax on mineral production in the state, is not invalid as imposing a burden on interstate commerce as applied to coal mined by a railroad company and used in the operation of interstate trains. Id.

A state may tax property permanently within its jurisdiction, although owned by nonresidents and used in interstate commerce, as in case of express company property used in both interstate and intrastate commerce; and where the property in the state is a part of a system partly within and partly without the state, assessment may be made by taking a mileage proportion. Wells Fargo & Co. v. Johnson (D. C. 1913) 205 Fed. 60.

Goods purchased from an importer after they have been brought within the jurisdiction of the United States, but before they have been delivered at the port of entry and before duties have been paid on them, and which are transported by the purchaser to the port to which they were consigned, are subject to taxation by state authority. City of Mobile v. Waring (1867) 41 Ala. 139.

Acts Ala. 1911, pp. 458, 466, imposing a tax upon oysters taken from public reefs or private bedding grounds for packing or sale, held to refer only to oysters taken in waters within the jurisdiction of Alabama; and hence not invalid as an unauthorized interference with interstate commerce. State v. Parker (Ala. 1912) 59 So. 741.

Tax discrimination against the products and manufactures of other states is prohibited by the commerce clause. Vines v. State (1880) 67 Ala. 73; Powell v. Same (1881) 69 Ala. 10.

Revenue Act Cal. 1853, which provides that all goods and merchandise brought into the state from any other state or foreign country to be sold in this state, and owned by any person not domiciled in the state, shall be taxed at a certain rate, is not unconstitutional, as interfering with the power of congress to regulate commerce. People v. Coleman (1854) 4 Cal. 46, 60 Am. Dec. 581.

When an original package of merchandise has been so acted upon by the importer as to have lost its distinctive character as an import, it becomes liable to taxation. In re Wilson (D. C. 1890) 8 Mackey, 341, 12 L. R. A. 624.

A tax on a chose in action owned by a resident of the state is not a regulation of interstate commerce, though the debtor be a nonresident. Atlanta Nat. Building & Loan Ass'n v. Stewart (1900) 35 S. E. 73, 109 Ga. 80.

Imported goods in the original unbroken packages on which the United States duties have been paid are exempt from state taxation. Appeal of Doane (1902) 64 N. E. 377, 197 Ill. 376.

Oil pumped through a pipe line, on its way from one state to a point in another, is a subject of interstate commerce, and is exempt from local taxation. Prairie Oil & Gas Co. v. Ehrhardt (1910) 91 N. E. 680, 244 Ill. 634.

A statute subjecting to taxation property bought in Indiana and kept there to undergo a further process of manufacture does not conflict with the interstate commerce clause. Standard Oil Co. v. Combs (1884) 96 Ind. 179, 49 Am. Rep. 156.

Taxation of the property of a corporation engaged in interstate commerce is not taxing interstate commerce. Cleveland, C., C. & St. L. Ry. Co. v. Backus (1893) 133 Ind. 513, 33 N. E. 421, 18 L. R. A. 729; Indianapolis & V. R. Co. v. Same (1893) 133 Ind. 609, 33 N. E. 443.

Assessing the property of an interstate telegraph company within the state at its true cash value, such value being placed at that proportion of the entire value of the company's property which its mileage within the state bears to the entire mileage, is not a tax on interstate commerce. Western Union Tel. Co. v. Taggart (1895) 141 Ind. 281, 40 N. E. 1051.

After property has left the channels of commerce and obtained a situs in the state, it is subject to the taxing power of the state; and the interstate commerce clause of the federal Constitution can be invoked only to protect such property from unjust discrimination. Darnell v. State (Ind. 1910) 90 N. E. 769.

Merchandise belonging to nonresident sellers, consigned to a warehouseman within the state and stored by him to await future delivery on sales thereof by the owner, may be lawfully assessed by the local authorities without infringing upon the interstate commerce laws. Merchants' Transfer Co. v. Board of Review of City of Des Moines (1905) 105 N. W. 211, 128 Iowa, 732, 2 L. R. A. (N. S.) 662.

Coal brought from Pennsylvania to New Orleans for sale can legally be taxed by the state of Louisiana. Such a tax does not violate the constitutional provision that Congress shall regulate commerce. Brown v. Houston (1881) 33 La. Ann. 843, 39 Am. Rep. 284.

Taxation of goods transported from one state into another state for purposes of sale, after arrival at their destination and being offered for sale, is lawful, and, in the absence of contrary congressional legislation, does not violate the commerce clause. Pittsburg & S. Coal Co. v. Bates (1888) 40 La. Ann. 226, 3 South. 642, 8 Am. St. Rep. 519.

An imported article in the importer's possession, in the original package, continues to be a part of the foreign commerce of the country and is not part of the property in the state subject to taxation. State ex rel. Gelpi v. Board of Assessors (1894) 46 La. Ann. 145, 15 So. 10, 49 Am. St. Rep. 318.

An article brought from another state is an article of interstate commerce until sold, and hence Laws Md. 1910, c. 735, which imposes a tax upon oysters shipped in from foreign states before they can be sold, interferes with interstate commerce. D. E. Foote & Co. v. Clagett (1911) 81 Atl. 511, 116 Md. 228.

Laws Mich. 1865, p. 244, imposing a specific tax upon corporations and companies engaged in mining, smelting, and refining ores in this state, which provides for the payment of a tax of 1½ cents per ton on all iron ore or mineral obtained and exported from the state before being smelted, but exempts from taxation all that is smelted within the state, is void, as an attempt in effect to impose a tax upon interstate commerce. Jackson Min. Co. v. Auditor General (1875) 32 Mich. 488.

The state may tax property within its borders, though such property may be employed by its owners in interstate

commerce. State v. United States Express Co. (1911) 131 N. W. 489, 114 Minn. 346.

Logs assessed for taxes after being brailed by a boom company, and while waiting for delivery to a steamer to be towed to another state, had not commenced their interstate transit, and were subject to assessment. State v. Burlington Lumber Co. (Minn. 1912) 136 N. W. 1033.

Laws Minn. 1907, c. 250, authorizing the imposition of gross earnings tax, held not invalid as imposing an unlawful burden on interstate commerce. State v. Cudahy Packing Co. (Minn. 1915) 151 N. W. 410.

Neither the Constitution nor laws of the United States prohibit a state from taxing the property of persons and corporations engaged in foreign and interstate commerce where the property is located in such state. State ex rel. Hammer v. Wiggins Ferry Co. (1907) 106 S. W. 1005, 208 Mo. 622.

The national government alone has power to tax and regulate foreign and interstate commerce. Id.

Gen. Laws N. H. c. 54, § 13, which provides that logs and lumber shall be taxed in the town where they are on the 1st day of April, is not unconstitutional, as being a tax on commerce, although such logs and lumber were in transit and seeking the market in another state. Coe v. Errol (1882) 62 N. H. 303.

The tax on property belonging to the citizens of another state in its transit to markets in other states, which is delayed within this state merely for the purpose of separation and assortment, is a tax on commerce. Detmold v. Engle (1871) 34 N. J. Law (5 Vroom) 425.

Coal mined in this state by a foreign corporation, whose business office is in New York City, is not taxable by this state while awaiting shipment to purchasers in other states. State v. Carrigan (1876) 39 N. J. Law (10 Vroom) 35.

A foreign corporation mining coal in this state is not subject to taxation on coal delivered in this state on orders received through its business office in such foreign state. Id.

Coal shipped from Pennsylvania, and stored in New Jersey to await orders for sale, then to be shipped to customers purchasing after such storage, is not in interstate commerce, and is taxable at the place of storage. Lehigh & Wilkesbarre Coal Co. v. Borough of Junction (N. J. 1907) 66 A. 923.

Coal in interstate commerce is not taxable when it rests in the state in cars solely for transshipment and not upon storage. Berwind & White Coal Co. v. Jersey City (N. J. 1907) 67 A. 181.

Transportation of merchandise by the owner to his own order as consignee from one state to another, for convenience of the owner, for the purpose of storage in mass, and subsequent sale in specific quantities, is not interstate commerce in the sense that the merchandise is exempted from local taxation, and interstate transportation of coal to be held indefinitely for future market is not such interstate commerce. Lehigh & Wilkes-Barre Coal Co. v. Borough of Junction (N. J. 1908) 68 A. 806, affirming judgment (1907) 66 A. 923.

For property of a foreign corporation to be exempt from taxation under the commerce clause of the federal Constitution there must be a continuous movement of merchandise in interstate commerce, that is, transportation from one state to another pursuant to some existing contract of sale or consignment. Id.

The power of congress to regulate commerce either with foreign countries or between the states is not interfered with by the assessment of a steamship company incorporated in New York for the transportation of passengers and freight between New York and a foreign country. People v. Commissioners of Taxes and Assessments (N. Y. 1866) 48 Barb. 157.

A state tax on money used in buying up cotton in different states for export to foreign countries held not in violation of the provisions of the commerce clause. People v. City & County of New York Tax Com'rs (N. Y. 1877) 10 Hun, 255.

Where goods have been brought within the state, and have entered into the body of the merchandise therein situate, they lose their character as articles of interstate commerce, and become subject to taxation within the state. People v. Raynes (1910) 120 N. Y. Supp. 1053, 136 App. Div. 417.

Laws N. C. 1866, § 12, which imposes a tax of 15 per cent. upon liquors purchased by residents from persons not residing in the state, and only 10 per cent. upon such as are purchased from the maker in the state, does not violate the commerce clause. Davis v. Dashiel (1867) 61 N. C. (Phil.) 114.

Rev. Codes N. D. 1905, c. 23, providing for assessment of railroad rights of way for the benefits from local drains, is not a violation of the commerce clause, though it is sought to be applied to interstate lines. Northern Pac. Ry. Co. v. Richland County (N. D. 1914) 148 N. W. 545.

A state tax on all persons trading in foreign or domestic goods, etc., within the state, whether the capital employed in such trade be owned within the state or elsewhere, does not violate the commerce clause. Raguet v. Wade (1829) 4 Ohio (4 Ham.) 107.

Rev. St. Ohio § 2740, providing for the taxation of personal property consigned from a place without the state for sale within the state, but that a

consignee shall not be required to list the property consigned for sale from any place within the state, is not unconstitutional, as discriminating between the home and the foreign product. Huddleston v. Hagerty (Com. Pl. 1893) 2 Ohio N. P. 291.

Goods brought from other states and sold by the importer in the original packages are subject to taxation under Act S. C. 1854, imposing a tax "on the amount of sales in goods, wares, merchandise," etc. State v. Pinckney (S. C. 1857) 10 Rich. Law, 474.

Laws S. D. 1891, c. 14, §§ 65, 66, providing for the taxation of the property of express companies, are not unconstitutional because they enable the board of assessment and equalization, in valuing their property, to take into consideration their gross earnings from contracts made with railroad companies extending to points without the state. State v. State Board of Assessment and Equalization (1892) 3 S. D. 338, 53 N. W. 192.

A tax upon logs purchased in and brought from another state, but lying in a millyard in the state awaiting manufacture into lumber, is not violative of the interstate commerce clause. I. M. Darnell & Son Co. v. City of Memphis (1906) 95 S. W. 816, 116 Tenn. 424.

Goods are subject to taxation within the state, though they are imported for the express purpose of reshipping and distributing them to persons outside of the state. Logan v. Brown (Tenn. 1911) 141 S. W. 751.

Timber belonging to a citizen of another state, felled in Virginia and placed near water courses to wait for high water to float it to the state of the owner, is not exempt from taxation in Virginia as being in process of exportation as interstate commerce, since it does not become such until the course of transportation has begun. Vansant Kitchen & Co. v. Commonwealth (1908) 60 S. E. 753, 108 Va. 135.

Where goods are brought into the state and stored in advance of sales, and orders therefor are filled from the store, the business is local commerce, and hence laws imposing taxes thereon are not invalid as interfering with interstate commerce; and the same rule applies where the goods reach their destination in this state for such storage and sale, even before they are unloaded from the cars. Spaulding v. Adams County (Wash. 1914) 140 Pac. 367.

Where one buys property outside of the state, and stores it in the state awaiting a sale elsewhere, it is not in transit during its stay, but is a commodity kept for sale, and is not exempt from taxation as subject of interstate commerce. State v. Patterson (Wis. 1908) 114 N. W. 441.

St. Wis. 1911, § 1087m2, subd. 3, imposing a tax on incomes from business within the state, though involving interstate transactions, does not violate the commerce clause. United States Glue Co. v. Town of Oak Creek (Wis. 1915) 153 N. W. 241.

Act Wyo. Feb. 16, 1895 (repealed by Act March 1, 1897), which provided that all live stock brought into the state for the purpose of being grazed should be taxed for the fiscal year during which it was brought into the state, and which vested the county assessors with powers to collect the same as soon as the property was brought into their counties, is not in conflict with the interstate commerce clause. Kelley v. Rhoads (1898) 51 P. 593, 7 Wyo. 237, 39 L. R. A. 594, 75 Am. St. Rep. 904.

223. —— **Means and instrumentalities of commerce.**—The state of California has no power to tax vessels owned and registered in New York, but which are temporarily within its jurisdiction for the purpose of discharging and receiving passengers and freight. Hays v. Pacific Mail S. S. Co. (1854) 58 U. S. (17 How.) 596, 15 L. Ed. 254.

No state but that in which a vessel has her home port has dominion over her for the purpose of taxation. Morgan v. Parham (1872) 83 U. S. (16 Wall.) 471, 21 L. Ed. 303.

Steamboats which ply between different ports on a navigable river may, under a state statute, be taxed as personal property by the city where the company owning them has its principal office, and which is their home port, although they are duly enrolled and licensed as coasting vessels under the laws of the United States, and all fees and charges thereon demandable under those laws have been duly paid. Wheeling, P. & C. Transp. Co. v. City of Wheeling (1878) 99 U. S. 273, 25 L. Ed. 412.

Effect of this clause as to power of states to tax vessels as personal property considered. Id.

A state cannot regulate foreign commerce, but may do many things more or less affecting it. It may tax vehicles of commerce the same as other property owned by its citizens. Wiggins Ferry Co. v. City of East St. Louis (1883) 2 Sup. Ct. 257, 264, 107 U. S. 365, 27 L. Ed. 419.

No legislation on the part of a state can impose a tax upon that portion of interstate commerce which is involved in the transportation of persons and freight, whatever be the instrumentality by which it is carried on. Gloucester Ferry Co. v. Pennsylvania (1885) 5 Sup. Ct. 826, 114 U. S. 196, 29 L. Ed. 158.

A tax assessed against a railroad company which is a link in a through line of road, and carries freight and passengers in and out of the state, by the state through which the through line passes, as a condition precedent

to its keeping an office in such state for the use of its officers, agents, and employés, is a tax on the means by which the company is enabled to carry on its business of interstate commerce, and is therefore in violation of the interstate commerce clause. Norfolk & W. R. Co. v. Pennsylvania (1890) 10 Sup. Ct. 958, 960, 136 U. S. 114, 34 L. Ed. 394, reversing (1886) 6 Atl. 45, 114 Pa. 256.

The taxation by local Kentucky authorities for that part of a bridge from Kentucky to Indiana which lies below low-water mark on the Kentucky shore does not amount to a regulation of interstate commerce by state authority. Henderson Bridge Co. v. Henderson (1891) 12 Sup. Ct. 114, 118, 141 U. S. 679, 35 L. Ed. 900.

The city of Henderson, Ky., whose corporate limits extend to low water on the Indiana shore of the Ohio river, by an ordinance granted to a Kentucky bridge company the right to build a railroad bridge within its boundaries, and made certain stipulations as to taxation thereof. Held, that the taxation of the bridge was not a regulation of interstate commerce, or the taxation of an agency of the federal government. Id.

The provision of Act Ind. March 6, 1891, in regard to taxation of railroad property, that rolling stock shall be listed and taxed in the several counties in the proportion that the main track used or operated in such county bears to the length of the main track used or operated by the company, in connection with the requirement of a statement of the amount of capital stock and indebtedness, is not invalid as requiring assessment and valuation of property outside the state, as the intent of the act to reach simply property of the railroad company within the state is obvious from its other provisions and its general scope, and it does not require the valuation of such property to be determined absolutely on a mileage basis. Pittsburgh, C., C. & St. L. Ry. Co. v. Backus (1894) 154 U. S. 421, 14 Sup. Ct. 1114, 38 L. Ed. 1031; Indianapolis & V. R. Co. v. Same (1894) 154 U. S. 438, 14 Sup. Ct. 1114, 38 L. Ed. 1040, affirming (1893) 133 Ind. 625, 33 N. E. 432.

Assessment of the part within one state of a railroad which extends into another state, and a valuation on a mileage basis, does not place a burden on interstate commerce, although the value of the road as a whole is created partly by its interstate commerce. Cleveland, C., C. & St. L. Ry. Co. v. Backus (1894) 154 U. S. 439, 14 Sup. Ct. 1122, 38 L. Ed. 1040, affirming (1892) 133 Ind. 513, 33 N. E. 421.

A state may tax telegraph property within its borders, though it is employed in interstate or foreign commerce. Western Union Tel. Co. v. Taggart (1896) 163 U. S. 1, 16 Sup. Ct. 1054, 41 L. Ed. 49.

No state can interfere with interstate commerce through the imposition of a tax, by whatever name called, which is in effect a tax for the privilege of transacting such commerce; but this restriction does not in the least abridge the right of a state to tax, at their full value, all the instrumentalities used for such commerce. Adams Express Co. v. Ohio State Auditor (1897) 17 Sup. Ct. 604, 605, 166 U. S. 185, 41 L. Ed. 965.

The fact that a bridge across a navigable stream between two states is an instrument of interstate commerce does not exempt so much of it as is within one of the states from taxation by such state. Pittsburgh, C., C. & St. L. Ry. Co. v. Board of Public Works (1898) 19 Sup. Ct. 90, 94, 172 U. S. 32, 43 L. Ed. 354.

A bridge erected by a corporation between Kentucky and Indiana, with the consent of congress, in or over the Ohio river, low-water mark on the western and northwestern banks of which is a boundary of Kentucky, is a proper subject of taxation by that state, although that river, as a navigable stream, is under the control of congress, and the fact that the bridge between low-water mark on either side of the river is used by the corporation for purposes of interstate commerce does not exempt it. Henderson Bridge Co. v. City of Henderson (1899) 19 Sup. Ct. 553, 565, 173 U. S. 592, 43 L. Ed. 823.

A state may constitutionally tax refrigerator cars used on railroads of the state, and required in their business, though owned by a corporation of another state, which furnishes them for the transportation of perishable products, as required by a shipper or railroad company for a particular shipment or trip,—being paid by the railroad company on a mileage basis,—and though such cars are used within the state entirely in carrying on interstate commerce; and such tax may properly be fixed upon the value of the average number of cars employed within the state. American Refrigerator Transit Co. v. Hall (1899) 19 Sup. Ct. 599, 604, 174 U. S. 70, 43 L. Ed. 899, affirming judgment (1897) 51 Pac. 421, 24 Colo. 291, 56 L. R. A. 89, 65 Am. St. Rep. 223.

A state may tax the average number of refrigerator cars used by railroads within the state, but owned by a foreign corporation without place of business therein, though employed in interstate commerce. Union Refrigerator & Transit Co. v. Lynch (1900) 20 Sup. Ct. 631, 632, 177 U. S. 149, 44 L. Ed. 708.

Vessels, which, though engaged in interstate commerce, are employed in such commerce wholly within the limits

of a state, are subject to taxation in that state, although they may have been registered or enrolled, under R. S. §§ 4141, 4311 (Comp. St. §§ 7719, 8057), at a port outside the limits of the state. Old Dominion S. S. Co. v. Virginia (1905) 25 Sup. Ct. 686, 688, 198 U. S. 299, 49 L. Ed. 1059, 3 Ann. Cas. 1100, affirming judgment (1904) 46 S. E. 783, 102 Va. 576, 102 Am. St. Rep. 855.

A tax upon the ordinary and lawful means of transportation is really a tax upon the thing carried; and a state law imposing a tax upon locomotives, passenger and freight cars, etc., being not merely a police regulation, but an expedient for raising revenue, involves a tax upon the passengers and freight transported, and is unconstitutional, as interfering with commerce between the states. Minot v. Philadelphia, W. & B. R. Co. (C. C. 1870) Fed. Cas. No. 9,645, affirmed in (1873) 85 U. S. (18 Wall.) 206, 21 L. Ed. 888.

It is no objection to the imposition of a state tax upon railroad rolling stock used partly within the state that the same is engaged as a vehicle of interstate commerce, or that its legal situs is in another state or territory, where taxes on it have been paid. Reinhart v. McDonald (C. C. 1896) 76 Fed. 403.

Dredges, having no propelling power, and not designated for use in the carrying trade, nor entitled to enrollment and registry, though employed to do work intended to aid navigation and commerce, and although they are vessels subject to maritime liens, are not instruments of interstate or foreign commerce, and may be subjected to taxation in a state other than that of the residence of their owners, when kept and employed in such state without an intention to remove them therefrom at any definite time; and such vessels are taxable in the state of Washington, under the last clause of section 1666, 1 Ballinger's Ann. Codes & St., providing that "all boats and small craft not required to be registered must be assessed in the county where the same are kept." McRae v. Bowers Dredging Co. (C. C. 1898) 90 Fed. 360.

The city of Mobile, under its charter authority to tax real and personal property within the city, may lawfully assess a steamboat plying on the Alabama river, though it is registered and enrolled as a coasting vessel under the laws of the United States, and the owner of the boat is a citizen of another state, if resident in Mobile during the business season. That the boat may be assessed and taxes paid in the state of which the owner is a citizen is immaterial. Battle v. Corporation of Mobile (1846) 9 Ala. 234, 44 Am. Dec. 438.

That a toll bridge is part of a structure which carries trains engaged in interstate commerce does not prevent its taxation. Southern Ry. Co. v. Mitchell (1904) 37 So. 85, 139 Ala. 629.

The interstate commerce clause does not inhibit the taxation by a state of railway cars found within its borders, though in the transaction of business they pass into adjoining states and territories. Denver & R. G. Ry. Co. v. Church (1891) 17 Colo. 1, 28 Pac. 468, 31 Am. St. Rep. 252.

Mills' Ann. St. Colo. § 3805, subd. 5, directing the officers of each railroad company operating in the state to report to the state board of equalization the number of cars of all kinds in use upon its road; and subdivision 7, authorizing the board to assess all property used by one corporation, and belonging to another, to either the corporation using it or the one owning it, is not, when applied to the case of a transportation company loaning cars to a railroad company for special purposes, an attempt to regulate interstate commerce. Hall v. American Refrigerator Transit Co. (1897) 51 Pac. 421, 24 Colo. 291, 65 Am. St. Rep. 223.

Cars of a foreign corporation (not a railroad corporation) having its principal office in another state, which are merely in transit in Illinois for the purpose of bringing merchandise from another state into or through this state, are instruments of interstate commerce, and not subject to taxation here. In re Union Tank Line Co. (1903) 68 N. E. 504, 204 Ill. 347, 98 Am. St. Rep. 221.

A tax imposed by the state of Kentucky on a bridge extending across the Ohio river from the Kentucky to the northwest Indiana shore is lawful, and not an attempt to regulate commerce between the states. Louisville Bridge Co. v. City of Louisville (1883) 81 Ky. 189, 5 Ky. Law Rep. 16, 473.

It is no defense to an action for taxes levied upon the property of a bridge company situated exclusively in the state, and upon the value of its franchise granted by the state, that the bridge connected two states, and was used entirely for interstate business. Henderson Bridge Co. v. Commonwealth (Ky. 1895) 31 S. W. 486.

Under Ky. St. § 3174, authorizing a city to make an annual assessment of all personal property within the corporate limits subject to taxation for state purposes, and section 4020, providing that all personal estate within the state shall be subject to taxation, unless exempted, a city may impose a tax on sleeping cars of a foreign corporation engaged in interstate commerce to the extent of the value of the average number of cars daily placed in railroad yards in the city for the purpose of preparing them for train service. City of Covington v. Pullman Co. (1905) 89 S. W. 116, 28 Ky. Law Rep. 199.

A proportional state tax, levied under Sess. Acts Ky. 1898, c. 38, on the intangible property within the state of a bridge company owning a bridge over

a river between the state and another state, is not a tax on interstate commerce, though the bridge is used for interstate commerce by street cars and other vehicles, and though, in arriving at the value, the income is considered, and the income is derived in whole or in part from interstate commerce. Covington & C. Bridge Co. v. City of Covington (1905) 89 S. W. 296, 28 Ky. Law Rep. 394.

The state has a right to tax a citizen and resident in the state for his interest in vessels which navigate the seas, and are regularly registered and licensed as American vessels under the laws of congress. Howell v. State (Md. 1845) 3 Gill, 14.

A municipal tax on a vessel engaged in foreign commerce, and owned by a citizen of the municipality levying the tax, is not in conflict with the commerce clause. Gunther v. City of Baltimore (1880) 55 Md. 457.

The taxation of a foreign corporation which owns freight cars run by state railroad companies from points within to points without the state is not unconstitutional, as an interference with interstate commerce. Fargo v. Auditor General (1885) 57 Mich. 598, 24 N. W. 538.

Section 9 of the law for taxing railroads (P. L. N. J. 1884, p. 142) provides that, in case of a railroad of this state being under lease to a foreign corporation, any tangible personal property of such foreign company, if used or kept but a part of the time in this state, shall be assessed such proportionate part of its value as the time it is used or kept in this state during the year preceding the 1st day of January designated in the act bears to the whole year; and it appearing that certain engines and cars that were used on its leased lines in this state by the Philadelphia & Reading Railroad Company in the course of interstate commerce, such company having in use a full local equipment of such leased lines, which was duly taxed in this state, held, that the tax upon such property employed in interstate commerce was illegal, being in contravention of the interstate commerce clause. Central R. Co. v. State Board of Assessors (1886) 49 N. J. Law (20 Vroom) 1, 7 Atl. 306.

Laws N. Y. 1886, c. 659, authorizing the taxation in the various towns and wards of the state of the portions of telegraph lines located in such towns and wards, including the interest in the land on which the poles stand, and all poles, insulators, wires, apparatus, etc., is not an interference with the right of the federal government to "regulate commerce among the several states," though such lines extend into other states. People v. Terney (1890) 57 Hun, 357, 10 N. Y. Supp. 940.

Under Const. art. 1, § 8, par. 3, authorizing congress to regulate commerce among the several states, the rolling stock of a foreign railroad company which is used in interstate commerce is not subject to taxation in North Carolina. Bain v. Richmond & D. R. Co. (1890) 105 N. C. 363, 11 S. E. 311, 18 Am. St. Rep. 912, 8 L. R. A. 299.

A state law which includes steamboats in the property made taxable is not in violation of the provision of the United States relative to the regulation of commerce. Perry v. Torrence (1838) 8 Ohio (8 Ham.) 521, 32 Am. Dec. 725.

Under Rem. & Bal. Code Wash. § 9142, subd. 3, and section 9152 as amended, cars of a foreign railroad operating in Canada, while carried over tracks of a domestic road, are taxable within the counties where they are found, although engaged in interstate or foreign commerce, since tangible personalty is taxable where found, regardless of the owner's domicile. Canadian Pac. Ry. Co. v. King County (Wash. 1916) 155 Pac. 416.

Where a city is authorized by law to assess, levy, and collect an annual tax for the use of the city on personal property, not to exceed a certain per cent. of the assessed valuation thereof, an annual tax on steamboats having that city as their home port, and based on their valuation, is not in violation of the commerce clause. Wheeling, P. & C. Transp. Co. v. City of Wheeling (1876) 9 W. Va. 170, 27 Am. Rep. 552.

224. —— **Corporate capital and securities.**—A ferry company, engaged in transporting freight and passengers across the Delaware river, from P., in Pennsylvania, to G., N. J., was incorporated under the laws of the latter state, and had all its boats registered there. It had no property in Pennsylvania other than the lease of a wharf, and did no other business there than the landing and receiving of freight and passengers at said wharf. Held, that a tax imposed by Pennsylvania upon the capital stock of said company was void, as an interference with interstate commerce. Gloucester Ferry Co. v. Pennsylvania (1885) 5 Sup. Ct. 826, 828, 114 U. S. 196, 29 L. Ed. 158.

Since a state has the right to tax personal property within its jurisdiction, even though it is employed in interstate commerce, a state tax on such proportion of the whole capital stock of a foreign sleeping-car company as the number of miles over which its cars are operated within the state bears to the whole number of miles over which its cars are operated, is valid and constitutional, though such cars run into, through, and out of the state. Pullman's Palace Car Co. v. Pennsylvania (1891) 11 Sup. Ct. 876, 141 U. S. 18, 35 L. Ed. 613; Same v. Hayward (1891) 11 Sup. Ct. 883, 141 U. S. 36, 35 L. Ed. 621, affirming Pullman's Palace Car Co. v. Com. (1884) 107 Pa. 156.

Pub. St. Mass. c. 13, § 40, providing that every telegraph company owning a line in the state shall be taxed on such proportion of the whole value of its capital stock as the length of its line in the state bears to the whole length of its line, is not inviolation of the interstate commerce clause of the constitution. Field and Harlan, JJ., dissenting. Attorney General of Massachusetts v. Western Union Telegraph Co. (1891) 11 Sup. Ct. 889, 141 U. S. 40, 35 L. Ed. 628.

Act N. Y. May 26, 1881, exacting from all corporations doing business in the state a tax proportioned to the total amount of their capital stock, without regard to what part thereof is employed within the state, or to the amount or kind of business done there, cannot be impeached on the ground of repugnancy to the commerce clause. Horn Silver-Min. Co. v. People (1892) 12 S. Ct. 403, 143 U. S. 305, 36 L. Ed. 164.

A state tax on the property of an express company within the state, the taxable value of which is determined with reference to the whole capital of the company ("Nichols Law," Rev. St. Ohio, §§ 2777–2780), is not an unconstitutional interference with interstate commerce. Mr. Justice White, Mr. Justice Field, Mr. Justice Harlan, and Mr. Justice Brown dissenting. Sanford v. Poe (1897) 17 Sup. Ct. 305, 308, 165 U. S. 194, 41 L. Ed. 683, affirming decree (1895) 69 Fed. 546, 16 C. C. A. 305, 60 L. R. A. 641.

Interstate commerce is not taxed by taxing the capital stock of a bridge company which own an interstate bridge, but does not transact any interstate business over it. Keokuk & H. Bridge Co. v. Illinois (1900) 20 Sup. Ct. 205, 207, 175 U. S. 626, 44 L. Ed. 299, affirming judgment (1898) 52 N. E. 117, 176 Ill. 267.

An unconstitutional interference with interstate commerce is not made by the tax on transfers of corporate stock imposed by Laws N. Y. 1905, c. 241, as applied to a sale in New York, between two nonresidents, of the stock of foreign railway corporations. New York ex rel. Hatch v. Reardon (1907) 27 Sup. Ct. 188, 189, 204 U. S. 152, 51 L. Ed. 415, 9 Ann. Cas. 736, affirming order (1906) 77 N. E. 970, 184 N. Y. 431, 8 L. R. A. (N. S.) 314, 112 Am. St. Rep. 628, 6 Ann. Cas. 515.

Tax imposed under Laws Colo. 1907, p. 548, on capital stock of foreign railway company, held invalid under the commerce clause. Atchison, T. & S. F. R. Co. v. O'Connor (1912) 32 Sup. Ct. 216, 217, 223 U. S. 280, 56 L. Ed. 436. Ann. Cas. 1913C, 1050.

Taxation of shares in foreign corporations owned by citizens under Burns' Ann. St. Ind. 1908, §§ 10,143, 10,233, 10,234 while shares in domestic corporations are only taxable when property of the corporation is not exempt, does not violate the commerce clause. Darnell v. State of Indiana (1912) 33 Sup. Ct. 120, 226 U. S. 390, 57 L. Ed. 267, affirming judgment (1910) 90 N. E. 769, 174 Ind. 143.

Annual tax on capital stock on domestic corporations imposed by Laws Kan. 1913, c. 135, is not a violation of the commerce clause as applied to a railroad with a paid-up capital whose lines extend into other states. Kansas City, Ft. S. & M. Ry. Co. v. Botkin (1916) 36 Sup. Ct. 261, 240 U. S. 227, 60 L. Ed. 617.

Revision Conn. 1875, tit. 12, c. 5, § 7, as amended in 1876, which provides that when only part of a railroad lies in the state it shall pay taxes on such proportion of the valuation of its capital stock, funded and floating debt, and bonds as the length of its road lying in the state bears to the entire length of the road, is not unconstitutional as laying a tax on interstate commerce. State v. New York, N. H. & H. R. Co. (1891) 60 Conn. 326, 22 Atl. 765.

St. Mass. 1903, c. 437, §§ 66, 67, 75, requiring every foreign corporation of the classes described in section 58 annually to file in the office of the Secretary of the Commonwealth a certificate of certain facts, and to pay an excise tax assessed on its capital stock by the Tax Commissioner, pursuant to Const. Mass. c. 1, § 1, art. 4, and section 58, including every foreign corporation which has a usual place of business in Massachusetts, or which is engaged, permanently or temporarily, and with or without a usual place of business therein, in the construction, erection, alteration, or repair of a building, bridge, railroad, railway, or construction of any kind are constitutional, and enforceable as applicable to a corporation engaged in interstate commerce, which has, at the same time, a place of business in the state for domestic purposes, since, though broad enough to include corporations engaged exclusively in interstate commerce, the legislative intention will not be presumed to include corporations whose usual places of business are established and maintained solely for use in interstate commerce. Attorney General v. Electric Storage Battery Co. (1905) 74 N. E. 467, 188 Mass. 239.

A foreign mining corporation maintained an office at Boston for the financial management of the company. The concern was engaged in interstate commerce, in selling its ore, and it sold ore in Massachusetts; but the office was neither necessary to nor maintained because of such sales. The company was taxed under St. Mass. 1909, c. 490, pt. 3, § 54–56, which imposes taxes upon foreign business corporations which maintain a usual place of business within the state, which taxes are based upon the par value of their capital stock. Held, that the tax upon

this company was not an interference with interstate commerce, for it could give up its office in Boston without affecting its interstate commerce, and by giving up such office it could avoid paying the tax; the tax being merely an excise tax imposed upon the privilege of maintaining an office in Massachusetts. Baltic Mining Co. v. Commonwealth (1911) 93 N. E. 831, 207 Mass. 381.

A corporation, under the statute of New York, cannot claim exemption from state taxation on its capital stock, upon the ground that the whole amount is invested in steamships engaged in foreign commerce, and in carrying the mails under contract with the United States. People v. Commissioners of Taxes and Assessments of City and County of New York (N. Y. 1866) 48 Barb. 157.

A state law imposing a tax on foreign corporations doing business in the state, based on the amount of capital used by the corporation in such state, is not a regulation of interstate commerce. People v. Wemple (1892) 131 N. Y. 64, 29 N. E. 1002 (affirming [1891] 61 Hun, 83, 15 N. Y. Supp. 446); Id. (N. Y. 1892) 30 N. E. 866.

Laws N. Y. 1880, c. 542, § 3, as amended by Laws 1890, c. 522, providing for the taxation of corporations doing business in this state, exempts corporations wholly engaged in manufacturing within the state. Held, that a foreign corporation operating a manufacturing plant, in which all its capital in the state is employed, is exempt from taxation under the statute, even though it maintains offices in the state, where samples of its product are kept, from which sales of goods manufactured in another state are made; this part of the business being exempt from taxation as being interstate commerce. People v. Roberts (1898) 51 N. Y. Supp. 487, 29 App. Div. 585, reversed (1899) 52 N. E. 1104, 158 N. Y. 168.

A state tax on a corporation's capital employed in manufacturing is not an interference with interstate commerce, though the corporations sells part of its manufactured product outside the state. People v. Roberts (1899) 52 N. E. 1104, 158 N. Y. 168, reversing (1898) 51 N. Y. Supp. 487, 29 App. Div. 585.

Imposition by a state of a tax on the stock of a foreign corporation whose business consists partly of foreign and partly of domestic commerce is not a regulation of foreign commerce, prohibited by Const. art. 1, § 10. People v. Roberts (1901) 60 N. E. 1117, 167 N. Y. 617, affirming order (1899) 55 N. Y. Supp. 950, 36 App. Div. 597.

Laws N. Y. 1905, c. 241, §§ 315, 324, imposing a tax upon transfers of stock in domestic and foreign corporations, applies only to transfers made within the state, and is not in conflict with the commerce clause. People v. Reardon (1906) 77 N. E. 970, 184 N. Y. 431, 8 L. A. (N. S.) 314, 112 Am. St. Rep. 628, affirming judgment (1906) 97 N. Y. Supp. 535, 110 App. Div. 821, and order affirmed People of State of New York v. Same (1907) 27 Sup. Ct. 188, 204 U. S. 152, 51 L. Ed. 415.

A tax on "money or capital invested in shipping" is not unconstitutional as a regulation of commerce. State v. City Council of Charleston (S. C. 1851) 4 Rich. Law, 286.

VI. INDIANS AND INDIAN TRIBES

225. Power of Congress in general.—The power of congress over commerce between Arkansas and the Indian Territory is not less than its power over commerce among the states. Hanley v. Kansas City Southern R. Co. (1903) 23 Sup. Ct. 214, 215, 187 U. S. 617, 47 L. Ed. 333.

Congress possesses plenary power over the tribal relations and lands of the Indians, and the action of Congress with reference thereto is conclusive upon the courts. Lone Wolf v. Hitchcock (1903) 23 Sup. Ct. 216, 222, 187 U. S. 553, 47 L. Ed. 299.

Reservation in Oklahoma Enabling Act June 16, 1906, § 1, of the authority of Congress to legislate as to Indians within the state, is within the power given Congress to regulate commerce with Indian tribes. Ex parte Webb (1912) 32 Sup. Ct. 769, 776, 225 U. S. 663, 56 L. Ed. 1248.

Congress has plenary authority over the tribal relations of the Indians, and the power is a political one, not subject to control by the judicial department of the government. Ex parte Dick (1905) 141 Fed. 5, 72 C. C. A. 667, reversed (1906) 26 Sup. Ct. 584, 202 U. S. 132, 50 L. Ed. 963.

The power of Congress over the whole subject of the relations of the federal government to the Indians is plenary. Leecy v. U. S. (1911) 190 Fed. 289, 111 C. C. A. 254.

Congress has from time to time exercised its power to regulate commerce with Indian tribes by enacting statutes regulating trade and intercourse with Indian tribes, including Act June 30, 1834, section 7 of which is incorporated in R. S. § 2135 (Comp. St. § 4132). U. S. v. Douglas (1911) 190 Fed. 482, 111 C. C. A. 314, 36 L. R. A. (N. S.) 1075.

The power of Congress over Indian relations is plenary, and it may prohibit and provide for the punishment of acts relating to and affecting Indians anywhere in the United States, and the location of a given territory within or without a state has nothing to do with whether it is or is not Indian country or with the application of the laws prohibiting the sale or introduction of liquor therein. United States Express Co. v. Friedman (1911) 191 Fed. 673, 112 C. C. A. 219, reversing judgment

U. S. v. United States Express Co. (D. C. 1910) 180 Fed. 1006.

The power of Congress to deal with Indians is in general political, and for that reason not subject to be controlled by the judicial department. Id.

Under the general power of congress to regulate commerce with the Indian tribes, it cannot exercise a general jurisdiction over an Indian territory within a state. U. S. v. Bailey (C. C. 1834) Fed. Cas. No. 14,495.

Under the power to regulate commerce with the Indian tribes, congress has power to prohibit all intercourse with them except under license. U. S. v. Cisna (C. C. 1835) Fed. Cas. No. 14,795.

The power of congress to regulate commerce with the Indians does not necessarily cease on their being included within the limits of a state. Id.

Where the Indians occupy a territory of very limited extent within a state surrounded by a white population, and it becomes impracticable to enforce a law prohibiting intercourse, federal jurisdiction will cease. Id.

An act admitting a state into the Union withdraws all its territory from the federal jurisdiction, except territory of Indians having treaties with the United States, which provide that without their consent such territory shall not be subjected to state jurisdiction. U. S. v. Ward (C. C. 1863) Fed. Cas. No. 16,639.

The power of congress to regulate the intercourse between the inhabitants of the United States and the Indian tribes therein is not limited by state lines or governments, but may be exercised and enforced wherever Indian tribes exist. U. S. v. Bridleman (D. C. 1881) 7 Fed. 894.

The power given to congress to regulate commerce with the Indian tribes does not include navigation with the Penobscot Indians, or, as it seems, with any of the Indian tribes whatever. It is confined to that sort of trade of which navigation constitutes no part. Moor v. Veazie (1850) 32 Me. 343, 52 Am. Dec. 655.

The right of Congress to enact laws in the interest of Indians as an independent people does not cease when an allotment is made and the allottee becomes a citizen of the United States. Walker v. Brown (Okl. 1914) 141 Pac. 681.

Congress may abrogate the provisions of an Indian treaty. Loman v. Paullin (Okl. 1915) 152 Pac. 73.

226. Meaning of "commerce with the Indian tribes."—Commerce with foreign nations means commerce between citizens of the United States and citizens or subjects of foreign governments as individuals, and so commerce with the Indian tribes means commerce with the individuals composing those tribes. U. S. v. Holliday (1865) 3 Wall. 407, 417, 18 L. Ed. 182.

227. Who are Indians.—Who shall be enrolled as citizens or members of the Cherokee Nation of Indians and permitted to participate in the distribution of its property are matters to be determined by Congress, and its determination of them is not subject to review by the courts. Henry Gas Co. v. U. S. (1911) 191 Fed. 132, 111 C. C. A. 612.

Half-breeds who never receive recognition from their white parents, but are left to be nurtured during childhood by Indian relatives, and live as savages, and are subjects of governmental care, have the status of Indians. U. S. v. Hadley (C. C. 1900) 99 Fed. 437.

228. Indian country.—See, also, note post as to "Selling or furnishing liquors to Indians or introducing liquor into Indian country," and notes under Comp. St. §§ 3980–4240, ante.

The criterion to determine what is "Indian country" is that all the country declared to be Indian country by Act June 30, 1834, remains Indian country as long as the Indians retain their original title, and, in the absence of a different provision by treaty, or act of Congress, ceases to be Indian country when that title is extinguished. Evans v. Victor (1913) 204 Fed. 361, 122 C. C. A. 531, reversing order (D. C. 1912) 199 Fed. 504.

The act of 1817, which assumed to exercise a general jurisdiction over Indian countries within a state, was unconstitutional, and of no effect. U. S. v. Bailey (C. C. 1834) Fed. Cas. No. 14,495.

Indian country is not within exclusive jurisdiction of United States under treaties with Indian tribes securing local self-government. Anonymous (C. C. 1843) Fed. Cas. No. 447.

Alaska is not "Indian country," in the technical sense of that phrase, but only so far as the introduction and disposition of spirituous liquors is concerned, and, subject to this restraint, it is open to occupation and trade generally. There is no law in the United States requiring persons to be licensed to trade in Alaska, even with the Indians. Waters v. Campbell (C. C. 1876) Fed. Cas. No. 17,264. See, also, U. S. v. Nelson (D. C. 1886) 29 Fed. 202; In re Sah Quah (D. C. 1886) 31 Fed. 327.

The Indian country is within the jurisdiction of the United States, and congress may extend all laws within the constitutional limits of municipal legislation over the same. U. S. v. Tobacco Factory (D. C. 1870) Fed. Cas. No. 16,528.

Act June 30, 1834, defining "Indian country," and regulating trade and intercourse with Indians, was not extended, propria vigore, over the territory of Alaska, upon its cession to the United States. U. S. v. Seveloff (D. C. 1872) Fed. Cas. No. 16,252. Such act as

amended March 15, 1864, was not extended over Alaska by Act July 27, 1868, extending the laws "relating to customs, commerce and navigation" over that territory. Id.

The statutes extending the laws regulating intercourse with the Indian tribes over the tribes in Utah, Nevada then being a part of Utah, do not make Nevada Indian country. U. S. v. Leathers (D. C. 1879) Fed. Cas. No. 15,581.

229. Indians as wards of the government in general.—The recognized relation between the government and the Indians is that of a superior and an inferior whereby the latter is placed under the care and control of the former. In re Heff (1905) 25 Sup. Ct. 506, 507, 197 U. S. 488, 49 L. Ed. 848.

Whether, to what extent, and for what length of time distinctly Indian communities within the borders of the United States shall be recognized and dealt with as dependent tribes, requiring the guardianship and protection of the United States, are questions to be determined by Congress, and not by the courts. U. S. v. Sandoval (1913) 34 Sup. Ct. 1, 231 U. S. 28, 58 L. Ed. 107.

The guardianship of the federal government over an Indian does not cease when allotment is made and the allottee becomes a citizen. Bowling v. U. S. (1914) 34 Sup. Ct. 659, 233 U. S. 528, 58 L. Ed. 1080, affirming decree (1911) 191 Fed. 19, 111 C. C. A. 561.

The Indians are the wards of the nation, and they occupy lands with the consent and authority of the United States under a policy by which they are to be maintained and prepared for assuming the habits of civilized life and citizenship. U. S. v. Gardner (1904) 133 Fed. 285, 66 C. C. A. 663.

The relationship of guardian and ward existing between the United States and an Indian of the Osage Tribe in Oklahoma is not affected by the mere fact that such Indian may be a citizen of the United States and of the state. Mosier v. U. S. (1912) 198 Fed. 54, 117 C. C. A. 162.

Congress has power to protect the Indians and their property. U. S. v. Gray (1912) 201 Fed. 291, 119 C. C. A. 529.

The United States has the right, as guardian and trustee of a tribe of Indians, to bring a suit to protect their rights secured by treaty. U. S. v. Winans (C. C. 1896) 73 Fed. 72.

An Indian allottee by accepting an allotment does not cease to be a ward of the government, but still remains in a condition of pupilage and dependency, the determination of all disputes concerning the allotment, its occupancy and possession, and the general control of the Indian remaining within the jurisdiction of the Secretary of the Interior. Bond v. U. S. (C. C. 1910) 181 Fed. 613.

The government is not bound to continue its guardianship over the Indian indefinitely, but may renounce the same at any time. U. S. v. Gardner (D. C. 1911) 189 Fed. 690.

Congress has dealt with the Indians as dependent people and has legislated concerning their property with a view to their protection. U. S. v. Hemmer (D. C. 1912) 195 Fed. 790, reversed (1912) 204 Fed. 898, 123 C. C. A. 194.

The United States as guardian of the Indians deal with certain distinct entities of Indians, and not with the individual Indians composing such entities. Blackfeather v. U. S. (1902) 37 Ct. Cl. 233.

The uncivilized native tribes of Alaska are wards of the government. The United States has the right, and it is its duty, to protect the property rights of its Indian wards. U. S. v. Berrigan (1905) 2 Alaska, 442.

Though the Indians are the wards of the United States, acting through executive officers pursuant to regulations promulgated under the authority of the president, pursuant to Comp. St. §§ 716, 723, yet in the absence of such regulations defining what conduct of Indians shall be deemed reprehensible and subject them to correction, it does not rest in executive discretion to administer corrective punishment, as to members of a tribe having a treaty with the United States, covenanting that bad Indians shall not be punished by the United States except pursuant to laws defining their offenses and prescribing the punishments therefor. Ex parte Bi-A-Lil-Le (Ariz. 1909) 100 Pac. 450, 12 Ariz. 150.

Indian tribes are dependents on the government of the United States, and their citizens are wards of the government, and under its protection. Tuttle v. Moore (1901) 64 S. W. 585, 3 Ind. T. 712.

Indians, while preserving their tribal relations, and residing on a reservation set apart for them by the United States, are the wards of the general government, and as such the subject of federal authority, and the power to legislate for them is exclusively in congress; and for acts committed within the limits of the reservation they are not subject to the criminal laws of the state. State v. Campbell (1893) 53 Minn. 354, 55 N. W. 553, 21 L. R. A. 169.

The Pueblo Indians of New Mexico are not wards of the government, nor are they in charge of an Indian superintendent, nor are they Indians over whom the government exercises guardianship within this section. U. S. v. Mares (N. M. 1907) 88 Pac. 1128.

The Indians are the wards of the nation and of the state, and no one can despoil them of their lands, and any sale by them must be approved by the proper officers. Seneca Nation of Indians v. Appleby (1908) 112 N. Y. Supp. 177, 127 App. Div. 770.

The Indians have been treated as the wards of the nation and this right of

guardianship has not ceased by allotment of lands. Texas Co. v. Henry (Okl. 1912) 126 Pac. 224, 34 Okl. 342.

Congress may determine, when a guardianship maintained over Indians shall cease. Brader v. James (Okl. 1916) 154 Pac. 560.

Indians are recognized as wards of the nation, and it is the duty of the court to uphold those restrictions against the alienation of their lands which the federal government has established to prevent them from impoverishing themselves. Felix v. Yaksum (1914) 137 Pac. 1037, 77 Wash. 519.

230. Status of Indian nations or tribes.—Status of Indian tribes defined. Cherokee Nation v. Georgia (1831) 5 Pet. 1, 18, 8 L. Ed. 25.

The Indian tribes have always been recognized as distinct communities, and have been permitted to a large extent to make and enforce the laws for their own government; but they are in no sense sovereign nations, and are, like all other communities within the territory of the United States, subject to the paramount authority of congress, which may, in its discretion, assume such part of the control and government of any tribe as, in its judgment, is necessary, or for the best interest of the members. Stephens v. Cherokee Nation (1899) 19 Sup. Ct. 722, 736, 174 U. S. 445, 43 L. Ed. 1041.

The political departments of the government have recognized the Eastern Band of Cherokee Indians as constituting a tribe; at least, as that word is used in the United States constitution. U. S. v. Boyd (1897) 83 Fed. 547, 27 C. C. A. 592.

Indian tribes are domestic dependent nations, and they and their members are wards of the United States. Farrell v. U. S. (1901) 110 Fed. 942, 49 C. C. A. 183.

The Indian nations are treated as sovereign communities possessing the right of free deliberation and action, but owing a qualified subjection to the United States. Ex parte Reynolds (C. C. 1879) Fed. Cas. No. 11,719.

The treaty of March 30, 1867, by which the territory of Alaska was ceded to the United States, made the uncivilized tribes therein subject to such laws and regulations as the United States might adopt in regard to them. In re Sah Quah (D. C. 1886) 31 Fed. 327.

Their tribal organization is recognized by the political department of the national government as existing, although their primitive habits and customs are largely broken into by the progress they have made towards civilization. Yet while the intercourse laws enacted by the national government are applicable to them, though they may have a local government of their own, it cannot with any reason be said that, as against the government of the United States, they are a sovereign people, or have the power which is inherent in sovereignty. That they are not sovereign is apparent from the treaties made with them by the United States, from the laws of congress enacted for their government, and from the opinions as to their status delivered at different times in the history of the country by the supreme court of the United States. Cherokee Nation v. Southern Kansas R. Co. (D. C. 1888) 33 Fed. 900.

The Cherokee Nation, while it owns the soil of its country, is under the political control of the United States, and it is dependent on it for its political rights. This, as the history of this country has so often demonstrated, is necessary for the protection of its people. Id.

The Cherokee Nation is neither a state nor territory in the sense of these words as used in the constitution of the United States. It has a qualified autonomy,—a local government; but it does not come within the meaning of a state or territory, but is a part of what is called "Indian country." Id.

An Indian who is a member of a tribe, and who dwells within the territory and jurisdiction of his tribe, is treated by the government as belonging to a separate, though dependent, political community, the members of which owe immediate allegiance thereto, and are not ordinarily dealt with by the government individually, so long as their tribal relation is preserved. An Indian, while a member of a tribe and subject to tribal jurisdiction, is not competent to take the oath required of a postmaster. (1885) 18 Op. Atty. Gen. 181.

A tribe of North American Indians is neither a state nor a nation, in the political or international sense of the terms. Roche v. Washington (1862) 19 Ind. 53, 81 Am. Dec. 376.

The sovereignty of the state having attached to the Tonawanda reservation, the Tonawanda Indians can claim no sovereignty of their own, superior to that of the state, by reason of their peculiar customs or tribal existence from immemorial times. Hatch v. Luckman (1909) 118 N. Y. Supp. 689, 64 Misc. Rep. 508.

So long as Indians live in their tribal relations, they are regarded in law and by the government as dependent governments, which, though subject to the laws of the United States and the will of Congress, are entitled to regulate their own affairs, including their domestic relations, and the laws of the state are not binding on them. Cyr v. Walker (1911) 116 Pac. 931, 29 Okl. 281, 35 L. R. A. (N. S.) 795.

A tribe of Indians within a state is not a corporation or quasi corporation. In re Narragansett Indians (1898) 40 A. 347, 20 R. I. 715.

231. Jurisdiction of states over Indians.—The Alabama statute of 1829

extending the jurisdiction of the state over the Indian Nation was not in violation of the commerce clause. Caldwell v. State (Ala. 1832) 1 Stew. & P. 430; State v. Foreman (1835) 16 Tenn. (8 Yerg.) 316.

Act Ga. Dec. 22, 1830, to prevent the exercise of assumed and arbitrary power by persons under pretext of authority from the Cherokee Indians, and providing for imprisonment of persons who should reside among such Indians within the Cherokee Nation without first obtaining authority to do so from the governor of the state, is in violation of the commerce clause. Worcester v. Georgia (1832) 31 U. S. (6 Pet.) 515, 8 L. Ed. 483.

A New York statute making it unlawful for any persons other than Indians to settle or reside on any lands belonging to or occupied by any nation or tribe of Indians within the state and providing for their summary ejectment held not to conflict with the constitution. New York ex rel. Cutler v. Dibble (1858) 21 How. 366, 368, 16 L. Ed. 149.

No state can either by its constitution or other legislation withdraw the Indians within its limits from the operation of the laws of congress regulating trade with them, notwithstanding any rights it may confer on them as electors or citizens. U. S. v. Holliday (1865) 3 Wall. 407, 419, 18 L. Ed. 182.

Neither the constitution of a state nor an act of its legislature can prevent the application of an act of congress to the Indian tribes residing in the state, but subject to the control of the general government. U. S. v. Boyd (1897) 83 Fed. 547, 27 C. C. A. 592.

An order of a state court restraining an Indian agent from removing from an Indian reservation any person not of the tribe of Indians entitled to remain thereon is beyond its jurisdiction and void, and should be disregarded. (1891) 20 Op. Atty. Gen. 245.

No state laws have any force over Indians in their tribal relations. Kobogum v. Jackson Iron Co. (1889) 43 N. W. 602, 76 Mich. 498.

Indian tribes within the state are subject to the jurisdiction and laws of the state. They are not aliens, but citizens, owing allegiance to the government, and entitled to its protection. Jackson v. Goodell (N. Y. 1822) 20 Johns. 188.

Where a tribe of Indians within a state has ceased to exercise the powers and functions of its government, and to be a tribe except in name, it is not in violation of the constitutional provision that congress shall have power to regulate commerce with Indian tribes for the state to purchase tribal lands and terminate the existence of the tribe, as provided by Pub. Laws R. I. c. 800. In re Narragansett Indians (1898) 40 A. 347, 20 R. I. 715.

Those Indian nations which reside in the limits of the states have a right to regulate their civil polity, unless there has been some affirmative act of the states incompatible with such rights. Jones v. Laney (1847) 2 Tex. 342.

232. Taxation by state or territory.—Territorial legislatures may impose a tax on cattle belonging to others than Indians, grazing on Indian reservations within the territory pursuant to a lease of the land for that purpose made by the Indians with the approval of the federal authorities. Such tax is too remote and indirect to be deemed a tax on the land or privileges of the Indians, and is not an interference with the power of Congress to deal with the Indians and their property and commercial transactions. Thomas v. Gay (1898) 18 Sup. Ct. 340, 343, 169 U. S. 264, 42 L. Ed. 740.

The tax imposed on the production of minerals by Act Okl. May 26, 1908, §§ 2, 3, and section 6 as amended by Act March 27, 1909, being Comp. Laws Okl. 1909, §§ 7702, 7703, 7706, held void as applied to lessees of Indian coal lands by authority of the United States as a tax on the business of mining which interferes with a federal instrumentality. Missouri, K. & T. Ry. Co. v. Meyer (D. C. 1913) 204 Fed. 140.

As long as the title to land lying in an Indian reserve remains in the United States, or in the Indians, or in both, the land is not taxable by the state. Douglas County Com'rs v. Union Pac. Ry. Co. (1870) 5 Kan. 615.

The provisions in the federal constitution conferring power on congress to regulate commerce among the several states and with the Indian tribes deprives the state of authority to levy taxes on property within the Indian Reservations. Foster v. Blue Earth County Com'rs (1862) 7 Minn. 140 (Gil. 84).

Laws N. Y. 1840, c. 254, authorizing the taxation and sale of Indian lands, without any reservation of the rights of Indian occupants, is unconstitutional and void. Fellows v. Denniston (1861) 23 N. Y. 420.

233. Indians as citizens.—See, also, notes under Amend. 14, § 1, post, and Comp. St. §§ 3980–4240, ante.

Citizenship is not in itself an obstacle to the exercise by Congress of its power to enact laws for the benefit and protection of tribal Indians as a dependent people. U. S. v. Sandoval (1913) 34 Sup. Ct. 1, 231 U. S. 28, 58 L. Ed. 107.

The Pueblo Indians of New Mexico were prior to the treaty of Guadalupe Hidalgo citizens of Mexico, and their rights as such were guaranteed by that treaty, so that they now hold the same relation to the United States that they formerly held to the Republic of Mexico. They are not Indian tribes within Comp. St. § 4108, and no action lies for

a penalty for settling on the lands secured to them by patent from the United States; their rights and remedies as to such lands being the same as those of other citizens owing lands. U. S. v. Santistevan (1874) 1 N. M. 583.

234. Admission of Indians to citizenship.—Neither the provisions of the Indian appropriation acts of 1896 and 1897, which authorized the Dawes commission to determine claims to citizenship in any of the Five Civilized Tribes of the Indian Territory, nor the Curtis act of June 28, 1898, authorizing the completion of the rolls of citizens in such tribes, and making them final when so completed and approved by the secretary of the interior, and by which the tribal laws and courts were abolished and superseded by those of the United States, and other comprehensive changes made in the government of the territory, is in excess of the powers of congress, or unconstitutional as an impairment of vested rights. Stephens v. Cherokee Nation (1899) 19 Sup. Ct. 722, 736, 174 U. S. 445, 43 L. Ed. 1041.

Congress could constitutionally empower the Choctaw and Chickasaw citizenship court, created by Act July 1, 1902, c. 1362, 32 Stat. 641, to review and annul, for irregularities, the judgments of the United States courts of the Indian territory in Indian citizenship cases, although, by the terms of Act June 10, 1896, c. 398, 29 Stat. 339, 340, those judgments had become final. Wallace v. Adams (1907) 27 Sup. Ct. 363, 204 U. S. 415, 51 L. Ed. 547.

Act July 1, 1902, c. 1362, 32 Stat. 641 whereby a citizenship court was created in the Indian Territory and empowered to review the final judgments of the courts of the United States under Act June 10, 1896, c. 398, 29 Stat. 339, which had been affirmed by the Supreme Court, was constitutional and valid against successful litigants who had not procured allotments before its passage. Wallace v. Adams (1906) 143 Fed. 716, 74 C. C. A. 540, judgment affirmed (1907) 27 Sup. Ct. 363, 204 U. S. 415, 51 L. Ed. 547.

The grant of citizenship to the Indians in Indian Territory was intended for their protection, and was not a renunciation by the United States of the authority which it had always exercised to adopt such measures as in its judgment were wise for the protection of the Indian in his rights. U. S. v. Allen (1910) 179 Fed. 13, 103 C. C. A. 1, reversing decree (C. C. 1909) 171 Fed. 907, and judgment affirmed upon conditions Deming Inv. Co. v. U. S. (1912) 32 Sup. Ct. 549, 224 U. S. 471, 56 L. Ed. 847, and Goat v. Same (1912) 32 Sup. Ct. 544, 224 U. S. 458, 56 L. Ed. 841, and Mullen v. Same (1912) 32 Sup. Ct. 494, 224 U. S. 448, 56 L. Ed. 834, and Heckman v. Same (1912) 32 Sup. Ct. 424, 224 U. S. 413, 56 L. Ed. 820.

That Indians, to whom lands have been allotted in severalty, are declared to be citizens of the United States, does not rendef null and void as to them, or as to the remaining portions of their tribes, restrictions upon alienation of their lands contained in the acts of congress under which allotments in severalty have been made, nor terminate the right and duty of the United States to preserve the reservation lands for the use and benefit of the Indians. U. S. v. Flournoy Live-Stock & Real-Estate Co. (C. C. 1896) 71 Fed. 576, following Beck v. Flournoy Live-Stock & Real-Estate Co. (1894) 65 Fed. 30, 12 C. C. A. 497, and U. S. v. Same (C. C. 1895) 69 Fed. 886, and Pilgrim v. Beck (C. C. 1895) Id. 895.

The government is not relieved from its duties of guardianship and protection of the members of an Indian tribe, assumed by treaty with such tribe, in consequence of the Indians becoming citizens of the United States. U. S. v. Mullin (D. C. 1895) 71 Fed. 682.

Though an Indian has become a full fledged citizen of the United States, and resides on land patented to a prior grantor in fee simple absolute, yet so long as he remains within the limits of an Indian reservation he is subject to the constitutional control of the federal government. U. S. v. Gardner (D. C. 1911) 189 Fed. 690.

235. Contracts.—Act March 3, 1847, § 3, providing that all executory contracts made with any Indian for the payment of money or goods shall be void, is unconstitutional, as interfering with transactions within a sovereign state. Hicks v. Ewhartonah (1860) 21 Ark. 106.

The Cherokee Indians have been placed upon the same footing with other tribes by an act of congress passed in pursuance of the power granted by the constitution in reference to "regulating commerce with foreign nations among the several states, and with the Indian tribes"; and their contracts made with the plaintiff to prosecute and collect claims alleged to be due them cannot be enforced against them in a state court without the consent of congress. The jurisdiction to determine such matters is lodged in the interior department. Rollins v. Cherokee Indians (1882) 87 N. C. 229.

236. Lands and funds of Indians or Indian tribes in general.—Indians as tribes could sell to the government of the discoverer, but could not sell to any other government, or its subjects, for the government by discovery acquired the exclusive pre-emption right of purchase and the right to exclude the subjects of other governments, and even its own, from acquiring title to Indian lands. Holden v. Joy (1872) 17 Wall. 211, 244, 21 L. Ed. 523.

Indian tribes are capable of taking as owners in fee simple lands by pur-

chase where the United States in form for a valuable and adequate consideration shall sell to them, and such sale is properly made by treaty. Id.

Neither the provisions of the Indian appropriation acts of 1896 and 1897 authorizing the Dawes commission to determine claims to citizenship in any of the five tribes of the Indian territory nor of the Curtis act of 1898, were unconstitutional as an impairment of vested rights, since the land and moneys of those tribes were public moneys and were not held in individual ownership. Stephens v. Cherokee Nation (1899) 19 Sup. Ct. 722, 736, 738, 174 U. S. 445, 43 L. Ed. 1041.

The lands of the Pueblo Indians in New Mexico, although held in communal fee-simple ownership by the Indians of each pueblo, are subject to the legislation of Congress, enacted in the exercise of the government's guardianship over such Indian communities and their affairs. U. S. v. Sandoval (1913) 34 Sup. Ct. 1, 231 U. S. 28, 58 L. Ed. 107.

Land reserved by a treaty or act of congress for the exclusive occupancy of Indian tribes is not a part of the public lands, and until the Indian title is extinguished no one but congress can initiate any preferential right upon or restrict the nation's power to dispose of it. King v. McAndrews (1901) 111 Fed. 860, 50 C. C. A. 29, reversing judgment (C. C. 1900) 104 Fed. 430.

The United States has power to reserve and hold in trust for Indians land and money derived from the release of their rights of occupancy of land and to manage and control their property, to furnish them with agricultural implements, houses, barns, and other permanent improvements on their lands, domestic animals, means of subsistence, and money and to provide them with physicians, farmers, schools, and teachers. U. S. v. Thurston County (1906) 143 Fed. 287, 74 C. C. A. 425.

The word "jurisdiction" as used in the ordinance of the convention of Montana preparatory to its admission as a state, agreeing that congress was to retain the absolute jurisdiction and control over the Indian lands within the Indian reservations in Montana, means the power of governing such lands, to legislate for them—the power of exercising authority over them. U. S. v. Partello (C. C. 1891) 48 Fed. 670.

The Indians of the Sac and Fox tribe residing in Tama county, Iowa, on lands purchased by them with the consent of the state, and held in trust for their benefit, are tribal Indians, and their lands constitute a reservation under the control of the United States in all matters pertaining to the domestic relations of such Indians. Such right of control in the general government arises from its relation to all the tribal Indians, as such, and is not dependent upon the title to the land upon which they reside. Peters v. Malin (C. C. 1901) 111 Fed. 244.

The aboriginal inhabitants of the country now composing the United States were not seised of titles to real estate. U. S. v. Ashton (C. C. 1909) 170 Fed. 509, appeal dismissed Bird v. Same (1911) 31 Sup. Ct. 718, 220 U. S. 604, 55 L. Ed. 605.

The government of the United States is the primary source of title to the public lands; the Indians having only a right of occupancy, which may at any time be extinguished by congress. U. S. v. Four Bottles Sour-Mash Whisky (D. C. 1898) 90 Fed. 720.

According to the public law of all the American states founded by Europeans, the aboriginal inhabitants have only a usufructuary interest in the soil, the fee simple and the eminent domain of which are in the government, and which may be granted in fee to private persons as well before as after the extinguishment of the occupation rights of the Indians. (1856) 8 Op. Atty. Gen. 256.

Congress has power to enact legislation authorizing the delivery of Seminole land patents prior to the expiration of the Seminole government, and also by legislation to modify the terms of the Seminole agreement of July 1, 1898, with reference to the school fund of that nation and authorize the Department of the Interior to assume control of the schools and the school fund. (1907) 26 Op. Atty. Gen. 340.

The evident purpose of Congress in its legislation in relation to the property rights of Indians in Alaska was to protect the natives in the possession of lands continuously claimed and occupied by them, but up to this time Congress has not fixed the terms under which they might acquire title thereto. It is evident, therefore, that the complainants in this action cannot have so much of the relief prayed for as would declare that the defendants were holding the lands in trust for their benefit, or require them to convey to the several complainants. Johnson v. Pacific Coast S. S. Co. (1904) 2 Alaska, 224.

Congress alone has the power to dispose of lands reserved by it for the use and occupation of Indians in Alaska, and all abandonments or sales thereof procured from the Indians are void. U. S. v. Berrigan (1905) 2 Alaska, 442.

By the third article of the treaty with Russia in 1867, ceding Alaska to the United States, the latter nation agreed that "the uncivilized tribes [in Alaska] will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country." Held, that the Athapaskan stock, including the native bands of the Tanana, belong to the uncivilized tribes mentioned in this clause. As such they

are entitled to the equal protection of the laws which the United States affords to similar aboriginal tribes within its borders. Id.

The lands and funds of the Indian tribes in Indian Territory are public lands and public moneys in which the members of the tribes have no vested rights, nor are the lands held by the individual allottees as tenants in common. Dukes v. Goodall (1904) 82 S. W. 702, 5 Ind. T. 145.

Since the act of June 30, 1834, the half-breed lands in Lee county, Iowa, have been subject to the laws of the state to the same extent as other lands owned by individuals. Wright v. Marsh (Iowa, 1849) 2 G. Greene, 94.

Lands not under Indian government, but held by individual Indians as tenants in common, are subject to the jurisdiction of the state or territory in which they lie. Telford v. Barney (Iowa, 1855) 1 G. Greene, 575.

The half-breed tract, after congress released the reversion to the half-breeds, became subject to the jurisdiction of Iowa; and the partition made in 1841, by the territorial court, is valid, and is conclusive evidence against all persons of legal title in those to whom the shares were allotted. Id.

The Indians have power by treaty to sell to the United States all their land absolutely; and they may also dispose of less than their whole interest therein, or attach conditions thereto. Wood v. Missouri, K. & T. Ry. Co. (1873) 11 Kan. 323.

The ultimate right to the soil occupied by Indian tribes in Louisiana is in the United States, who can grant the soil while in the possession of the natives. Breaux v. Johns (1849) 4 La. Ann. 141, 50 Am. Dec. 555.

A grant by the United States of lands occupied by Indian tribes in Louisiana conveys title to the grantees, subject to the Indian right of occupancy. Id.

In an action by the custodians of a tribal fund for conversion thereof, the fact that one of the parties charged with the conversion was originally one of the tribal representatives intrusted as a custodian of the fund does not prevent the other custodians from recovering the money as against him; it appearing that he had severed his tribal relations with the band and removed from the reservation and converted the money to his own use. Ain-Dus-Oke Shig v. Beaulieu (1906) 107 N. W. 820, 98 Minn. 98.

The district court has jurisdiction in an action by the custodians of a tribal fund in an action for its conversion outside of the reservation. Id.

The possession of a tract of land by the native Indians does not affect the validity of a patent from the state, granting the land to white persons without the consent of the Indians. Jackson v. Hudson (N. Y. 1808) 3 Johns. 375, 3 Am. Dec. 500.

The interest of Indians in reservation lands is merely one of occupancy, of which they cannot be deprived, except by voluntary cession on their part, approved by the proper civil authorities, and the ultimate title is in the state, or its grantee. Seneca Nation of Indians v. Appleby (1908) 112 N. Y. Supp. 177, 127 App. Div. 770.

Indian lands within reservations are not subject to state laws as to real estate, so long as the Indian title is not extinguished and the Indians maintain their tribal relations or remain under the protection and control of the state. Terrance v. Crowley (1909) 116 N. Y. Supp. 417, 62 Misc. Rep. 138.

The discovery of land held by the Indians, followed by possession, vested in the sovereign of the discovering subjects the absolute title to the soil subject to the Indians' right of occupation, which right could only be extinguished by their voluntary consent unless forfeited by the laws of war, and such sovereign had the exclusive right to extinguish their right of occupation, and the right of occupation of the Cayuga Nation was extinguished by their sale to the state in 1795 of their lands for a price agreed upon between the state and tribe, so that the tribe has no legal claim against the state for an amount based upon the difference between the price paid to it and the amount for which the state subsequently sold the lands. People ex rel. Cayuga Nation v. Commissioners of Land Office (1911) 131 N. Y. Supp. 937, 74 Misc. Rep. 154.

The possession of land by Indians does not affect the validity of a grant by the government to a state, made without the consent of the Indians. Veeder v. Guppy (1854) 3 Wis. 502.

237. **Allotment of lands.**—See note post. See, also, Comp. St. § 4195 et seq., and notes thereunder.

Congress, under its power over Indians and to control federal courts, could take away, even as to pending cases as it did by Act June 25, 1910, jurisdiction of the federal district courts to establish equitable title of heirs of an Indian allottee and vest the power of ascertaining heirs in the Secretary of the Interior. Hallowell v. Commons (1916) 36 Sup. Ct. 202, 239 U. S. 506, 60 L. Ed. 409.

Claimants of citizenship in the Indian Territory who secured judgments in their favor which were final when rendered, and took possession of and demanded suitable lands as their allotments, before their judgments were made reviewable, acquired no vested rights in such judgments against subsequent legislation enacted before the lands were allotted to them. Wallace v. Adams (1906) 143 Fed. 716, 74 C. C. A. 540, judgment affirmed (1907) 27 Sup. Ct. 363, 204 U. S. 415, 51 L. Ed. 547.

The plan of the United States gov-

ernment in dissolving the Five Civilized Tribes of Indians and distributing their lands in severalty was a great governmental project, having for its object the social and industrial advancement of the Indians, and the various acts pertaining thereto must be construed in consonance with such purpose and not merely as real estate transactions. The relation of the government to the Indians is not to be measured by the law governing the ordinary relation of guardian and ward, nor are the limitations imposed on the alienation of land governed by the strict rules of law relating to grantor or grantee, but the United States, by virtue of its peculiar relationship to the Indians and to prevent the policy to be worked out through such legislation from being defeated may enforce such restrictions on alienation in the courts although retaining neither a legal nor an equitable estate in the lands after the allotment. U. S. v. Allen (1910) 179 Fed. 13, 103 C. C. A. 1, reversing decrees (C. C. 1909) 171 Fed. 907, and judgment affirmed upon conditions Deming Inv. Co. v. U. S. (1912) 32 Sup. Ct. 549, 224 U. S. 471, 56 L. Ed. 847, and Goat v. Same (1912) 32 Sup. Ct. 544, 224 U. S. 458, 56 L. Ed. 841, and Mullen v. Same (1912) 32 Sup. Ct. 494, 224 U. S. 448, 56 L. Ed. 834, and Heckman v. Same (1912) 32 Sup. Ct. 424, 224 U. S. 413, 56 L. Ed. 820.

Lapse of time and allotment of portions of their reservations in severalty do not terminate the tribal relations of Indians, nor remove them from the supervision and control of the interior department of the government. U. S. v. Flournoy Live-Stock & Real-Estate Co. (C. C. 1896) 71 Fed. 576.

The executive order of the President in 1857, setting apart lands bordering Commencement Bay in Oregon Territory for the Puyallup Tribe of Indians, did not grant right or title to shore lands, which could only be done by Congress for some national purpose; and in any event under the provision of the treaty of Dec. 26, 1854, 10 Stat. 1132, vesting in the President power to change and relocate the reservation, the subsequent allotment and conveyance in severalty of lands therein in accordance with a survey made under Act May 29, 1872, c. 233, 17 Stat. 186, in which the shore line was meandered and the lands allotted extended only to line of ordinary high tide, had the effect of extinguishing rights of the tribe as a community to tide lands, if any such previously existed. U. S. v. Ashton (C. C. 1909) 170 Fed. 509, appeal dismissed Bird v. Same (1911) 31 Sup. Ct. 718, 220 U. S. 604, 55 L. Ed. 605.

The allotment of lands in severalty to Indians residing on the Umatilla reservation in Oregon, under Act March 3, 1885, c. 319, 23 Stat. 340, did not terminate their tribal relations, and so long as the same continue the marriage relations of such Indians are to be determined by their tribal customs, and not by the laws of the state, and their marriage or divorce in accordance with such customs is valid everywhere and for all purposes. Yakima Joe v. To-Is-Lap (C. C. 1911) 191 Fed. 516.

Under the treaties with the Five Civilized Tribes in Indian Territory and the reservations in Oklahoma enabling act (Act June 16, 1906, c. 3335, § 1, 34 Stat. 267) Congress has full power to legislate with respect to lands allotted to such Indians and their disposition by the allottees and its laws relating to such matters are paramount. Bell v. Cook (C. C. 1911) 192 Fed. 597.

Act March 11, 1904 (Comp. St. § 4192), authorizing the Secretary of Interior to grant a right of way over allotments of minor Creek Indians for pipe lines, held constitutional. Texas Co. v. Henry (Okl. 1912) 126 Pac. 224, 34 Okl. 342.

Plenary authority to fix the conditions under which restrictions from allotments to Creek Indians shall be removed is vested in Congress. Cornelius v. Yarbrough (Okl. 1914) 144 Pac. 1030.

So long as the United States recognizes the national character of Indians and they are under the protection of treaties and laws of Congress, their property is outside the operation of state laws, and the state courts have no jurisdiction over controversies concerning the titles to Indian allotments while the same are held in trust by the United States. Smith v. Mosgrove (Or. 1908) 94 Pac. 970.

238. Alienation of lands in general.—Congress has power to limit the alienation of lands by an Indian. Taylor v. Brown (1893) 13 Sup. Ct. 549, 147 U. S. 640, 37 L. Ed. 313; U. S. v. Hemmer (D. C. 1912) 195 Fed. 790, decree reversed Hemmer v. U. S. (1912) 204 Fed. 898, 123 C. C. A. 194.

The United States, having disposed, under the general land laws, of the lands in the Mille Lac Indian reservation not filed upon, instead of selling them as "pine" or "agricultural" lands, and holding the proceeds in trust for the Indians, as was contemplated by the act of Jan. 14, 1889, under which they were ceded to the United States, is liable to the Indians for the resulting loss, although such wrongful disposal was in obedience to directions given in the joint resolutions of Congress of Dec. 19, 1893 (28 Stat. 576), and May 27, 1898 (30 Stat. 745), which were not adopted in the exercise of the administrative power of Congress over the property and affairs of dependent Indian wards, but were intended to and did assert an unqualified power of disposal over the lands as the absolute property of the government. U. S. v. Mille Lac Band of Chippewa Indians (1913) 33 Sup. Ct. 811, 229 U. S. 498, 57 L. Ed. 1299.

A title acquired by an Indian allottee through an unrestricted patent issued conformably to the Indian appropriation act of March 3, 1905, could not, by reason of any state statute, inure to the benefit of the grantee in a deed made by an allottee while the restrictions on alienation imposed by the act of February 8, 1887, c. 119, § 5, Comp. St. § 4201, were still in force, rendering such deed "absolutely null and void." Monson v. Simonson (1913) 34 Sup. Ct. 71, 231 U. S. 341, 58 L. Ed. 260.

Complainant having purchased and taken possession of lands awarded an Indian allottee, a freedman, and enrolled as a citizen of the Creek Nation, notwithstanding Act June 28, 1898, c. 517, 30 Stat. 507, declaring that the land should not be transferred by the allottee, nor be liable for his contract obligation, the complainant by such contract in possession did not acquire such a vested right in the land as required observance, or prevented Congress from making its prohibition more effectual, or imposing others, which it did by Act March 1, 1901, c. 676, 31 Stat. 863, and Act June 30, 1902, c. 1323, 32 Stat. 503, declaring that lands should not be alienated except with the approval of the Secretary of the Interior, at any time prior to five years from the ratification of the Creek Agreement, and that any agreement or conveyance violative of its provisions should be void, not susceptible of ratification, nor subject to any rule of estoppel. Harris v. Hardridge (1909) 166 Fed. 109, 92 C. C. A. 93, affirming order (1907) 104 S. W. 826, 7 Ind. T. 532.

It is within the power of Congress to enlarge the period within which an Indian allottee is prohibited from alienating his land beyond that imposed when the allotment was made, so long as the land is held by the allottee, although in the meantime he may have been made a citizen. U. S. v. Allen (1910) 179 Fed. 13, 103 C. C. A. 1, reversing decrees (C. C. 1909) 171 Fed. 907, and judgment affirmed upon conditions Deming Inv. Co. v. U. S. (1912) 32 Sup. Ct. 549, 224 U. S. 471, 56 L. Ed. 847, and Goat v. Same (1912) 32 Sup. Ct. 544, 224 U. S. 458, 56 L. Ed. 841, and Mullen v. Same (1912) 32 Sup. Ct. 494, 224 U. S. 448, 56 L. Ed. 834, and Heckman v. Same (1912) 32 Sup. Ct. 424, 224 U. S. 413, 56 L. Ed. 820.

Congress cannot impose restrictions on the alienation of land allotted to an Indian after the restrictions imposed by prior laws have expired and both the equitable and legal title has become vested in the allottee, and acts general in their terms should not be construed as intended to apply to such cases. Bartlett v. U. S. (1913) 203 Fed. 410, 121 C. C. A. 520.

The laws of the state of Kansas have no application to the mode of alienation of lands granted to the Miami Indians, so long as the title remains in the patentees. Mungosah v. Steinbrook (C. C. 1875) Fed. Cas. No. 9,924.

It is competent for the United States by treaty, notwithstanding any state law, to prescribe conditions to the conveyance of Indian lands, which constitute the law of the title; but on the extinguishment of the original Indian title, and the removal of the Indians from the state, the laws of the state would come into operation, except so far as modified by the existing treaties and laws of the United States. Love v. Pamplin (C. C. 1884) 21 Fed. 755.

All members of either of the Five Civilized Tribes in Indian Territory became and remain citizens, unaffected by the fact that by subsequent legislation their tribal existence was continued to await the final disposition of the tribal property, or that restrictions still exist on the power to alienate their lands after allotment in severalty; and such being their political and civil status, with full power to maintain suits to protect their rights, the United States occupies no such relationship of trust or guardianship toward them as entitles it to maintain in their behalf suits in its own name, to which they are not parties to cancel conveyances made by them of their allotted lands. U. S. v. Allen (C. C. 1909) 171 Fed. 907, decree reversed (1910) 179 Fed. 13, 103 C. C. A. 1, judgment affirmed upon conditions Deming Inv. Co. v. U. S. (1912) 32 Sup. Ct. 549, 224 U. S. 471, 56 L. Ed. 847, and Goat v. Same (1912) 32 Sup. Ct. 544, 224 U. S. 458, 56 L. Ed. 841, and Mullen v. Same (1912) 32 Sup. Ct. 494, 224 U. S. 448, 56 L. Ed. 834; Heckman v. Same (1912) 32 Sup. Ct. 424, 224 U. S. 413, 56 L. Ed. 820.

It is within the power of Congress to impose restrictions on the alienation of the lands of Indian allottees although restrictions imposed by prior legislation have expired by limitation. U. S. v. Shock (C. C. 1911) 187 Fed. 870.

Congress, acting as parens patriæ of the Indians of the Creek Nation, may provide that lands patented to the nation under treaty may be platted, and the lots sold for the benefit of the Indians. Tuttle v. Moore (1901) 64 S. W. 585, 3 Ind. T. 712.

Congress had power to authorize the Secretary of the Interior by law to grant a right of way in the nature of an easement for pipe lines over the allotment of a minor Creek Indian, whose allotment contained restrictions against alienation, for the conveyance of oil and gas, on payment of due consideration for the benefit of the allottee. Texas Co. v. Henry (Okl. 1912) 126 Pac. 224, 34 Okl. 342.

Restrictions placed by act of Congress upon the alienation by Indians of lands allotted to them in severalty, and embodied in the patents issued for such

lands, are pursuant to a general and beneficent policy of the government for the protection of the Indians, and are valid. Nelson v. John (1906) 86 Pac. 933, 43 Wash. 483.

239. Lease of lands.—The rights of lessees of the heir of an Indian to whom title to land was granted by an Indian treaty cannot be devested by any subsequent action of the lessor, or of congress, or of the executive departments. Jones v. Meehan (1899) 20 Sup. Ct. 1, 12, 175 U. S. 1, 44 L. Ed. 49.

The state legislature has not power to authorize leases of Indian lands. Buffalo, R. & P. R. Co. v. Lavery (1894) 75 Hun, 396, 27 N. Y. Supp. 443.

The plenary power of Congress over the tribal relations and lands of the Osage Indians could not be so limited by the act of March 3, 1905, extending a certain approved oil and gas lease, as to preclude Congress by the enactment of June 28, 1906, from providing how and to whom the oil and gas royalties of the allotted lands should be paid. Leahy v. Indian Territory Illuminating Oil Co. (Okl. 1913) 135 Pac. 416.

240. Execution of process on Indian land or reservation.—The process of all the courts of the territory could have been legally executed anywhere within the limits defined by the territorial laws, whether on the Indian or the military reservations, except only on those Indian reservations which by express treaty were not to be included within the limits or jurisdiction of any state or territory; and the state courts have like power, subject to the laws of the state, to execute their process on any Indian or government reservation, within the limits defined by state laws, except only on such Indian reservations as were to be excluded from the limits of any state by treaty in force at the date of the admission of Kansas into the Union. McCracken v. Todd (1862) 1 Kan. 148.

Entry on Indian lands by an officer to levy an execution issued by a state court on property of one not an Indian, but residing on the Indian land by consent of the tribe, is not interdicted by the provision of the enabling act of Montana that all Indian lands in the state "shall remain under the absolute jurisdiction and control of the congress of the United States." Stiff v. McLaughlin (1897) 48 Pac. 232, 19 Mont. 300.

241. Telephone lines in Indian Territory or reservation.—See, also, Comp. St. §§ 4181, 4191, and notes thereunder.

Congress having provided, by section 4191, Comp. St., for the granting of franchises for telephone lines in the Indian Territory, in the exercise of its power to regulate commerce among the states and with the Indian tribes, such legislation necessarily annulled any grants previously made by one of the Indian nations which conflict therewith. Muskogee Nat. Tel. Co. v. Hall (1902) 118 Fed. 882, 55 C. C. A. 208.

Laws N. Y. 1902, c. 296, entitled "An act to amend the Indian law in relation to the erection of poles and wires on the Tonawanda reservation," is not unconstitutional and void, as conflicting with Comp. St. §§ 4100, 4128, 4191, 4194, 4240, 5016. Jemison v. Bell Tel. Co. of Buffalo (1906) 79 N. E. 728, 186 N. Y. 493, affirming judgment (1905) 95 N. Y. Supp. 1137, 109 App. Div. 911.

242. Construction of highway across reservation.—See, also Comp. St. § 4194.

The state has power to construct a highway across an Indian reservation. France v. Erie R. Co. (N. Y. 1874) 2 Hun, 513, 5 Thomp. & C. 12; O'Meara v. Commissioners of Allegany (N. Y. 1874) 3 Thomp. & C. 235.

243. Removal of Indians to or from reservations.—The military power may be employed to effect the removal of a person from an Indian reservation in a proper case, but the person thus removed cannot be held by the military authorities. U. S. v. Crook (C. C. 1879) Fed. Cas. No. 14,891.

Indians at peace with the government cannot be arrested and held for the purpose of removing them to and confining them on a reservation in the Indian Territory. Id.

244. Administration of estates.—Without the assent of the general government, the state probate courts cannot administer upon the property or credits of Indians who were members of a tribe which maintained toward the United States its tribal relation. U. S. v. Payne (C. C. 1877) Fed. Cas. No. 16,014.

On the death of a tribal Indian residing upon a reservation, his property does not become subject to the laws of distribution of the state in which the reservation is situated, but descends in accordance with the custom of his tribe; and hence the courts of the state have no jurisdiction to appoint an administrator for his estate, there being no property within its jurisdiction to be administered. Y-Ta-Tah-Wah v. Rebock (C. C. 1900) 105 Fed. 257.

A probate court, the territorial jurisdiction of which may extend over an Indian reservation, has no jurisdiction to administer upon the estate of an Indian, a member of the tribe to which such reservation belongs, and residing thereon. U. S. v. Shanks (1870) 15 Minn. 369 (Gil. 302).

The private property of the Seneca Indians is not within the jurisdiction of the laws respecting administration. Dole v. Irish (N. Y. 1848) 2 Barb. 639.

245. Guardianship of infant Indians.—A court of the state of Iowa has no jurisdiction to appoint a guardian for the persons of minors of the Sac and Fox tribe of Indians who reside on the reservation of the tribe in Tama coun-

ty; and an order making such an appointment, and directing the guardian to place and keep his wards in the industrial school established by the United States, thus removing them from the reservation and from the immediate control of their parents and relations, was void, and conferred no authority upon the guardian over such minors. Peters v. Malin (C. C. 1901) 111 Fed. 244.

In view of the cession by the legislature of Iowa to the United States of jurisdiction over the reservation in Tama county occupied by a portion of the Sac and Fox tribe of Indians, and the acceptance of such cession by congress in the general Indian appropriation act of June 10, 1896 (29 Stat. 331), a district court of the state of Iowa has no jurisdiction to appoint a guardian for the person of a minor of such tribe residing on the reservation. In re Lelah-puc-ka-chee (D. C. 1899) 98 Fed. 429.

Where, on an application of one claiming to be the guardian of infant heirs owning lands in the state, he filed an authenticated copy of his appointment as such guardian by a probate court of the state, the fact that such wards belonged to an Indian tribe, recognized as a distinct nation, does not invalidate such appointment. Farrington v. Wilson (1872) 29 Wis. 383.

246. Actions by or against Indians.—A United States citizen who has become a citizen of an Indian nation by marriage with one on whom citizenship in the nation has been conferred by the legislature of the nation, but who has ceased to be such owing to a withdrawal by the legislature of all rights of citizenship possessed by his wife, may enforce his claim against one of that nation in the federal courts. Roff v. Burney (1897) 18 Sup. Ct. 60, 61, 168 U. S. 218, 42 L. Ed. 442.

A state court has no jurisdiction over a partition suit in relation to lands of the Shawnee Indians, which have never been conveyed with the approval of the secretary of the interior. Ex parte Forbes (C. C. 1870) Fed. Cas. No. 4,921.

The fact that tribal Indians residing on a reservation within a state under charge of Indian agents are not subject to the laws of the state as to their property rights does not prevent such Indians from maintaining actions for the protection of their rights either of person or property, in the courts of the state or in federal courts therein, where such courts have jurisdiction by reason of the questions involved; and where such an action has been brought, and the court has acquired jurisdiction over the parties, the effect of the death of the plaintiff upon the action is determined by the state statutes. Y-Ta-Tah-Wah v. Rebock (C. C. 1900) 105 Fed. 257.

The Indians of Alaska may come into the courts on equal terms with citizens, and maintain whatever rights the laws vest in them. Johnson v. Pacific Coast S. S. Co. (1904) 2 Alaska, 224.

A state court has jurisdiction of an action on a contract made in the Indian Territory between residents thereof, one of whom (defendant) is a Cherokee Indian, the other (plaintiff) a white man married in the state, according to its laws, to a Cherokee woman, and carrying on a mercantile business in the territory, defendant having been served with summons and appeared in the case; though, under the Cherokee law, one marrying into the Cherokee Nation, as provided in that law, becomes a member of the Nation, and though there is no Indian law authorizing a noncitizen to do business in the Cherokee Nation. Stevenson v. Christie (1897) 42 S. W. 418, 64 Ark. 72.

The fact that property belongs to Indians is not sufficient to place it beyond the jurisdiction of the state courts; and, if the subject-matter of a suit is within the jurisdiction of the court, it makes no difference whether the parties are Indians or white men. Swartzel v. Rogers (1865) 3 Kan. 374.

The fact that a party is an Indian does not exclude him from the jurisdiction of a state court, while within the state. Rubideaux v. Vallie (1873) 12 Kan. 28.

A tribal Indian, whether a citizen or not, may sue in the courts of the state to redress any wrong committed outside of the reservation against his person or property. Bem-way-bin-ness v. Eshelby (1902) 91 N. W. 291, 87 Minn. 108.

An action by tribal Indians in the district court of the county of Red Lake to recover the possession of an undivided interest in a section of land lying outside of any Indian reservation, and which is in possession of citizens of the state, is within the jurisdiction of the district court. Id.

In an action by tribal representatives against one charged with a conversion of the tribal fund, it is unnecessary to allege that neither the custodians nor the beneficiaries of the fund had selected or designated the lands which were to be purchased with such fund. Ain-Dus-Oke Shig v. Beaulieu (1906) 107 N. W. 820, 98 Minn. 98.

Individual Indians who were directed by the tribe to act as custodians of a tribal fund are the proper parties to sue for conversion thereof outside of the reservation. Id.

An Indian may maintain ejectment to recover possession of land, reserved to him by treaty, of which he has been dispossessed. Coleman v. Doe (1844) 12 Miss. (4 Smedes & M.) 40.

A tribal Indian, placed upon a reservation under a government treaty, is not incapacitated from suing in the courts of Missouri for the enforcement

of his rights under a contract entered into off the reservation, and while sojourning in the state. Whirlwind v. Von der Ahe (1896) 67 Mo. App. 628.

An Indian who has appropriated water in the public lands of the United States may maintain an action for the diversion of that water in the same cases as any other person. Lobdell v. Hall (1867) 3 Nev. 507.

The right of the Seneca Indians to the use and occupation of the Cottarangus reservation belongs to the individuals of the tribe in their collective capacity. They have no corporate name in which they can maintain an action at law for the possession of such lands, or for damages to them, or for the use of them; nor will an action lie in the name of the tribe. But one or more of the tribe may maintain a bill in behalf of themselves and the other Indians interested to protect their rights, and to obtain compensation in damages for trespasses committed on their lands. Strong v. Waterman (N. Y. 1845) 11 Paige, 607.

A suit cannot be maintained by and in the name of an Indian tribe, in relation to tribal rights, without express statutory authority. Onondaga Nation v. Thacher (1899) 61 N. Y. Supp. 1027, 29 Misc. Rep. 428, judgment affirmed (1900) 65 N. Y. Supp. 1014, 53 App. Div. 561, and (1901) 62 N. E. 1098, 169 N. Y. 584.

An action in ejectment on behalf of a tribe of Indians cannot be maintained by an individual member of such tribe for himself and others who come in and contribute to the expenses, in absence of statutory authority, since the Indian tribes are regarded as wards of the state, and, generally speaking, are possessed of only such rights to appear and litigate in courts of justice as are conferred on them by statute. Johnson v Long Island R. Co. (1900) 56 N. E. 992, 162 N. Y. 462, reversing order (1899) 61 N. Y. Supp. 1139, 42 App. Div. 626.

Where a complaint in ejectment, brought on behalf of a tribe of Indians by an individual member of such tribe, conceded that the tribe had no legal capacity to sue, and no corporate name by which they could institute suit, such complaint did not state a cause of action, since, if such tribe had no cause of action, no member thereof could sue for their benefit. Id.

In the absence of statutory authority, a suit in equity to recover personalty cannot be maintained by individual members of an Indian tribe in its behalf. Onondaga Nation v. Thacher (1901) 62 N. E. 1098, 169 N. Y. 584, affirming judgment Onondaga Nation v. Thatcher (1900) 65 N. Y. Supp. 1014, 53 App. Div. 561, which affirms Onondaga Nation v. Same (1899) 61 N. Y. Supp. 1027, 29 Misc. Rep. 428.

The Indians of a tribe, not being citizens of the state, though not treated as independent foreign nations, and not being subject to jurisdiction of the state to the same extent as its citizens, neither the tribe nor its individual members may sue to recover the property of the tribe without special authority. Seneca Nation of Indians v. Appleby (1909) 89 N. E. 835, 196 N. Y. 318, reversing judgment (1908) 112 N. Y. Supp. 177, 127 App. Div. 770.

Under the provisions of the act admitting South Dakota into the Union that the state should disclaim the right and title to lands within the state held by any Indian tribes, and that until the title shall have been extinguished by the United States the same shall remain subject to the jurisdiction and control of Congress, and Const. art. 22, by which the state on its part entered into the required compact with the United States, the state courts are precluded from exercising jurisdiction in actions involving the possession or right to possession of Indian reservation lands, such as an action of trespass brought by a tribal Indian against an Indian agent to recover damages for the latter's act in destroying fences erected by the former on land within the reservation. Peano v. Brennan (1906) 106 N. W. 409, 20 S. D. 342.

If an Indian sustaining tribal relations hires work done, he may be sued for the price. Gho v. Julles (1890) 1 Wash. T. 325.

In the absence of a federal statute or treaty to the contrary, a state court has jurisdiction of an action on contract by a white man against an Indian belonging to a tribe and a particular reservation. Stacy v. La Belle (1898) 75 N. W. 60, 99 Wis. 520, 41 L. R. A. 419, 67 Am. St. Rep. 879.

247. Offenses by or against Indians in general.—Where the country occupied by Indians is not within the limits of any of the states, Congress may, by law, punish any offense committed there, whether the offender be a white man or an Indian. U. S. v. Rogers (1846) 4 How. 567, 572, 11 L. Ed. 1105.

Independently of any question of title, the federal courts have jurisdiction of crimes committed by Indians on a reservation, for, regarding them as the wards of the nation, the United States has full power to pass such laws as may be necessary to their full protection, and to punish all offenses committed against them or by them within the reservation. U. S. v. Thomas (1894) 14 Sup. Ct. 426, 428, 151 U. S. 577, 38 L. Ed. 276, denying motion for new trial (C. C. 1891) 47 Fed. 488.

The admission of California into the Union under the act of September 9, 1850, "on an equal footing with the original states," without any express reservation by Congress of governmental jurisdiction over the public lands contained within her borders, did not qualify the former federal jurisdiction

over the Indian country included therein, so as to withdraw from the United States and confer upon the state authority to punish offenses committed by or against Indians upon an Indian reservation. Donnelly v. U. S. (1913) 33 Sup. Ct. 449, 228 U. S. 243, 57 L. Ed. 820, Ann. Cas. 1913E, 710.

Congress cannot punish for an offense within the Indian territory in a state which has no relation to the Indians, and which cannot affect their commerce. U. S. v. Bailey (C. C. 1834) Fed. Cas. No. 14,495.

The United States has jurisdiction over the intercourse with tribal Indians, and congress may prohibit and provide for the punishment of acts relating to or affecting such intercourse anywhere in the United States. U. S. v. Barnhart (C. C. 1884) 22 Fed. 285.

In the exercise of its constitutional power to regulate intercourse with the Indian tribes, congress may define and punish crimes committed by white men upon the person or property of an Indian, and vice versa, within, as well as without, the limits of a state. U. S. v. Martin (D. C. 1883) 14 Fed. 817.

Congress has constitutional power to pass laws punishing Indians for crimes and offenses committed against the United States. U. S. v. Cha-To-Kah-Na-Pe-Sha (Super. Ct. Ark. 1824) Fed. Cas. No. 14,789a. See, also, U. S. v. Kagama (1886) 6 Sup. Ct. 1109, 118 U. S. 375, 30 L. Ed. 228; Hollister v. U. S. (1906) 145 Fed. 773, 76 C. C. A. 337.

248. Indians as subject to criminal laws of state.—Indians belonging to a tribe maintaining a tribal organization on a reservation within the limits of a state are amenable to the state laws for offenses off the reservation, and within the limits of the state. U. S. v. Sa-Coo-Da-Cot (C. C. 1870) Fed. Cas. No. 16,212.

Unless otherwise provided by treaty with an Indian tribe, or by the act admitting the state into the Union, the criminal laws of the state, except so far as restricted by the authority of congress "to regulate commerce with the Indian tribes," extend to all crimes committed on an Indian reservation by persons other than tribal Indians. State v. Campbell (1893) 53 Minn. 354, 55 N. W. 553, 21 L. R. A. 169.

Indians, while preserving their tribal relations, and residing on a reservation set apart for them by the United States, are the wards of the general government, and as such the subject of federal authority, and the power to legislate for them is exclusively in congress; and for acts committed within the limits of the reservation, they are not subject to the criminal laws of the state. Id.

249. Selling or furnishing liquors to Indians or introducing liquors into Indian country.—See, also, Comp. St. § 4137, and notes thereunder.

Act Feb. 12, 1862, making it penal to sell spirituous liquors to an Indian under charge of an Indian agent, though sold outside of any reservation and within the limits of a state, held to be constitutional. U. S. v. Holliday (1865) 70 U. S. (3 Wall.) 407, 416, 18 L. Ed. 182.

A stipulation in a treaty with an Indian tribe that laws prohibiting the introduction of liquors in Indian country should apply to the territory ceded by the treaty held to be valid and operative without legislation, and binding upon the courts, though the ceded territory was within an organized county of a state. U. S. v. Forty-Three Gallons of Whisky (1876) 93 U. S. 188, 194, 23 L. Ed. 846.

Congress may prohibit the introduction of liquors into territory in proximity to an Indian reservation as well as into the reservation. Id.

Congress was not given the power, by the commerce clause of the Constitution, to penalize by section 4137, Comp. St., the sale of liquor within a state to an Indian to whom an allotment had been made, in view of sections 3951, 4203, Comp. St., since this emancipation from federal control is not affected by the fact that the statute provides that the Indian title shall not be alienated or incumbered for twenty-five years, when a final patent shall issue, and stipulates that the grant of citizenship shall not impair their right to tribal or other property. In re Heff (1905) 25 Sup. Ct. 506, 512, 197 U. S. 488, 49 L. Ed. 848.

The stipulation in the agreement of May 1, 1893, between the United States and the Nez Perce Indians, that the federal laws prohibiting the introduction of intoxicating liquors into the Indian country shall, for a period of 25 years, apply to the lands thereby ceded to the United States and to those retained by the Indians and to those allotted to them in severalty, was a valid regulation, based upon the treaty-making power of the United States and upon the power of Congress to regulate commerce with the Indians, and was not an invasion of the sovereignty of the state of Idaho, which had by Act July 3, 1890, c. 656, 26 Stat. 215, been admitted into the Union upon an equal footing with the other states. Dick v. U. S. (1908) 28 Sup. Ct. 399, 208 U. S. 340, 52 L. Ed. 520.

Congress, in the exercise of its power to regulate commerce with Indian tribes, may, when creating a new state out of territory inhabited by Indians, in which territory introduction of liquors is by law prohibited, legislate so as to preserve those laws to the extent of excluding interstate traffic in intoxicating liquors that would be inconsistent with the prohibition. Ex parte Webb (1912) 32 Sup. Ct. 769, 779, 225 U. S. 663, 56 L. Ed. 1248.

Congress, in the exercise of its con-

trol over the Indian tribes, could validly prohibit, as it did by Act Jan. 30, 1897, c. 109, 29 Stat. 506, as supplemented by section 2 of New Mexico Enabling Act June 20, 1910, c. 310, 36 Stat. 557, the introduction of intoxicating liquors into the Indian pueblos in the state of New Mexico, the legislative and executive branches of the federal government having by a uniform course of action long regarded and treated such pueblos as dependent communities, entitled to the aid and protection of the government like other Indian tribes. U. S. v. Sandoval (1913) 34 Sup. Ct. 1, 231 U. S. 28, 58 L. Ed. 107.

The power to protect the government's Indian wards against the evils of intemperance is sufficiently comprehensive to enable Congress, when securing the cession of part of an Indian reservation within a state, to prohibit the sale of intoxicants upon the ceded lands if, in its judgment, that is reasonably essential to the protection of the Indians residing on the unceded lands. Perrin v. U. S. (1914) 34 Sup. Ct. 387, 232 U. S. 478, 58 L. Ed. 691.

The prohibition against the sale of intoxicating liquors upon any of the ceded lands embraced in an agreement ratified and confirmed by Congress by Act Aug. 15, 1894, c. 290, 28 Stat. 286, by which the Yankton tribe of Sioux Indians ceded and relinquished to the United States all the unallotted lands in a reservation in South Dakota, does not transcend the power of Congress as covering an unnecessarily extensive territory, where the reservation originally embraced 400,000 acres, and the lands which had been allotted to the Indians in severalty are in small tracts scattered throughout the ceded district, and aggregate nearly 100,000 acres, occupied by more than 1,500 Indians. Id.

Under its power to regulate commerce with the Indian tribes congress had authority to pass the act of January 30, 1897 (Comp. St. § 4137), which declares it to be a crime punishable by fine and imprisonment to sell spirituous liquors to any Indian to whom an allotment of lands has been made while the title thereto is held in trust by the government. Farrell v. U. S. (1901) 110 Fed. 942, 49 C. C. A. 183.

Act 1897, c. 109, is valid under the power to regulate commerce with Indian tribes, and, so far as the introduction of liquor from other states is concerned, it is valid as a regulation of interstate commerce. United States Exp. Co. v. Friedman (1911) 191 Fed. 673, 112 C. C. A. 219.

It was within the power of Congress to enact Act Jan. 30, 1897, making it an offense to sell liquor to any Indian, a ward of the government under charge of any Indian superintendent or agent. Katzenmeyer v. U. S. (1915) 225 Fed. 523, 140 C. C. A. 507.

It is the duty of congress to regulate the intercourse with the Indians, and to that end they may provide for punishing the giving of spirituous liquors to them on or off a reservation within or without a state. U. S. v. Earl (C. C. 1883) 17 Fed. 75.

Comp. St. § 4137, is authorized under the commerce clause, and is applicable to a citizen allottee. U. S. v. Torrey Cedar Co. (C. C. 1904) 154 Fed. 263, affirmed (1907) 27 Sup. Ct. 697, 206 U. S. 467, 51 L. Ed. 1139.

Congress has power, not only to prohibit the introduction of liquor into an Indian reservation, or into what is in fact Indian country, but also to prohibit the introduction of liquor into adjoining country, not in the Indian country, within the limits of an organized state. Gearlds v. Johnson (C. C. 1911) 183 Fed. 611.

Congress has the power to prohibit the traffic of spirituous liquors between the Indian tribes, or members thereof, within as well as without the limits of the state. U. S. v. Shaw-Mux (D. C. 1873) Fed. Cas. No. 16,268.

Alaska is an "Indian country," in the legal sense that congress, in relation thereto, is the sole lawmaking power, and therefore congress has power to enact that intoxicating liquors shall not be manufactured or sold as a beverage in Alaska, and to authorize the president of the United States to make such regulations as may be necessary to carry out the provisions of the law. U. S. v. Nelson (D. C. 1886) 29 Fed. 202.

R. S. § 2139, as amended, and Comp. St. § 4137, are police regulations, and can be enforced only as to land within the exclusive territorial jurisdiction of the United States; and an indictment thereunder will not lie for taking liquor upon land within a state which was allotted in severalty to an Indian under Act Feb. 8, 1887, c. 119, 24 Stat. 389, prior to the amendatory act of May 8, 1906, c. 2348, 34 Stat. 182, and which is held in trust by the United States, such land being no longer "Indian country," the effect of the allotment having been to make it, as well as the allottee, subject to the jurisdiction and laws of the state, and to exclude therefrom the police powers of the United States, which have no relation to the protection of its title to, or rights in, the land as trustee. U. S. v. Sutton (D. C. 1908) 165 Fed. 253, judgment reversed (1909) 30 Sup. Ct. 116, 215 U. S. 291, 54 L. Ed. 200.

Congress could enact so much of section 4137, Comp. St. as makes criminal the introduction of intoxicating liquor upon an allotment within the limits of the Yakima Indian reservation, in Washington, made and patented to the Indian allottee under section 4195, et seq., Comp. St., by which the title is held in trust by the government, and is not alienable by the allottee without the consent of the United States, since, under Washington Enabling Act Feb. 22, 1889, c. 180, § 4, 25 Stat. 677, ju-

risdiction and control of Indian lands remain in the United States. Id.

Since by the enabling act by which Oklahoma was admitted into the Union (Act June 16, 1906, c. 3335, 34 Stat. 267) the state was left with jurisdiction of the introduction of intoxicating liquors from Oklahoma into that part of the state known as Indian Territory, and was authorized to control the sale of liquor through its own courts, section 4137, Comp. St., was no longer in force in that part of Oklahoma formerly known as Indian Territory after its admission as a state so as to prevent the introduction therein of liquor from Arkansas in interstate commerce. U. S. v. United States Express Co. (D. C. 1910) 180 Fed. 1006, judgment reversed United States Exp. Co. v. Friedman (1911) 191 Fed. 673, 112 C. C. A. 219.

The provisions of the New Mexico Enabling Act of June 20, 1910, reserving the power to regulate the liquor traffic with the Pueblo Indians, are void. U. S. v. Sandoval (D. C. 1912) 198 Fed. 539.

Congress may prohibit the introduction of intoxicating liquors on land within the exterior boundaries of an Indian reservation, though title thereto has been extinguished, and may also prohibit intoxicants on lands near a reservation and on railroad rights of way through a reservation. U. S. v. Twelve Bottles of Whiskey (D. C. 1912) 201 Fed. 191.

Congress, in enacting Comp. St. § 4137, exercised its power to regulate commerce. Id.

It is within the police power of the state to make it an offense to sell liquor to any person of Indian descent, though he is a citizen of the United States and of the state. People v. Gebhard (1908) 115 N. W. 54, 151 Mich. 192, 14 Detroit Leg. N. 885.

Gen. St. Minn. 1894, § 2002, which forbids the sale of intoxicating liquors to any Indian, without regard to the question whether he has or has not severed his tribal relations, adopted the habits of civilization, and become a citizen of the United States, by complying with the provisions of the United States "Land in Severalty Act," of February 8, 1887, is a valid exercise of the police power of the state. State v. Wise (1897) 72 N. W. 843, 70 Minn. 99.

Comp. St. Mont. div. 4, § 160, which provides that "if any person shall, directly or indirectly, sell intoxicating liquor, whether fermented, vinous, or spirituous * * * to any Indian or half-breed Indian" in that territory, he shall be guilty of a felony, etc., does not conflict with R. S. § 2139 (Comp. St. § 4136a), providing that "every person (except an Indian in the Indian country) who sells * * * any spirituous liquors or wine to any Indian under the charge of any Indian agent, shall be punished," etc., nor with Const. art. 1, § 8, subd. 3, which provides that congress shall have power to regulate commerce with the Indian tribes, but is merely an exercise of police power, and is constitutional. Territory v. Guyott (1889) 9 Mont. 46, 22 Pac. 134.

Rem. & Bal. Code Wash. § 6288, prohibiting the sale of intoxicating liquors to Indians, was a valid exercise of police power within the state's power to prohibit the sale of liquor to classes of persons peculiarly liable to be injured, morally or physically, by its use; Indians being within such classes. State v. Manlock (Wash. 1910) 109 Pac. 47.

The Legislature in the exercise of its police power may prohibit the sale of liquor to Indians or those of Indian descent. State v. Nicolls (Wash. 1910) 112 Pac. 269.

CITED WITHOUT DEFINITE APPLICATION

Groves v. Slaughter (1841) 15 Pet. 449, 464, 503, 504, 509, 511, 10 L. Ed. 800; Cross v. Harrison (1853) 16 How. 164, 199, 14 L. Ed. 889; Hays v. Pacific Mail Steamship Co. (1854) 17 How. 596, 599, 15 L. Ed. 254; Allen v. Newberry (1858) 21 How. 244, 246, 248, 16 L. Ed. 110; Maguire v. Card (1858) 21 How. 248, 250, 16 L. Ed. 118; Waring v. Mobile (1868) 8 Wall. 110, 121, 19 L. Ed. 342; Cox v. Lott (1870) 12 Wall. 204, 214, 20 L. Ed. 370; Ward v. Maryland (1870) 12 Wall. 418, 426, 20 L. Ed. 449; Slaughterhouse Cases (1872) 16 Wall. 36, 63, 21 L. Ed. 394; Morgan v. Parham (1872) 16 Wall. 471, 472, 473, 21 L. Ed. 303; Cannon v. New Orleans (1874) 20 Wall. 577, 22 L. Ed. 417; U. S. v. Reese (1875) 92 U. S. 214, 249, 23 L. Ed. 563; Boston Beer Co. v. Massachusetts (1877) 97 U. S. 25, 33, 24 L. Ed. 989; New York v. Tax & A. Com'rs (1881) 104 U. S. 466, 467, 26 L. Ed. 632; Ex parte Kan-gi-shun-ca (1883) 3 Sup. Ct. 396, 399, 109 U. S. 556, 27 L. Ed. 1030; Elk v. Wilkins (1884) 5 Sup. Ct. 41, 44, 112 U. S. 94, 28 L. Ed. 643; U. S. v. Kagama (1886) 6 Sup. Ct. 1109, 1111, 118 U. S. 375, 30 L. Ed. 228; Fire Ass'n of Philadelphia v. New York (1886) 7 Sup. Ct. 108, 112, 119 U. S. 110, 30 L. Ed. 342; Leisy v. Hardin (1890) 10 Sup. Ct. 681, 690, 135 U. S. 100, 34 L. Ed. 128 (dissenting opinion); O'Neil v. Vermont (1892) 12 Sup. Ct. 693, 700, 144 U. S. 323, 36 L. Ed. 450 (dissenting opinion); St. Louis v. Western Union Tel. Co. (1893) 13 Sup. Ct. 485, 486, 148 U. S. 92, 37 L. Ed. 380; Pollock v. Farmers' Loan & Trust Co. (1895) 15 Sup. Ct. 673, 679, 157 U. S. 429, 39 L. Ed. 759; Dooley v. U. S. (1901) 22 Sup. Ct. 62, 69, 183 U. S. 151, 46 L. Ed. 128; The Roanoke (1903) 23 Sup. Ct. 491,

189 U. S. 185, 47 L. Ed. 770; Fullerton v. Texas (1905) 25 Sup. Ct. 221, 222, 196 U. S. 192, 49 L. Ed. 443; Cox v. Same (1906) 26 Sup. Ct. 671, 673, 202 U. S. 446, 50 L. Ed. 1099; Chicago, B. & Q. Ry. Co. v. Babcock (1907) 27 Sup. Ct. 326, 204 U. S. 585, 51 L. Ed. 636; Armour Packing Co. v. U. S. (1908) 28 Sup. Ct. 428, 435, 209 U. S. 56, 52 L. Ed. 681; Southern Pac. Co. v. Kentucky (1911) 32 Sup. Ct. 13, 18, 222 U. S. 63, 56 L. Ed. 96; Johannessen v. U. S. (1912) 32 Sup. Ct. 613, 615, 225 U. S. 227, 56 L. Ed. 1066; Hawley v. Malden (1914) 34 Sup. Ct. 201, 202, 232 U. S. 1, 58 L. Ed. 477; Wheeler-Stenzel Co. v. National Window Glass Jobbers' Ass'n (1907) 152 Fed. 864, 81 C. C. A. 658, 10 L. R. A. (N. S.) 972; Southern Ry. Co. v. King (1908) 160 Fed. 332, 87 C. C. A. 284 (affirmed [1910] 30 Sup. Ct. 594, 217 U. S. 524, 54 L. Ed. 868); Atlantic Coast Line R. Co. v. Macon Grocery Co. (1909) 166 Fed. 206, 92 C. C. A. 114 (affirmed [1910] 30 Sup. Ct. 184, 215 U. S. 501, 54 L. Ed. 300); Cardwell v. American River Bridge Co. (C. C. 1884) 19 Fed. 562, 565 (affirmed [1885] 5 Sup. Ct. 423, 113 U. S. 205, 28 L. Ed. 959); Chappell v. Waterworth (C. C. 1889) 39 Fed. 77, 79; In re Rahrer (C. C. 1890) 43 Fed. 556, 557, 10 L. R. A. 444 (reversed [1891] 11 Sup. Ct. 865, 140 U. S. 545, 35 L. Ed. 572); Toledo, A. A. & N. M. Ry. Co. v. Pennsylvania Co. (C. C. 1893) 54 Fed. 730, 732, 19 L. R. A. 387; U. S. v. Debs (C. C. 1894) 64 Fed. 724, 749; Brooks v. Southern Pac. Co. (C. C. 1906) 148 Fed. 986 (affirmed [1908] 28 Sup. Ct. 141, 207 U. S. 463, 52 L. Ed. 297); Howard v. Illinois Cent. R. Co. (C. C. 1907) 148 Fed. 997 (affirmed [1908] 28 Sup. Ct. 141, 207 U. S. 463, 52 L. Ed. 297); Columbus Iron Steel Co. v. Kanawha & M. R. Co. (C. C. 1909) 171 Fed. 713 (affirmed [1910] 178 Fed. 261, 101 C. C. A. 621); Oregon R. & Nav. Co. v. Campbell (C. C. 1909) 173 Fed. 957 (affirmed [1913] 33 Sup. Ct. 1026, 230 U. S. 525, 57 L. Ed. 1604); Philadelphia & R. Ry. Co. v. Interstate Commerce Com'n (C. C. 1909) 174 Fed. 687; Kansas City Southern Ry. Co. v. Quigley (C. C. 1910) 181 Fed. 190; The E. A. Shores, Jr. (D. C. 1896) 73 Fed. 342, 347; U. S. v. Moline (D. C. 1897) 82 Fed. 592, 593; U. S. v. Whepley (D. C. 1903) 125 Fed. 616; U. S. v. Johnson (D. C. 1910) 177 Fed. 313 (affirmed [1911] 31 Sup. Ct. 627, 221 U. S. 488, 55 L. Ed. 823); Murray v. Pacific Coast S. S. Co. (D. C. 1913) 207 Fed. 688, 690.

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

Notes of Decisions

1. Naturalization—Term defined.
2. —— Privilege or right.
3. —— Power of Congress in general.
4. —— When and how persons may be naturalized in general.
5. —— Admission of state.
6. —— Concurrent powers and authority of states.
7. —— Nonexercise of power of Congress.
8. —— Conferring jurisdiction on state courts.
9. —— Uniform operation of laws among the states.
10. —— Expatriation.
11. —— Construction and operation of statutes.
12. Bankruptcy—Power of Congress in general.
13. —— "Subject of bankruptcies."
14. —— Power as exclusive in general.
15. —— Legislation of territories under act of Congress.
16. —— Validity and uniformity of enactments.
17. —— Powers and authority of states in general.
18. —— Nonexercise of power of Congress.
19. —— Suspension, supersedure, or annulment of state laws.
20. —— Jurisdiction of courts.
21. —— Construction, operation, and validity of statutes.

1. Naturalization—Term defined.—As to the admission or exclusion of aliens based on the commerce clause with this and other clauses, see notes under clause 3, ante.

Naturalization signifies the act of adopting a foreigner and clothing him with all the privileges of a native citizen or subject. Boyd v. Nebraska (1892) 12 Sup. Ct. 375, 382, 143 U. S. 135, 36 L. Ed. 103 (reversing State v. Boyd [1891] 31 Neb. 682); (1859) 9 Op. Atty. Gen. 357.

2. —— Privilege or right.—Admission to naturalization is a privilege, not a right, and Congress may determine who shall be entitled to become citizens and the terms and conditions on which citizenship may be acquired. In re Freeze (D. C. 1911) 189 Fed. 1022.

3. —— Power of congress in general.—Congress has exclusive jurisdiction over the subject of naturalization. Passenger Cases (1849) 48 U. S. (7 How.) 283, 556, 12 L. Ed. 702; Inhabitants of Hampden County v. Morris (1911) 93 N. E. 579, 207 Mass. 167.

Naturalization is a national right and privilege, rather than a state right; Congress having exclusive power to provide for naturalization. U. S. v. Rhodes (C. C. 1866) Fed. Cas. No. 16,151; Gardina v. Board of Registrars of Jefferson County (Ala. 1909) 48 So. 788.

That provision giving congress the power to establish a uniform rule of naturalization was intended to provide a rule to be executed by the states. Ex parte Knowles (1855) 5 Cal. 301

Weaver v. Fegely (1857) 29 Pa. St. 27, 70 Am. Dec. 151.

Congress did not exceed its power over the naturalization of aliens by providing in Act June 29, 1906, § 15 (Comp. St. § 4374), for the orderly cancellation, after full notice and hearing, of naturalization certificates which have been procured fraudulently or illegally. Luria v. U. S. (1913) 34 Sup. Ct. 10, 231 U. S. 9, 58 L. Ed. 101. See U. S. v. Wong Kim Ark (1898) 18 Sup. Ct. 456, 477, 169 U. S. 649, 42 L. Ed. 890, declaring that the power to naturalize is a power to confer, and not a power to take away. And see in this connection Osborn v. Bank of United States (1824) 22 U. S. (9 Wheat.) 738, 827, 6 L. Ed. 204.

This clause vested an exclusive power in Congress, and no power remained in the states to change or vary the rule of naturalization Congress established. Minneapolis v. Reum (1893) 56 Fed. 576, 580, 6 C. C. A. 31.

4. —— **When and how persons may be naturalized in general.**—Congress is not limited to the exercise of the constitutional power of enacting general laws whereby individuals may be naturalized, but may naturalize a number of persons collectively, as by treaty or by statute in special cases. Boyd v. Nebraska (1892) 12 Sup. Ct. 375, 382, 143 U. S. 135, 36 L. Ed. 103; In re Rodriguez (D. C. 1897) 81 Fed. 337, 351.

Congress has power to determine when and under what circumstances an alien may become a citizen. In re Young (D. C. 1912) 198 Fed. 715.

5. —— **Admission of state.**—No state can make a foreigner or any other person a citizen of the United States. Scott v. Sandford (1856) 60 U. S. (19 How.) 393, 15 L. Ed. 691; Lanz v. Randall (C. C. 1876) Fed. Cas. No. 8,080. A state may put such person upon a footing with its own citizens, as to all rights and privileges enjoyed by them within its dominion and by its laws, but that will not make him a citizen of the United States. Scott v. Sandford (1856) 60 U. S. (19 How.) 393, 405, 15 L. Ed. 691.

When a state is admitted into the Union all residents thereof who are endowed by congress with political rights and privileges, or who, with the consent of congress, are permitted to participate in the formation of the new state, become citizens of the United States by adoption, even though, being foreigners, they have never complied with the requirements of the naturalization laws. Boyd v. Nebraska (1892) 12 Sup. Ct. 375, 388, 143 U. S. 135, 36 L. Ed. 103, reversing (1891) 31 Neb. 682, 48 N. W. 739. See, also, Desbors's Case (La. 1812) 2 Mart. 185; U. S. v. Laverty (La. 1813) 2 Mart. 733. And see Opinions of Justices (1878) 68 Me. 589.

An alien minor who had resided in Texas less than six months before the admission of that state into the Union, and was not a resident at the time of its Declaration of Independence, and had never taken the oath of allegiance to Texas, was not a citizen of Texas at the time of its admission, or, irrespective of the citizenship of his parents, "one of the people of Texas" who became citizens of the United States without naturalization. Contzen v. U. S. (1900) 21 Sup. Ct. 98, 179 U. S. 191, 45 L. Ed. 148, affirming Coutzen v. U. S. (1898) 33 Ct. Cl. 475. See, also, Osterman v. Baldwin (1867) 73 U. S. (6 Wall.) 116, 18 L. Ed. 730; Baker v. Westcott (1889) 11 S. W. 157, 73 Tex. 129; Williams v. Bennett (1892) 20 S. W. 856, 1 Tex. Civ. App. 498.

Residents and inhabitants of the territory of Nebraska at the time of its admission as a state to the Union, who had previous thereto declared before a court of record their intention to become citizens of the United States, were, by the enabling act admitting Nebraska into the Union, created naturalized citizens of the United States. Bahuaud v. Bize (C. C. 1901) 105 Fed. 485.

6. —— **Concurrent powers and authority of states.**—The individual states, it seems, since the adoption of the constitution of the United States, have not authority to pass naturalization laws. Chirac v. Chirac (1817) 15 U. S. (2 Wheat.) 259, 4 L. Ed. 234.

The states have concurrent authority with the United States to naturalize aliens. Collet v. Collet (C. C. 1792) Fed. Cas. No. 3,001, 2 Dall. 294, 1 L. Ed. 387. Though the states have concurrent authority, such authority cannot be exercised so as to contravene the acts of congress. Id.

The Pennsylvania act of 1878 providing for the naturalization of foreigners, was repealed by implication on the adoption of the new state constitution, which contains provisions in relation to resident foreigners inconsistent with that act; and, as the new constitution makes no provision on the subject, an attempted naturalization under the state laws is void, irrespective of the question whether the naturalization laws of the United States do not operate to exclude all state jurisdiction. U. S. v. Villato (C. C. 1797) Fed. Cas. No. 16,622.

An attempted naturalization under the Pennsylvania act of 1789, after the adoption of the new state constitution, held ineffectual. Id.

The exercise of the power by the state governments to pass naturalization laws is incompatible with the grant of power to congress. Golden v. Prince (C. C. 1814) Fed. Cas. No. 5,509.

An alien could not become a citizen either of a state or of the United States, by compliance with state nat-

uralization laws, after congress passed a naturalization law. Matthew v. Rae (C. C. 1829) Fed. Cas. No. 9,284.

A state has power to give capacity to aliens to hold lands within it. Beard v. Rowan (C. C. 1831) Fed. Cas. No. 1,181.

Every state in general has power to prescribe terms on which it will admit aliens to citizenship. In re Trum (D. C. 1912) 199 Fed. 361.

Although, since congress has exercised the power, conferred by the federal constitution, of establishing a uniform rule of naturalization, no state can pass an act by which aliens may be naturalized, yet each state has the undoubted right to enact laws regulating the descent of, and succession to, property within its limits, and consequently to permit an alien to inherit it. Etheridge v. Malempre (1851) 18 Ala. 565.

Laws Me. 1893, c. 310, which prohibits any court established by this state, other than the supreme judicial and superior courts, from entertaining any jurisdiction over the naturalization of aliens, is not in violation of any provision of the constitution. In re Gilroy (1895) 88 Me. 199, 33 Atl. 979.

St. Mass. 1855, c. 28, restricting the courts of this commonwealth and their clerks from receiving applications or entertaining jurisdiction for the naturalization of aliens, under the acts of congress, is not contrary to the constitution. In re Stephens (1855) 70 Mass. (4 Gray) 559.

Act N. J. March 26, 1895, providing that no person shall be naturalized as a citizen of the United States by any court of New Jersey within 30 days next preceding any election, does not violate this clause. Rushworth v. Judges of Inferior Court of Common Pleas of Hudson County (1895) 58 N. J. Law, 97, 32 Atl. 743.

Under the constitution the power to regulate naturalization is vested in congress, and since congress has legislated upon the subject states have no power to act in regard to it. Lynch v. Clarke (N. Y. 1844) 1 Sandf. Ch. 583.

7. —— Nonexercise of power of congress.—A state cannot pass naturalization laws notwithstanding congress has failed to legislate on the subject. Golden v. Prince (C. C. 1814) Fed. Cas. No. 5,509.

The power conferred on congress to establish a rule of naturalization did not deprive the states of their authority to naturalize before action by congress in regard thereto, but, when congress passed an act on the subject, it became exclusive over the entire subject, and involved the manner as well as the details of the subject of naturalization. In re Ramsden (N. Y. 1857) 13 How. Prac. 429.

8. —— Conferring jurisdiction on state courts.—Congress, in the exercise of its power, may confer jurisdiction upon the courts of a state of naturalization proceedings involving admission to citizenship in the United States, and may constitutionally provide for the punishment of false swearing in such a proceeding. Holmgren v. U. S. (1909) 30 Sup. Ct. 588, 589, 217 U. S. 509, 54 L. Ed. 861, 19 Ann. Cas. 778.

Under this clause Congress may empower state courts to admit qualified aliens to citizenship, and such courts may exercise the power without legislative authority from the states which created them. Levin v. U. S. (1904) 128 Fed. 826, 63 C. C. A. 476.

Congress has under this clause plenary power to pass naturalization laws, and to bestow, if it chooses, on state tribunals, authority concurrent with the federal courts to admit aliens to citizenship, in pursuance to the laws of Congress. Ex parte Bridges (C. C. 1875) Fed. Cas. No. 1862. See, also, Houston v. Moore (1820) 5 Wheat. 27, 5 L. Ed. 19; Spratt v. Spratt (1830) 4 Pet. 393, 7 L. Ed. 897; Morgan v. Dudley (1858) 57 Ky. (18 B. Mon.) 693, 68 Am. Dec. 735.

Congress, after prescribing a uniform rule of naturalization, may give to the state courts jurisdiction of cases arising under it. State v. Penney (1850) 10 Ark. (5 Eng.) 621.

R. S. § 1994 (Comp. St. § 3948), providing that any woman married to a citizen, and who might herself be naturalized, shall be deemed a citizen, is a uniform rule, even though congress has provided for the naturalization of aliens, both male and female, by a judicial proceeding. Dorsey v. Brigham (1898) 52 N. E. 303, 177 Ill. 250, 42 L. R. A. 809, 69 Am. St. Rep. 228.

Exclusive jurisdiction over the subject of the naturalization of foreigners is vested by the constitution in congress, with full power to constitute all necessary tribunals, and make and establish all laws and regulations requisite and proper for the exercise of that jurisdiction. There is, consequently, no implied obligation, on the ground of convenience or efficiency, on the part of the states, to furnish tribunals or enact laws to aid in the administration of a system of naturalization which it is the exclusive privilege and appropriate duty of the national government to establish and enforce. Beavins' Petition (1856) 33 N. H. 89.

Although the state statutes relative to fees in naturalization proceedings and the statute prohibiting courts from naturalizing on certain days, etc., cannot be taken as conferring a power to naturalize which the state legislatures cannot bestow, yet they operate in this manner: The power of legislation upon this subject existed in the states prior to the constitution; the legislation would have been executed in the ordinary tribunals of justice; the

power has been superseded by an act of congress passed under the constitution; congress adopted the state tribunals as the agents to exercise the power, as they would have performed it before; the concurrence of the state legislatures, expressed or fairly implied, adds the sanction of the state to this delegation of power. In re Ramsden (N. Y. 1857) 13 How. Prac. 429.

Under this clause and Act June 29, 1906, § 3 (Comp. St. § 4351), giving certain state courts jurisdiction to naturalize aliens, the jurisdiction of the state courts is exercised as a function of the national government and the procedure is controlled by Congress. State v. Superior Court of King County (Wash. 1913) 134 P. 916.

9. —— **Uniform operation of laws among the states.**—See Darling v. Berry (C. C. 1882) 13 Fed. 659.

10. —— **Expatriation.**—See notes under Comp. St. §§ 3955, 3959, ante.

11. —— **Construction and operation of statutes.**—See notes under Comp. St. §§ 4351–4384, ante.

12. **Bankruptcy—Power of congress in general.**—Congress has authority to establish a complete bankruptcy system covering every case, or a system covering only certain classes of cases, so long as the system is uniform throughout the United States, but, so long as congress does not act, the several states may establish their own systems of insolvency or bankruptcy, and when congress acts and establishes a system, the federal court act is the supreme law of the land as to the cases governed by it. In re F. A. Hall Co. (D. C. 1903) 121 Fed. 992; Hurley v. Devlin (D. C. 1907) 151 Fed. 919. The power comprehends both voluntary and involuntary bankruptcy. In re Klein (C. C. 1843) Fed. Cas. No. 7,865, reversing (D. C. 1843) Fed. Cas. No. 7,866. It is not limited to acts similar in scope to those in force in England at the adoption of the constitution, but is plenary over the subject of bankruptcy. Silverman's Case (D. C. 1870) Fed. Cas. No. 12,855. And generally all uniform legislation tending to promote the distribution of an insolvent's estate among his creditors, and his discharge from their demands, is within the power of congress. In re Silverman (D. C. 1870) Fed. Cas. No. 12,855.

Congress has power to destroy any lien upon property of the bankrupt, whether created by contract, by statute, or by judgment. In re Jordan (D. C. 1873) Fed. Cas. No. 7,514; Id. (D. C. 1874) Fed. Cas. No. 7,515; Bank of Columbia v. Overstreet (1873) 73 Ky. (10 Bush) 148.

Congress may enact that liens acquired within a specified period shall through bankruptcy proceedings be applied to the common benfit of all creditors of a bankrupt. In re Martin (1912) 193 Fed. 841, 113 C. C. A. 627, rehearing denied (1912) 201 Fed. 31, 119 C. C. A. 363. And Congress may provide that bankruptcy shall dissolve a contract of lease. In re Arnstein (D. C. 1899) 101 Fed. 706, 708.

The provisions of subdivision "f," § 67, of the bankruptcy law (Comp. St. § 9651) are valid as an exercise of the grant in the constitution to confer on the courts of the United States exclusive jurisdiction of matters in bankruptcy. In re Tune (D. C. 1902) 115 Fed. 906.

Bankruptcy acts as supreme law of the land, see notes under art. 6, cl. 2, post.

13. —— **Subject of bankruptcies."**—"Subject of bankruptcies," as used in this clause, include the distribution of the property of a debtor among his creditors, and his discharge from contracts and legal liabilities. Pope v. Title Guaranty & Surety Co. (1913) 140 N. W. 348, 152 Wis. 611.

14. —— **Power as exclusive in general.**—The power of congress "to establish uniform laws on the subject of bankruptcies throughout the United States" is not exclusive, and state laws on that subject are valid where they do not conflict with acts of congress relating thereto. Ogden v. Saunders (1827) 25 U. S. (12 Wheat.) 213, 6 L. Ed. 606; Fisk v. Montgomery (1869) 21 La. Ann. 446.

Congress have exclusively the power to pass a bankrupt law. Golden v. Prince (C. C. 1814) Fed. Cas. No. 5,509. But the power to establish uniform bankrupt law is exclusive only to the extent it is actually exercised. Lace v. Smith (R. I. 1912) 82 A. 268.

The rights and remedies of a trustee in bankruptcy are created and defined by Congress, which under this clause has exclusive control of the subject of bankruptcy, with the one qualification that its laws thereon shall be uniform throughout the United States. The rights given and the remedies thus created by federal statute may be enforced against townships or their boards of trustees. Nor is the state's permission by legislative enactment, or otherwise, necessary to the maintenance of an action of this character, or to make townships or their boards of trustees liable thereon. Painter v. Napoleon Tp. (D. C. 1907) 156 Fed. 289, 293.

The power of Congress under this clause is not exclusive; and, except when Congress has actually exercised its power upon the same subject, the several states may pass insolvent or bankrupt laws. Martin v. Berry (1869) 37 Cal. 208.

15. —— **Legislation of territories under act of congress.**—Provision in this clause as to laws on the subject of bankruptcies does not qualify the plenary legislative power of congress over the territories, and hence R. S. § 1851

(Comp. St. § 3438), providing that the "legislative power of every territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States," authorized the legislature of Wyoming to pass Rev. St. Wyo. § 118, declaring that any creditor accepting a dividend from the property of an assignor shall release him from all further liability on the claim. Downes v. Parshall (1891) 3 Wyo. 425, 26 Pac. 994.

16. —— Validity and uniformity of enactments.—The bankrupt act of 1841 (5 Stat. 440), relating to voluntary bankruptcy, was constitutional. In re Klein (1843) 42 U. S. (1 How.) 277, note; Id. (C. C. 1843) Fed. Cas. No. 7,865, reversing (D. C. 1843) Fed. Cas. No. 7,866; State Bank v. Wilborn (1845) 6 Ark. (1 Eng.) 35; Lalor v. Wattles (1846) 8 Ill. (3 Gilman) 225; Loud v. Pierce (1845) 25 Me. (12 Shep.) 233; Thompson v. Alger (1847) 53 Mass. (12 Metc.) 428; Cutter v. Folsom (1845) 17 N. H. 139; Kunzler v. Kohaus (N. Y. 1843) 5 Hill, 317; Morse v. Hovey (N. Y. 1846) 1 Barb. Ch. 404; McCormick v. Pickering (1850) 4 N. Y. (4 Comst.) 276.

The bankruptcy act of 1867 was uniform in its operations and constitutional. In re Beckerford (C. C. 1870) Fed. Cas. No. 1,209; U. S. v. Pusey (C. C. 1872) Fed. Cas. No. 16,098; In re California Pac. R. Co. (D. C. 1874) Fed. Cas. No. 2,315; Dozier v. Wilson (1890) 84 Ga. 301, 10 S. E. 743; Bank of Columbia v. Overstreet (1873) 73 Ky. (10 Bush) 150.

Bankruptcy Act 1898 (Comp. St. § 9585 et seq.) is an act passed in accordance with this clause. Hanover Nat. Bank v. Moyses (1902) 22 Sup. Ct. 857, 186 U. S. 181, 46 L. Ed. 1113; In re Britannia Min. Co. (1913) 203 Fed. 450, 121 C. C. A. 395; In re Blanchard (D. C. 1907)161 Fed. 793.

Act March 3, 1873 (17 Stat. 577), was uniform and constitutional. In re Smith (C. C. 1876) Fed. Cas. No. 12,-996; Id. (D. C. 1873) Fed. Cas. No. 12,986; In re Everitt (D. C. 1873) Fed. Cas. No. 4,579.

Act June 22, 1874, § 17, providing for compositions, was constitutional and valid. In re Reiman (C. C. 1875) Fed. Cas. No. 11,675 (affirming [D. C. 1874] Fed. Cas. No. 11,674; Id. (D. C. 1874) Fed. Cas. No. 11,673.

The provisions of the bankrupt law giving the United States priority of payment out of the effects of the bankrupt is a valid exercise of the powers conferred on congress by the constitution. U. S. v. Fisher (1805) 6 U. S. (2 Cranch) 358, 2 L. Ed. 304.

The uniformity required is geographical, and not personal; and no limitation is imposed upon congress as to the classification of persons who are to be affected by such laws, provided only the laws shall have uniform operation throughout the United States. Leidigh Carriage Co. v. Stengel (1899) 95 Fed. 637, 37 C. C. A. 210.

The requirement of the constitution that acts of bankruptcy shall be uniform throughout the United States had its origin in the fear that the powers conferred on Congress would be exercised by the party in control of the national government to oppress that section of the country which for the time being was opposed to that party, and when Congress legislates on the subject it must apply a uniform system and establish a law embracing the entire subject-matter of civil law. Thomas v. Woods (1909) 173 Fed. 585, 97 C. C. A. 535, 26 L. R. A. (N. S.) 1180, 19 Ann. Cas. 1080, decree vacated (1910) 178 Fed. 1005, 101 C. C. A. 664.

Act March 3, 1873, in so far as it attempts to exempt property specified in the state laws in a different manner or with different effect from that of the laws themselves, was in violation of the constitutional requirement of uniformity of the bankrupt laws throughout the United States. In re Deckert (C. C. 1874) Fed. Cas. No. 3,728.

A bankrupt law is not unconstitutional merely because its operations may be wholly different in different states. Darling v. Berry (C. C. 1882) 13 Fed. 659.

A bankrupt law is not rendered unconstitutional by reason of the want of uniformity in the exemptions allowed in different states. In re Jordan (D. C. 1873) Fed. Cas. No. 7,514.

Congress exercised its power to establish uniform laws on the subject of bankruptcy by enacting Bankr. Law July 1, 1898 (Comp. St. § 9585 et seq.). In re Fellerath (D. C. 1899) 95 Fed. 121, 122; In re Farmers' Supply Co. (D. C. 1909) 170 Fed. 502; In re J. W. Zeigler Co. (D. C. 1911) 189 Fed. 259.

Bankr. Act 1898, § 67, subsec. "f" (Comp. St. § 9651), applies to attachments sued out in state as well as in federal courts. No exception was made in favor of creditors prosecuting their claims against a bankrupt in state courts. Wood v. Carr (1903) 73 S. W. 762, 115 Ky. 303, 24 Ky. Law Rep. 2144.

17. —— Powers and authority of states in general.—A state has authority to pass a bankrupt law, provided it does not impair the obligation of contracts, and provided there be no federal act in force to establish a uniform system of bankruptcy conflicting therewith. Sturges v. Crowninshield (1819) 4 Wheat. 122, 192, 4 L. Ed. 529.

While a state insolvent law which discharges both the person of the debtor and his future acquisitions of property is not a law impairing the obligations of contracts as to debts contracted subsequent to its passage, the certificate of discharge cannot be pleaded in bar

of an action by a citizen of another state. Boyle v. Zacharie (1832) 6 Pet. 635, 643, 8 L. Ed. 527; Ogden v. Saunders (1827) 12 Wheat. 213, 273, 6 L. Ed. 606; Suydam v. Broadnax (1840) 14 Pet. 67, 74, 10 L. Ed. 357.

The power of congress does not exclude the right of the states to legislate on the subject of bankruptcy except when the power is actually exercised by congress and the state laws conflict with those of congress. Ogden v. Saunders (1827) 12 Wheat. 213, 273, 6 L. Ed. 606.

An act of insolvency completely executed under the authority of a state is not a bar against a recovery upon a contract made in another state. Suydam v. Broadnax (1840) 14 Pet. 67, 74, 10 L. Ed. 357.

Except as against proceedings instituted under the bankrupt act to secure the administration of property in the bankruptcy court, an assignment for creditors made in accordance with a state law, without intent to hinder, delay, or defraud creditors, is valid, at least for the purpose of securing equal distribution among them in proportion to their several demands. Boese v. King (1883) 2 Sup. Ct. 765, 108 U. S. 379, 27 L. Ed. 760.

The act of 1867 did not devest the state power to pass laws for winding up the estate of insolvent corporations. The jurisdiction conferred upon the bankruptcy court in this respect is superior to, but not exclusive of, that of the state laws. Chandler v. Siddle (C. C. 1874) Fed. Cas. No. 2,594.

The exercise of the power by the state governments to pass bankrupt laws is incompatible with the grant of power to congress. Golden v. Prince (C. C. 1814) Fed. Cas. No. 5,509.

Assignments under state insolvent laws are valid, and insolvent laws of states are not repugnant to the federal constitution. Torrens v. Hammond (C. C. 1882) 10 Fed. 900.

The provision of an insolvent law which does not grant a discharge of the debtor on surrender of all his property to an assignee or a receiver, but merely gives a priority to creditors who will release the debtor over those who stand back and do not accept the conditions under which his property passes to the assignee or the receiver, and who alone can receive dividends from the estate, is not in conflict with the constitution of the state or of the United States. Mather v. Nesbit (C. C. 1882) 13 Fed. 872.

An alien living and doing business in Louisiana, with actual and constructive notice, is bound by insolvency proceedings under the laws of Louisiana. Letchford v. Convillon (C. C. 1884) 20 Fed. 608.

Congress may exercise or decline the power conferred by this clause as its wisdom shall decide, to the extent that it does exercise the power, and to that extent only are matters in bankruptcy taken out of the general cognizance of state law and judicial procedure. It is only such matters as congressional legislation includes that come within the purview of a federal bankruptcy system, and are within the jurisdiction of the courts administering it. In re Elmira Steel Co. (D. C. 1901) 109 Fed. 456, 475.

This provision does not affect a defense of discharge by the bankrupt law of another state where the contract sued upon was made. Blanchard v. Russell (1816) 13 Mass. 1, 7 Am. Dec. 106.

A law discharging an insolvent debtor from his debt without full payment is a bankrupt law, and beyond the power of a state to pass. Olden v. Hallett (1816) 5 N. J. Law (2 Southard) 535; Vanuxem v. Hazlehursts (1818) 4 N. J. Law (1 Southard) 192, 7 Am. Dec. 582; Ballantine v. Haight (1837) 16 N. J. Law (1 Har.) 196.

See, also, notes ante.

18. —— Nonexercise of power of congress.—So long as there is no national bankrupt act, each state has full authority to pass insolvent laws binding persons and property within its jurisdiction so long as it does not impair the obligation of existing contracts, but a state cannot by such law discharge one of its own citizens from contracts with citizens of other states, though made after the passage of the law, unless they voluntarily become parties to the insolvency proceeding. Gilman v. Lockwood (1866) 4 Wall. 409, 410, 18 L. Ed. 432; Brown v. Smart (1892) 12 Sup. Ct. 958, 959, 145 U. S. 454, 36 L. Ed. 773.

States may pass bankrupt laws, in the absence of action by congress. Adams v. Storey (C. C. 1817) Fed. Cas. No. 66; Pugh v. Bussel (Ind. 1831) 2 Blackf. 394. CONTRA, see Golden v. Prince (C. C. 1814) Fed. Cas. No. 5,509.

Validity of state insolvent laws in the absence of a federal bankrupt law, considered. Denny v. Bennett (1888) 9 Sup. Ct. 134, 137, 128 U. S. 489, 32 L. Ed. 491.

19. —— Suspension, supersedure, or annulment of state laws.—The enactment by congress of a national bankruptcy law suspends the operation of state insolvency laws. In re Worcester County (1900) 102 Fed. 808, 816, 42 C. C. A. 637; Carling v. Seymour Lumber Co. (1902) 113 Fed. 483, 51 C. C. A. 1; In re Curtis (D. C. 1899) 91 Fed. 737, 739 (affirmed [1899] 94 Fed. 630, 36 C. C. A. 430); In re John A. Etheridge Furniture Co. (D. C. 1899) 92 Fed. 329.

From the time when congress acts upon the subject by a bankrupt law, all state laws become suspended, as far as all persons and cases within the purview of the national law are concerned. Ex parte Eames (C. C. 1842) Fed. Cas. No. 4,237; In re Reynolds (C. C. 1874)

Fed. Cas. No. 11,723; Clarke v. Rosenda (La. 1843) 5 Rob. 27; Beach v. Miller (1860) 15 La. Ann. 601; Meekins v. Creditors (1867) 19 La. Ann. 497; Fisk v. Montgomery (1869) 21 La. Ann. 446; Van Nostrand v. Carr (1868) 30 Md. 128; Rowe v. Page (1874) 54 N. H. 190; Boese v. Locke (N. Y. 1877) 53 How. Prac. 148; Commonwealth v. O'Hara (Pa. 1867) 6 Phila. 402, 3 Pittsb. R. 70; In re Reynolds (1867) 8 R. I. 485, 5 Am. Rep. 615.

The enactment by Congress of a national bankruptcy act suspends the operation of state insolvency laws from the time of such enactment, subject only to such limitations as may be prescribed in the bankruptcy act. In re Curtis (1899) 94 Fed. 630, 36 C. C. A. 430 (affirming [D. C. 1899] 91 Fed. 737); Carling v. Seymour Lumber Co. (1902) 113 Fed. 483, 51 C. C. A. 1 (reversing In re Macon Sash, Door & Lumber Co. [D. C. 1901] 112 Fed. 323); Torrens v. Hammond (C. C. 1882) 10 Fed. 900; In re Bruss-Ritter Co. (D. C. 1898) 90 Fed. 651; In re Smith (D. C. 1899) 92 Fed. 135; In re John A. Etheridge Furniture Co. (D. C. 1899) 92 Fed. 329; Harbaugh v. Costello (1900) 56 N. E. 363, 184 Ill. 110, 75 Am. St. Rep. 147 (affirming Costello v. Harbaugh [1899] 83 Ill. App. 29); First Nat. Bank v. Ware (1901) 50 A. 24, 95 Me. 388; Parmenter Mfg. Co. v. Hamilton (1898) 51 N. E. 529, 172 Mass. 178, 70 Am. St. Rep. 258; Foley-Bean Lumber Co. v. Sawyer (1899) 78 N. W. 1038, 76 Minn. 118; Armour Packing Co. v. Brown (1899) 79 N. W. 522, 76 Minn. 465; E. C. Wescott Co. v. Berry (1899) 45 A. 352, 69 N. H. 505; Potts v. Smith Mfg. Co. (1904) 25 Pa. Super. Ct. 206. CONTRA, In re Scholtz (D. C. 1901) 106 Fed. 834.

State insolvent laws, which merely protect the person from imprisonment, and do not affect the contract, were not suspended by the bankrupt act of 1841. Sullivan v. Hieskell (D. C. 1843) Fed. Cas. No. 13,594; Ex parte Jacobs (N. Y. 1871) 12 Abb. Prac. (N. S.) 273; Jordan v. Hall (1869) 9 R. I. 220.

A national bankruptcy law supersedes state insolvency laws. Ex parte Eames (C. C. 1842) Fed. Cas. No. 4,237; Thornhill v. Bank of Louisiana (C. C. 1870) Fed. Cas. No. 13,992; Id. (D. C. 1870) Fed. Cas. No. 13,990; In re Richard (D. C. 1899) 94 Fed. 633; Capital Lumber Co. v. Saunders (1914) 143 P. 1178, 26 Idaho, 408; Idaho Hardware & Plumbing Co. v. Same (1914) 143 P. 1183, 26 Idaho, 424.

The insolvent laws of a state are superseded by the United States bankrupt acts only so far as they conflict with such acts. Appeal of Geery (1876) 43 Conn. 289; Pugh v. Bussell (Ind. 1831) 2 Blackf. 394; Fisk v. Montgomery (1869) 21 La. Ann. 446.

Where Congress has exercised its constitutional power to establish uniform laws on the subject of bankruptcy, all state laws and proceedings of state courts in conflict therewith must yield thereto. Rosenfeld v. Siegfried (1901) 91 Mo. App. 169; Mauran v. Crown Carpet Lining Co. (1901) 50 A. 331, 23 R. I. 324.

The national bankrupt act (Comp. St. § 9585 et seq.), by its terms, went into full force and effect upon its passage July 1, 1898, notwithstanding the provision that no voluntary petition should be filed within one month of the passage of the act, and that no petition for involuntary bankruptcy should be filed within four months of the passage of the act, and was effective from that date to supersede the insolvency laws of the several states. In re Bruss-Ritter Co. (D. C. 1898) 90 Fed. 651; Harbaugh v. Costello (1900) 56 N. E. 363, 184 Ill. 110, 75 Am. St. Rep. 147, affirming Costello v. Harbaugh (1899) 83 Ill. App. 29; E. C. Wescott Co. v. Berry (1899) 45 A. 352, 69 N. H. 505.

The right of a state to pass bankrupt laws is not extinguished by a federal law, but only suspended so far as the two conflict. Sturges v. Crowninshield (1819) 4 Wheat. 122, 196, 4 L. Ed. 529.

The insolvency laws of a state were not annulled by the bankruptcy law, but continue operative, although within a limited range. In re Worcester County (1900) 102 Fed. 808, 42 C. C. A. 637.

A bankrupt law suspends state laws. New Jersey v. Lovell (1910) 179 Fed. 321, 102 C. C. A. 505, 31 L. R. A. (N. S.) 988, certiorari denied (1911) 31 Sup. Ct. 471, 219 U. S. 587, 55 L. Ed. 347.

Act La. March 14, 1842, in relation to the liquidation of banks, held in effect a bankrupt law, and superseded by the bankruptcy act of 1867. Thornhill v. Bank of Louisiana (C. C. 1870) Fed. Cas. No. 13,992; Id. (D. C. 1870) Fed. Cas. No. 13,990.

Where the operation of the state law is revived by a repeal of the bankrupt act, an amendment of the state law by repeal and simultaneous re-enactment will not interrupt the continuous operation of the law. Torrens v. Hammond (C. C. 1882) 10 Fed. 900.

The act of 1890, providing for voluntary assignments by insolvent debtors, operated to repeal the old insolvent law of Washington, and proceedings pending in court under the old law when the new law went into effect fell with the old law, unless an assignee had actually been appointed and qualified, so as to devest the debtor of the title to his property. Gilmour v. Ewing (C. C. 1892) 50 Fed. 656.

Cases pending under state insolvent laws when Act 1841 came into operation are not affected thereby. In re Holmes (D. C. 1842) Fed. Cas. No. 6,633.

State insolvent laws, which merely

protect the person from imprisonment, and do not affect the contract, were not suspended by the act of 1841. Sullivan v. Hieskill (D. C. 1843) Fed. Cas. No. 13,594.

While the insolvency laws of the several states are superseded by the enactment of the national bankruptcy law, this is not the case with state statutes which merely regulate the administration of the trust created by an assignment for the benefit of creditors; and proceedings under such statutes, or under a common-law deed of assignment, are not void or voidable by reason of the existence merely of a bankruptcy law, or unless proceedings in bankruptcy are subsequently instituted against the assignor. In re Sievers (D. C. 1899) 91 Fed. 366, affirmed Davis v. Bohle (1899) 92 Fed. 325, 34 C. C. A. 372.

A state insolvency law, although its operation upon insolvents is suspended during the existence of the national bankruptcy law, remains a "law of the state," within the Bankrupt Act, § 64b, cl. 5 (Comp. St. § 9648); and consequently, where a law of the state makes a debt due to a county a preferred claim in insolvency, it will be entitled to priority of payment in bankruptcy. In re Wright (D. C. 1899) 95 Fed. 807.

A proceeding in the form of a creditors' bill under Code Ga. §§ 2716–2722, filed in that state with the averments and prayers essential under such sections, is an insolvency or state bankruptcy proceeding. In re Macon Sash, Door & Lumber Co. (D. C. 1901) 112 Fed. 323, judgment reversed Carling v. Seymour Lumber Co. (1902) 113 Fed. 483, 51 C. C. A. 1.

The bankruptcy law must be uniform throughout the United States, and the uniformity must extend to each state, and hence a state law must give way to a uniform national bankruptcy law. Id.

The character of a proceeding in court may be tested by what can be accomplished under it, and since Bankr. Act July 1, 1898 (Comp. St. § 9585 et seq.), has been in operation it is incompetent for a lien creditor of a bankrupt to so use his lien in the state court as to support a state insolvency proceeding, and distribute the assets of the bankrupt according to the priorities and preferences fixed by the state law, and thus supplant and nullify the uniform system provided by the national bankruptcy act. Id.

The bankruptcy or insolvency laws of a state are suspended by the enactment of a uniform system of bankruptcy, and proceedings under such insolvency laws, commenced after the passage of the bankruptcy act, are ipso facto null and void, and the appointment of a receiver by a state court to administer the assets under such insolvency proceedings is a nullity, and may be so held in any court when it becomes material to the interest of parties to consider it. Id.

Bankr. Act July 1, 1898 (Comp. St. § 9585 et seq.), on its passage, at once suspended and superseded all state insolvency laws, as to cases coming within its purview, whether the insolvent be a person, partnership, or corporation, and proceedings instituted thereafter under any such insolvency law by or against an insolvent subject to adjudication as a bankrupt, either voluntary or involuntary, are void. In re F. A. Hall Co. (D. C. 1903) 121 Fed. 992.

Under the provision in this clause as to bankruptcy, Bankr. Act July 1, 1898 (Comp. St. § 9585 et seq.), authorizing the discharge of certain persons from specified debts on complying with the provisions of the act, superseded the ordinances and fire regulations of a city, requiring members of the city's fire department to promptly pay all necessary personal and household expenses, and making his failure to do so a ground for discharge in so far as it affected debts of a fireman dischargeable in a bankruptcy proceeding pending against him. In re Hicks (D. C. 1905) 133 Fed. 739.

L. O. L. Or. §§ 7540–7555, permitting a debtor to voluntarily file an assignment for benefit of creditors without preference, and providing that, if all his property is administered on and more than 50 per cent. of the indebtedness paid, the debtor shall be discharged, is an insolvent law suspended by federal bankruptcy act (citing 4 Words and Phrases, 3655). Pelton v. Sheridan (Or. 1914) 144 P. 410.

The national Bankruptcy Act suspended state laws concerning assignments for the benefit of creditors, leaving such assignments to be governed by the common law. Sabin v. Chrisman (Or. 1916) 154 P. 908.

20. —— **Jurisdiction of courts.**—Congress having made provision on the subject of bankruptcies the jurisdiction conferred becomes exclusive throughout the United States. New Lamp Chimney Co. v. Ansonia Brass & Copper Co. (1875) 91 U. S. 656, 661, 23 L. Ed. 336.

The power of congress to pass uniform bankruptcy laws includes the power to vest in the courts paramount jurisdiction in bankruptcy proceedings, and orders in bankruptcy are therefore superior to those of a state insolvency court. Leidigh Carriage Co. v. Stengel (1899) 95 Fed. 637, 645, 37 C. C. A. 210.

Congress is without power to give jurisdiction to state courts to administer a bankrupt law, so far as the collection of the estates of bankrupts is concerned, though state courts in enforcing the rights and duties under the federal law exercise concurrent ju-

risdiction with the federal courts. Wall v. Cox (1900) 101 Fed. 403, 411, 41 C. C. A. 408, certified questions answered (1901) 21 Sup. Ct. 642, 181 U. S. 244, 45 L. Ed. 845.

The jurisdiction conferred by the bankruptcy act in district courts, under the power conferred by this clause, cannot be revoked, annulled, or impaired by the law or act of any state. Dunlop v. Mercer (1907) 156 Fed. 545, 551, 86 C. C. A. 435.

This clause confers on congress the power to vest in the courts authority to appoint referees in bankruptcy. Birch v. Steele (1908) 165 Fed. 577, 91 C. C. A. 415.

Congress has no power to vest jurisdiction in the state tribunals to carry into effect the bankrupt law. McLean v. Lafayette Bank (C. C. 1843) Fed. Cas. No. 8,885; Mitchell v. Great Works Mill. & Mfg. Co., Id. 9,662.

Congress has a complete constitutional authority to enact a bankrupt act, giving to the district and circuit courts full jurisdiction in law and equity. Mitchell v. Great Works Mill. & Mfg. Co. (C. C. 1843) Fed. Cas. No. 9,662.

The extent to which Congress has exercised the power to establish uniform laws on the subject of bankruptcies defines the scope of the power of the federal courts in bankruptcy cases. In re Ward (D. C. 1908) 161 Fed. 755.

The bankruptcy law does not necessarily deprive a state court of jurisdiction conferred by a state law to dissolve a local corporation, even though the reason for exercising such jurisdiction be the insolvency of such corporation. Lyon v. Russell (1914) 41 App. D. C. 554.

21. —— Construction, operation, and validity of statutes.—See notes under Comp. St. §§ 9585–9656, ante.

Cited without definite application, Minor v. Happersett (1874) 21 Wall. 162, 168, 22 L. Ed. 627; Michaels v. Post (1874) 21 Wall. 398, 428, 22 L. Ed. 520; In re Clarke (1879) 100 U. S. 399, 412, 25 L. Ed. 715; Elk v. Wilkins (1884) 5 Sup. Ct. 41, 112 U. S. 94, 101, 28 L. Ed. 643; In re Bodek (C. C. 1894) 63 Fed. 813; U. S. v. Gleason (C. C. 1897) 78 Fed. 396, 397 (affirmed [1898] 90 Fed. 778, 33 C. C. A. 272); In re Spitzer (C. C. 1908) 160 Fed. 137; U. S. v. Spohrer (C. C. 1910) 175 Fed. 440; Stearns v. Flick (D. C. 1900) 103 Fed. 919; In re Gardner (D. C. 1900) 103 Fed. 922; In re Hicks (D. C. 1901) 107 Fed. 910, 911; In re Builders' Lumber Co. (D. C. 1906) 148 Fed. 244 (modified [1908] 157 Fed. 801, 85 C. C. A. 165); State v. Libby (1907) 92 Pac. 350, 47 Wash. 481.

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Notes of Decisions

Coinage and value of coins.—The power conferred upon congress by this clause and by the following clause as to counterfeiting does not prevent a state from passing a law to punish the offense of circulating counterfeit coin of the United States. Fox v. Ohio (1847) 46 U. S. (5 How.) 410, 12 L. Ed. 213.

The power to coin money carries with it the power of protecting money. U. S. v. Marigold (1850) 9 How. 560, 567, 13 L. Ed. 257.

Congress under the power conferred may, as it did with regard to gold by Act June 28, 1834, c. 95, and with regard to silver by Act Feb. 28, 1878, c. 20, issue coins of the same denominations as those already current by law, but of less intrinsic value than those by reason of obtaining a less weight of the precious metals, thereby enabling debtors to discharge their debts by the payment of coins of less real value and a contract to pay a certain sum in money without any stipulation as to kind, may be satisfied by payment of that sum in any lawful currency. Legal-Tender Cases (1884) 4 Sup. Ct. 122, 131, 110 U. S. 421, 28 L. Ed. 204.

Contract obligations are not impaired by so much of Act April 12, 1900, § 11 (Comp. St. § 3758), as requires United States currency at the rate of exchange prescribed by that act, and not at the rate of $1 for each peso of indebtedness, to be accepted in discharge of an obligation on account of a purchase in 1894 of a plantation in Porto Rico, which was to be satisfied with money current in the province at the rate of 100 centavos for each peso of indebtedness, the effect of the act being merely an exercise of the power to fix the value of the coins which were to be withdrawn and to state the rate of exchange at which existing debts might be paid in American money. Succession of Serralles v. Esbri (1906) 26 Sup. Ct. 176, 182, 200 U. S. 103, 50 L. Ed. 391.

Currency.—A contract to pay a certain sum of money is legally performed if paid in currency, which is lawful money at the time payment becomes due or is demanded; and therefore Act Feb. 25, 1862, making treasury notes a legal tender is valid, although applied to obligations existing before that time. Knox v. Lee (1870) 79 U. S. (12 Wall.) 457, 20 L. Ed. 287; Troy v. Bland (1877) 58 Ala. 197; Belloc v. Davis (1869) 38 Cal. 242; Jones v. Harker (1867) 37 Ga. 503; Black v. Lusk (1873) 69 Ill. 70; Hintrager v. Bates

(1864) 18 Iowa, 174; Wilson v. Triblecock (1867) 23 Iowa, 331; George v. Concord (1864) 45 N. H. 434; Metropolitan Bank v. Van Dyck (1863) 27 N. Y. 400; Shollenberger v. Brinton (1866) 52 Pa. St. (2 P. F. Smith) 9; Johnson v. Ivey (1867) 44 Tenn. (4 Cold.) 608, 94 Am. Dec. 206. CONTRA, see Hepburn v. Griswold (1869) 75 U. S. (8 Wall.) 603, 19 L. Ed. 513; Griswold v. Hepburn (1865) 63 Ky. (2 Duv.) 20; Martin v. Martin (1870) 20 N. J. Eq. (5 C. E. Green) 421; Meyer v. Roosevelt (N. Y. 1862) 25 How. Prac. 97.

Congress may restrain the circulation of notes not issued under its own authority. Veazie Bank v. Fenno (1869) 8 Wall. 533, 540, 19 L. Ed. 482.

The authority to coin money and regulate its value does not prohibit Congress from establishing a paper currency and making it a legal tender. The Legal Tender Cases (1870) 12 Wall. 457, 536, 20 L. Ed. 287.

Congress may make the treasury notes of the United States a legal tender in payment of private debts in time of peace as well as in time of war, and Act May 31, 1878, c. 146, enacting that notes of the United States issued during the rebellion, shall be reissued and kept in circulation, is valid. Legal Tender Cases (1884) 4 Sup. Ct. 122, 131, 110 U. S. 421, 28 L. Ed. 204.

The right and power of congress to coin money and regulate its value does not include the power to compel persons to take paper money in discharge of a contract. Meyer v. Roosevelt (N. Y. 1862) 25 How. Prac. 97.

If congress had the power to create paper currency and to make laws enabling it to pass for money, which, in effect, deprived city railroads of the fares of five cents in specie which they were authorized to charge, Act 1864, authorizing such companies to add an extra cent to their fares, is constitutional. Moneypenny v. Sixth Ave. R. Co. (1865) 30 N. Y. Super. Ct. (7 Rob.) 328, 35 How. Prac. 452.

See, also, notes under clause 2, ante.

Weights and measures.—A state has the right to regulate weights and measures, until congress exercises its power over the subject. Higgins v. California Petroleum & Asphalt Co. (1898) 55 Pac. 155, 122 Cal. 373; Harris v. Rutledge (1866) 19 Iowa, 388, 87 Am. Dec. 441; Caldwell v. Dawson (1862) 4 Metc. (Ky.) 123; Commonwealth v. Gussman (1913) 102 N. E. 342, 215 Mass. 349; Weaver v. Fegely (1857) 29 Pa. (5 Casey) 27, 70 Am. Dec. 151. CONTRA, The Miantinomi (C. C. 1855) Fed. Cas. No. 9,521.

Cited without definite application, Hepburn v. Griswold (1869) 8 Wall. 603, 616, 19 L. Ed. 513; Rae v. Homestead Loan & Guaranty Co. (1899) 20 Sup. Ct. 341, 343, 176 U. S. 121, 44 L. Ed. 398; Ceballos v. U. S. (1906) 146 Fed. 380, 76 C. C. A. 652; U. S. v. Boak Fish Co. (C. C. 1906) 146 Fed. 104.

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

Notes of Decisions

Counterfeiting in general.—The same act of counterfeiting may be punishable under the laws of the state as well as of the United States. Sexton v. California (1903) 23 Sup. Ct. 543, 544, 189 U. S. 319, 47 L. Ed. 833.

Counterfeiting the securities of a foreign nation is an offense against the "law of nations," within the meaning of clause 10, post, giving congress power to punish such offenses. U. S. v. White (C. C. 1886) 27 Fed. 200.

The states can exercise jurisdiction over the offense of counterfeiting the current coin of the United States. Chess v. State (Ind. 1822) 1 Blackf. 198; Dashing v. Same (1881) 78 Ind. 357; State v. McPherson (1859) 9 Iowa, 53; Harlan v. People (Mich. 1843) 1 Doug. 207; State v. Antonio (S. C. 1816) Tread. Const. 776; Sizemore v. State (1859) 40 Tenn. (3 Head) 26; Martin v. State (1885) 18 Tex. App. 224. CONTRA, see Rouse v. State (1848) 4 Ga. 136; Mattison v. State (1834) 3 Mo. 421 (but see In re Truman [1869] 44 Mo. 181); State v. Brown (1867) 2 Or. 221.

Section 78 of the California act concerning crimes and punishments, which provides for the punishment of persons engaged in counterfeiting money, etc., held not to be in conflict with this clause. People v. White (1867) 34 Cal. 183.

The states and territories of the Union may punish the forgery of bank notes of the United States Bank. The fact that Congress has passed an act for the same purpose does not render the exercise of that power by the states unconstitutional. Territory v. Ross (La. 1810) 1 Mart. (O. S.) 147, 5 Am. Dec. 705.

A state has jurisdiction to punish the offense of counterfeiting foreign coin circulating as money in that state, and it is not merely an offense against the United States. Sutton v. State (1839) 9 Ohio (9 Ham.) 133; State v. Antonio (S. C. 1816) 3 Brev. 562.

Passing counterfeit.—This clause extends to the passing of counterfeit coin and securities as well as to counterfeiting them. Ex parte Houghton (D. C. 1881) 7 Fed. 657, 658; Id., 8 Fed. 897.

The power conferred on congress by this clause does not prevent a state

from passing a law to punish the offense of circulating counterfeit coin of the United States. Fox v. Ohio (1847) 5 How. 410, 433, 12 L. Ed. 213; State v. Moore (1855) 6 Ind. 436. See, also, State v. Adams (1836) 4 Blackf. (Ind.) 146; Donnell v. State (1852) 3 Ind. 480.

The act providing for the punishment of persons bringing into the United States, with intent to pass, any false, forged, or counterfeited coin, and for the punishment of persons passing any such coin, is within the constitutional power of Congress to enact. U. S. v. Marigold (1850) 9 How. 560, 567, 13 L. Ed. 257.

Whether congress has power to provide for the punishment of the offense of passing counterfeit coin, quære. Campbell v. U. S. (D. C. 1847) Fed. Cas. No. 2,373; U. S. v. ——— (D. C. 1849) Fed. Cas. No. 14,414.

An indictment lies, under Act S. C. 1736, for uttering and publishing bills of the Branch Bank of the United States, although the same offense is punishable by the laws of the federal government. State v. Pitman (S. C. 1801) 1 Brev. 32, 2 Am. Dec. 645.

Though one charged with passing a counterfeit bill of the Bank of the United States is indictable in the courts of the United States, he is also indictable in Virginia for an offense against the laws of that state. Hendrick's Case (Va. 1834) 5 Leigh, 707.

See, also, note post as to "Jurisdiction of state courts."

Possession of tools or implements for counterfeiting.—See note post as to "Jurisdiction of state courts."

Under Pen. Code Cal. § 480, punishing one having in his possession anything employed in counterfeiting bank notes or bills, state courts have jurisdiction of a prosecution for having possession of tools for counterfeiting notes of the Bank of England, though the offense is also punishable under the federal statute. People v. McDonnell (1889) 80 Cal. 285, 22 Pac. 190, 13 Am. St. Rep. 159.

The offense of having implements for counterfeiting is not included in that of counterfeiting United States coin, and is cognizable by the state legislatures, and within the jurisdiction of the state courts. State v. Brown (1867) 2 Or. 221.

Punishment of other offenses.—The expression of the power to punish counterfeiting does not deprive Congress of the right to punish other crimes. The Legal Tender Cases (1870) 12 Wall. 457, 535, 20 L. Ed. 287.

Jurisdiction of state courts.—Judiciary Act 1789, § 11, provides for the exclusive cognizance by the United States courts of all offenses against the laws of the United States, unless such laws otherwise direct. Act 1825, § 20 (R. S. § 5457; Comp. St. § 10333), and section 26 (R. S. § 5328; Comp. St. § 10500), providing for the punishment of the counterfeiting of coin, declare that "nothing in this act shall be construed to deprive the courts of the individual states of jurisdiction of the laws of the several states over offenses made punishable by this act." Held, that the state courts have power to punish counterfeiting under the state statutes. Ex parte Geisler (C. C. 1882) 50 Fed. 411.

The state courts have power to punish counterfeiting under the state statutes. Id.

A state court has no jurisdiction over the offense of passing counterfeit national bank notes with knowledge of their character. Ex parte Houghton (D. C. 1881) 7 Fed. 657; Id., 8 Fed. 897.

The courts of Indiana have jurisdiction of the offense of retaining in possession apparatus made use of in counterfeiting gold or silver coin of the United States current within the state. Snoddy v. Howard (1875) 51 Ind. 411, 19 Am. Rep. 738.

The courts of Massachusetts have jurisdiction of the offense of having false money, counterfeited in the similitude of any gold or silver coin current by law or usage within the state, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true. Commonwealth v. Fuller (1844) 49 Mass. (8 Metc.) 313, 41 Am. Dec. 509.

Jurisdiction of the federal courts over offenses against the laws of Congress punishing counterfeiting United States coin is not exclusive of the jurisdiction of state courts over the same offenses under state laws. Harlan v. People (Mich. 1843) 1 Doug. 207.

Passing a forged United States treasury note may be an offense against the laws of the state in which it is committed, as well as against the United States. Congress might, perhaps, by appropriate legislation, render the jurisdiction of the national courts exclusive; but, as it does not appear to have done so, the jurisdiction of the state courts is not suspended. In re Truman (1869) 44 Mo. 181.

Act Pa. Jan. 7, 1867, revising and amending the penal laws of Pennsylvania, so as to punish frauds on the national currency, is unconstitutional in so far as it undertakes to confer jurisdiction on the state courts to punish the offense of passing altered national currency; such jurisdiction being vested exclusively in the United States courts. Commonwealth v. Dale (1887) 3 Pa. Co. Ct. R. 30.

The state courts have jurisdiction to punish the uttering and publishing of counterfeit bills and notes of the Bank of the United States, as well as to all other counterfeits of the currency of the state. State v. Tutt (S. C. 1830) 2 Bailey, 44, 21 Am. Dec. 508.

The state courts have jurisdiction of

the offense of counterfeiting. Stroube v. State (1899) 51 S. W. 357, 40 Tex. Cr. R. 581.

Under Code Va. c. 193, § 3, punishing the uttering of a forged note or bill of a banking company, with knowledge thereof, the courts of that state had jurisdiction of an attempt to pass a counterfeit national bank note, though the same is also an offense under an act of congress. Jett v. Commonwealth (Va. 1867) 18 Grat. 933.

Cited without definite application, U. S. v. Yates (D. C. 1881) 6 Fed. 861.

[7] To establish Post Offices and post Roads;

Notes of Decisions

1. Effect of clause in general.
2. Postal conventions.
3. Post offices—Establishment in general.
4. —— Discontinuance of post offices established.
5. —— Post office sites.
6. —— Punishment of breaking and entering.
7. Transmission and delivery of mails—In general.
8. —— Parcels.
9. —— Newspapers and periodicals.
10. —— Steamships.
11. —— Mail trains.
12. —— Obstruction.
13. —— Theft and robbery.
14. —— Unauthorized opening of letters.
15. —— Punishment of crime committed through mails.
16. —— Exclusion of matter from the mails.
17. Post roads—Establishment in general.
18. —— Grant of rights in public lands as affecting state control.
19. —— Application of fifth amendment.
20. —— Navigable waters.
21. —— Bridges.
22. —— Use by telegraph companies.
23. Taxation by state.

1. Effect of clause in general.—The constitutional power of congress to establish post offices and post roads embraces the regulation of the entire postal system, and includes as a necessary incident the right to determine what may be carried in the mails, and what shall not be, and to impose penalties for the violation of its regulations to be enforced, through the courts. In re Jackson (1877) 96 U. S. 727, 24 L. Ed. 877; Weeber v. U. S. (C. C. 1894) 62 Fed. 740, 741; American School of Magnetic Healing v. McAnnulty (C. C. 1900) 102 Fed. 565, 566 (reversed [1902] 23 Sup. Ct. 33, 187 U. S. 94, 47 L. Ed. 90); Lewis Pub. Co. v. Wyman (C. C. 1907) 152 Fed. 787; U. S. v. Loring (D. C. 1884) 91 Fed. 881, 882.

The power granted by this clause is not confined to the postal service known and in use when the constitution was adopted, but it keeps pace with the progress of the country, and adapts itself to the new developments of time and circumstances. It was intended for the government of the business to which it relates, at all times and under all circumstances, and it is not only the right, but it is the duty, of congress to see to it that the transmission of intelligence is not obstructed or unnecessarily incumbered by state legislation. Pensacola Teleg. Co. v. Western U. Teleg. Co. (1877) 96 U. S. 1, 9, 24 L. Ed. 708.

This clause authorizes not merely designation of mail routes, and officers for receiving letters and other documents to be distributed or forwarded, but carriage of mail, and all measures necessary to secure its safe and speedy transit, and prompt delivery of its contents, and the validity of legislation prescribing what shall be carried, and its weight and form, and charges therefor, is unquestioned. Ex parte Jackson (1877) 96 U. S. 727, 732, 24 L. Ed. 877.

Under the power of Congress to regulate the entire postal system of the country, it may prescribe what shall be carried in the mails and what shall be excluded. It may also prescribe the size, weight, shape, and character of the contents of every mailable package, limit the superscription, and declare a violation of its regulations a public offense, and fix punishment therefor. Warren v. U. S. (1910) 183 Fed. 718, 106 C. C. A. 156, 33 L. R. A. (N. S.) 800.

The power exercised by the federal government to establish a postal system is exclusive of the power of the several states to establish any postal system, and as a monopoly excludes all private individuals from establishing competing or postal systems. As an incident to this power, Congress may designate what matters may be carried through the mails, and how, and may exclude from the mails that which is immoral or injurious to morals. Hoover v. McChesney (C. C. 1897) 81 Fed. 472, 478.

2. Postal conventions.—The power of Congress to authorize the Postmaster General to conclude conventions with foreign governments may be derived from this clause. (1890) 19 Op. Atty. Gen. 513.

3. Post offices—Establishment in general.—The government's mere occupation of a rented building on a post road for a post office did not constitute the establishment of a post office in the sense of accomplishing of itself any appropriation or dedication of the site selected to public use, or any interference with existing rights therein. U. S. v. Boston Elevated Ry. Co. (C. C. 1910) 176 Fed. 963.

Where a place has been designated where mail shall be received and delivered, there is a post office, over which a postmaster may be appointed, and the post office continues until it is discontinued. Id.

4. —— Discontinuance of post offices established.—Congress has power to discontinue post offices established by

it, and such power may be conferred on the Postmaster General. Ware v. U. S. (1866) 71 U. S. (4 Wall.) 617, 632, 18 L. Ed. 389.

5. —— **Post office sites.**—Power to establish post offices includes authority to obtain sites therefor by condemnation proceedings. Kohl v. U. S. (1875) 91 U. S. 367, 372, 23 L. Ed. 449.

The constitution gives congress authority to condemn lands situated in a state for use as a post-office site. U. S. v. Inlots (C. C. 1873) Fed. Cas. No. 15,441.

See, also, notes under clauses 17 and 18, post.

6. —— **Punishment of breaking and entering.**—R. S. § 5478 (Comp. St. § 10362), the object of which is to secure the buildings used for the postal service from felonious entry with a criminal intent defined in the statute, is within the powers granted to congress. Considine v. U. S. (1901) 112 Fed. 342, 50 C. C. A. 272, writ of certiorari denied (1902) 22 Sup. Ct. 938, 184 U. S. 699, 46 L. Ed. 765.

R. S. § 5478 (Comp. St. § 10362), relating to breaking and entering post offices, was enacted in pursuance of these constitutional provisions. U. S. v. Campbell (C. C. 1883) 16 Fed. 233, 234.

The power to enact a statute making it a criminal offense to break into any post office is conferred on Congress by this section. U. S. v. Martin (C. C. 1905) 140 Fed. 256.

7. **Transmission and delivery of mails —In general.**—That which promotes a public convenience and provides for the transfer of money by mail is a proper exercise of the power conferred by this provision. Bolognesi v. U. S. (1911) 189 Fed. 335, 111 C. C. A. 67, 36 L. R. A. (N. S.) 143, certiorari denied (1911) 32 Sup. Ct. 525, 223 U. S. 726, 56 L. Ed. 632.

After the voluntary termination of the custody of a letter by the post office or its agents, the rights of the proprietor are under the protection of the local law, and not that of the United States; and there is no difference in the dominion of the postal laws over a letter before that custody has commenced and after it has ended. U. S. v. Dauphin (C. C. 1884) 20 Fed. 625.

Congress has power to confer authority on the postmaster general to forbid delivery of registered letters or payment of money orders to a citizen or corporation found by him to be using the mails for fraudulent purposes, but not to deprive them of the ordinary use of the mails. Fairfield Floral Co. v. Bradbury (C. C. 1898) 89 Fed. 393.

This clause authorizes all measures necessary to secure the safe and speedy transmission of the mails and a prompt delivery of their contents, and also grants power to prescribe what shall be carried and what shall be excluded. U. S. v. Musgrave (D. C. 1908) 160 Fed. 700.

The government of the United States in the carriage and delivery of the mails is engaged in the discharge of a governmental function. Barker v. Chicago, P. & St. L. Ry. Co. (1910) 90 N. E. 1057, 243 Ill. 482.

8. —— **Parcels.**—While Congress has full constitutional power to reserve to the postal department a monopoly of the business of receiving, transmitting, and delivering mails, it has never attempted to extend its monopoly to the transportation of merchandise in parcels weighing less than four pounds, nor to prohibit private express companies making regular trips over established post routes from engaging in the business of carrying such parcels for hire. Williams v. Wells Fargo & Co. Express (1910) 177 Fed. 352, 101 C. C. A. 328, 35 L. R. A. (N. S.) 1034, 21 Ann. Cas. 699.

9. —— **Newspapers and periodicals.**—Congress, in the interest of the dissemination of current intelligence, may so legislate as to the mails, by classification or otherwise, as to favor the widespread circulation of newspapers, periodicals, etc., even though the legislation on that subject, when considered intrinsically, discriminates against the public, and in favor of such publications and their publishers. Lewis Publishing Co. v. Morgan (1913) 33 Sup. Ct. 867, 229 U. S. 288, 57 L. Ed. 1190.

10. —— **Steamships.**—A corporation, under the statute of New York, cannot claim exemption from state taxation on its capital stock, upon the ground that the whole amount is invested in steamships engaged in foreign commerce, and in carrying the mails under contract with the United States. People v. Commissioners of Taxes and Assessments of City and County of New York (N. Y. 1866) 48 Barb. 157.

11. —— **Mail trains.**—Rev. St. Ill. 1889, c. 114, § 88, providing that all regular passenger trains shall stop a sufficient length of time at the railroad stations and county seats to receive and let off passengers with safety, as construed by the state supreme court, requiring a fast-mail train, carrying interstate passengers and the United States mail from Chicago to places south of the Ohio river, over an interstate highway established by authority of congress, to turn aside from the direct interstate route, and run to the station in Cairo, three miles and a half away from that route, and back again, in order to receive and discharge passengers at that station, for the interstate travel to and from which the railroad company furnishes other and ample accommodation, is an unconstitutional obstruction of the passage of

the mails. Illinois Cent. R. Co. v. State of Illinois (1896) 16 Sup. Ct. 1096, 163 U. S. 142, 41 L. Ed. 107.

A state statute which unnecessarily interferes with the speedy and uninterrupted carriage of the mails cannot be considered a reasonable police regulation. Id.

Act Minn. March 31, 1893 (Laws 1893, c. 60), requiring every regular passenger train running wholly within the state to stop at county seats to take on and discharge passengers, is not an unconstitutional interference with the transportation of the mails. Gladson v. Minnesota (1897) 17 Sup. Ct. 627, 628, 166 U. S. 427, 41 L. Ed. 1064.

The power of Congress to establish post offices and post roads is not infringed by Act Pa. April 4, 1868, under which a railway postal clerk, injured in the course of his employment, can have no greater rights against the railway company than if he were an employé. Martin v. Pittsburg & L. E. R. Co. (1906) 27 Sup. Ct. 100, 101, 203 U. S. 284, 51 L. Ed. 184, 8 Ann. Cas. 87, affirming judgment (1905) 76 N. E. 1129, 72 Ohio St. 659.

Under its power to regulate interstate commerce, establish post roads, and provide for the transportation of troops and munitions of war, Congress has power to charter a corporation to operate an interstate railroad and engage in the general business of a common carrier for its own purposes in addition to serving the government. Mercantile Trust Co. v. Texas & P. Ry. Co. (C. C. 1908) 216 Fed. 225.

This clause did not prohibit or abrogate the right of the state to pass Acts Ind. 1907, c. 11, specifying the number of employés to be carried on trains operated through the state in the reasonable exercise of the state's police power when applied to mail trains. Pittsburgh, C., C. & St. L. Ry. Co. v. State (1909) 87 N. E. 1034, 172 Ind. 147.

12. —— **Obstruction.** — Under the powers given to congress by this clause, the national government may remove all obstructions to interstate commerce and the transportation of the mails, either by force operating through the executive, or by process emanating from the courts. In re Debs (1895) 15 Sup. Ct. 900, 158 U. S. 564, 39 L. Ed. 1092.

Congress had authority to enact R. S. § 3995 (Comp. St. § 10371), punishing any person who knowingly and willfully obstructs the passage of mail, or any carriage, horse, driver, or carrier carrying the same. U. S. v. Sears (D. C. 1893) 55 Fed. 268, 270.

13. —— **Theft and robbery.**—Under this authority Congress may punish theft of letters and mail robberies. The Legal Tender Cases (1870) 12 Wall. 457, 537, 20 L. Ed. 287; U. S. v. Saunders (D. C. 1896) 77 Fed. 170.

Congress has ample power to protect the mails of the United States from the time the same is received by the postal authorities until possession thereof is surrendered voluntarily and rightfully to the party entitled to receive the same, and R. S. § 3892 (Comp. St. § 10364), is within the power of Congress. U. S. v. Bullington (C. C. 1908) 170 Fed. 121.

Beyond the protection of the mail while discharging the functions of postal service with respect to it the federal government has no rightful power or legal concern. Its right to impose any penalties is an incident to its power to establish post offices and post roads, and in discharge of this function to protect the correspondence from the depredations of its own employés, as well as the unlawful aggressions of others. U. S. v. Safford (D. C. 1895) 66 Fed. 942, 946. See, also, Houston v. Moore (1820) 18 U. S. (5 Wheat.) 1, 34, 5 L. Ed. 19.

14. —— **Unauthorized opening of letters.**—R. S. § 3892 (Comp. St. § 10364), making it an offense to open the letters of another with intent to pry into his business and secrets, is constitutional. U. S. v. McCready (C. C. 1882) 11 Fed. 225.

15. —— **Punishment of crime committed through mails.**—A state may punish for a crime committed through the mails as a medium, without in any sense impinging the right of the national government to control the mails. Rose v. State (1908) 62 S. E. 117, 4 Ga. App. 588.

16. —— **Exclusion of matter from the mails.**—See note ante as to "Effect of clause in general."

It is the constitutional province of Congress to protect the mail against the transmission of letters, postal cards, circulars, or other mail matter concerning enterprises deemed improper. U. S. v. Politzer (D. C. 1893) 59 Fed. 273, 275; U. S. v. 74 Cases of Grape Juice (D. C. 1910) 181 Fed. 629; Public Clearing House v. Coyne (1904) 24 Sup. Ct. 789, 194 U. S. 497, 48 L. Ed. 1092.

Congress may confer authority on the Postmaster General to direct a postmaster to refuse delivery of registered letters or payment of money orders to a person or corporation engaged in conducting a lottery. Enterprise Sav. Ass'n v. Zumstein (1895) 67 Fed. 1000, 15 C. C. A. 153, affirming decree (C. C. 1894) 64 Fed. 837; Hoover v. McChesney (C. C. 1897) 81 Fed. 472; Public Clearing House v. Coyne (C. C. 1903) 121 Fed. 927 (affirmed [1904] 24 Sup. Ct. 789, 194 U. S. 497, 48 L. Ed. 1092); (1881) 17 Op. Atty. Gen. 77; In re Jackson (C. C. 1877) Fed.

Cas. No. 7,124. Or to prevent the mails being used as a medium to disseminate printed matter which, on grounds of public policy, has been declared nonmailable. Missouri Drug Co. v. Wyman (C. C. 1904) 129 Fed. 623. The grant carried with it all the powers necessary to make the grant effective, including the power to forbid the use of the mails to carry matter used in the dissemination of crime or immorality; no distinction can be made between mala in se and mala prohibita, and the question as to what shall be excluded must be left to congress, in the exercise of a sound discretion. Ex parte Rapier (1892) 12 Sup. Ct. 374, 143 U. S. 110, 36 L. Ed. 93.

The unrestricted use of the mails is not one of the fundamental rights guaranteed by the Constitution. Warren v. U. S. (1910) 183 Fed. 718, 106 C. C. A. 156, 33 L. R. A. (N. S.) 800.

Comp. St. § 10381, making obscene, lewd, lascivious, or filthy matter nonmailable and prescribing the punishment for depositing such matter for mailing or delivery, is a valid exercise of the power to establish a postal system. Coomer v. U. S. (1914) 213 Fed. 1, 129 C. C. A. 617.

The acts of September 29, 1890 (26 Stat. 466), and March 2, 1895 (28 Stat. 964), for the suppression of lotteries, are constitutional and empower the Postmaster General to deny all mail facilities to those engaged in any of the classes of business described therein. (1896) 21 Op. Atty. Gen. 313, 314.

Congress has full power under the Constitution to exclude from the mails a publication which counsels the commission of murder, arson, riot, or treason, and to make the use, or the attempted use, of the mails for the transmission of such writings a crime against the United States. (1908) 26 Op. Atty. Gen. 555.

17. Post roads—Establishment in general.—The provision for establishment of post roads means such roads as are laid out by the authority of the state. Cleveland, P. & A. R. Co. v. Franklin Canal Co. (C. C. 1853) Fed. Cas. No. 2,890.

18. —— Grant of rights in public lands as affecting state control.—A railway company cannot claim immunity from state regulation in respect to rates because its right of way was granted by the government, which declared it to be a post and military route, and national highway for governmental service. St. Louis & S. F. Ry. Co. v. Gill (1891) 54 Ark. 101, 15 S. W. 18, 11 L. R. A. 452.

The fact that congress has aided several states by the donation of public lands for the construction of railroads, which eventually form one continuous line, and carry the mail from one state to another, does not relieve the companies operating such roads from the control of the states under whose laws they are respectively organized, even in regard to the trains carrying the mail from state to state. Illinois Cent. R. Co. v. People (1892) 143 Ill. 434, 33 N. E. 173, 19 L. R. A. 119.

19. —— Application of fifth amendment.—The power of congress to establish post roads and to make all laws necessary to carry the power into effect, is subject to the limitations imposed by the constitution including the fifth amendment. Postal Telegraph Cable Co. v. Southern Ry. Co. (C. C. 1898) 89 Fed. 190, 191.

The power to establish post roads was given to enable the general government to make, repair, keep open, and improve post roads, whenever the exercise of such an independent national power should be deemed proper to effectuate the satisfactory transportation of the mail; but it was not given to authorize congress to adopt and use state roads as post roads without compensation, if any should be just, and should be demanded. Dickey v. Maysville, W. P. & L. Turnpike Co. (1838) 37 Ky. (7 Dana) 113.

20. —— Navigable waters.—The power of Congress over navigable streams within a state is limited to the regulation of commerce and establishing post roads. Woodruff v. North Bloomfield Gravel-Min. Co. (C. C. 1884) 18 Fed. 753.

The rights of the people of the states to the navigable waters and lands thereunder are subject to lawful regulation by the states, subordinate to the powers of Congress as to post roads, etc. Broward v. Maboy (1909) 50 So. 826, 58 Fla. 398; Ex parte Powell (1915) 70 So. 392, 70 Fla. 363.

21. —— Bridges.—Whether congress has power under its authority to establish post offices and post roads, to legalize a bridge over a navigable river, not determined. Pennsylvania v. Wheeling & Belmont Bridge Co. (1855) 18 How. 421, 431, 15 L. Ed. 435.

Act June 16, 1886, authorizing the S. I. Rapid Transit Co., a New York corporation, and the B. & N. Y. R. Co., a New Jersey corporation, or either of them, to construct and maintain a railroad bridge across the Staten Island Sound, known as "Arthur Kile," and establishing the same as a "post road," is within the power of Congress. Stockton v. Baltimore & N. Y. R. Co. (C. C. 1887) 32 Fed. 9.

22. —— Use by telegraph companies.—Congress has constitutional power to grant to telegraph companies organized under state laws the right to construct and use lines of telegraph along any of the post roads of the United States. Pensacola Tel. Co. v. Western Union Tel. Co. (1877) 96 U. S. 1, 11, 24 L.

Ed. 708; Id. (C. C. 1875) Fed. Cas. No. 10,960.

Under the powers conferred on congress to regulate commerce and to establish post offices and post roads, Act July 24, 1866, securing to the government the use of telegraph lines for postal, military, and other purposes, so far as it declares that the erection of telegraph lines shall, as against state interference, be free to all who accept its terms, is a constitutional regulation of commercial intercourse among the states. Id.

Act July 24, 1866 (incorporated into R. S. § 5263 et seq. [Comp. St. § 10072 et seq.]), giving the right to operate telegraph lines on the military and post roads of the United States, is appropriate legislation to execute the powers of Congress over the postal service. Leloup v. Port of Mobile (1888) 8 Sup. Ct. 1380, 1382, 127 U. S. 640, 32 L. Ed. 311.

Whatever franchise or right a telegraph company acquires from the United States by its acceptance of the provisions of Act July 24, 1866 (Comp. St. § 10072), giving such companies the right to use the military and post roads of the United States, etc., is exempt from taxation by a state. Western Union Tel. Co. v. Wright (1910) 185 Fed. 250, 107 C. C. A. 356 (reversing decree [C. C. 1909] 166 Fed. 954); Id. (1910) 185 Fed. 260, 107 C. C. A. 366.

Act July 24, 1866 (Comp. St. § 10072), provides that any telegraph company organized under the laws of any state shall have the right to construct and operate lines of telegraph along any of the military or post roads of the United States. Act June 8, 1872 (17 Stat. 283), declares all railroads to be post roads. Act Fla. Dec. 11, 1866, conferred upon a body corporate the sole right to construct and maintain lines of telegraph in certain counties, and, in pursuance of such authority, it erected a line along the right of way of a railroad within one of such counties. Another telegraph company claimed the right, by virtue of Act Fla. Feb. 19, 1874, and the acts of congress above mentioned, to construct a telegraph line along the same railroad, having filed with the postmaster general its written consent to the restrictions and obligations contained in Act July 24, 1866 (14 Stat. 221). Held, that an injunction would not be granted against the latter company, at the instance of the former, as Act Fla. Dec. 11, 1866, was in conflict with Act July 24, 1866 (14 Stat. 221), and null and void. Pensacola Tel. Co. v. Western Union Tel. Co. (C. C. 1875) Fed. Cas. No. 10,960, affirmed in (1877) 96 U. S. 1, 24 L. Ed. 708.

23. **Taxation by state.**—A general license tax on a telegraph company engaged in interstate business is unconstitutional; telegraphic communications being in the nature of postal service. Leloup v. Port of Mobile (1888) 8 Sup. Ct. 1380, 127 U. S. 640, 32 L. Ed. 311.

Cited without definite application, McCulloch v. Maryland (1819) 4 Wheat. 316, 417, 4 L. Ed. 579; Searight v. Stokes (1845) 44 U. S. (3 How.) 151, 166, 11 L. Ed. 537; California v. Central Pac. R. Co. (1888) 8 Sup. Ct. 1073, 127 U. S. 1, 32 L. Ed. 150; St. Louis v. Western Union Tel. Co. (1893) 13 Sup. Ct. 485, 486, 148 U. S. 92, 37 L. Ed. 380; American School of Magnetic Healing v. McAnnulty (1902) 23 Sup. Ct. 33, 187 U. S. 94, 109, 47 L. Ed. 90; Battle v. U. S. (1908) 28 Sup. Ct. 422, 209 U. S. 36, 52 L. Ed. 670; Sturtevants v. Alton (C. C. 1844) Fed. Cas. No. 13,580; Cardwell v. American River Bridge Co. (C. C. 1884) 19 Fed. 562, 565 (affirmed [1885] 5 Sup. Ct. 423, 113 U. S. 205, 28 L. Ed. 959); Louisiana Lottery Cases (C. C. 1884) 20 Fed. 625, 626; U. S. v. Conrad (C. C. 1894) 59 Fed. 458, 467; Danciger v. Stone (C. C. 1909) 187 Fed. 853.

[8] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Notes of Decisions

1. Power of congress as exclusive in general.
2. No extraterritorial operation.
3. Writings defined in general.
4. Word "securing" as related to copyrights.
5. Discrimination in favor of good morals.
6. Discretion of Congress as to time limit.
7. Power to extend rights of assignee.
8. Property in copyright as created by statute.
9. Construction of copyright laws in general.
10. Right derived from author or inventor.
11. Power to prescribe conditions as to copyright.
12. Originator of index system as "author."
13. Printing and engraving not for mechanical end.
14. Photographs.
15. Pictorial illustrations.
16. Show bills or circus advertisements.
17. Protection of stage performance and moving pictures.
18. Telegraphic despatches as to market quotations, etc.
19. Judicial decisions.
20. Laws in exercise of power as to patents.
21. Retrospective act.
22. Power to extend term.
23. Protection prior to patent.
24. Letters patent as matter of favor.
25. Novelty and utility of invention.
26. Construction of patents and specifications.
27. Right to patent as exclusive as against government.
28. State laws affecting copyrights.

29. State laws affecting patents—Sales or transfers.
30. —— Licenses.
31. —— Taxation.
32. Trade-marks.

See Comp. St. tit. IX, §§ 9427–9584, and notes thereunder.

1. Power of congress as exclusive in general.—Congress has the exclusive power to grant patents, and to renew or prolong the time for the continuance of the same. Evans v. Robinson (C. C. 1813) Fed. Cas. No. 4,571.

The Constitution and acts of congress relating to patents are alone the sources governing the rights and remedies of patentees. U. S. v. American Bell Tel. Co. (C. C. 1887) 32 Fed. 591, 602, reversed (1888) 9 Sup. Ct. 90, 128 U. S. 315, 32 L. Ed. 450.

2. No extraterritorial operation.—The use of an improvement in the construction or equipment of a foreign vessel while coming into or going out of a port of the United States is not an infringement of the rights of an American patentee, where it was placed upon her in a foreign port and authorized by the laws of the country to which she belongs, since the power granted Congress by this section of the Constitution is domestic in its character and necessarily confined within the limits of the United States, and it confers no power on Congress to regulate commerce or the vehicles of commerce which belong to a foreign nation and occasionally visit United States ports in their commercial pursuits. Brown v. Duchesne (1856) 19 How. 183, 15 L. Ed. 595.

3. Writings defined in general.—The word "writings" includes maps, charts, engravings, etchings, prints, paintings, drawings, chromos, statues, models, designs, photographs, and the negatives thereof, dramatizations of copyrighted works, and may also be extended to moving pictures tending to reproduce an artist's conception of an author's situation as described in words. Harper & Bros. v. Kalem Co. (1909) 169 Fed. 61, 94 C. C. A. 429, decree affirmed Kalem Co. v. Harper Bros. (1911) 32 Sup. Ct. 20, 222 U. S. 55, 56 L. Ed. 92, Ann. Cas. 1913A, 1285.

The word "writings" is not limited to the actual script of the author, but includes his printed books and all forms of writing, printing, engraving, etching, etc., by which the ideas in his mind are given visible expressions. American Mutoscope & Biograph Co. v. Edison Mfg. Co. (C. C. 1905) 137 Fed. 262.

4. Word "securing" as related to copyrights.—The word "securing" as used in the constitution, relating to copyrights, does not refer to an acknowledged legal right. Wheaton v. Peters (1834) 8 Pet. 591, 660, 8 L. Ed. 1055.

5. Discrimination in favor of good morals.—In exercising its constitutional power in relation to copyrights and patents, Congress may discriminate in favor of good morals and against vice. Martinetti v. Maguire (C. C. 1867) Fed. Cas. No. 9,173.

6. Discretion of Congress as to time limit.—The time rests within the discretion of Congress. Pennock v. Dialogue (1829) 2 Pet. 1, 15, 7 L. Ed. 327.

The power of Congress to grant to inventors is general; and it is within the discretion of Congress to say when and for what length of time and under what circumstances the patent for an invention shall be granted. Blanchard v. Sprague (C. C. 1839) Fed. Cas. No. 1,518.

7. Power to extend rights of assignee.—The power of Congress to reserve rights and privileges to assignees, on extending the term of a patent is incidental to the general power conferred on them by the constitution to secure to inventors, for limited times, the exclusive right to their discoveries. Blanchard Gun Stock Turning Factory v. Warner (C. C. 1846) Fed. Cas. No. 1,521.

8. Property in copyright as created by statute.—The means of securing the exclusive right to authors are to be prescribed by Congress, and no authority exists for obtaining a copyright beyond the extent to which Congress has authorized it. A copyright cannot be sustained as a right existing at common law; but, as it exists in the United States, it depends wholly on the legislation of Congress. Banks v. Manchester (1888) 9 Sup. Ct. 36, 39, 128 U. S. 244, 32 L. Ed. 425; Boucicoult v. Hart (C. C. 1875) Fed. Cas. No. 1692; In re Brosnahan (C. C. 1883) 18 Fed. 62.

Property in copyright in this country is the creation of the statutes enacted under this section. American Tobacco Co. v. Werckmeister (1907) 28 Sup. Ct. 72, 74, 207 U. S. 284, 52 L. Ed. 208, 12 Ann. Cas. 595.

9. Construction of copyright laws in general.—The intention of the copyright laws, as declared by the Constitution, being "to promote the progress of science and useful arts," they should be liberally construed to carry out such intention. Werckmeister v. American Lithographic Co. (C. C. 1905) 142 Fed. 827.

10. Right derived from author or inventor.—Since it is only "authors and inventors" who are directly entitled to copyright, one endeavoring to enforce a copyright as "proprietor" must show an exclusive right, lawfully derived, from such author or inventor. Yuengling v. Schile (C. C. 1882) 12 Fed. 97.

11. Power to prescribe conditions as to copyright.—Congress has the power to prescribe the conditions on which an exclusive right in an author shall be enjoyed; and no one can avail himself

of such right who does not substantially comply with the requisitions of the law. Wheaton v. Peters (1834) 33 U. S. (8 Pet.) 591, 8 L. Ed. 1055.

12. Originator of index system as "author."—The originator of an index system is not an "author" as that word is used in this clause. Amberg File & Index Co. v. Shea Smith & Co. (C. C. 1896) 78 Fed. 479, 480, affirmed (1897) 82 Fed. 314, 27 C. C. A. 246.

13. Printing and engraving not for mechanical end.—Printing and engraving, though not for a mechanical end, are not excluded from the useful arts, which congress is empowered by the constitution to promote by copyright laws. Bleistein v. Donaldson Lithographing Co. (1903) 23 Sup. Ct. 298, 299, 188 U. S. 239, 47 L. Ed. 460, reversing judgment Courier Lithographing Co. v. Donaldson Lithographing Co. (1900) 104 Fed. 993, 44 C. C. A. 296.

14. Photographs.—It is not sufficiently clear that a photograph is not a writing, and that a photographer is not an author, within the meaning of this clause, to warrant the court in declaring unconstitutional the act (R. S. §§ 4952, 4965) providing for the copyright of photographs. Sarony v. Burrow-Giles Lithographic Co. (C. C. 1883) 17 Fed. 591, judgment affirmed Burrow-Giles Lithographic Co. v. Sarony (1884) 4 Sup. Ct. 279, 111 U. S. 53, 28 L. Ed. 349; Schreiber v. Thornton (D. C. 1883) 17 Fed. 603, judgment reversed Thornton v. Schreiber (1888) 8 Sup. Ct. 618, 124 U. S. 612, 31 L. Ed. 577.

Under this clause Congress may authorize the copyright of photographs. Sarony v. Burrow-Giles Lithographic Co. (C. C. 1883) 17 Fed. 591, 592, affirmed (1884) 4 Sup. Ct. 279, 111 U. S. 53, 28 L. Ed. 349.

A photograph which is not only a light-written picture of some object, but also an expression of an idea, or thought, or conception of the one who takes it, is a "writing" within the constitutional sense, and a proper subject of copyright. American Mutoscope & Biograph Co. v. Edison Mfg. Co. (C. C. 1905) 137 Fed. 262.

15. Pictorial illustrations.—Congress has power to make pictorial illustrations the subject of copyright as it has done by Act March 4, 1909, c. 320, § 5k. National Cloak & Suit Co. v. Kaufman (C. C. 1911) 189 Fed. 215.

16. Show bills or circus advertisements.—Engravings representing ballet dancers or fancy bicycle riding, designed for use as show bills, or advertisements of a circus, are not entitled to the privilege of copyright, under the constitutional provision. Bleistein v. Donaldson Lithographing Co. (C. C. 1899) 98 Fed. 608.

17. Protection of stage performance and moving pictures.—Construing the exclusive right given to authors by R. S. § 4952, as amended by Act March 3, 1891, c. 565, 26 Stat. 1106, to dramatize their works, as extending to the public exhibition of moving pictures of the incidents of a copyrighted work, does not render the statute invalid as exceeding the power given to Congress to secure to authors for a limited time the exclusive right to their writings. Kalem Co. v. Harper Bros., (1911) 32 Sup. Ct. 20, 22, 222 U. S. 55, 56 L. Ed. 92, Ann. Cas. 1913A, 1285, affirming decree Harper & Bros. v. Kalem Co. (1909) 169 Fed. 61, 94 C. C. A. 429.

A stage performance consisting of the singing of well-known songs by a woman dressed to personate other singers, prefaced by a short and commonplace dialogue having no reference to such performance, and with a kinetoscope exhibition during the intervals when the performer is changing costume, in which she is shown while making such changes by means of moving pictures previously taken photographically on a film, is not a subject of copyright, the dialogue not being a dramatic composition, within the meaning of the statute, and neither the dalogue, performance, nor exhibition being such as to "promote the progress of science" or "useful arts," within the meaning of the constitutional provision conferring upon Congress power to enact copyright laws, and by which such power is limited. Barnes v. Miner (C. C. 1903) 122 Fed. 480.

18. Telegraphic dispatches as to market quotations, etc.—The matter gathered and transmitted by a telegraph company, and printed on a tape by tickers in the offices of its customers, consisting merely of a notation of current events, such as market quotations or the result of a race or game, and having only a transient value, due solely to its quick transmission and distribution, is not copyrightable as literary property, under the constitution and statutes of the United States, but is essentially a commercial product. National Tel. News Co. v. Western Union Tel. Co. (1902) 119 Fed. 294, 56 C. C. A. 198, 60 L. R. A. 805.

19. Judicial decisions.—A provision of a state constitution that all judicial decisions shall be free for publication by any person is not repugnant to the provision of the federal constitution in relation to copyrights. Little v. Gould (C. C. 1851) Fed. Cas. No. 8,394.

20. Laws in exercise of power as to patents.—See Comp. St. §§ 9427-9484.

The power conferred on Congress by this clause was exercised by the passage of Acts April 17, 1800, and Feb. 21, 1793. Shaw v. Cooper (1833) 7 Pet. 292, 316, 8 L. Ed. 689.

The general object of the statute in relation to letters patent for new and useful inventions is to execute the intention of this clause of the constitu-

tion. Butterworth v. U. S. (1884) 5 Sup. Ct. 25, 29, 112 U. S. 50, 28 L. Ed. 656.

By virtue of this clause Congress passed the laws under which patents for inventions are issued. U. S. v. American Bell Tel. Co. (1888) 9 Sup. Ct. 90, 93, 128 U. S. 315, 32 L. Ed. 450.

Congress could have provided for the grant of monopolies to inventors against which the citizen could set up no defenses, and Congress has named certain permissible defenses to which fraud and collusion in following the application to issuance is not one, and a patent procured by fraud and collusion or by illegal procedure can be attacked only by the government. Western Glass Co. v Schmertz Wire-Glass Co. (1911) 185 Fed. 788, 109 C. C. A. 1.

Act June 14, 1878, relieving the heirs of William A. Graham from all disabilities preventing them from renewing or reviving an application filed by Graham in 1837 for a patent for a novel method of extinguishing fires, held to be a constitutional exercise of the power of congress. The Fire-Extinguisher Case (C. C. 1884) 21 Fed. 40.

Act Feb. 4, 1887, creating a liability of $250 against the infringer of a design patent, was a valid exercise of the authority granted by this clause. Untermeyer v. Freund (C. C. 1892) 50 Fed. 77, decree affirmed (1893) 58 Fed. 205, 7 C. C. A. 183.

21. Retrospective act.—A retrospective act giving a patent for an invention already in public use is within the power of congress. Blanchard v. Sprague (C. C. 1839) Fed. Cas. No. 1,-518.

22. Power to extend term.—Under this clause congress has power to confer a new and extended term upon the patentee, even after the expiration of the first, and after it has become publicly known. Jordan v. Dobson (C. C. 1870) Fed. Cas. No. 7,519.

23. Protection prior to patent.—This clause contemplates and necessarily implies the extension of science and the useful arts, and their increasing adaptation to the uses of society, and an inventor who designedly, and with a view of applying it indefinitely and exclusively for his own profit, withholds his invention from the public, does not come within the policy or objects of the constitution or acts of Congress. Kendall v. Winsor (1858) 21 How. 322, 328, 16 L. Ed. 165.

24. Letters patent as matter of favor.—Letters patent for inventions are not granted in the exercise of prerogative as a matter of favor, but are granted pursuant to the authority given Congress under this section. Belknap v. Schild (1896) 16 Sup. Ct. 443, 444, 161 U. S. 10, 40 L. Ed. 599.

25. Novelty and utility of invention.—See, also, Comp. St. § 9430, and notes thereunder.

Novelty and increased utility in an improvement on previous devices do not necessarily make it an invention, and a device which displays only the expected skill of the maker's calling, and involves only the exercise of ordinary faculties of reasoning upon materials supplied by special knowledge and facility of manipulation resulting from habitual intelligent practice, is in no sense a creative work of inventive faculty, such as the constitution and the patent laws aim to encourage and reward. Calkins v. Oshkosh Carriage Co. (C. C. 1886) 27 Fed. 296, 298.

Under the Constitution and the statute, a person to be entitled to a patent must have invented or discovered something new and useful, and it is not enough that a thing shall be new, in the sense that in the shape or form in which it is produced it shall not have been known before, and that it shall be useful, but it must, under the Constitution and the statute, amount to an invention or discovery. Johnson Co. v. Pacific Rolling Mills Co. (C. C. 1891) 47 Fed. 586, 589, affirmed (1892) 51 Fed. 762, 2 C. C. A. 506; Same v. Tidewater Steel Works (C. C. 1892) 50 Fed. 90.

To authorize issuance of a patent, it is not enough that a thing shall be new in the sense that in the shape or form in which it is produced it shall not have been before known and that it shall be useful; but it must amount to an invention or discovery. Vulcanized Fiber Co. v. Taylor (C. C. 1891) 49 Fed. 744.

26. Construction of patents and specifications.—The specifications for a patent must be liberally construed in accordance with the design of the constitution to promote the progress of the useful arts and allow inventors to retain to their own use, not anything which is matter of common right, but what they themselves have created. Winans v. Denmead (1853) 15 How. 330, 341, 14 L. Ed. 717.

Patents granted under the laws of the United States pursuant to this clause are grants made in consideration of discoveries which "promote the progress of science and useful arts," and are to be construed liberally so as to effect their real intent. Bossert Electric Const. Co. v. Pratt Chuck Co. (1910) 179 Fed. 385, 103 C. C. A. 45.

27. Right to patent as exclusive as against government.—The government, when it grants letters patent for a new invention or discovery in the arts, confers on the patentee an exclusive property which it cannot appropriate or use itself without just compensation. James v. Campbell (1881) 104 U. S. 356, 357, 358, 26 L. Ed. 786; U. S. v. Palmer (1888) 9 Sup. Ct. 104, 128 U.

S. 262, 32 L. Ed. 442; Head v. Porter (C. C. 1891) 48 Fed. 481.

The words used, "securing" "to inventors the exclusive right to their" "discoveries," do not imply that as to patented articles needed by the government the right shall not be exclusive. McKeever v. U. S. (1878) 14 Ct. Cl. 396.

28. State laws affecting copyrights.—As regards copyrighted books, an agreement between publishers and others to maintain fixed retail prices thereof, no retailer cutting prices to be allowed to handle them, is not subject to a state statute against monopolies and restraint of trade. Straus v. American Publishers' Ass'n (1908) 86 N. E. 525, 193 N. Y. 496, affirming judgment (1908) 111 N. Y. Supp. 830, 127 App. Div. 935.

29. State laws affecting patents—Sales or transfers.—State laws regulating the execution and transfer of notes given for a patent right and requiring that the words "given for a patent right" shall be written or printed on the face of such note are not unconstitutional. Allen v. Riley (1906) 27 Sup. Ct. 95, 203 U. S. 347, 51 L. Ed. 216, 8 Ann. Cas. 137 (affirming judgment [1905] 80 P. 952, 71 Kan. 378); John Woods & Sons v. Carl (1906) 27 Sup. Ct. 99, 203 U. S. 358, 51 L. Ed. 219; Ozan Lumber Co. v. Union County Nat. Bank (1907) 28 Sup. Ct. 89, 207 U. S. 251, 52 L. Ed. 195, reversing (1906) 145 Fed. 344, 76 C. C. A. 218, 7 Ann. Cas. 390, which affirmed (C. C. 1904) 127 Fed. 206; Tilson v. Gatling (1895) 60 Ark. 114, 29 S. W. 35; Columbia County Bank v. Emerson (1908) 110 S. W. 214, 86 Ark. 155; New v. Walker (1886) 108 Ind. 365, 9 N. E. 386, 58 Am. Rep. 40; Hankey v. Downey (1888) 18 N. E. 271, 116 Ind. 118, 1 L. R. A. 447; Pape v. Wright (1888) 19 N. E. 459, 116 Ind. 502; Mason v. McLeod (1896) 57 Kan. 105, 45 Pac. 76, 57 Am. St. Rep. 327, 41 L. R. A. 548; Herdic v. Roessler (N. Y. 1886) 39 Hun, 198 (affirmed [1888] 109 N. Y. 127, 16 N. E. 198); Tod v. Wick (1881) 36 Ohio St. 370; Haskell v. Jones (1878) 86 Pa. 173; Shires v. Commonwealth (1888) 120 Pa. 368, 14 Atl. 251; State v. Cook (1901) 64 S. W. 720, 107 Tenn. 499, 62 L. R. A. 174. CONTRA, Woollen v. Banker (C. C. 1877) Fed. Cas. No. 18,030; Castle v. Hutchinson (C. C. 1885) 25 Fed. 394; Pegram v. American Alkali Co. (C. C. 1903) 122 Fed. 1000; Helm v. First Nat. Bank (1873) 43 Ind. 167, 13 Am. Rep. 395; Cranson v. Smith (1877) 37 Mich. 309, 26 Am. Rep. 514; J. H. Clark Co. v. Rice (1906) 106 N. W. 231, 127 Wis. 451.

Rights acquired under the patent laws of the United States cannot be affected by a state statute. United States Consol. Seeded Raisin Co. v. Griffin & Skelley Co. (1903) 126 Fed. 364, 61 C. C. A. 334; Rubber Tire Wheel Co. v. Milwaukee Rubber Works Co. (1907) 154 Fed. 358, 83 C. C. A. 336 (writ of certiorari granted Milwaukee Rubber Works Co. v. Rubber Tire Wheel Co. [1907] 28 Sup. Ct. 255, 207 U. S. 589, 52 L. Ed. 354); Castle v. Hutchinson (C. C. 1885) 25 Fed. 394; Ball v. Coker (C. C. 1909) 168 Fed. 304; Grover & Baker Sewing Mach. Co. v. Butler (1876) 53 Ind. 454, 21 Am. Rep. 200.

The right of a patentee, under act of congress authorizing issue of patents, to vend his invention, cannot be subjected to any restrictions by state legislation. The authority of congress is supreme. Patterson v. Kentucky (1878) 97 U. S. 501, 24 L. Ed. 1115 (affirming [1875] 74 Ky. [11 Bush] 311, 21 Am. Rep. 220); Ex parte Robinson (C. C. 1870) Fed. Cas. No. 11,932; Hollida v. Hunt (1873) 70 Ill. 109, 22 Am. Rep. 63.

State laws requiring a person who sells or offers for sale patents to file with the clerk of the proper county a duly authenticated copy of the letters patent, and an affidavit that the letters are genuine and have not been revoked or annulled, and that he has a right to sell the same, is a legitimate exercise of the police power of the state, and is not in conflict with this clause. Reeves v. Corning (C. C. 1892) 51 Fed. 774 (following Brechbiel v. Randall [1885] 1 N. E. 362, and distinguishing Castle v. Hutchinson [C. C. 1885] 25 Fed. 394); Sandage v. Studabaker Bros. Mfg. Co. (1895) 142 Ind. 148, 41 N. E. 380, 34 L. R. A. 363, 51 Am. St. Rep. 165.

This provision of the constitution was not violated by Const. N. Y. 1846, art. 6, § 22, providing that all "judicial decisions shall be free for publication by any person," since the latter provision means that the right to engage in the original enterprise of publishing such decisions shall remain common to all, and not that one who has performed the labor of preparing and incurred the expense of printing from manuscript a volume of reports, shall be allowed no protection from piracy of his work. Little v. Gould (C. C. 1851) Fed. Cas. No. 8,394.

Ownership of a physical structure covered by a patent does not necessarily include the right to use the same, nor can such right be foreclosed by the operation of state statutes. Federal Const. Co. v. Park Imp. Co. (C. C. 1908) 166 Fed. 128.

The provision of 1 Rev. St. Ind. 1876, p. 373, requiring agents of foreign corporations to file their authority with the county clerk, does not apply to a corporation owning a patent, or to its agents, engaged solely in the manufacture, use, or sale of the invention. Grover & Baker Sewing Mach. Co. v. Butler (1876) 53 Ind. 454, 21 Am. Rep.

200; Shook v. Singer Mfg. Co. (1878) 61 Ind. 520.

Plaintiff's agents, who were engaged in selling patent articles, took notes, which notes plaintiff sold to the agent, taking the agent's note in return therefor. Held, that the consideration for the agent's note was the transfer to the agent of the other notes and not the patented article, and therefore plaintiff could not maintain an action on the agent's note without complying with the statute required for incorporations to file a power of attorney before transacting business in the state. Domestic Sewing Mach. Co. v. Hatfield (1877) 58 Ind. 187.

The fact that an article sold in a state by a foreign corporation was constructed under authority of letters patent issued by the United States does not relieve it from compliance with the laws of the state in respect to foreign corporations. Toledo Agricultural Works v. Work (1880) 70 Ind. 253.

The fact that the telephone and appliances are articles patented under the Constitution does not preclude a state from regulating and limiting telephone rates. Hockett v. State (1886) 5 N. E. 178, 105 Ind. 250, 55 Am. Rep. 201.

Ky. St. § 4223, requiring every "peddler's note" to be so marked, is not violative of the federal constitution, though it affects notes given for patent rights. Union Nat. Bank v. Brown (1897) 41 S. W. 273, 101 Ky. 354, 19 Ky. Law Rep. 540, 38 L. R. A. 503, 72 Am. St. Rep. 420; Nunn v. Citizens' Bank (1899) 107 Ky. 262, 53 S. W. 665, 21 Ky. Law Rep. 961; Rumbley v. Hall (1899) 54 S. W. 4, 107 Ky. 349, 21 Ky. Law Rep. 1071.

While the state has no right to interfere by legislation with the monopoly of invention secured by letters patent issued by the federal government, the patentee and his assignees are nevertheless subject to regulations properly within the state's police power. In re Opinion of the Justices (1907) 81 N. E. 142, 193 Mass. 605.

The patent laws, while conferring exclusive rights, do not affect personal capacity to contract nor prescribe the requisites for sales of patented articles, nor provide customary restrictions supposed to be important for the protection of public morals. People v. Russell (1883) 14 N. W. 568, 49 Mich. 617, 43 Am. Rep. 478.

Laws Minn. 1871, c. 26, which requires owners of patent rights before a sale thereof to file with the clerk of the district court a true copy of the letters patent, is void, as an unauthorized attempt by the state legislature to regulate the sale of patent rights. Crittenden v. White (1876) 23 Minn. 24.

A judgment prohibiting a foreign corporation from doing business in the state because its business was in restraint of trade was not in violation of this clause and the acts of Congress relating to inventions and inventors, because the principal inducement of the combination was to secure a monopoly for the sale of patented articles. State v. Creamery Package Mfg. Co. (Minn. 1911) 132 N. W. 268.

Act Neb. Feb. 18, 1873, prescribing certain steps to be taken by the vendor of a patent right in order to make a valid sale, the effect of which is to hamper the assignment of patent rights is in conflict with this clause. Wilch v. Phelps (1883) 14 Neb. 134, 15 N. W. 361.

The fact that a patent securing the exclusive right to manufacture and use certain medicines is issued by authority of the constitution of the United States does not authorize the owner of the patent to administer such medicines in the character of a practicing physician, without conforming to state laws; the sole operation of the patent statute being to enable him to prevent others from using the products of his labor except with his consent, and not to enlarge his own right of use. Jordan v. Overseers of Dayton (1831) 4 Ohio, 295.

The use of patented property, like other species of property, when devoted to public use, is subject to control by state legislation, where the exigencies of the public welfare require it. State v. Bell Tel. Co. (1880) 36 Ohio St. 296, 38 Am. Rep. 583.

30. —— **Licenses.**—A statute of Kentucky imposing a license tax upon peddlers, which, for vendors of patent rights, was double the amount required of others, was a taxation of patent rights granted by the United States, and so unconstitutional and void. In re Sheffield (C. C. 1894) 64 Fed. 833.

The state can require a patentee or his assignee to take out a license before he can sell the right to make or sell the patented article. Burns v. Sparks (1904) 82 S. W. 425, 26 Ky. Law Rep. 688.

Under the federal constitution and laws, giving a patentee an exclusive right to sell and manufacture the patented article, a state has no right to impose a license or privilege tax thereon. Commonwealth v. Petty (1895) 96 Ky. 452, 29 S. W. 291, 29 L. R. A. 786; State v. Butler (1879) 71 Tenn. (3 Lea) 222.

The state has power to pass a general law prohibiting licensees and owners of patents from leasing patented machines by a contract prohibiting the lessee from obtaining from any other person similar machines to perform the same operation as that performed by the leased machine during the term of the lease. In re Opinion of the Justices (1907) 81 N. E. 142, 193 Mass. 605.

The Legislature was also authorized

to pass a general law providing that, where a patented machine is designed to perform two successive steps in the making of an article or product, the owner of the patent or license shall not lease or license the use of one of the machines designed to perform one of the steps on conditions in effect prohibiting the lessee or licensee from using in the manufacture of the article or product the leased or licensed machine, if a machine not obtained from the licensor or lessor is or is to be used to perform the other of such steps during the term of the lease or license. Id.

The state had power to pass a law that a patentee or licensee of a patented machine should not lease or license the use thereof on condition that the lessee or licensee should exclusively purchase of the lessor unpatented material or merchandise used in the machine during the term of the lease or license. Id.

31. —— Taxation.—See note ante as to "Licenses."

This clause is not violated by a state tax on patent rights. Crown Cork & Seal Co. v. State (1898) 40 A. 1074, 87 Md. 687, 67 Am. St. Rep. 371.

A tax assessed against an electric illuminating company doing business in the state of New York under patents controlled by it, and in which part of its capital is invested, is not a property tax assessed on the patents, but a tax on the franchise of such corporation, which is therefore not entitled to exemption from such tax. People v. Wemple (1891) 61 Hun, 53, 15 N. Y. Supp. 711.

Patent rights are not taxable by a state, since they are created by the federal government for the promotion of federal purposes. People v. Board of Assessors of City of Brooklyn (1898) 51 N. E. 269, 156 N. Y. 417, 42 L. R. A. 290, affirming order (1897) 46 N. Y. Supp. 388, 19 App. Div. 599.

The capital invested by a corporation in United States patent rights is exempt from taxation. People v. Neff (1898) 51 N. E. 1093, 156 N. Y. 701, affirming order (1895) 44 N. Y. Supp. 46, 15 App. Div. 8.

Though a domestic corporation has invested all its capital in patents issued by the United States, and such patents are by the law of the United States exempt from taxation, it does not render a franchise tax imposed on the corporation, computed on the basis of the amount of its capital stock employed within the state, as provided by Tax Law N. Y. (Laws 1896, c. 908) § 182, invalid. People v. Knight (1903) 67 N. E. 65, 174 N. Y. 475, 63 L. R. A. 87, reversing order (1901) 73 N. Y. Supp. 745, 67 App. Div. 333.

Inventors and owners of appliances for transmission of sounds (telephone) and for producing light by electricity, in consideration of certain shares of stock to be issued to them by defendant company, agreed that the latter should have the exclusive right to use such appliances in certain territory, the inventors and owners reserving the right to sell the privilege of using the same everywhere except in that territory, and also the ownership of the appliances actually used. Held, that stock of defendant company issued to such inventors and owners was not an investment in "patent rights," and so was not exempt from state taxation. Commonwealth v. Central District & Printing Tel. Co. (1891) 145 Pa. 121, 22 Atl. 841, 28 Wkly. Notes Cas. 515, 27 Am. St. Rep. 677; Same v. Edison Electric Light Co. (1891) 145 Pa. 131, 22 Atl. 841, 845, 28 Wkly. Notes Cas. 531, 27 Am. St. Rep. 683; Same v. Philadelphia Co. (1891) 145 Pa. 142, 22 Atl. 843, 28 Wkly. Notes Cas. 518; Same v. Brush Electric Light Co. (1891) 145 Pa. 147, 22 Atl. 844, 28 Wkly. Notes Cas. 527.

Capital stock of a corporation invested in patent rights is not taxable by the state; a patent right being a privilege emanating from the federal government, with which the state cannot interfere. Commonwealth v. Westinghouse Electric & Mfg. Co. (1892) 151 Pa. 265, 24 Atl. 1107, 1111.

32. Trade-marks.—See Comp. St. §§ 9485–9516. See, also, notes under clause 3, ante.

This clause does not apply to trademarks. Trade-Mark Cases (1879) 100 U. S. 82, 93, 25 L. Ed. 550; Higgins v. Keuffel (1890) 140 U. S. 428, 11 Sup. Ct. 731, 35 L. Ed. 470 (affirming [C. C. 1887] 30 Fed. 627); Leidersdorf v. Flint (C. C. 1878) Fed. Cas. No. 8,-219. See, also, U. S. v. Roche (C. C. 1879) Fed. Cas. No. 16180; U. S. v. Koch (C. C. 1889) 40 Fed. 250, 5 L. R. A. 130; U. S. v. Loeb (C. C. 1892) 49 Fed. 636.

Cited without definite application, Evans v. Eaton (1818) 3 Wheat. 454, 513, 4 L. Ed. 433; Grant v. Raymond (1832) 6 Pet. 218, 241, 8 L. Ed. 376; Seymour v. Osborne (1870) 11 Wall. 516, 539, 20 L. Ed. 33; Gardner v. Herz (1886) 6 Sup. Ct. 1027, 1033, 118 U. S. 180, 30 L. Ed. 158; Hill v. Wooster (1890) 10 Sup. Ct. 228, 231, 132 U. S. 693, 33 L. Ed. 502; International Postal Supply Co. v. Bruce (1904) 24 Sup. Ct. 820, 821, 194 U. S. 601, 48 L. Ed. 1134; Henry v. A. B. Dick Co. (1912) 32 Sup. Ct. 364, 378, 224 U. S. 1, 56 L. Ed. 645, Ann. Cas. 1913D, 880; J. L. Mott Iron Works v. Clow (1897) 82 Fed. 316, 317, 27 C. C. A. 250; Bobbs-Merrill Co. v. Straus (1906) 147 Fed. 15, 77 C. C. A. 607, 15 L. R. A. (N. S.) 766 (affirmed [1908] 28 Sup. Ct. 722, 210 U. S. 339, 52 L. Ed. 1086); Saake v. Ledefer (1909) 174 Fed. 135, 98 C. C. A. 571; Blanchard v. Haynes (C. C. 1848) Fed.

Cas. No. 1512; Bloomer v. Stolley (C. C. 1850) Fed. Cas. No. 1559; Crowe v. Aiken (C. C. 1870) Fed. Cas. No. 3441; Wilcox & Gibbs Sewing Machine Co. v. Gibbens Frame (C. C. 1883) 17 Fed. 623, 624; Henry Bill Pub. Co. v. Smythe (C. C. 1886) 27 Fed. 914, 921; Gilmore v. Anderson (C. C. 1889) 38 Fed. 846, 848; International Postal Supply Co. v. Bruce (C. C. 1902) 114 Fed. 509 (affirmed [1904] 132 Fed. 1006, 65 C. C. A. 130); National Phonograph Co. v. Schlegel (C. C. 1902) 117 Fed. 624 (reversed [1904] 128 Fed. 733, 64 C. C. A. 594); Thomson-Houston Electric Co. v. Illinois Telephone Const. Co. (C. C. 1906) 143 Fed. 534, 538; Blount Mfg. Co. v. Yale & Towne Mfg. Co. (C. C. 1909) 166 Fed. 555.

[9] To constitute Tribunals inferior to the supreme Court;

Notes of Decisions

Creation of courts in general.—See, also, notes under art. 2, § 2, cl. 1, "President as commander in chief."

See, also, notes under clause 17, post, as to "District of Columbia."

It would seem that Congress is bound to create some inferior courts, in which to vest all that jurisdiction which under the Constitution is exclusively vested in the United States, and of which the Supreme Court cannot take original cognizance. It might establish one or more inferior courts, it might parcel out the jurisdiction among such courts, from time to time at its pleasure. But the whole judicial power of the United States, should be at all times vested either in an original or appellate form in some courts created under its authority. Martin v. Hunter (1816) 14 U. S. (1 Wheat.) 304, 331, 4 L. Ed. 97, reversing Hunter v. Martin (1815) 4 Munf. (Va.) 1. See, also, Johnson v. Gordon (1854) 4 Cal. 368.

Courts-martial.—Courts-martial are tribunals created by Congress in pursuance of the power conferred by the Constitution. Rose v. Roberts (1900) 99 Fed. 948, 949, 40 C. C. A. 199.

Authority to obtain courthouse sites.—Power to create such courts within states includes authority to obtain sites for courthouses by condemnation proceedings. Kohl v. U. S. (1875) 91 U. S. 367, 372, 23 L. Ed. 449.

Power to authorize issue and to suspend writ of habeas corpus.—This clause contains a delegation to congress of power to authorize the issue and to suspend the writ of habeas corpus. Warren v. Paul (1864) 22 Ind. 276.

Cited without definite application. Downes v. Bidwell (1901) 21 Sup. Ct. 770, 816, 182 U. S. 244, 45 L. Ed. 1088 (dissenting opinion).

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

Notes of Decisions

See, also, notes following clause 18, post. See U. S. v. Rodgers (1893) 14 Sup. Ct. 109, 150 U. S. 249, 37 L. Ed. 1071.

Piracies and felonies on the high seas.—See Comp. St. § 10,463 et seq., and notes thereunder.

Congress can enact laws punishing pirates, though they may be foreigners and may have committed no particular offense against the United States. U. S. v. Palmer (1818) 3 Wheat. 610, 630, 4 L. Ed. 471.

Act March 3, 1819, § 5 (incorporated into R. S. § 5368 [Comp. St. § 10463]) referring to the law of nations for a definition of "piracy," is a constitutional exercise of the power of Congress to define and punish piracy, which is defined by the law of nations with reasonable certainty. U. S. v. Smith (1820) 5 Wheat. 153, 158, 5 L. Ed. 57.

It is competent for Congress, as was done by Act May 15, 1820, § 3 (R. S. § 5370), to prescribe the punishment of offenses committed on the high seas, open roadsteads, in any haven, basin, or bay, or in any river where the sea ebbs and flows, though within the limits of a state. U. S. v. John (1861) 1 Black, 484, 487, 17 L. Ed. 225.

The express authority to punish piracies does not preclude Congress from punishing other crimes. The Legal Tender Cases (1870) 12 Wall. 457, 535, 20 L. Ed. 287.

Under the power to define and punish piracies, congress may declare to be piracy the service of a citizen or resident of the United States on a vessel used in kidnapping the inhabitants of a foreign country for the purpose of making them slaves, or the use of a vessel owned in the United States in such kidnapping. In re Charge to Grand Jury (C. C. 1859) Fed. Cas. No. 18,-269a.

Pirates are sea robbers or highwaymen of the sea, and all civilized nations have a common interest and are under a moral obligation to arrest and suppress them; and the constitution in express terms confers upon the United States the power to perform this duty, as one of the family of nations. In re Charge to Grand Jury (C. C. 1861) Fed. Cas. No. 18,277.

The power to define and punish fel-

onies committed on the high seas is independent of any power which Congress may derive from article 3, § 2, cl. 1, declaring that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction, but that clause gives Congress any power which it may possess to provide for the punishment of offenses committed on any navigable waters other than those of the high seas. Imbrovek v. Hamburg-American Steam Packet Co. (D. C. 1911) 190 Fed. 229, judgment affirmed Atlantic Transport Co. v. Imbrovek (1912) 193 Fed. 1019, 113 C. C. A. 398.

Offenses against laws of nations.—A penal statute passed by Congress under the power granted to it by this clause need not expressly declare the act made punishable to be an offense against the law of nations. U. S. v. Arjona (1887) 7 Sup. Ct. 628, 630, 120 U. S. 479, 30 L. Ed. 728. So the act of 1884 (incorporated into Comp. St. § 10326 et seq.) is not an invalid exercise of authority because it fails to declare that the offense is one "against the law of nations." Id.

Congress, under its authority to define and punish offenses against the law of nations and to regulate commerce with foreign nations, may provide for punishing as a crime the counterfeiting within the United States of the notes of foreign banks or corporations, although such notes are not the issue of the foreign government. Id.

The federal judiciary, in the absence of legislation by congress, has jurisdiction of an offense against the law of nations, and may proceed to punish the offender according to the forms of the common law. Henfield's Case (C. C. 1793) Fed. Cas. No. 6,360.

The participation by the citizens of a neutral state in an attack by one belligerent power upon another is an offense against the law of nations, and may be punished as such by such neutral state. Id.

Counterfeiting the securities of a foreign nation is an offense against the "law of nations." U. S. v. White (C. C. 1886) 27 Fed. 200, 202.

Cited without definite application, McCulloch v. Maryland (1819) 4 Wheat. 316, 417, 4 L. Ed. 579.

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

Notes of Decisions

1. Declaring war in general.
2. Casus belli.
3. Blockades and commercial intercourse during war.
4. Recognition of state of war and belligerent rights.
5. War against states.
6. Insurrection or rebellion constituting war.
7. Exercise of war powers.
8. Martial law.
9. Acquisition and government of territory.
10. Captures on land and water.
11. Seizure and confiscation of property.

See, also, notes under art. 1, § 8, cl. 12, post.

1. Declaring war in general.—A state law imposing a tax on passengers held void as interfering with the power of the federal government to declare and prosecute war, and as a necessary incident to raise and transport troops through and over territory of any state. Crandall v. Nevada (1867) 6 Wall. 35, 44, 18 L. Ed. 745.

This clause does not confer on congress the power to designate by law a person to fill a military office, since this would be in dirct conflict with the power of appointment given the president by Const. art. 2, § 2. (1884) 18 Op. Atty. Gen. 18, 26.

The power to declare war is exclusively vested in congress. Perkins v. Rogers (1871) 35 Ind. 124, 9 Am. Rep. 639.

This clause relates only to wars with foreign nations. Norris v. Doniphan (1863) 61 Ky. (4 Metc.) 385.

Assuming that a conscript, by furnishing a substitute, as authorized by the act of April 16, 1862, made a contract with the government, the latter, under the power to declare war and raise and support armies, may annul such contract without making any compensation; exemption from military service not being property, but a mere personal privilege. Gatlin v. Walton (1864) 60 N. C. 325, 1 Winst. 333.

2. Casus belli.—A recognition by any other independent power of the Confederate States as an independent power before they had demonstrated their ability to maintain their new government would have been a casus belli between the United States and such power. Smith v. Stewart (1869) 21 La. Ann. 67, 99 Am. Dec. 709.

3. Blockades and commercial intercourse during war.—The charges which the treasury regulations required to be paid as a condition of carrying on trade in the insurrectionary states were imposed in the exercise of the war power. Hamilton v. Dillin (1874) 21 Wall. 73, 87, 22 L. Ed. 528.

The government may permit trading with an enemy upon such conditions as it chooses to prescribe. Id.

The proclamation of the blockade is of itself conclusive evidence of the existence of war warranting the blockade. The Mary Clinton (C. C. 1863) Fed. Cas. No. 9,203.

Concession of belligerent rights by the legislative and executive departments to rebels establishes no rights ex-

cept during the war. Shortridge v. Macon (C. C. 1867) Fed. Cas. No. 12,812.

The president may lawfully proclaim a blockade of any of the ports of the United States when in his judgment the exigency for such action has arisen, though congress alone has power, under the constitution, to declare war and grant letters of marque. U. S. v. The Tropic Wind (1861) 6 D. C. 351.

The acts of July 13, 1861, and August 6, 1861, did not affect prior proceedings of the president in authorizing acts of war, in establishing blockades, and making captures of enemy property. The Hiawatha (D. C. 1861) Fed. Cas. No. 6,451.

As against the states in rebellion, the United States had both sovereign and belligerent rights, and might both establish a blockade and interdict all commerce with their ports. The Revere (D. C. 1862) Fed. Cas. No. 11,716.

The results of war inter gentes were substantially applied to the citizens of the Confederate States during the Rebellion. Harden v. Boyce (N. Y. 1870) 59 Barb. 425.

See, also, The Venice (1864) 2 Wall. (U. S.) 258, 17 L. Ed. 866; Mrs. Alexander's Cotton (1864) 2 Wall. (U. S.) 404, 17 L. Ed. 915; Ouachita Cotton (1867) 6 Wall. (U. S.) 521, 18 L. Ed. 935; Hanger v. Abbott (1867) 6 Wall. (U. S.) 532, 18 L. Ed. 939; Coppell v. Hall (1868) 7 Wall. (U. S.) 542, 19 L. Ed. 244; McKee v. U. S. (1868) 8 Wall. 163, 19 L. Ed. 329; Jackson Ins. Co. v. Stewart (C. C. 1866) Fed. Cas. No. 7,152.

4. Recognition of state of war and belligerent rights.—Whether war be made by invasion of a foreign nation, or by states organized in rebellion, it is none the less a war, although the declaration of it be "unilateral," for war may exist without a declaration on either side, and a declaration of war by one country only is not a mere challenge, to be accepted or refused at pleasure by the other. Prize Cases (1862) 2 Black, 635, 668, 17 L. Ed. 459.

The power of making war is exclusively vested in congress, bnt the president has power to repel invasions by hostile forces, even when congress has not declared war. U. S. v. Smith (C. C. 1806) Fed. Cas. No. 16,342.

The practice of a formal proclamation before recognizing an existing war and capturing enemy's property has fallen into disuse in modern times, and actual hostilities may determine the date of the commencement of war, though no proclamation may have been issued, no declaration made, and no action of the legislative branch of the government had. The Buena Ventura (D. C. 1898) 87 Fed. 927, decree reversed (1899) 20 Sup. Ct. 148, 175 U. S. 384, 44 L. Ed. 206; decree affirmed The Panama (1900) 20 Sup. Ct. 480, 176 U. S. 535, 44 L. Ed. 577.

A public war, within the meaning of the constitution and the rules and articles of war (Act April 10, 1806, c. 20), has existed with the Seminoles since the day congress recognized their hostilities and appropriated money to suppress them. (1838) 3 Op. Atty. Gen. 307.

A state of war may exist without a declaration on either side. Baker v. Gordon (1864) 23 Ind. 204.

The federal government alone has power to recognize and regulate belligerent rights. On this subject the states have no sovereignty. Price v. Poynter (1867) 64 Ky. (1 Bush) 387, 89 Am. Dec. 631; Bell v. Louisville & N. R. Co. (1867) 64 Ky. (1 Bush) 404, 89 Am. Dec. 632.

5. War against states.—By the constitution, congress alone has the power to declare a national or foreign war, but it cannot declare war against a state, or any number of states, by virtue of any clause in the constitution. Prize Cases (1862) 2 Black, 635, 668, 688, 17 L. Ed. 459.

Authority to suppress rebellion is found in the power to suppress insurrection and carry on war; and authority to provide for the restoration of state governments, under the Constitution, when subverted and overthrown, is derived from the obligation of the United States to guarantee to every state in the Union a republican form of government. The latter, indeed, in the case of a rebellion which involves the government of a state, and, for the time, excludes the national authority from its limits, seems to be a necessary complement to the other. Texas v. White (1868) 74 U. S. (7 Wall.) 700, 19 L. Ed. 227.

Congress is not deprived of its power when its exercise is called out by civil war. Tyler v. Defrees (1870) 11 Wall. 331, 345, 20 L. Ed. 161.

The theory or opinion that the Constitution does not contemplate making war on a state is true in the sense that the state as a political body is not to be compelled to execute the laws of the United States; for those laws act directly on individuals and are to be enforced by national instrumentalities. Charge to Grand Jury, Treason (D. C. 1863) Fed. Cas. No. 18,274.

Although it is clear that the constitution does not give congress power, either expressly or by implication, to make war against a state, and to require the executive to carry it on by force drawn from the other states, yet that question is one for congress itself to consider. (1860) 9 Op. Atty. Gen. 517.

If it be true that war cannot be declared, nor a system of hostilities carried on, by the federal government against a state, it follows that an attempt to do so would be, ipso facto, an expulsion of such state from the Union; and in that event, it would seem, all the

states will be absolved from their federal obligations. Id.

The general government may lawfully repel a direct aggression on its property and officers, but cannot carry on an offensive war to punish the people for the political misdeeds of their state government, or to prevent threatened violation of the constitution, or to enforce an acknowledgment that the government of the United States is supreme. Id.

See, also, Brown v. Hiatt (C. C. 1870) Fed. Cas. No. 2,011; Philips v. Hatch (C. C. 1871) Fed. Cas. No. 11,094; Jacoway v. Denton (1869) 25 Ark. 625; Buie v. Parker (1869) 63 N. C. 131; Hedges v. Price (1867) 2 W. Va. 192. 94 Am. Dec. 507.

6. Insurrection or rebellion constituting war.—No formal declaration of war by the president, in the case of the war of the Rebellion, was necessary to render lawful the means adopted by him to repel the warlike measures of the enemy. The Hiawatha (D. C. 1861) Fed. Cas. No. 6,451.

The late insurrection of the Southern States did not become a civil war until after the proclamation of President Lincoln, issued August 16, 1861, pursuant to Act July 13. 1861, placing the inhabitants of the Southern States in a state of insurrection. Perkins v. Rogers (1871) 35 Ind. 124, 9 Am. Rep. 639.

John Morgan and his band of Confederate soldiers constituted in May, 1862, a public enemy in the technical sense. The strife in which they were fighting was not an insurrection, but a civil war, in which the parties were belligerents and respectively entitled to belligerent rights. Bland v. Adams Exp. Co. (1864) 62 Ky. (1 Duv.) 232, 85 Am. Dec. 623.

The late Rebellion in this country had matured into a civil war on the 10th of May, 1862. Bell v. Louisville & N. R. Co. (1867) 64 Ky. (1 Bush) 404, 89 Am. Dec. 632.

Insurrection is not in the legal sense war, and the strife between the states was not war of such character as to make commercial intercourse and contracts between the antagonist citizens illegal before its recognition as such by the government of the United States. Leathers v. Commercial Ins. Co. (1867) 65 Ky. (2 Bush) 296, 92 Am. Dec. 483.

Where a portion of the subjects of a civil government have rebelled, established another government, and resorted to arms to maintain it, and the rebellion is of such magnitude that the military and naval forces have been called out to suppress it, the fact that such rebels are robbers on land and pirates on the sea does not preclude them from being regarded as belligerents. Dole v. Merchants' Mut. Marine Ins. Co. (1863) 51 Me. 465.

On May 20, 1861, the people of the state of Tennessee were public enemies. Lewis v. Ludwick (1869) 46 Tenn. (6 Cold.) 368, 98 Am. Dec. 454.

7. Exercise of war powers.—See, also, notes under art. 1, § 8, cl. 12, post.

By virtue of its power to make war and suppress insurrection, the government has the right to transport troops to all parts of the Union by the usual and most expeditious mode, and a state tax on passengers carried out of the state is void as an interference therewith. Crandall v. Nevada (1867) 6 Wall. 35, 44, 18 L. Ed. 745.

An act suspending statute of limitations during the war held to be a proper exercise of the war power. Stewart v. Bloom (1870) 11 Wall. 493, 506, 20 L. Ed. 176.

Under its power to declare war, congress may carry on war and collect revenue for that purpose. The Legal Tender Cases (1870) 12 Wall. 457, 546, 20 L. Ed. 287.

As incident to the power of making war, the national government has the power to bury the dead who have fallen in battle and to appropriate for this purpose such lands for national cemeteries as are necessary to hold such burial places and protect them from desecration. (1869) 13 Op. Atty. Gen. 131.

When congress declares war, by that declaration it puts in force the laws of war, and the war powers of the government which are not to be exercised, under the constitution, in time of peace, come into full force by virtue of the constitution, and are to be exerted by the president and congress. After the declaration of war, every act done in carrying on the war, is an act done by virtue of the constitution, which authorized the war to be commenced. Every measure of congress, and every executive act performed by the president, intended and calculated to carry the war to a successful issue, are acts done under the constitution, whether the act or the measure be for the raising of money to support armies, or a declaration of freedom to fill their ranks and weaken the enemy, whether it be the organization of military tribunals to try traitors, or the destruction of their property by the advancing army, without due process of law, and the validity of such acts must be determined by the constitution. McCormick v. Humphrey (1866) 27 Ind. 144.

Since congress has the constitutional power to declare war, it follows that congress must possess the choice of means, and must be empowered to use any means which are, in fact, conducive to the exercise of the constitutional grant of power. Id.

The law of nations imposes only the limit on the war power of the United States, and there is no difference in this respect between a foreign and a

civil war. Knoefel v. Williams (1868) 30 Ind. 1.

Assuming that a conscript by furnishing a substitute, as authorized by Act April 16, 1862, made a contract with the government, the latter, under the power to declare war and raise and support armies, may annul such contract without making any compensation; exemption from military service not being property, but a mere personal privilege. Gatlin v. Walton (1864) 60 N. C. 325, 1 Winst. 333.

The United States military authorities during the war had authority to construct a line of railroad along a public street in Memphis connecting the lines of certain railroads, and any one using such line of road for military purposes under the orders of the military authorities should not be deemed a trespasser. Mississippi & T. R. Co. v. Wilson (1873) 57 Tenn. (10 Heisk.) 496.

See, also, The Grapeshot (1869) 9 Wall. (U. S.) 129, 19 L. Ed. 651.

Military tribunals, see (1865) 11 Op. Atty. Gen. 297.

8. Martial law.—Martial law cannot suspend the constitution as the guardian of the person and property of a private citizen who is not an enemy to the government, and has been guilty of no hostile act. Corbin v. Marsh (1865) 63 Ky. (2 Duv.) 193.

Martial law is limited to the theater of active military operations, where no civil authority remains, and there is a necessity to furnish a substitute to preserve the safety of the army and society; and martial rule can only prevail until the laws can have their free course. McLaughlin v. Green (1874) 50 Miss. 453.

See Ex parte Vallandigham (C. C. 1863) Fed. Cas. No. 16,816.

9. Acquisition and government of territory.—The government possesses the power of acquiring territory by conquest. American Ins. Co. v. Canter (1828) 1 Pet. 511, 542, 7 L. Ed. 242; Pollard v. Kibbe (1840) 14 Pet. 353, 392, 10 L. Ed. 490.

The power to declare war is conferred on congress to enable the general government to vindicate by arms its own rights and the rights of its citizens, and a war declared by congress is not presumed to be waged for conquest, and the boundaries of the United States may only be extended by the treaty-making power or legislative authority. Fleming v. Page (1850) 9 How. 603, 614, 13 L. Ed. 276.

A military occupation which will give the right to exercise governmental authority is not merely an invasion, but is an invasion plus possession of the enemy's country for the purpose of holding it temporarily, at least. Macleod v. U. S. (1913) 33 Sup. Ct. 955, 229 U. S. 416, 57 L. Ed. 1260.

The power conferred on the government to make war and treaties implies the power to acquire territory, either by conquest or treaty; and the power to govern such territory until it is fit to be admitted into the Union as a state results from the acquisition thereof. Nelson v. U. S. (C. C. 1887) 30 Fed. 112, affirming (D. C. 1886) 29 Fed. 202.

The power to acquire additional territory rests on the power to declare war. Ex parte Ortiz (C. C. 1900) 100 Fed. 955, 958.

The title to lands in this state owned by the Confederate government when the state was overpowered by the federal forces in 1865 passed by conquest to the government of the United States. Atkinson v. Central Georgia Agricultural & Mfg. Co. (1877) 58 Ga. 227.

The government of the United States during the Civil War could make no conquest of its own territory or by triumph of arms gain any higher rights over the soil of Tennessee and its inhabitants than it enjoyed before the war; the Rebellion being suppressed and the revolted inhabitants coerced into obedience, the general laws proprio vigore extended over the territory. Rutledge v. Fogg (1866) 43 Tenn. (3 Cold.) 554, 91 Am. Dec. 299.

Government established in a conquered territory by the orders of the military power occupying the same endures while the occupation continues, and ends with the restoration of peace and the resumption of the regular civil municipal government. Isbell v. Farris (1868) 45 Tenn. (5 Cold.) 426.

10. Captures on land and water.—Enemy property found here, on land, at the commencement of hostilities, cannot be condemned without a legislative act authorizing confiscation. The declaration of war is not such an act. Brown v. U. S. (1814) 8 Cranch, 110, 125, 126, 3 L. Ed. 504.

Captured and Abandoned Property Act March 12, 1863, held within the power to "make regulations concerning captures on land and water." Haycraft v. U. S. (1874) 22 Wall. 81, 94, 22 L. Ed. 738.

Rev. St. 5308, Comp. St. § 10150, is an exercise of the power vested in congress by this clause as to captures on land and water. Kirk v. Lynd (1882) 1 Sup. Ct. 296, 106 U. S. 315, 27 L. Ed. 193.

Congress in the exercise of the power to make rules concerning captures on land and water, enacted statutes from time to time as embodied in R. S. tit. 54 (Comp. St. tit. 54) relating to "Prize." The Rita (D. C. 1898) 89 Fed. 763, 765.

Prize Act March 3, 1863, c. 86, authorizing the taking by the government of any captured property and the deposit of its value in the treasury, subject to the jurisdiction of the prize court in which proceedings may be instituted for condemnation of the prop-

erty, is a valid exercise of the power of congress to make rules concerning captures. (1863) 10 Op. Atty. Gen. 519.

11. Seizure and confiscation of property.—See, also, note under art. 1, § 8, cl. 18, post.

The confiscation acts passed during the Civil War are constitutional. Tyler v. Defrees (1870) 11 Wall. 331, 345, 20 L. Ed. 161; Page v. U. S. (1870) 11 Wall. 268, 304, 20 L. Ed. 135; Kirk v. Lynd (1882) 1 Sup. Ct. 296, 297, 106 U. S. 315, 27 L. Ed. 193; U. S. v. Republican Banner Officers (C. C. 1863) Fed. Cas. No. 16,148.

A military commander, under circumstances of actual, urgent, immediate, and pressing public necessity may take private property. Harmony v. Mitchell (C. C. 1850) Fed. Cas. No. 6,082; Holmes v. Sheridan (C. C. 1870) Fed. Cas. No. 6,644.

The mere declaration of war does not confiscate enemy property or debts due to an enemy, nor does it so vest the property or the debts in the government, as to support judicial proceedings for the confiscation of the property or debts, without expression of the will of the government, through its proper department, to that effect. Under the constitution of the United States, the power of confiscating enemy property and debts due to an enemy is in congress alone. Britton v. Butler (C. C. 1872) Fed. Cas. No. 1903.

The United States can hold possession of the sites of the advanced martello towers, outworks of Ft. Taylor, Fla., which were erected during the rebellion, and exclude all intruders therefrom, whether they claim to be owners or not, and no proceedings to oust the United States from such possession are maintainable. (1881) 17 Op. Atty. Gen. 6. But, see U. S. v. Lee (1882) 106 U. S. 196, 1 Sup. Ct. 240, 27 L. Ed. 171.

The United States may take and use real estate during war for war purposes, but may not, by any summary proceeding, divest the title of the owner, nor the power to retain possession beyond the period during which the occasion for the taking continued. (1896) 21 Op. Atty. Gen. 382.

If the provisions of the confiscation act of July 17, 1862, are unconstitutional and void, it seems clear that congress has no power to prohibit the state courts from giving to the owners the relief to which they are entitled by the laws of the states. Norris v. Doniphan (1863) 61 Ky. (4 Metc.) 385.

The right given by the constitution to make war upon rebels gives the power to perform acts of war, and no other power whatever, and the seizure and confiscation of enemy's property on land are not acts of war. Id.

The seizure and sale of property does not pass title unless warranted by the usages of war, but Const. Mo. art. 11, § 4, protecting officers from prosecutions for unlawful seizures made during the Rebellion, is valid. Williamson v. Russell (1872) 49 Mo. 185.

See, also, The Hampton (1866) 5 Wall. (U. S.) 372, 18 L. Ed. 659; The William Bagaley (1866) 5 Wall. (U. S.) 377, 18 L. Ed. 583; The Siren (1871) 13 Wall. (U. S.) 389, 20 L. Ed. 505; U. S. v. 1756 Shares of Capital Stock (C. C. 1865) Fed. Cas. No. 15,961; U. S. v. Stevenson (C. C. 1869) Fed. Cas. No. 16,396; Wagner v. Schooner Juanita (D. C. 1846) Fed. Cas. No. 17,039; The Ned (D. C. 1862) Fed. Cas. No. 10,078; McVeigh v. The Bank of the Old Dominion (Va. 1875) 26 Grat. 188, 199.

Cited without definite application, Hepburn v. Griswold (1869) 8 Wall. 603, 617, 19 L. Ed. 513; Kilbourn v. Thompson (1880) 103 U. S. 168, 192, 26 L. Ed. 377; Civil Rights Cases (1883) 109 U. S. 3, 18, 3 Sup. Ct. 18, 27 L. Ed. 835; Rice v. U. S. (1887) 7 Sup. Ct. 1377, 1384, 122 U. S. 611, 30 L. Ed. 793.

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Notes of Decisions

Raising and supporting armies—In general.—A state law imposing a tax on passengers held void, as interfering with the power of the federal government to declare and prosecute war, and as a necessary incident to raise and transport troops through and over territory of any state. Crandall v. Nevada (1867) 6 Wall. 35, 44, 18 L. Ed. 745.

Among the powers assigned to the national government is the power "to raise and support armies," and the power "to provide for the government and regulation of the land and naval forces." The execution of these powers falls within the line of its duties; and its control over the subject is plenary and exclusive. It can determine, without question from any state authority, how the armies shall be raised, whether by voluntary enlistment or forced draft, the age at which the soldier shall be received, and the period for which he shall be taken, the compensation he shall be allowed, and the service to which he shall be assigned. Tarble's Case (1871) 13 Wall. (U. S.) 397, 408, 20 L. Ed. 597.

A provision of a state statute, giving an exclusive right to a telegraph company to erect and use lines of telegraph within certain counties, held to be in conflict with Act July 24, 1866, in re-

lation to the construction of telegraph lines, passed pursuant to the power to raise and support armies. Pensacola Tel. Co. v. Western Union Tel. Co. (C. C. 1875) Fed. Cas. No. 10,960.

Under the authority to raise and support armies, congress has power to bestow bounties and pensions upon those who may engage in military service, and may make it an offense to detain from a military pensioner any portion of the sum collected in his behalf as his pension. U. S. v. Fairchilds (D. C. 1867) Fed. Cas. No. 15,067.

The act providing for the reduction of the army by mustering out certain officers (Act July 15, 1870 [16 Stat. 314), was an exercise of the power "to raise and support armies." Street v. U. S. (1889) 24 Ct. Cl. 230, affirmed Street v. U. S. (1890) 133 U. S. 307, 10 Sup. Ct. 309, 33 L. Ed. 631.

This clause does not confer on congress the power to designate by law a person to fill a military office, since this would be in direct conflict with the power of appointment given the president by Const. art. 2, § 2. (1884) 18 Op. Atty. Gen. 18, 26.

The power to raise and support armies is plenary, and without limitation or restriction. (1909) 27 Op. Atty. Gen. 260.

The making of treasury notes lawful money and a legal tender in payment of debts is one of the means which congress may constitutionally adopt to enable the general government "to raise and support an army." Lick v. Faulkner (1864) 25 Cal. 404. Act Feb. 25, 1862, authorizing treasury notes to be issued, and making them lawful money and a legal tender in payment of debts, was an exercise of sovereign authority within the scope of the power "to raise and support an army." Id.

The power of congress to raise and support armies, to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections and repel invasions, and to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, is clear and indisputable. The language used in the constitution, in making this grant of power is so plain, precise, and comprehensive as to leave no room for doubt or controversy as to where the supreme control over the military force of the country resides. This power of commanding the service of the militia in times of insurrection and invasion is a natural incident to the duties of superintending the common defense, and of watching over the internal peace of the country, and was wisely vested in congress by the framers of the constitution. In re Griner (1863) 16 Wis. 423.

—— **Conscription.**—The constitution of the United States authorizes congress to raise armies, and also to call forth and organize the militia of the several states. Under this twofold power, both regular national armies and occasional militia forces from the several states may be raised, either by conscription or in other modes. McCall's Case (D. C. 1863) Fed. Cas. No. 8,669.

Under the grant of power to raise and support armies and call out the militia, congress has power to make and authorize such orders and regulations as may be necessary to prevent those who are liable by law to military service from evading that duty, such as an order to prevent them from leaving the country and state, to avoid an impending draft. Allen v. Colby (1867) 47 N. H. 544.

Assuming that a conscript, by furnishing a substitute, as authorized by the act of April 16, 1862, made a contract with the government, the latter, under the power to declare war and raise and support armies, may annul such contract without making any compensation; exemption from military service not being property, but a mere personal privilege. Gatlin v. Walton (1864) 60 N. C. 325, 1 Winst. 333.

Under this and clauses 16 and 17 of article 1, § 8, of the constitution, the United States conscription law of March 3, 1863, held constitutional. Kneedler v. Lane (1863) 45 Pa. 238.

—— **Enlistment of minors.**—This clause gives congress power to enlist minors in the army without the consent of their parents. U. S. v. Bainbridge (C. C. 1816) Fed. Cas. No. 14,497.

Under this clause congress may provide for the enlistment of minors, with or without the consent of their parents, and may give such effect and conclusiveness to the contract of enlistment as it may deem best. In re Davison (C. C. 1884) 21 Fed. 618.

The United States have a right to prescribe the rules and conditions under which voluntary or compulsory services are to be rendered by citizens, and the period at which persons reach their majority and become sui juris with respect to the ordinary affairs of life cannot abridge this power of the General Government. (1896) 21 Op. Atty. Gen. 327.

Under the war-making powers granted congress by the constitution, congress had power to enact the act of May, 1846, providing for the prosecution of war with Mexico, under which a minor volunteer was bound by his enlistment and could not be released because of his minority, notwithstanding he enlisted without the consent of his parents or the master to whom he was apprenticed. U. S. v. Blakeney (Va. 1847) 3 Grat. 405.

—— **State courts.**—In view of the constitutional grant of power to congress "to raise and support armies"

and "to provide for the government and regulation of the land and naval forces," a state judge has no jurisdiction to issue a writ of habeas corpus, or to continue proceedings under the writ when issued, for the discharge of a person held under the authority, or claim or color of authority, of the United States, by an officer of that government. Tarble's Case (1871) 13 Wall. (N. S.) 397, 408, 20 L. Ed. 597.

The organization of the army of the United States is specifically conferred by the constitution upon congress; and an application for a writ of habeas corpus to release one held to service as a soldier in the regular army should be addressed to a United States court, and not to a state court. Ex parte Rielly (N. Y. 1867) 2 Abb. Prac. (N. S.) 334.

Appropriations.—See, also, notes under art. 1, § 8, cl. 14.

Act Aug. 26, 1842, c. 202, § 23, authorizes the transfer and application of the surplus of appropriations standing to the credit of the War Department, and not transferred by the Secretary of the Treasury to the general account of moneys not appropriated, to supply the deficiency of the appropriation for preventing and suppressing Indian hostilities. Such transfer will not conflict with this clause. (1850) 5 Op. Atty. Gen. 283.

The inhibition of this clause does not extend to appropriations for the various means which an army may use in military operations, or which are deemed necessary for common defense. (1904) 25 Op. Atty. Gen. 105.

Cited without definite application, Presser v. Illinois (1886) 6 Sup. Ct. 580, 581, 116 U. S. 252, 29 L. Ed. 615; Johnson v. Sayre (1895) 15 Sup. Ct. 773, 775, 158 U. S. 109, 39 L. Ed. 914; Dashiell v. Grosvenor (1895) 66 Fed. 334, 337, 13 C. C. A. 593, 27 L. R. A. 67 (affirmed [1896] 16 Sup. Ct. 805, 162 U. S. 425, 40 L. Ed. 1025); U. S. v. Angell (C. C. 1881) 11 Fed. 34, 45; Kirkman v. McClaughry (C. C. 1907) 152 Fed. 255, affirmed (1908) 160 Fed. 436, 90 C. C. A. 86.

[18] To provide and maintain a Navy;

Notes of Decisions

Power in general.—See, also, notes under art. 1, § 8, cl. 14.

This clause authorizes the government to buy or build any number of steam or other ships of war, to man, arm, and otherwise prepare them for war, and to dispatch them to any accessible part of the globe. Under this power the Naval Academy has been established. U. S. v. Rhodes (C. C. 1866) Fed. Cas. No. 16,151.

Legislative authority in congress may, in some instances, be derived from more than one grant in the constitution, as a river may receive its waters through streams flowing from different sources. Thus the authority to build and equip vessels of war is doubtless implied in the power to "declare war," but the same authority is more directly conferred by the power to "provide and maintain a navy." U. S. v. Burlington, etc., Ferry Co. (D. C. 1884) 21 Fed. 331, 340.

The president has no power, without express authority of law, to fix the relative rank of the line and civil or staff officers of the navy, this being an act of the legislative power reposed in congress by the constitutional provision empowering congress "to provide and maintain a navy" and "to make rules for the government of the land and naval forces." (1862) 10 Op. Atty. Gen. 413.

Act Feb. 25, 1862, authorizing treasury notes to be issued, and making them lawful money and a legal tender in payment of debts, was an exercise of sovereign authority within the scope of the power "to provide and maintain a navy." Lick v. Faulkner (1864) 25 Cal. 404.

The making of treasury notes lawful money and a legal tender in payment of debts is one of the means which congress may constitutionally adopt to enable the general government to provide and maintain a navy. Id.

The grant of power to congress to provide and maintain a navy does not of itself operate to restrain states from erecting or authorizing the erection of structures, such as bridges and dams, upon the navigable waters within their limits, which might prevent vessels of war from passing or using the spot for anchorage, if no legitimate legislation of congress is contravened, and it does not appear that the structure does or may actually impair the efficiency of the navy or of the means of defence. Dover v. Portsmouth Bridge, (1845) 17 N. H. 200.

Enlistments.—Congress has the right to declare what class of persons shall be enlisted in the navy, and may provide by law for the enlistment of minors therein, without the consent of parents or guardians. U. S. v. Bainbridge (C. C. 1816) Fed. Cas. No. 14,497; U. S. v. Stewart (D. C. 1839) Fed. Cas. No. 16,400; In re Norton (D. C. 1899) 98 Fed. 606, 607; Commonwealth v. Murray (1812) 4 Bin. (Pa.) 487, 5 Am. Dec. 412.

The United States have the right to prescribe the rules and conditions under which voluntary or compulsory

services are to be rendered by citizens. (1896) 21 Op. Atty. Gen. 327.

Appropriations for marine corps.—The provision in the naval appropriation act of March 3, 1909 (35 Stat. 753, 773), that no part of the appropriations therein made for the marine corps shall be expended unless officers and enlisted men of that corps shall serve, as theretofore, on board all battle ships and armored cruisers, etc., in detachments of not less than 8 per cent. of the strength of the enlisted men of the navy on such vessels is constitutional. (1909) 27 Op. Atty. Gen. 259.

Offenses on ships of war.—Congress may punish offenses by persons serving on board a ship of war wherever it may lie. U. S. v. Bevans (1818) 3 Wheat. 336, 390, 4 L. Ed. 404.

Cited without definite application, U. S. v. Angell (C. C. 1881) 11 Fed. 34, 45.

[14] To make Rules for the Government and Regulation of the land and naval Forces;

Notes of Decisions

See, also, notes under R. S. § 1342.

Power in general.—Congress may punish offenses by persons serving on board a ship of war wherever it may be. U. S. v. Bevans (1818) 3 Wheat. 336, 390, 4 L. Ed. 404.

Among the powers assigned to the national government is the power "to raise and support armies," and the power "to provide for the government and regulation of the land and naval forces." The execution of these powers falls within the line of its duties; and its control over the subject is plenary and exclusive. It can determine, without question from any state authority, how the armies shall be raised, whether by voluntary enlistment or forced draft, the age at which the soldier shall be received, and the period for which he shall be taken, the compensation he shall be allowed, and the service to which he shall be assigned. Tarble's Case (1871) 13 Wall. (U. S.) 397, 408, 20 L. Ed. 597.

The power of congress to provide for the government of the land and naval forces "in peace and war" is not affected by amendments to the constitution. In re Bogart (C. C. 1873) Fed. Cas. No. 1,596.

The president, and subordinate executive officers, whether military or civil, possess a limited power to establish regulations, provided these be in execution of, and supplemental to, the statutes and statute regulations, but not to repeal or contradict existing statutes or statute regulations, nor to make provisions of a legislative nature. Hence the "System of Orders and Instructions" for the navy, issued by President Fillmore as "Executive of the United States," February 15, 1853, is without legal validity, and in derogation of the powers of congress. (1853) 6 Op. Atty. Gen. 10.

The president has no power, without express authority of law, to fix the relative rank of the line and civil or staff officers of the navy, this being an act of the legislative power reposed in congress by the constitutional provision empowering congress "to provide and maintain a navy" and "to make rules for the government of the land and naval forces." (1862) 10 Op. Atty Gen. 413.

The twelfth section of the act of March 3, 1865, providing, in certain contingencies, for the restoration of an officer dismissed from the military or naval service, is constitutional under this clause. (1866) 12 Op. Atty. Gen. 4.

It may now be considered settled by the practice of the government that the regulation and government of the army include, as being properly within their scope, the regulation of the appointment and promotion of officers therein. (1873) 14 Op. Atty. Gen. 164. Hence congress may impose such restrictions and limitations on the appointing power as it deems proper in regard to promotions or appointments to any and all vacancies in the army, provided the restrictions and limitations be not incompatible with the exercise of the appointing power. Id.

This clause does not confer on congress the power to designate by law a person to fill a military office, since this would be in direct conflict with the power of appointment given the president by Const. art. 2, § 2. (1884) 18 Op. Atty. Gen. 18, 26.

The provision in the naval appropriation act of March 3, 1909 (35 Stat. 753, 773), that no part of the appropriations therein made for the marine corps shall be expended unless officers and enlisted men of that corps shall serve, as theretofore, on board all battle ships and armored cruisers, etc., in detachments of not less than 8 per cent. of the strength of the enlisted men of the navy on such vessels, is constitutional. (1909) 27 Op. Atty. Gen. 259.

Under the war-making powers granted congress by the constitution, congress had power to enact the act of May, 1846, providing for the prosecution of war with Mexico, under which a minor volunteer was bound by his enlistment and could not be released because of his minority, notwithstanding he enlisted without the consent of his parents or the master to whom he was apprenticed. U. S. v. Blakeney (Va. 1847) 3 Grat. 405.

Power as distinct from power of president.—The power of the president

to command the army and navy and of congress "to make rules for the government and regulation of the land and naval forces" are distinct. The president cannot by military orders evade the legislative regulations; congress cannot by rules and regulations impair the authority of the president as commander in chief. Swain v. U. S. (1893) 28 Ct. Cl. 173.

State laws.—The laws and regulations for the efficiency of the United States army being vested by the constitution in the general government, the states cannot, either through their legislative or judicial departments, regulate or circumscribe the powers of the United States in reference thereto. In re Fair (C. C. 1900) 100 Fed. 149.

Trial and punishment of offenses.—Congress may provide for the trial and punishment of military and naval offenses in the manner practiced by civilized nations. Dynes v. Hoover (1857) 20 How. 65, 78, 15 L. Ed. 838.

In view of the constitutional grant of power to congress "to raise and support armies" and to provide for the government and regulation of the land and naval forces," a state judge has no jurisdiction to issue a writ of habeas corpus or to continue proceedings under the writ when issued, for the discharge of a person held under the authority, or claim or color of authority, of the United States by an officer of that government. Tarble's Case (1871) 13 Wall. (U. S.) 397, 408, 20 L. Ed. 597.

The constitutionality of the statutes touching army and navy courts-martial is no longer an open question. Ex parte Reed (1879) 100 U. S. 13, 21, 25 L. Ed. 538.

The fifth article of amendment of the constitution, which declares that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury," expressly excepts "cases arising in the land or naval forces," and leaves such cases subject to the rules for the government and regulation of those forces which, by the eighth section of the first article of the constitution, congress is empowered to make. Courts-martial form no part of the judicial system of the United States, and their proceedings, within the limits of their jurisdiction, cannot be controlled or revised by the civil courts. Congress has never conferred upon civil officers or magistrates or private citizens any power over offenders punishable only in a military tribunal. Kurtz v. Moffitt (1885) 6 Sup. Ct. 148, 152, 115 U. S. 487, 29 L. Ed. 458.

This provision is no authority for the contention that the district court has no jurisdiction to indict and try a person charged with having forged an obligation of the United States with intent to defraud, which is made an offense against the United States by R. S. § 5414, Comp. St. 10318, although such person was at the time an officer of the army, and the alleged offense was committed at a military post and with intent to defraud an enlisted soldier, where accused has since been discharged from the army without any action against him having been taken by the military authorities. Neall v. U. S. (1902) 118 Fed. 699, 701, 56 C. C. A. 31.

Act March 3, 1865, c. 79, § 12, providing, in certain contingencies, for the restoration of an officer dismissed from the military or naval service, is constitutional. (1866) 12 Op. Atty. Gen. 4.

Review of decisions of military courts.—The power conferred by this clause, which authorizes the creation of military courts-martial, and the power conferred by article 3, § 1, are independent of each other, and when courts organized under these respective powers are proceeding within the limits of their jurisdiction, they must be held free from any interference. Hence decisions of military courts-martial, within their jurisdiction, are not reviewable by the courts created pursuant to the authority conferred by said article 3. Ex parte Dickey (D. C. 1913) 204 Fed. 322.

Cited without definite application, Presser v. Illinois (1886) 6 Sup. Ct. 580, 581, 116 U. S. 252, 29 L. Ed. 615; Carter v. Roberts (1900) 20 Sup. Ct. 713, 177 U. S. 496, 44 L. Ed. 861; Street v. U. S. (1889) 24 Ct. Cl. 230.

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Notes of Decisions

See McCormick v. Humphrey (1866) 27 Ind. 144.

Power of congress in general.—Act Act May 2, 1792, Act May 8, 1792, Act Jan. 3, 1795, Act Feb. 28, 1795, and Act April 18, 1814, providing for calling forth the militia to execute the laws of the United States, suppress insurrections, and repel invasion, and for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, amount to a full execution of the powers conferred on congress by the constitution. Houston v. Moore (1820) 5 Wheat. 1, 12, 5 L. Ed. 19.

By virtue of its power to make war and suppress insurrection, the government has the right to transport troops to all parts of the Union by the usual and most expeditious mode of trans-

portation, and a state tax on passengers carried out of the state is void as an interference therewith. Crandall v. Nevada (1867) 6 Wall. 35, 44, 18 L. Ed. 745.

Congress is not deprived of its power under this clause when the necessity for its exercise is called out by civil war. Tyler v. Defrees (1870) 11 Wall. 331, 345, 20 L. Ed. 161.

This clause which confers power upon congress to provide for the calling forth of the militia to execute the law of the United States, and Act Feb. 28, 1795, applies to the states. U. S. v. Stewart (C. C. 1857) Fed. Cas. No. 16,401a.

Under the twofold power to raise armies and call forth the militia, both regular national armies, and occasional militia forces from the several states, may be raised, either by conscription or in other modes. McCall's Case (D. C. 1863) Fed. Cas. No. 8,669.

Act Feb. 25, 1862, authorizing treasury notes to be issued, and making them lawful money and a legal tender in payment of debts, was an exercise of sovereign authority within the scope of the power granted in this clause. Lick v. Faulkner (1864) 25 Cal. 404.

The making of treasury notes lawful money and a legal tender in payment of debts is one of the means which congress may constitutionally adopt to enable the general government "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions." Id.

The confiscation act of July 17, 1862, is within the constitutional powers of congress enumerated in this clause and clause 1, ante, and clause 18, post, and is binding upon the state as well as the federal courts. Knoefel v. Williams (1868) 30 Ind. 1.

The provision of the Military Code that the commander in chief shall have power to disband companies of the national guard whenever, in his judgment, the efficacy of the state force will be thereby increased, is not in conflict with power of congress to call forth the militia, and provide for their government while in the service of the United States. People v. Hill (1891) 13 N. Y. Supp. 186, judgment affirmed (1891) 126 N. Y. 497, 27 N. E. 789.

Under the war-making powers congress had power to enact the act of May, 1846, providing for the prosecution of war with Mexico, under which a minor volunteer was bound by his enlistment and could not be released because of his minority, notwithstanding he enlisted without the consent of his parents or the master to whom he was apprenticed. U. S. v. Blakeney (1847) 3 Grat. (Va.) 405.

The power of commanding the service of the militia in times of insurrection and invasion is a natural incident to the duties of superintending the common defense, and of watching over the internal peace of the country, and was wisely vested in congress by the framers of the constitution. In re Griner (1863) 16 Wis. 423.

State laws.—Act Pa. March 28, 1814, § 21, prescribing punishment for militiamen neglecting or refusing to serve in response to call to federal service, held valid. Houston v. Moore (1820) 5 Wheat. 1, 5 L. Ed. 19.

Under this and the following clause, the only instance where governmental powers may be exercised by the United States is when the militia shall be employed in the service of the United States. At all other times the whole government of the militia is within the province of the state, and therefore any legislation which the state may adopt relating to the government of the militia in no wise contracts powers conferred upon congress, as long as it does not infringe upon the method of organization. People v. Hill (1891) 59 Hun, 624, 13 N. Y. Supp. 637, judgment affirmed (1891) 126 N. Y. 497, 27 N. E. 789.

Calling and service of militia.—The president alone is made the judge of the necessity of calling the militia into the service of the United States, and he acts upon his responsibility under the constitution. Martin v. Mott (1827) 25 U. S. (12 Wheat.) 19, 6 L. Ed. 537; Vanderheyden v. Young (N. Y. 1814) 11 Johns. 150. See, also, Luther v. Borden (1849) 7 How. 1, 12 L. Ed. 581; (1856) 8 Op. Atty. Gen. 8.

Courts-martial, organized under the authority of a state, have not power, it seems, to assess fines on delinquent militiamen for not obeying a requisition from the secretary of war to enter the service. Meade v. Deputy Marshal (C. C. 1815) Fed. Cas. No. 9,372.

This clause and Act Feb. 28, 1795, applies to the states. U. S. v. Stewart (C. C. 1857) Fed. Cas. No. 16,401a.

Congress may "provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions" (Const. art. 1, § 8), and the authority to call forth the militia has been exclusively vested in the President. Alabama Great Southern R. Co. v. U. S. (1914) 49 Ct. Cl. 522.

The president held to have no power to establish a bureau of militia in the war department without an act of congress authorizing such bureau. (1861) 10 Op. Atty. Gen. 1.

The constitution, which enumerates the exclusive purposes for which the militia may be called into the service of the United States, affords no warrant for the use of the militia by the general government, except to suppress insurrection, repel invasions, or to execute the laws of the Union, and hence the President has no authority to call forth the organized militia of the states and send it into a foreign country with

the regular army as a part of an army of occupation. (1912) 29 Op. Atty. Gen. 322.

The power of the president under the federal constitution to call the whole militia of any part of the Union into service in case of invasion may be exercised by his delegate, i. e. a general commanding in chief in a particular district; and all citizens subject to militia duty may thereby be placed under military law, but this is the extent of martial law, and all beyond is usurpation. Johnson v. Duncan (La. 1815) 3 Mart. (O. S.) 530, 6 Am. Dec. 675.

The commanders in chief of the militia of the several states have a right to determine whether any of the exigencies contemplated by the constitution of the United States exist, so as to require them to place the militia, or any part of it, in the service of the United States, at the request of the President, to be commanded by him, pursuant to acts of congress. In re Opinion of the Judges (1812) 8 Mass. 549.

Under this clause the raising of militia by draft under order of the president and the punishment of delinquents refusing or neglecting to serve are matters of federal cognizance. Matter of Spangler (1863) 11 Mich. 298.

Under the grant of power to raise and support armies and call out the militia, congress has power to make and authorize such orders and regulations as may be necessary to prevent those who are liable by law to military service, from evading that duty, such as an order to prevent them from leaving the country and state, to avoid an impending draft. Allen v. Colby (1867) 47 N. H. 544.

The provision of the Military Code that the commander in chief shall have power to disband companies of the national guard whenever, in his judgment, the efficacy of the state force will be thereby increased, is not in conflict with this clause, for R. S. § 1630, provides that the "militia of each state shall be arranged into divisions * * * and companies, as the legislature of the state may direct." People v. Hill (1891) 13 N. Y. Supp. 186, judgment affirmed (1891) 126 N. Y. 497, 27 N. E. 789.

Act Feb. 28, 1795 (R. S. § 1642), passed by virtue of this clause gave the President authority in case of invasion or danger of it to call forth the militia which thereafter were subject to the same rules as the United States troops, and provided a penalty for failure of the militia to obey the president's orders. Held, thereunder, that on the President's calling on the state executives for militia pursuant to the express provisions of Act April 18, 1812, whatever orders were given by the governor respecting the militia called for were given in pursuance of the president's call, and their breach was a breach of the president's orders. Commonwealth v. Irish (Pa. 1815) 3 Serg. & R. 177, note.

The authority under this clause to call forth the militia includes the power to punish delinquent militia men who fail or refuse to respond. Duffield v. Smith (1818) 3 Serg. & R. (Pa.) 590, 593. See, also, Mills v. Martin (N. Y. 1821) 19 Johns. 7, as to amenability of militia men to laws of United States in times of peace and when not in the service or pay of the United States.

Suppressing insurrection.—The authority of the United States to suppress the rebellion is found in the power to suppress insurrection and carry on war. Texas v. White (1868) 7 Wall. 700, 727, 19 L. Ed. 227.

Authority to suppress rebellion is found in the power to suppress insurrection and carry on war; and authority to provide for the restoration of state governments, under the constitution, when subverted and overthrown, is derived from the obligation of the United States to guarantee to every state in the Union a republican form of government. The latter, indeed, in the case of a rebellion which involves the government of a state, and, for the time, excludes the national authority from its limits, seems to be a necessary complement to the other. Texas v. White (1868) 74 U. S. (7 Wall.) 700, 19 L. Ed. 227.

Under this clause and clauses 1 and 15, ante, the Confiscation Act July 17, 1862, was held constitutional. Knoefel v. Williams (1868) 30 Ind. 1.

The authority to make war to suppress rebellion is derived from this clause, and the provision in article 2, § 3, post, that the president shall take care that the laws be faithfully executed. Norris v. Doniphan (1863) 61 Ky. (4 Metc.) 385.

Act March 3, 1863, authorizing the raising of a national military force, to suppress an existing rebellion, by a draft, is not repugnant to this clause, by interfering with the reserved rights of the states over their own militia. Kneedler v. Lane (1863) 45 Pa. (9 Wright) 238, 5 Phila. 485.

Acts of government or officers of states in insurrection or rebellion.—The acts of one appointed as clerk of a county by the provisional government in 1862, organized by a portion of the people in sympathy with the rebellion, were not valid for any purpose. Simpson's Ex'x v. Loving (1868) 66 Ky. (3 Bush) 458, 96 Am. Dec. 252.

Where the militia of a state are employed by the governor to resist the authority of the United States, they become public enemies. The fact that the governor was lawfully elected and qualified, and that the militia were lawfully organized and called out, furnishes no excuse or claim for compensation to those who knowingly supplied them with the means of prosecuting hostilities, though a warrant on the treasury was

issued under the forms of law. State ex rel. Blakeman v. Hays (1872) 49 Mo. 604.

The acts of an officer, performed after the president of the United States has declared the county to be in insurrection and rebellion, are void. Hawver v. Seldenridge (1867) 2 W. Va. 274, 94 Am. Dec. 532.

Where a state government is in insurrection or rebellion and committing acts of hostility against the government of the United States, and the same is so declared by the political department of the United States government, the acts of all officers claiming allegiance to and adhering to the state government are null and void. Id.

Although a trespass is committed by order of the authorities of a state acting in pursuance of the law thereof, it cannot be justified when the state is engaged in rebellion against the government and laws of the United States. Lively v. Ballard (1868) 2 W. Va. 496.

The acts of persons claiming to act as officers under the authority of the usurped government at Richmond, within the county of Monroe, after the inauguration of the state of West Virginia, and who certified themselves to be officers of that government, are void in law. Brown v. Wylie (1868) 2 W. Va. 502, 98 Am. Dec. 781.

Repelling invasion.—The power to repel invasion includes the power to provide against the danger of invasion. Martin v. Mott (1827) 12 Wheat. 19, 28, 6 L. Ed. 537.

The constitutional power of congress to suppress insurrections includes the authority to guard against an immediate renewal of the conflict and to remedy the evils growing out of it. Stewart v. Kahn (1870) 11 Wall. 493, 20 L. Ed. 176; Raymond v. Thomas (1875) 91 U. S. 712, 23 L. Ed. 434.

[16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

Notes of Decisions

Organization and government of militia.—The Military Code of Illinois (Act Ill. May 28, 1879 [Laws 1879, p. 192]), for the enrollment, organization, and government of the state militia, is a valid exercise of the police power, and is not unconstitutional as encroaching upon the power of congress, under this clause, or as falling within the prohibition of article 1, § 10, that no state shall, without the consent of congress, keep troops in time of peace; the provisions of article 11. §§ 5, 6, of such Military Code, forbidding unauthorized bodies of men to associate themselves together as a military company or organization, or to drill or parade with arms in any city or town. Presser v. State (1886) 6 Sup. Ct. 580, 116 U. S. 252, 29 L. Ed. 615.

The right of control of the militia by the states and their right to legislate regarding the militia has been fully recognized by the courts; both rights being concurrent with that of the Congress within constitutional limitations to legislate regarding it and its control, the right of the state yielding to the superior right of Congress. Alabama Great Southern R. Co. v. U. S. (1914) 49 Ct. Cl. 522.

In the absence of act of congress authorizing the establishment of a militia bureau in the war department the president has no power to establish such bureau. (1861) 10 Op. Atty. Gen. 11.

The governor of a state has no power to depose an officer, or interfere with the organization of a regiment after such officer or regiment is mustered into service of the United States. (1862) 10 Op. Atty. Gen. 279.

This clause does not confer on congress the power to designate by law a person to fill a military office, since this would be in direct conflict with the power of appointment given the president by Const. art. 2, § 2. (1884) 18 Op. Atty. Gen. 18, 26.

When state militia organizations with officers commissioned by the governor are mustered into United States service, the governor thereafter has no authority to remove them. (1898) 22 Op. Atty. Gen. 225.

The military code (Act Ill. May 28, 1879) which provides for the organization of the state militia, does not violate any provision of the state or federal constitution, and is not repugnant to any act of congress as to the relative powers and authority of congress and the states over the militia. Dunne v. People (1879) 94 Ill. 120, 34 Am. Rep. 213.

By virtue of Act Mass. 1792, c. 33, and Act Mass. 1809, c. 108, the governor and council have power to organize and arrange the militia of the commonwealth, and to make the necessary alterations therein. Commonwealth v. Thaxter (1814) 11 Mass. 386; Same v. Allen (1820) 16 Mass. 523.

The provisions of Acts 2d Cong. (1st Sess.) c. 33, enacting that the militia of the respective states shall be arranged into divisions and brigades as the legislature of each state shall direct, and St. Mass. 1809, c. 108, § 2, authorizing

the commander in chief, with the advice of his council, to organize and arrange the state militia conformably to the laws of the United States, are not unconstitutional, as being a delegation of legislative authority. In re Adams (1826) 21 Mass. (4 Pick.) 25.

By the constitution of the United States, the power to determine who shall compose the militia is vested in congress; and, after it has been exercised by congress, a state legislature cannot constitutionally provide for the enrollment of any other persons in the militia. Opinion of Justices (1859) 80 Mass. (14 Gray) 614. See, also, Tyler v. Pomeroy (1864) 8 Allen (Mass.) 480.

The only instance where governmental powers may be exercised by the United States is when the militia shall be employed in the service of the United States. At all other times the whole government of the militia is within the province of the state, and therefore any legislation which the state may adopt relating to the government of the militia in no wise contracts powers conferred upon congress, as long as it does not infringe upon the method of organization. People v. Hill (1891) 59 Hun, 624, 13 N. Y. Supp. 637, judgment affirmed (1891) 126 N. Y. 497, 27 N. E. 789.

The provision of the Military Code that the commander in chief shall have power to disband companies of the national guard whenever, in his judgment, the efficacy of the state force will be thereby increased, is not in conflict with power of congress to call forth the militia, and provide for their government while in the service of the United States. Id.

Under R. S. § 1630, which provides that "the militia of each state shall be arranged into divisions, brigades, regiments, battalions, and companies, as the legislature of the state may direct," a state legislature had power to provide for the disbanding of organized militia companies. People v. Hill (1891) 126 N. Y. 497, 27 N. E. 789.

Power of governing the militia, given by this clause, is of a limited nature, and confined to the objects specified, and in all other respects and for all other purposes the militia are subject to the control and government of their respective states. Ansley v. Timmons (S. C. 1825) 3 McCord, 329.

The duties of the National Guard being defined by the military act (Acts 29th Leg. Tex. c. 104), by which the governor is alone authorized to prescribe regulations, in the absence of proof that the governor had adopted and promulgated the United States army regulations as governing the state militia, such regulations are not applicable to the militia. Manley v. State (Tex. Cr. App. 1911) 137 S. W. 1137.

Under the war-making powers congress had power to enact the act of May, 1846, providing for the prosecution of war with Mexico, under which a minor volunteer was bound by his enlistment and could not be released because of his minority, notwithstanding he enlisted without the consent of his parents or the master to whom he was apprenticed. U. S. v. Blakeney (1847) 3 Grat. (Va.) 405.

The power of commanding the service of the militia in times of insurrection and invasion is a natural incident to the duties of superintending the common defense, and of watching over the internal peace of the country, and was wisely vested in congress by the framers of the constitution. In re Griner (1863) 16 Wis. 431.

Maintenance.—Under Const. Mass. pt. 2, c. 1, § 1, art. 4, providing that the taxes imposed by the general court are to be disposed of for the public service in the defense of the government of the commonwealth and the protection of its subjects, and chapter 2, § 1, arts. 7, 10, and articles 4, 5, of the amendments, providing for the control and organization of the militia, and in view of this clause giving Congress power to raise money to maintain the militia, the maintenance of the militia is a public purpose for which taxes may be imposed. Hodgdon v. City of Haverhill (1907) 79 N. E. 830, 193 Mass. 406.

Cited without definite application, Martin v. Mott (1827) 12 Wheat. 19, 29, 6 L. Ed. 537.

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

Notes of Decisions

I. District of Columbia

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I. DISTRICT OF COLUMBIA

See, also, notes under art. 1, § 1, ante.

1. When jurisdiction of federal government vested.—The jurisdiction of the United States over the District of Columbia vested on the first Monday in December, 1800, the day on which, by law, the District became the seat of government. U. S. v. Hammond (C. C. 1801) Fed. Cas. No. 15,293.

2. Operation and effect of cession.—The separation of the county of Alexandria from Virginia did not affect existing contracts between individuals. The insurance on buildings in A. did not cease on the separation, though the insurance company could insure only on houses in Virginia. Korn v. Mutual Assur. Soc. (1810) 10 U. S. (6 Cranch) 192, 3 L. Ed. 195.

A mere change of sovereignty produces no change in the state of rights existing in the soil; and the cession of the District of Columbia to the national government did not affect the lien created by the act of the assembly of Virginia of December 22, 1794, in relation to the Mutual Assurance Society, on real property situate in the town of Alexandria, though the personal character or liability of a member of the society could not thereby be forced on a purchaser of said property. Mutual Assur. Soc. v. Watts (1816) 14 U. S. (1 Wheat.) 279, 4 L. Ed. 91.

The compact of 1786, between Virginia and Maryland, in respect to the free navigation of the Potomac, was a compact between the two commonwealths, as such, the citizens of each being entitled individually to the benefit of it, but, individually, in no just sense parties to it. The compact could be modified or annulled at the will of the two states, and, when they ceded the District of Columbia to the United States, whatever the legislatures of Virginia and Maryland could have before done could be done by congress, after the cession, in respect to that portion of the river within the District, subject only to the limitations imposed by the act of cession. City of Georgetown v. Alexandria Canal Co. (1838) 37 U. S. (12 Pet.) 91, 9 L. Ed. 1012.

It was intended, on the cession of the territory comprising the District of Columbia to the United States, by Maryland, that the suits then pending in the Maryland tribunals should be proceeded in until final decision, and that the judgments and decrees there made should be as valid and conclusive as if the sovereignty had not been transferred to the United States. Van Ness v. Bank of United States (1839) 38 U. S. (13 Pet.) 17, 10 L. Ed. 38.

The state of Maryland could grant no title to lands within the District of Columbia after the act of cession in 1791, and the proviso in that act, continuing the jurisdiction of the laws of Maryland until congress should provide for the government thereof, applied only to laws affecting private rights, and did not continue the land laws of Maryland as to public lands owned by the state within that territory. Shoemaker v. U. S. (1893) 147 U. S. 282, 13 Sup. Ct. 361, 37 L. Ed. 170.

Under the agreement between the original proprietors of the lands on which the city of Washington was laid out and the commissioners of the president, and the Maryland act of December 19, 1791, ratifying the cession of the District of Columbia, the United States became the owner in fee of the streets of the city, although no conveyance thereof by the trustees was ever in fact made as provided in such agreement. Morris v. U. S. (1899) 19 Sup. Ct. 649, 669, 174 U. S. 196, 43 L. Ed. 946.

By the cession of the District of Columbia by the state of Maryland, such rights as the state possessed in that portion of the Potomac river lying within the territory ceded, and in the soil under it, passed to the United States. Id.

The act of cession by Maryland transferred to the United States all the right of the state of Maryland to the ungranted land in this part of the District of Columbia. O'Neal v. Brown (C. C. 1802) Fed. Cas. No. 10,511.

By the cession of part of the District by Maryland, all the state prerogative which Maryland enjoyed under the common law which she had adopted, so far as concerned the ceded territory, passed to the United States. All the power which Maryland had,

by virtue of that common-law prerogative, to punish, by indictment, offenders against her sovereignty, and to protect that sovereignty, as to this District, became vested in the United States. The United States, therefore, have a criminal common-law jurisdiction in such part of the District, and the circuit court of the District of Columbia has a criminal common-law jurisdiction. U. S. v. Watkins (C. C. 1829) Fed. Cas. No. 16,649.

An act of Virginia passed on the 21st of January, 1801, is in force in the county of Alexandria, D. C., although it was to commence in force from the 1st of June, 1801, and although the jurisdiction of Virginia ceased on the 27th of February, 1801. U. S. v. Farrell (C. C. 1837) Fed. Cas. No. 15,074.

By the first part of this provision the several states relinquish any rights of government any of them might have over any ten miles square of territory, which might at any time become the site of the federal government and gave to Congress exclusive control thereof, which control is perpetual. Boyd v. Great Western Coal & Coke Co. (C. C. 1911) 189 Fed. 115.

The laws of Maryland in force on the 27th of February, 1801, are applicable to the District of Columbia in all cases where they have not been changed by act of congress, or where an act of congress does not apply to the subject-matter. In re Wolf (D. C. 1886) 27 Fed. 606.

St. Md. 1791, c. 46, ceding the District of Columbia to the United States, "provided that nothing herein contained shall be construed to vest in the United States any right of property in the soil, so as to affect the rights of individuals therein," does not deprive the United States of the right of eminent domain within the District. U. S. v. Cooper (1891) 20 D. C. 104.

The compact of 1785, between Maryland and Virginia, providing, among other things, that the right of fishing in the Potomac river should be common to and equally enjoyed by the citizens of both states, was never in force in the District of Columbia, in view of the acts of the two states, which ceded the territory now comprising the District, and relinquished their joint interest in and control over that portion of the river within the bounds of the District of Columbia to the federal government; and, subsequent to said acts of cession, Congress, in the exercise of its police power, has had the power to regulate fishing in that part of the river within the district. Evans v. U. S. (1908) 31 App. D. C. 544.

Virginia, by her cession of a portion of her territory to the federal government for the seat of the general government, lost the easements and privileges she possessed in that part of the Potomac river within the boundaries of the ceded territory under her compact with Maryland of 1785; and such rights and privileges were not revived by Act July 9, 1846, c. 35, 9 Stat. 35, by which the federal government receded to her the portion of her territory she had ceded to it, as that act was silent regarding such rights and privileges, and there can be no revival by implication. Id.

Territory acquired for the seat of the government continues to be national. The District of Columbia is a part of the United States for all purposes, domestic and international. James v. U. S. (1903) 38 Ct. Cl. 615.

3. Status and governmental powers of District.—The act of congress to provide a government for the District of Columbia confers such powers only as are granted in the statute creating that government, and such powers as are necessary to carry into practical effect those which are expressly granted. Barnes v. District of Columbia (D. C. 1874) 1 MacArthur, 322.

The District of Columbia has no legislative power, it being merely a municipal corporation bearing the same relation to congress that a city does to the legislature of the state in which it is incorporated. U. S. v. Macfarland (1907) 28 App. D. C. 552.

The District of Columbia, is a municipal corporation although its organization is peculiar, there being no general organic law covering all of the ordinary powers usually conferred in the creation of a municipal corporation; no formal charter. District of Columbia v. Tyrrell (1914) 41 App. D. C. 463.

It was the purpose of the framers of the constitution that the 10 miles square, which by the cession of states and the acceptance of congress might become "the seat of the government," should be as permanent as the states from which it should be taken; and territory acquired from states for the seat of the government continues to be national. The District of Columbia is a part of the United States for all purposes, domestic and international. James v. U. S. (1903) 38 Ct. Cl. 615, reversed (1906) 26 Sup. Ct. 685, 202 U. S. 401, 50 L. Ed. 1079.

Certain corporate powers are exercised by the district government, yet the District of Columbia as the seat of the government is controlled by congress exclusively. The United States government is the sovereign and the district government one of the agencies of the sovereign power. Mackey v. U. S. (1911) 47 Ct. Cl. 121.

4. Legislative power of congress in general.—The power given to congress by the constitution, to legislate for the District of Columbia, is not given to it as a local legislature, but as the legislature of the United States, and laws

enacted under such power are laws of the United States, and enforceable as such throughout the Union. Cohens v. Virginia (1821) 19 U. S. (6 Wheat.) 264, 5 L. Ed. 257; Lyons v. Bank of Discount of City of New York (C. C. 1907) 154 Fed. 391.

The exclusive legislation of congress over the District of Columbia, being conferred by the constitution, carries with it all those incidental powers necessary to its complete and effectual execution. Cohens v. Virginia (1821) 19 U. S. (6 Wheat.) 264, 5 L. Ed. 257.

Congress, in legislating within the District of Columbia, may, provided no intervening rights are thereby impaired, confirm proceedings which, without such confirmation, would be void. Mattingly v. District of Columbia (1878) 97 U. S. 687, 24 L. Ed. 1098; First Nat. Bank v. Shoemaker (1878) 97 U. S. 692, note, 24 L. Ed. 1100.

Congress has entire control of the District of Columbia for every purpose of government, national or local, and may exercise therein all legislative powers that the legislature of the state might exercise within the state, and may vest and distribute the judicial authority in and among courts and magistrates, and regulate judicial proceedings between them, as it sees fit, if within the United States Constitution. Capital Traction Co. v. Hof (1899) 19 Sup. Ct. 580, 582, 174 U. S. 1, 43 L. Ed. 873.

The jurisdiction of congress in respect to the District of Columbia, in matters municipal as well as political, is exclusive, and not controlled by the provisions of the Fourteenth amendment, though in the exercise of such legislative powers congress is subject to the provisions of the Fifth amendment, that no person shall be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation. Wight v. Davidson (1901) 21 Sup. Ct. 616, 621, 181 U. S. 371, 45 L. Ed. 900.

The power given by congress to the corporation of Washington to pass bylaws for the government of the city is not a delegation of the power of exclusive legislation given to congress by the constitution of the United States. Washington v. Eaton (C. C. 1833) Fed. Cas. No. 17,228.

The obvious meaning of the words "exclusive legislation" is "exclusive jurisdiction." U. S. v. Tully (C. C. 1905) 140 Fed. 899.

Act June 25, 1906 (34 Stat. 458), amendatory of Code D. C., making banking or trust companies within the District of Columbia, subject to the national banking act is within the constitutional powers of congress to legislate for the District of Columbia. Lyons v. Bank of Discount of City of New York (C. C. 1907) 154 Fed. 391.

Congress may enact laws applying exclusively to the District of Columbia. U. S. v. Campbell (D. C. 1910) 179 Fed. 762.

Congress may grant the District the same powers as state legislatures grant municipalities. Cooper v. District of Columbia (D. C. 1879) 4 MacArthur, 250.

The entire Potomac river, within the limits of the District of Columbia, is subject to the legislative control of congress, as well in respect to matters of police as to all other subjects of legislation. Smoot v. District of Columbia (1904) 23 App. D. C. 266.

The power of congress in the District of Columbia is plenary, and extends to the regulation of all commerce of whatsoever nature that may be carried on within its boundaries. Hyde v. Southern Ry. Co. (1908) 31 App. D. C. 466.

In enacting a statute primarily to amend the Code of the District of Columbia, congress may extend the operations of one of the sections or provisions of the Code beyond the locality primarily legislated for, although it should not be so extended in its operations if by proper construction that result may be avoided. Hall's Safe Co. v. Herring-Hall-Marvin Safe Co. (1908) 31 App. D. C. 498, 506.

A foreign life insurance company doing business in the District of Columbia may be prohibited from doing business here or admitted under any conditions that congress may impose; and such a company is in no position to question the power of congress to enact a statute providing that no life insurance company doing business here shall make any defense to an action on one of its policies, unless it deliver to the insured with the policy a copy of the application made by the insured. Metropolitan Life Ins. Co. v. Hawkins (1908) 31 App. D. C. 493.

The power of congress to enact laws applicable to the District of Columbia is plenary, and not dependent on the interstate commerce clause. McNamara v. Washington Terminal Co. (1910) 35 App. D. C. 230.

It is within the power of congress, in prescribing legal rates of interest, to make general classifications, and, so long as a general class of property is embraced within a single classification, and there is no discrimination in favor of persons or property within the same classification, it infringes no constitutional right. Reagan v. District of Columbia (1914) 41 App. D. C. 409.

Congress cannot, under the constitution, create a private corporation, but, in its capacity as the local legislature of the District of Columbia, it may create such a corporation within and for said District. Daly v. National Life Ins. Co. of the U. S. (1878) 64 Ind. 1.

5. Police regulations in general.—Internal Revenue Act March 2, 1867, § 29,

making it a misdemeanor to sell naphtha inflammable at less than a certain temperature, is a police regulation, valid only in localities over which congress has complete control, as the District of Columbia, and despite the power of congress to regulate commerce is invalid as to the states. U. S. v. Dewitt (1869) 9 Wall. 41, 44, 19 L. Ed. 593.

Congress by enacting Food and Drugs Act June 30, 1906, § 1, exercised the power conferred by this provision, so far as the act relates to the District of Columbia. U. S. v. Sixty-Five Casks Liquid Extract (D. C. 1909) 170 Fed. 449, affirmed (1910) 175 Fed. 1022, 99 C. C. A. 667.

Congress has the same police powers in the District of Columbia as the state legislatures have within their several jurisdictions. Lansburgh v. District of Columbia (1897) 11 App. D. C. 512.

Congress has power to regulate the practice of medicine and surgery in the District of Columbia. Czarra v. Board of Medical Sup'rs of District of Columbia (1905) 25 App. D. C. 443.

Congress, which exercises all the functions of a state legislature in the District of Columbia, has power to provide for the separation of white and colored children in the public schools. Wall v. Oyster (1910) 36 App. D. C. 50.

6. Employers' liability.—Employers' Liability Act June 11, 1906, c. 3073, § 1, 34 Stat. 232, as applied to the District of Columbia, is constitutional. Philadelphia, B. & W. R. Co. v. Tucker (1910) 35 App. D. C. 123; McNamara v. Washington Terminal Co. (1910) 35 App. D. C. 230; Washington Ry. Co. v. Downey (1913) 40 App. D. C. 147 (following Hyde v. Southern R. Co. [1908] 31 App. D. C. 466); McNamara v. Washington Terminal Co. (1911) 37 App. D. C. 384. CONTRA, Atchison, T. & S. F. Ry. Co. v. Mills (Tex. Civ. App. 1908) 108 S. W. 480.

The fact that Act June 11, 1906, c. 3073, 34 Stat. 232, commonly known as the "employers' liability act," is unconstitutional in so far as it relates to carriers engaged in business in the states, because it applies to all employés whether engaged or not in interstate commerce at the time of injury, does not render it unconstitutional so far as it relates to the District of Columbia; and, its provisions being severable, and it being the duty of congress to legislate generally for the benefit of inhabitants of the District of Columbia, there is no reason to doubt that congress would have enacted the act with the unconstitutional provisions eliminated. The act, therefore, is valid and operative, in so far as it applies to all employés of common carriers in the District of Columbia, without regard to the character of the commerce engaged in. Hyde v. Southern Ry. Co. (1908) 31 App. D. C. 466.

The application of the employers' liability act of 1906, to the District of Columbia, so far as it grants a right of action to employés, or as it applies to common carriers operating exclusively within the District, and not forming part of an interstate system, is not dependent upon the right of congress to legislate under the commerce clause of the Constitution, but to the power of congress to legislate generally for the District. McNamara v. Washington Terminal Co. (1911) 37 App. D. C. 384.

7. Taxation.—The power of congress to exercise exclusive jurisdiction within the District of Columbia includes the power of taxing it, and congress may impose a direct tax on the district in proportion to the census directed to be taken by the constitution. Loughborough v. Blake (1820) 5 Wheat. 317, 324, 5 L. Ed. 98.

Congress, as a local legislature for the District of Columbia, and levying taxes for district purposes, may wholly exempt from taxation certain classes of property, or tax them at a lower rate than other property. Gibbons v. District of Columbia (1886) 116 U. S. 404, 6 Sup. Ct. 427, 29 L. Ed. 680.

The grant of authority to congress to exercise exclusive legislation over the District of Columbia was a grant not merely for the benefit of the locality, but for a high national purpose; and therefore congress has constitutional power to declare that bonds issued by the District of Columbia, to be paid in part by a taxation of property within the District and in part by appropriations from the revenues of the United States, shall be exempt from taxation by state or municipal authority, and the act of June 20, 1874 (18 Stat. 120), which contains a clause to that effect, is constitutional and valid. Grether v. Wright (1896) 75 Fed. 742, 23 C. C. A. 498.

8. Public improvements.—Congress has power to direct that the whole or any part of the cost of a public improvement in the District of Columbia shall be assessed against the lands benefited. Willard v. Presbury (1871) 81 U. S. (14 Wall.) 676, 20 L. Ed. 719; Wight v. Davidson (1901) 21 Sup. Ct. 616, 620, 181 U. S. 371, 45 L. Ed. 900 (reversing decree Davidson v. Wight [1900] 16 App. D. C. 371); Buchanan v. MacFarland (1908) 31 App. D. C. 6; Columbia Heights Realty Co. v. MacFarland (1908) 31 App. D. C. 112; Briscoe v. Macfarland (1908) 32 App. D. C. 167; Shea v. Same, Id. 176; MacFarland v. Umhau (1909) 34 App. D. C. 109; Washington Ry. & Electric Co. v. Newman (1914) 41 App. D. C. 439.

The United States possesses not only political, but municipal, authority over the District, and has authority to condemn lands in the District for a public park, an authority not limited by any provision in the Maryland act of ces-

sion (Act Md. 1791, c. 45). Shoemaker v. U. S. (1893) 13 Sup. Ct. 361, 390, 147 U. S. 282, 37 L. Ed. 170.

By Act Dec. 21, 1893, the commissioners were directed to condemn lands necessary for the extension of a certain street. Proceedings were instituted, and an award was made to the owners, from which an appeal was taken. Pending the appeal, Act Aug. 7, 1894, making appropriation for the District, and containing a direction to the supreme court to vacate the award to the owners, and authorizing the commissioners to acquire the land by condemnation under Rev. St. D. C. c. 11, was passed. The award of the lower court was affirmed, but the commissioners abandoned the purpose of taking the land condemned. Held that, though the provision of the last act with reference to vacating the order was void, as an unconstitutional invasion by congress of judicial power, yet it constituted a valid repeal of the first act, and the commissioners could not, therefore, be compelled to open the street and pay the damages. Ross v. U. S. (1896) 8 App. D. C. 32.

In Code, § 483 (31 Stat. 1265) providing for the condemnation of land in this district for a right of way for sewers, or for any other municipal use authorized by congress, the words "authorized by congress" limit only the words preceding them in the same phrase, "or for any other municipal purpose," and have no reference to the preceding phrases; so that the commissioners have the right to institute and prosecute proceedings to condemn land for sewer purposes without express direction of congress to do so. Macfarland v. Elverson (1908) 32 App. D. C. 81.

9. Establishment and jurisdiction of courts.—That the Supreme Court of the District of Columbia is a court of the United States results from the right which the constitution has given to congress of exclusive legislation over the District. Embry v. Palmer (1883) 2 Sup. Ct. 25, 30, 107 U. S. 3, 27 L. Ed. 346.

The chief justice of the Supreme Court of the District of Columbia is charged with the same duties in extradition proceedings as are imposed on the governors of the several states. Hayes v. Palmer (1903) 21 App. D. C. 450.

Under this clause and Act March 3, 1863, c. 91, 12 Stat. 762, relates to the establishment of a judicial system for the District of Columbia, and organizes the courts of that district, it was held that, in an action on a judgment rendered in the Supreme Court of the District of Columbia, the courts of New York will take judicial notice of the fact that the District of Columbia is the seat of government, and of the act of March 3, 1863. Milliken v. Dotson (1907) 102 N. Y. S. 564, 117 App. Div. 527.

10. Right of suffrage of residents.—A person who, at the time of the cession of the District of Columbia, resided in that part of the county of Fairfax which was comprehended in that district, and who has continued to reside there, is not entitled to vote for members of the legislature of Virginia, though he was born in that state, and has a freehold therein. Custis v. Lane (Va. 1813) 3 Munf. 579.

11. Powers of president.—Outside of the District of Columbia the president has no power to remit the forfeiture of a judgment on a recognizance. (1897) 21 Op. Atty. Gen. 494.

II. PLACES ACQUIRED OR HELD BY GOVERNMENT

12. Construction and effect of clause in general.—This constitutional provision is not applicable where a state cedes its jurisdiction over a military reservation within its borders. Benson v. U. S. (1892) 13 Sup. Ct. 60, 61, 146 U. S. 325. 36 L. Ed. 991.

This clause applies only to land acquired by actual purchase accompanied by a cession of jurisdiction by the state; and where land is acquired directly from the state as owner by an act of cession, as in the case of Fortress Monroe, the constitutional provision does not apply, and the United States holds the land only as prescribed in the act of session. Crook, Horner & Co. v. Old Point Comfort Hotel Co. (C. C. 1893) 54 Fed. 604.

There must be an actual purchase for the purposes specified by the United States, and consent by the legislative authority of the state, as conditions precedent to the operation of the power of exclusive legislation, and thereupon all jurisdiction is ceded and passes to the general government. In re Kelly (C. C. 1895) 71 Fed. 545, 549.

This clause contemplates the purchase of land "needful," for any reason, to the discharge of any of the constitutional duties, or the exercise of any of the constitutional powers, of the United States. (1907) 26 Op. Atty. Gen. 289.

Under this clause congress has power to construct an aqueduct drawing its supply of water for the city of Washington from within the limits of Maryland, and using and occupying the land for that purpose in Maryland, by permission and consent of the state. Reddall v. Bryan (1859) 14 Md. 444, 74 Am. Dec. 550.

This clause does not apply to lands acquired otherwise than by purchase. Barrett v. Palmer (1891) 16 N. Y. Supp. 94.

13. Needful buildings.—This clause extends to land bought for post offices

or courts. Battle v. U. S. (1908) 28 Sup. Ct. 422, 209 U. S. 36, 52 L. Ed. 670.

Lands acquired by the United States for needful public buildings with the consent of the state legislature are "places" within the jurisdiction of the federal government. U. S. v. Pierce County (D. C. 1912) 193 Fed. 529.

The reservoirs, aqueducts, and other constructions appurtenant to the water supply of the city of Washington, D. C., are to be considered "needful buildings," within this clause, and since a roadway is an appropriate and necessary appurtenance to such works, the Conduit road constitutes territory within the exclusive jurisdiction of congress. (1907) 26 Op. Atty. Gen. 289.

Post offices and federal courthouses are "needful buildings." State v. Mack (1897) 47 P. 763, 23 Nev. 359, 62 Am. St. Rep. 811.

14. Meaning of purchase.—A purchase by its terms imports the assent of both buyer and seller, not an appropriation of property without the consent of the seller. It is therefore only where the United States have agreed to buy, and the owner to sell, and they disagree as to the price, that a case arises under a state law, consenting to a purchase, which provides a tribunal to determine the price in that event, but not before. Burt v. Merchants' Ins. Co. (1871) 106 Mass. 356, 8 Am. Rep. 339.

15. Consent of state and effect thereof in general.—Sufficiency of consent to warrant expenditure of appropriation for improvements, see Comp. St. § 6902 and notes thereunder.

Jurisdiction which a state has once exercised cannot be withdrawn from it, and conferred on the general government, without the consent of the state. U. S. v. Stahl (C. C. 1868) Fed. Cas. No. 16,373.

This clause provides the only constitutional method by which the United States may acquire lands within a state with exclusive jurisdiction thereover, but it does not affect the power of the government to acquire the mere use of such lands without exclusive jurisdiction. Consent of the state is not required when exclusive jurisdiction is not sought. Stockton v. Baltimore & N. Y. R. Co. (C. C. 1887) 32 Fed. 9, 18.

The act of the legislature of Maryland empowering the United States to acquire land in said state, for the use of the Washington Aqueduct, is not in conflict with the constitution either of that state or of the United States. (1855) 7 Op. Atty. Gen. 114.

Jurisdiction is acquired by the United States by the consent of a state to the purchase of land within the same for constitutional uses of the Union. (1856) 7 Op. Atty. Gen. 628.

Under this provision of the constitution, there is no power in congress to acquire or assert exclusive jurisdiction over any part of the territory of any state without the consent of the legislature of the state; and, to acquire exclusive jurisdiction over a national cemetery, the consent of the legislature of the state in which the same is situated must first be obtained. (1869) 13 Op. Atty. Gen. 131.

Consent of the legislature of Texas to the purchase by the United States of the building site recently acquired in the city of Austin was given by operation of a law of that state passed April 4, 1871. Held that such consent worked a transfer of jurisdiction over the site from the state to the United States when the title to the site became vested in the latter. (1878) 15 Op. Atty. Gen. 480.

The assent of the state legislature is necessary to the establishment of forts and permanent garrisons by the United States within the boundaries of a state. Jackson v. Wilcox (Ill. 1837) 1 Scam. 344.

A state may, in the exercise of its right of eminent domain, give its consent that the United States shall take and hold real estate for a site for a post office. Burt v. Merchants' Ins. Co. (1871) 106 Mass. 356, 8 Am. Rep. 339.

The consent of the state is not a condition precedent to the taking of lands by the general government. Its consent is required only for the purpose of a transfer of jurisdiction. People v. Humphrey (1871) 23 Mich. 471, 9 Am. Rep. 94.

The purchase of land within a state by the United States for public purposes does not of itself oust the jurisdiction or the sovereignty of such state when it is so purchased; but it is only when land has been purchased by the national government, by the consent of the legislature, that the former obtains exclusive control over such land. Commonwealth v. Hutchinson (Pa. 1848) 2 Pars. Eq. Cas. 384.

The legislative power over a place purchased by the United States with the consent of the legislature of the state is transferred from the state to the federal government, except as restrained by some qualification in the expression of state consent. Allegheny County v. McClung (1867) 53 Pa. (3 P. F. Smith) 482.

16. Grant or conveyance to government.—A conveyance of lands to the United States is void and inoperative, unless the purchase is authorized by congress. United States v. Tichenor (C. C. 1882) 12 Fed. 415.

When the grant has been accepted by the general government, and the conditions of the purchase have been fully performed, such grant becomes a solemn compact, which the general government will not permit the state to

violate. Bannon v. Burnes (C. C. 1889) 39 Fed. 892, 897.

A contention that a National Soldiers' Home was a corporation and a conveyance of the land to it was not a conveyance to the United States was without force. State v. Willett (Tenn. 1906) 97 S. W. 299.

The conveyance by the state of Virginia to the United States of the land at Old Point Comfort by the high-water mark boundary passed to the grantee the soil and jurisdiction to the low-water mark. French v. Bankhead (Va. 1854) 11 Grat. 136.

In ascertaining the boundaries of a tract of land at Old Point Comfort, conveyed by Virginia to the United States, the act, the report of the surveyor, and the deed are all to be consulted. Id.

17. Title and rights acquired by government in general.—Act Md. 1853, c. 179, consented to the purchase by the United States of state lands to construct dams, reservoirs, buildings, and to exercise concurrently with the state such jurisdiction as might be necessary for the purpose of procuring a water site for the cities of Washington and Georgetown. The government decided to draw the water from the Potomac river, and a site for the dam was located. Held, that a corporation, who had knowledge of such location, and who obtained a patent from the state for the lands across which the dam was located, acquired no title. U. S. v. Great Falls Mfg. Co. (1864) 21 Md. 119.

18. Purchase of lands not intended for forts, arsenals, etc.—Under the provision for exclusive legislation over all places purchased by the consent of the legislature of the state for the erection of forts, etc., and other needful buildings, a purchase of land for any of these purposes made by the national government, where the state legislature has given its consent to the purchase, the land so purchased, ipso facto, falls within the exclusive legislation of congress, and the state jurisdiction is completely ousted. U. S. v. Cornell (C. C. 1819) Fed. Cas. No. 14,867.

When the government purchases land within a state, not intended for forts, arsenals, and other national uses, but merely to secure a debt, it takes the land as any other corporation, and cannot claim any of the immunities or prerogatives of a sovereign. Elliot v. Van Voorst (C. C. 1860) Fed. Cas. No. 4,390.

19. Exclusive jurisdiction of congress in general. — Jurisdiction under this clause is absolutely exclusive of that of the state, unless power is given to it to serve the ordinary process of its courts in the precinct acquired. Ex parte Siebold (1879) 100 U. S. 371, 395, 25 L. Ed. 717.

Where the purchase of land is made by consent of the state legislature, such land, under the constitutional provision, falls within the exclusive legislation of congress. U. S. v. Cornell (C. C. 1819) Fed. Cas. No. 14,867.

Where the United States courts are held in rented buildings owned by private parties, the United States has no jurisdiction over them under this clause. In re Neagle (C. C. 1889) 39 Fed. 833, 848, 5 L. R. A. 78, affirmed (1890) 10 Sup. Ct. 658, 135 U. S. 1, 34 L. Ed. 55.

This clause vests in the national government exclusive jurisdiction over places occupied for military purposes, when the site has been acquired with the consent of the legislature of the state in which it is situated. U. S. v. Holt (C. C. 1909) 168 Fed. 141, judgment affirmed Holt v. U. S. (1910) 31 Sup. Ct. 2, 218 U. S. 245, 54 L. Ed. 1021, 20 Ann. Cas. 1138.

The land on which Ft. Oglethorpe is located in Georgia, being a part of that acquired by the United States for a national military park with the consent of the state legislature, which ceded jurisdiction of the lands and roads therein, said fort being used as a military post, is within the provision of this clause, giving exclusive jurisdiction over forts, etc., to congress, and neither the state nor other local authorities have power to interfere with any instrumentalities necessary to the proper use of such location as a military post. Pundt v. Pendleton (D. C. 1909) 167 Fed. 997.

The purchase by the United States of the land occupied by Ft. Trumbull, Connecticut, and the consent of the state legislature to the purchase, though a formal cession of jurisdiction is wanting, give to congress the exclusive power of legislation over the purchased land. (1871) 13 Op. Atty. Gen. 411.

The transfer of jurisdiction may take place in two ways: Indirectly, by the state consenting to the purchase of the land by the United States; and directly, by the state granting the jurisdiction to the United States. (1871) 13 Op. Atty. Gen. 461.

Where the United States has acquired title to lands by purchase by consent of the legislature of a state, and there was no reservation on the part of the state of concurrent jurisdiction over the lands so disposed of, the federal jurisdiction is exclusive of all state authority. (1900) 23 Op. Atty. Gen. 254.

Congress has the right of exclusive jurisdiction over the entire length of the Conduit road appurtenant to the water supply of the city of Washington, provided the roadbed is owned in fee by the United States and has been acquired in accordance with the consent of the legislature of the state of Maryland contained in the act of May 3, 1853

(Laws Md. 1853. c. 179). (1907) 26 Op. Atty. Gen. 289.

The Conduit road is not a public highway, but is subject to the control of the chief of engineers (Comp. St. § 3511) and its use by the public may be subjected to such regulations as may be appropriate, obedience to which may be secured by the use of such reasonably sufficient force as the Secretary of War may deem advisable. Id.

Under this clause, land purchased ipso facto falls within the exclusive jurisdiction of the United States. State v. Mack (1897) 47 P. 763, 23 Nev. 359, 62 Am. St. Rep. 811.

A state could not issue a liquor tax certificate for premises on a United States military reservation, though congress had not expressly prohibited the sale of liquor thereon by Act Feb. 2, 1901, § 38 (Comp. St. § 1990). Farley v. Scherno (1913) 101 N. E. 891, 208 N. Y. 269, 47 L. R. A. (N. S.) 1031, reversing judgment (1911) 132 N. Y. S. 170, 147 App. Dv. 375.

20. Cession or abandonment of jurisdiction by state.—The legislature of a state may cede to the United States exclusive jurisdiction over places needed by the general government in the execution of its powers. Ft. Leavenworth R. Co. v. Lowe (1885) 114 U. S. 525, 5 Sup. Ct. 995, 29 L. Ed. 264; Chicago, R. I. & P. Ry. Co. v. McGlinn (1885) 114 U. S. 542, 5 Sup. Ct. 1005, 29 L. Ed. 270.

At the time of the cession by the state of Kansas to the United States of exclusive jurisdiction over the Ft. Leavenworth military reservation, then owned by the United States, there was a railroad, running through the territory included in the cession. Held, that a law of the state, making a railroad company whose road was not included by a lawful fence liable to the owner of cattle killed or wounded by its engines or cars for the full value of the animals killed and the full damage to those wounded, whether the killing or wounding was caused by negligence or not, continued in force in the reservation after the cession. Chicago, R. I. & P. R. Co. v. McGlinn (1885) 114 U. S. 542, 5 Sup. Ct. 1005, 29 L. Ed. 270.

Laws Kan. 1875, p. 95, ceding to the United States exclusive jurisdiction over the Ft. Leavenworth military reservation, with certain exceptions as to service of process and taxation by state authorities, constituted a valid cession of jurisdiction, and, though made without any request by the general government, yet, as it conferred a benefit, its acceptance is to be presumed. Benson v. U. S. (1892) 146 U. S. 325, 13 Sup. Ct. 60, 36 L. Ed. 991.

Lands over which jurisdiction has been ceded, or which are not within the limits of any state used for constitutional purposes, are subject only to the laws of congress in the case of conflict. U. S. v. Ames (C. C. 1845) Fed. Cas. No. 14,441.

The acceptance by congress of the cession by a state of exclusive jurisdiction over territory in a military reservation which existed before the state was created is not necessary to vest such jurisdiction in the United States under this clause. Ex parte Hebard (C. C. 1877) Fed. Cas. No. 6,312.

Cession by a state is only necessary to extinguish its jurisdiction in whole or in part and is not necessary to the use of land by the United States for public purposes, subject, like all lands within the limits of the Union to the concurrent jurisdiction of both governments; that of the federal being supreme. Stockton v. Baltimore & N. Y. R. Co. (C. C. 1887) 32 Fed. 9, 19.

Inasmuch as this clause authorizes congress to exercise exclusive jurisdictice over the places referred to therein, statutes abandoning state jurisdiction therein are held to have accomplished their evident intent. State jurisdiction is thereafter at an end. Beekman v. Hudson River West Shore R. Co. (C. C. 1888) 35 Fed. 3, 8.

An act of the legislature of New Jersey, mentioned in this case, considered insufficient to meet the requirements of the law of September 11, 1841 (5 Stat. 468), in regard to the cession of jurisdiction over certain land purchased by the United States, at Finn's Point, in that state. (1871) 13 Op. Atty. Gen. 461.

The state of Virginia, through its legislature, having duly relinquished jurisdiction over the lands belonging to the United States at the navy yard at Norfolk, upon which it is proposed to construct a dry dock, the state board of harbor commissioners for the port of Norfolk and Portsmouth is without authority to require the submission to and approval by it of the plans of the contemplated improvement, although such improvement be within the harbor line established by that board. The authority of the United States over that harbor is paramount and absolute. (1902) 24 Op. Atty. Gen. 50.

The cession of Bedlow's Island to the United States by 1 Rev. Laws N. Y. p. 189, providing that "all that certain island called 'Bedlow's Island,' bounded on all sides by the waters of the Hudson, shall hereafter be subject to the jurisdiction of the United States," did not include any land covered by the waters of the Hudson. In re Osgood (N. Y. 1821) 6 City H. Rec. 4.

That a state, being sovereign, may waive or transfer its right to exercise judicial authority over portions of its territory, cannot be doubted. A state may sell or cede its own territory, with all its powers over it, to another power, as in the case of the cession of the District of Columbia to the United States, or in the sale to congress of places to be used as forts, dockyards, hospitals,

etc. Commonwealth v. Frazee (Pa. 1856) 5 Am. Law Reg. 167, 169, 2 Phila. 191.

Rev. St. Tex. art. 333, providing that, when the United States shall acquire any land in Texas for certain governmental purposes, the governor may cede to them jurisdiction over the same, does not authorize him to cede jurisdiction over land to which the United States have no title. U. S. v. Schwalby (1894) 8 Tex. Civ. App. 679, 29 S. W. 90.

A state legislature has no power to abdicate the jurisdiction of the state over places within its limits, except where the title to them has been acquired by the United States. In re O'Connor (1875) 37 Wis. 379, 19 Am. Rep. 765.

21. Relinquishment or retrocession of jurisdiction.—Acts 1897-98, p. 668, retroceding to Indiana and Illinois the jurisdiction of the United States over territory purchased by the consent of said states for the location of branches of the National Home for Disabled Volunteer Soldiers, does not violate this clause. State v. Board of Com'rs of Grant County (1899) 54 N. E. 809, 153 Ind. 302.

Where the United States has acquired the jurisdiction over lands within the territory of a state, for any of the purposes allowed by the constitution, congress has power to relinquish or recede to the state the jurisdiction, without abandoning the property; and acceptance of such recession by the state is not necessary. Renner v. Bennett (1871) 21 Ohio St. 431.

Act Jan. 21, 1871, relinquishing to a state "exclusive jurisdiction" over a place purchased for an asylum for disabled soldiers, is not so in conflict with a proviso reserving the "powers and rights" theretofore conferred on the board of managers incorporated by congress, that they may not stand together and both be operative. Id.

22. Places held or acquired without consent or cession of jurisdiction.—The purchase of lands by the United States for public purposes within the territorial limits of a state does not of itself oust the jurisdiction of sovereignty of the state over such lands. U. S. v. Cornell (C. C. 1819) Fed. Cas. No. 14,-867.

The rights and remedies of the United States in respect to land owned by it within the limits of the state and over which it has no cession of jurisdiction are governed by the lex rei sitæ, unless treaties or statutes of the United States otherwise provide. U. S. v. Ames (C. C. 1845) Fed. Cas. No. 14,441.

The United States have not sole and exclusive jurisdiction over land rented for a military camp, but only such jurisdiction as is necessary for military purposes. U. S. v. Tierney (C. C. 1864) Fed. Cas. No. 16,517.

On the admission of Kansas into the Union, jurisdiction within forts of the United States within the state was not excepted, and the consent of the state was necessary to the exercise of federal jurisdiction therein. U. S. v. Stahl (C. C. 1868) Fed. Cas. No. 16,373.

The site of the navy yard at Pensacola having been reserved out of the public domain of the United States for naval purposes while Florida was a territory, and jurisdiction over such site not having been ceded by the legislature of Florida after its admission as a state, advised that, in this case, application be made to the state for a cession of its jurisdiction thereover to the United States, as without such cession, the latter cannot claim exclusive jurisdiction over the premises. (1855) 7 Op. Atty. Gen. 571.

There is nothing in the constitution which prohibits the United States purchasing land within a state without the consent of the state legislature; but when land is purchased by them in a state without such consent the United States cannot exercise "exclusive legislation" over the place. (1861) 10 Op. Atty. Gen. 35.

The United States have over lands within a state held for national cemeteries or other public purposes, which were acquired by the former without the consent of the state, or over which the latter has not ceded its jurisdiction, only such jurisdiction as they have over other parts of the state wherein they possess no proprietary interests. (1875) 14 Op. Atty. Gen. 558.

The mere ownership of the land does not put the United States in a different position, as regards the matter of jurisdiction over it, than they occupied previous to its acquisition; nor is the situation of the state, with reference to the same matter, in any degree altered thereby. Id.

Strictly speaking, therefore, where the United States own land situated within the limits of a state, but over which the state has not parted with its jurisdiction, they cannot be taken to have exclusive jurisdiction over such land. Id.

The declaration that congress may exercise exclusive legislation over all territory purchased, etc., does not preclude the exercise of jurisdiction by the state of Kansas over criminal offenses committed on the military reservation at Ft. Leavenworth, for the reason that such reservation was not purchased with the consent of the state, or for the erection of forts and other buildings, but was purchased before the formation of the state as a part of the territory of Louisiana, and for the further reason that no attempt was made by congress in the act admitting the state to the Union to reserve control by exacting guaranties or otherwise against exercising jurisdiction. Clay v. State (1866) 4 Kan. 49.

The jurisdiction over land purchased

by the United States, lying within the limits of a state, remains in the state, unless the consent of the state be given, according to this clause. Commonwealth v. Young (Pa. 1869) 1 Jour. Juris. 47.

Where the United States merely buys or condemns land within a state for its own use, the state retains jurisdiction over the land, subject to the limitation that it cannot interfere with the full, free, and perfect use by the United States of the land for the purpose for which it was acquired. Divine v. Unaka Nat. Bank (Tenn. 1911) 140 S. W. 747.

23. Conditions or reservations by state.—Cession by the legislature of a state of exclusive jurisdiction over places needed by the general government in the execution of its powers, may be accompanied with any conditions not inconsistent with the effective use of the property for the public purposes intended. Ft. Leavenworth R. Co. v. Lowe (1885) 5 Sup. Ct. 995, 114 U. S. 525, 29 L. Ed. 264; Chicago, R. I. & P. R. Co. v. McGlinn (1885) 5 Sup. Ct. 1005, 114 U. S. 542, 25 L. Ed. 587.

A state may, in ceding jurisdiction over a place purchased, without consent, for a navy yard and naval hospital, impose the condition that such jurisdiction shall be retained by the United States only so long as the place is used for those purposes. Palmer v. Barrett (1896) 16 Sup. Ct. 837, 838, 162 U. S. 399, 40 L. Ed. 1015, following Ft. Leavenworth R. Co. v. Lowe (1885) 5 Sup. Ct. 995, 114 U. S. 525, 29 L. Ed. 264.

A state, in ceding to the United States jurisdiction over land purchased by the latter for a navy yard and naval hospital, without the "consent" of the state, imposed a condition that such jurisdiction should be retained by the United States only so long as the place was used for said purposes. Subsequently, a part of the land was leased by the United States authorities to a city of the state for market purposes, with a provision that the city should patrol and police the same. Held, that the exclusive jurisdiction of the United States was suspended while the lease remained in force, so that the state courts had jurisdiction of a controversy between individuals in respect to the right of possession of a market stand located on the premises. Palmer v. Barrett (1896) 16 Sup. Ct. 837, 162. U. S. 399, 40 L. Ed. 1015, affirming Barrett v. Palmer (1892) 31 N. E. 1017, 135 N. Y. 336.

Where a state grants land to the general government, reserving concurrent jurisdiction in executing process therein for offenses committed out of it, the federal courts have exclusive jurisdiction of offenses committed within such territory. U. S. v. Travers (C. C. 1814) Fed. Cas. No. 16,537.

Where the United States has purchased of a state certain lands for the erection of forts, etc., and other needful buildings, a reservation, on a cession by the state, of "concurrent jurisdiction" to serve state process civil and criminal in a ceded place, does not exclude the exclusive legislation or exclusive jurisdiction of the United States over such place. It merely operates as a condition of the grant. U. S. v. Davis (C. C. 1829) Fed. Cas. No. 14,930.

A reservation on a cession of "concurrent jurisdiction" to serve state process, civil and criminal, in the ceded place, does not exclude the exclusive legislation or exclusive jurisdiction of the United States over the ceded place. Id.

Where land has been sold to the United States government, and jurisdiction over the same has been ceded to it by the state legislature, reserving the right to serve personal process thereon, no process issuing out of a state court upon a judgment lien to which the land was subject at the time of sale can affect the title thereto. Martin v. House (C. C. 1888) 39 Fed. 694.

An act of the legislature of a state ceding to the United States the jurisdiction of the state over a tract of land used as a military reservation, upon condition that such jurisdiction shall continue only so long as the United States shall own and occupy such reservation; that the state shall have the right, within the reservation, to serve civil process, and to execute criminal process against persons charged with crime committed within the state; and that roads may be opened and kept in repair within such reservation—cedes to the United States the entire political jurisdiction of the state over the place in question, including judicial and legislative jurisdiction, except as to service of process and opening roads, and the same cannot be affected or further limited, without the consent of the United States, by a subsequent act of the state legislature attempting to impose additional restrictions on the jurisdiction ceded. In re Ladd (C. C. 1896) 74 Fed. 31.

Congress has exclusive legislative power over a place ceded by a state for a military post, though the state reserves a right to send process therein. U. S. v. Knapp (D. C. 1849) Fed. Cas. No. 15,538.

Phrases in legislative acts of the states retaining concurrent jurisdiction for certain purposes do not impair the federal jurisdiction conferred by the constitution. (1856) 7 Op. Atty. Gen. 628.

Consent of a state to the purchase of land within it conveys in general jurisdiction to the United States, but not when all jurisdiction is expressly reserved by the state. (1856) 8 Op. Atty. Gen. 31.

If the legislative act of the state wherein the land lies amounts to a consent to the purchase by the United States, any exceptions, reservations, or

qualifications contained in the act are void. (1861) 10 Op. Atty. Gen. 35.

The act of the Virginia legislature of January 14, 1871, providing for a cession of jurisdiction over the bridge across Mill creek, at Old Point Comfort, Va., owned by the government, proposed in effect that the United States shall have exclusive jurisdiction over the bridge and its abutment (with concurrent jurisdiction in the state for the execution of process) so long as the bridge was kept up and maintained by the government for military purposes, and the public were permitted to pass over the same free of charge, and no longer, and the Attorney General advised that there would be no impropriety in accepting the grant of jurisdiction executed by the governor of the state in pursuance of said act, upon the terms proposed. (1871) 13 Op. Atty. Gen. 419.

By St. Mass. 1800, c. 26, giving the consent of this commonwealth to the purchase, by the United States, of a tract of land in Charlestown, for a navy yard, it was provided that the commonwealth should retain concurrent jurisdiction over it, so far as that all civil and such criminal processes as might issue under the authority of this commonwealth against persons charged with crimes committed without that tract of land, might be executed therein. It was held that, under St. Mass. 1822, c. 103, requiring vessels employed in transporting stone within this commonwealth to be weighed and marked, no penalty was incurred by the employment of a vessel not weighed or marked, in transporting stone from the state of Maine to such navy yard, because such vessel was not employed in transporting stone "within this commonwealth" in the sense of the statute, and because no offense was committed within the jurisdiction of the commonwealth. Mitchell v. Tibbetts (1835) 34 Mass. (17 Pick.) 298.

Rev. Laws Mass. c. 1, § 2, provides that "the jurisdiction of the commonwealth extends, to all places within the boundaries, subject to the concurrent jurisdiction granted over places ceded to the United States." Section 6, relative to the title of lands acquired by the United States for public uses, retains concurrent jurisdiction with the United States to the extent that all civil and criminal process of the commonwealth may be executed thereon the same as if the jurisdiction had not been ceded, and revests exclusive jurisdiction in the commonwealth if such tract ceases to be used by the United States for such public purposes. Held, that a state court has jurisdiction over a writ of entry by the heirs of a grantor to recover possession of property deeded to the United States for a specific purpose, which was to revert to the grantor or his heirs if such land was not used for the purpose specified. Fay v. Locke (1909) 87 N. E. 753, 201 Mass. 387.

A writ of habeas corpus, issuing under the authority of New Hampshire, may be executed within the limits of the land ceded by the state to the United States for the purpose of a fort and lighthouse, by virtue of the proviso in the act of cession. State v. Dimick (1841) 12 N. H. 194, 37 Am. Dec. 197.

Laws N. Y. 1853, c. 355, § 1, cedes to the United States jurisdiction over certain lands "for the uses and purposes of a navy yard and naval hospital," and section 4 reserves to the state jurisdiction of the premises if they are not used for these purposes. The United States leased these lands to the city of Brooklyn for market purposes. Held, that the state courts have jurisdiction of actions growing out of disputes between the city's lessees. Barrett v. Palmer (1891) 16 N. Y. Supp. 94, affirmed (1892) 31 N. E. 1017, 135 N. Y. 336, 31 Am. St. Rep. 835.

Laws N. Y. 1853, c. 355, cedes to the United States the jurisdiction of the state over the land in the city of Brooklyn occupied as a navy yard, and provides that the jurisdiction so ceded shall not impede the service or execution of the legal process of the state. At the time of the cession, Laws N. Y. 1847, c. 450, giving a right of action for death by wrongful act, was in force. Held, that while by the cession the United States acquired power to legislate in regard to the ceded territory, yet the state laws in force, at the time of the cession, such as the one above mentioned, remain in force until repealed by the United States. McCarthy v. R. G. Packard Co. (1905) 75 N. E. 1130, 182 N. Y. 555, affirming judgment (1905) 94 N. Y. S. 203, 105 App. Div. 436, 34 Civ. Proc. R. 321.

Whatever repealing effect Laws N. Y. 1880, c. 245, § 1, subd. 24, had within the state of New York on Laws N. Y. 1847, c. 450, giving a right of action for death by wrongful act, it could not repeal the same so far as it was operative in territory ceded to the United States by Laws N. Y. 1853, c. 355. Id.

But if the legislature could repeal the act of 1847 in so far as it was in operation in the ceded territory, Code Civ. Proc. N. Y. § 1902, passed as a substitute for the act repealed at the time of the repeal, and giving a similar right of action, would be in force there. Id.

Since there exists in territory ceded to the United States by Laws N. Y. 1853, c. 355, a right of action for death by wrongful act, and such an action is also given in the state of New York by the laws thereof, the courts of New York have jurisdiction over an action for death caused by a wrongful act committed in the ceded territory. Id.

A deed of cession of land from a state to the United States contained a pro-

viso "that nothing shall be construed so as to impede or prevent the execution of any civil or criminal process under the authority of the state." Held, that this would authorize the coroner to hold an inquest within such premises. Allegheny County v. McCung (1866) 53 Pa. St. (3 P. F. Smith) 482.

The legislative power over a place purchased by the United States with the consent of the legislature of the state is transferred from the state to the federal government, except as restrained by some qualification in the expression of state consent. Allegheny County v. McCung (1867) 53 Pa. (3 P. F. Smith) 482.

Where land within a state is acquired by the United States with the consent of the state, the jurisdiction of the United States over it is supreme, and a reservation by the state of the right to serve civil or criminal process within the land ceded is limited to actions arising outside of the ceded territory; but the laws of the state for the enforcement of municipal or private rights of individuals residing therein continue unless the United States provides legislation for the territory, and where jurisdiction is not given by a federal law to federal courts to assert and protect private rights, such rights may be enforced in the state courts. Divine v. Unaka Nat. Bank (Tenn. 1911) 140 S. W. 747.

Where land on which a custom house stood had been ceded to the United States with the proviso that the cession should not interfere with "the service or execution of any legal process," it was held that a sheriff's sale of mortgaged property was within the meaning of this proviso, and could be legally made in the custom house. Sauer v. Steinbauw (1861) 14 Wis. 70.

24. Operation of state laws in general.—At the time of the cession by the state of Kansas to the United States of exclusive jurisdiction over the Ft. Leavenworth military reservation, then owned by the United States, there was a railroad running through the territory included in the cession. Held, that a law of the state, making a railroad company whose road was not inclosed by a lawful fence liable to the owner of cattle killed or wounded by its engines or cars for the full value of the animals killed and the full damage to those wounded, whether the killing or wounding was caused by negligence or not, continued in force in the reservation after the cession. Chicago, R. I. & P. R. Co. v. McGlinn (1885) 5 Sup. Ct. 1005, 114 U. S. 542, 25 L. Ed. 587.

The public laws of New Jersey are in force in the littoral waters of Sandy Hook peninsula below low-water mark, whether enacted prior or subsequently to the cession to the United States, by Act N. J. March 12, 1846, of jurisdiction over a portion of that peninsula for military purposes. Hamburg-American S. S. Co. v. Grube (1905) 25 Sup. Ct. 352, 196 U. S. 407, 49 L. Ed. 529.

Exclusive legislative power which congress possesses over the Norfolk Navy Yard excludes giving any operation or effect, within limits of such navy yard, to the provisions of Code Va. 1904, § 1294h, subds. 5, 6, imposing a penalty upon telegraph companies for failure to deliver a message to the addressee. Western Union Telegraph Co. v. Chiles (1909) 29 Sup. Ct. 613, 614, 214 U. S. 274, 53 L. Ed. 994, reversing judgment (1907) 57 S. E. 587, 107 Va. 60.

Lands of the United States not within the limit of a state, or over which jurisdiction has been ceded, and which are used for constitutional purposes, are, in case of conflict, subject only to the laws of the United States. U. S. v. Ames (C. C. 1845) Fed. Cas. No. 14,441.

The Massachusetts laws of flowage do not apply to the case of machinery used by the United States on its lands over which jurisdiction has been ceded to them. Id.

The general laws of Virginia, other than criminal, which do not conflict with those of the United States relating to forts, and which do not interfere with the military control, discipline, and use of Fortress Monroe as a military post, are in force at Old Point Comfort, which was acquired by an act of cession directly from the state. Crook, Horner & Co. v. Old Point Comfort Hotel Co. (C. C. 1893) 54 Fed. 604.

Lands of the United States within the limits of a state are not subject to state laws, except there be in the act of its legislature, under which jurisdiction was ceded to the United States, a reservation of concurrent jurisdiction to the state. (1894) 21 Op. Atty. Gen. 18.

Assuming that title to land on which a dry dock is built, and the exclusive jurisdiction over it, are in the United States, the mechanic's lien laws of South Carolina do not operate thereon, and claims under such laws may be ignored in settlements with contractors. (1898) 22 Op. Atty. Gen. 18.

The statute of Kansas of February 27, 1874, entitled "An act relating to killing or wounding stock by railroads," is operative within the Ft. Leavenworth military reservation, notwithstanding the cession to the United States by Act Kan. Feb. 22, 1875. Chicago, R. I. & P. Ry. Co. v. McGlinn (1882) 28 Kan. 274.

25. State taxation.—Laws Mo. 1870, p. 355, gave the consent of the state to the acquisition by the United States of land in Kansas City for the erection of a post office, and declared that the land, when acquired, should, so long as it remained the property of the United States, be exonerated from all taxes, assessments, and other charges levied

or imposed under the authority of the state. By the charter of Kansas City the lien for city taxes attaches on January 1st, but the levy is not made until the third Monday in April. Held, that land so acquired by the United States between January and April was not subject to taxation by the city. Bannon v. Burnes (C. C. 1889) 39 Fed. 892.

Under Laws Wash. 1903, p. 339, § 63, held that real property acquired by United States in May and July was not subject to tax of that year. U. S. v. Pierce County (D. C. 1912) 193 Fed. 529.

When title to land in Cincinnati, Ohio, was acquired by the United States, and jurisdiction over the land so acquired was ceded to the United States by the state, taxes theretofore assessed on the land by the city authorities and remaining unpaid ceased thereafter to be a lien on the land, and did not become a proper charge against the United States; the state having virtually relinquished its lien when it parted with jurisdiction. (1881) 17 Op. Atty. Gen. 44.

Premises being purchased by the United States for an arsenal, with consent of the state, Congress became vested with exclusive legislation thereover, and the legislation of the state in regard to taxation had no application to them; so that the right to use of water power developed thereon, and granted by the United States, is exempt from state taxation. Moline Water Power Co. v. Cox (1911) 96 N. E. 1044, 252 Ill. 348.

26. Jurisdiction of state courts in general.—See, also, notes under Comp. St. § 1233, ante.

No action can be maintained in a state court for a tort committed in the Brooklyn navy yard, as the state has ceded the exclusive jurisdiction of that place to the United States. Armstrong v. Foote (N. Y. 1860) 19 How. Prac. 237.

Where lands in a state have been purchased by the United States with the consent of the state, the state courts have no jurisdiction of an action of ejectment to recover dower in such land, where the land was purchased by the United States from the husband of the claimant, and ceded by the state while he was living and the right of dower of the wife was inchoate. Dibble v. Clapp (N. Y. 1866) 31 How. Prac. 420, 1 Sheld. 123.

The fact that the state has ceded land in the city of Brooklyn, and political jurisdiction over it, to the United States, for the purpose of a navy yard, does not oust the state courts of jurisdiction as to private rights and remedies within such territory, at least so long as congress makes no new regulations touching the administration of justice in civil actions arising therein. Barrett v. Palmer (1892) 135 N. Y. 336, 31 N. E. 1017, 31 Am. St. Rep. 835, 17 L. R. A. 720, affirming (1891) 16 N. Y. Supp. 94.

State courts have jurisdiction of summary proceedings by a lessee to recover from his sublessee possession of the leased premises, though they are lands of the United States as part of the Brooklyn navy yard, leased by it to plaintiff lessee. Lotterle v. Murphy (1893) 67 Hun, 76, 21 N. Y. Supp. 1120.

This clause does not deprive the state courts of jurisdiction to try actions arising from civil wrongs committed by private persons in such places, since congress has not given any method of redressing such wrongs. Madden v. Arnold (1900) 57 N. E. 1116, 162 N. Y. 638, affirming judgment (1897) 47 N. Y. S. 757, 22 App. Div. 240, 5 N. Y. Ann. Cas. 26.

27. Criminal offense in places acquired.—See, also, Comp. St. § 10445, ante, and notes thereunder.

This clause confers no jurisdiction upon the federal courts to try a person for a petty larceny committed in the National Cemetery on the Arlington estate, which was purchased by the United States at a tax sale, without the consent of the state of Virginia. U. S. v. Penn (C. C. 1880) 48 Fed. 669.

Under this clause, places, when acquired, would be places over which the United States has exclusive jurisdiction, and would fall within the field of operation of the Edmunds-Tucker act. The fact that Utah is a state is in no way inconsistent with the operation of the law in such places. U. S. v. Baum (C. C. 1896) 74 Fed. 43, 47.

To give a federal court jurisdiction to try a person for a criminal offense, on the ground that it was committed within a fort or military reservation, such fort or reservation must have been established by law, as contemplated by this clause, either by purchase with the consent of the legislature of the state or by reservation of public lands therefor by compact with the state at the time of its admission, and exclusive jurisdiction over the same must have been reserved to the United States, either by express words or by necessary implication. U. S. v. Tully (C. C. 1905) 140 Fed. 899.

Congress has power to regulate the hours of labor which may be required or permitted on public buildings or works of the United States, and the federal courts have jurisdiction to punish violations of such regulations, though the buildings or works where committed may be situated on land within the political jurisdiction of a state. U. S. v. San Francisco Bridge Co. (D. C. 1898) 88 Fed. 891.

A state retains complete and exclusive political jurisdiction over land within its limits purchased by the United States as a site for a public building, unless such purchase was with the consent of its legislature, or jurisdiction has been otherwise ceded to the United

States, and any offense against its laws committed thereon is punishable in its courts. Id.

Under this clause the power of congress to exercise exclusive legislation extends to land purchased by the United States, by consent of the legislature of the state, and used for the public governmental purpose of maintaining thereon locks and dams for the improvement of the navigation of a river, and the United States has exclusive jurisdiction to prescribe and punish criminal offenses committed thereon; and the fact that the legislative consent was granted after the purchase is immaterial so far as relates to offenses committed thereafter. U. S. v. Tucker (D. C. 1903) 122 Fed. 518.

The exclusive jurisdiction of the United States to prescribe and punish criminal offenses committed on land or in a "place" occupied for governmental purposes may be derived either from this clause, where the place was purchased by consent of the state legislature, or from an express cession of such jurisdiction by the legislature. Id.

Where, on a trial for an offense committed in a building used as a post office, it was shown that the post office was rented by the postmaster, the questions of the right of the state to try offenses committed in places ceded to the United States, or of the force of Civ. Code Ala. 1896, § 628, authorizing the ceding of jurisdiction to the United States, were immaterial. Brooke v. State (Ala. 1908) 46 So. 491.

The penalty prescribed by St. Mass. 1822, c. 103, respecting the weighing and marking of vessels in certain cases, is not incurred by a vessel in the employment of the United States, engaged in transporting stone from Maine to the navy yard at Charlestown, as no offense is committed within the jurisdiction of the commonwealth. Mitchell v. Tibbetts (1835) 34 Mass. (17 Pick.) 298.

Where an assault was committed on land purchased by the United States with the consent of the state of New Jersey, and jurisdiction of the state over such lands was vested in the United States by an act of the legislature and thereafter congress passed an act for the punishment of such offense, it was the exercise of power conferred by this clause, and is exclusive, and the state courts have no jurisdiction to try or punish such offense. State v. Morris (N. J. 1908) 68 A. 1103.

Act N. Y. Feb. 15, 1800 (1 Rev. Laws, p. 189), provides that "Governor's Island on which Ft. Jay is situated, bounded on all sides by the waters of the East river and Hudson river, shall hereafter be subject to the jurisdiction of the United States." Held that, it not appearing that the United States have accepted the act of this state respecting said island, nor that they have exercised the power of exclusive legislation over the same, granted by the constitution to congress, the court of sessions of the city of New York has, notwithstanding the above provisions, jurisdiction of offenses committed on Governor's Island. In re Lent (N. Y. 1819) 4 City H. Rec. 27; People v. Lent (N. Y. 1819) 2 Wheeler, Cr. Cas. 548.

Adultery, being an offense arising out of the marriage relation, is cognizable only in the state courts, except in the places where the United States has exclusive jurisdiction, in which places congress may pass laws defining the offense and prescribing the punishment. Southern Surety Co. v. State (1912) 127 Pac. 409, 34 Okl. 781.

Acts Tenn. 1867, ceding to the United States lands for cemeteries, does not exclude the right of the state to execute process within the cemetery grounds, and to punish offenses committed therein; but over adjacent grounds, while they are temporarily occupied by the United States forces in preparing the cemetery, the national jurisdiction is exclusive. Wills v. State (1871) 50 Tenn. (3 Heisk.) 141.

The power of congress to exercise exclusive legislation over all places purchased is limited to places the title to which is vested in the United States with consent of the legislature; and even as to such places the jurisdiction of the state to enforce its laws and punish crimes continues until congress has, by some further legislative act, extinguished the state authority, and vested exclusive jurisdiction over such places in the federal court. In re O'Connor (1875) 37 Wis. 379, 19 Am. Rep. 765.

28. Execution of civil or criminal process.—Writs issued by the courts of Minnesota run into and on the military reservation of Ft. Snelling, in that state. (1881) 17 Op. Atty. Gen. 1.

Act Ga. Dec. 22, 1808, provided that from and after its passage congress shall have and maintain jurisdiction in and over all the lands they have acquired, or may hereafter acquire, for the purpose of erecting forts and fortifications in that state. In 1875 the United States acquired by purchase from a citizen the lands upon which is now located the military reservation on Tybee Island, in that state. Held, that under the provisions of the act of 1808, the United States acquired and retains exclusive jurisdiction over that reservation, and the sheriff of the county within which it is situated has no power to go and serve thereon any process whatsoever issued by a court of that State. (1900) 23 Op. Atty. Gen. 254.

A habeas corpus issued by a state court of New York runs within the territory ceded by the state to the United States at West Point, the exercise of this common-law jurisdiction not having been forbidden by any act of con-

gress, or of the state. In re Carlton (N. Y. 1827) 7 Cow. 471.

29. Soldiers' homes.—Where oleomargarine was furnished by the federal government to be served as food to the inmates of a national home for federal soldiers, the governor of such institution is not amenable to the laws of the state in which it is located, regulating the use and sale thereof, since the legislature of the state has no constitutional power to interfere with the internal management of federal institutions located within its limits. Ohio v. Thomas (1899) 19 Sup. Ct. 453, 455, 173 U. S. 276, 43 L. Ed. 699, affirming order In re Thomas (1898) 87 Fed. 453, 31 C. C. A. 80.

The acts of congress establishing the National Home for Disabled Volunteer Soldiers, and creating a corporation authorized to take and hold lands for the purposes of such homes, containing no declaration of the necessity of exclusive jurisdiction in the general government over such lands, do not vest such exclusive jurisdiction in the United States, upon the consent of the state being given to the acquisition of such lands. In re Kelly (C. C. 1895) 71 Fed. 545.

A cession to the general government, in the act giving the consent of the state to the purchase of land for a soldiers' home, of "jurisdiction," does not confer exclusive jurisdiction, the purpose of the act not requiring it, but such jurisdiction only, concurrent with that of the state, as congress, may find necessary for the objects of the cession. Id.

Intoxicating liquors found in transit to the National Soldiers' Home, Togus, at which place alone they were intended for sale by the home storekeeper, are not liable to seizure, under Rev. St. Me. c. 27, § 39 et seq., rendering liable to seizure liquors kept and deposited in the state intended for sale in violation of law; the territory of the home having been ceded to the United States, and the state court having no jurisdiction thereof. State v. Intoxicating Liquors (1886) 78 Me. 401, 6 Atl. 4.

An asylum for disabled volunteer soldiers is among the needful buildings for the erection of which the government of the United States may purchase and hold territory, and territory so purchased, by the consent of the legislature of the state in which the same is located, is under the exclusive jurisdiction of the general government in all cases whatsoever. Sinks v. Reese (1869) 19 Ohio St. 306, 2 Am. Rep. 397.

Where an inmate of a national home for disabled soldiers, located on land ceded by the state to the federal government, subject to the reservation of the right to serve civil and criminal process within the territory ceded dies, the state court has probate jurisdiction of his estate, and an administrator appointed by a state probate court has authority to compel the officers of the home to deliver to him property of decedent. Divine v. Unaka Nat. Bank (Tenn. 1911) 140 S. W. 747.

The land on which "The National Home for Disabled Volunteer Soldiers," a federal corporation, has its buildings, was purchased by the United States with the consent of the legislature, and is under the exclusive jurisdiction of the federal government. Its officers are disbursing officers of the United States, and the funds in their hands as such cannot be attached or garnished under process from a state court. Foley v. Shriver (1886) 81 Va. 568.

The title to the premises occupied by the "National Home for Disabled Volunteer Soldiers" in this state is not in the United States, but in a corporation created by congress, and though the legislature of this state attempted to cede to the United States jurisdiction over such premises (Priv. & Loc. Laws Wis. 1867, c. 275), the jurisdiction of the proper state courts over them remains unimpaired. In re O'Connor (1875) 37 Wis. 379, 19 Am. Rep. 765.

30. Right of suffrage of residents.—The inhabitants of a territory owned by the United States, and lying within this commonwealth, but over which the courts of this commonwealth have no jurisdiction, cannot exercise any civil or political privileges under the laws of the commonwealth, because they are not interested in any elections made within the state, nor held to pay any taxes imposed by its authority, nor bound by any of its laws. Commonwealth v. Clary (1811) 8 Mass. 72.

Persons who reside on lands purchased by or ceded to the United States do not, by residing on such lands, acquire any elective franchise as inhabitants of such towns. Opinion of the Judges (1841) 42 Mass. (1 Metc.) 580.

Since the state of New York has ceded to the United States the territory comprising the West Point reservation, reserving nothing except the right to serve process therein, such territory has ceased to be subject to state jurisdiction, or to be a part of the state; and persons having no other qualifications as residents than a residence in such territory are not residents of the state, and have no right to vote. In re Town of Highlands (1892) 22 N. Y. Supp. 137.

The inmates of an asylum for disabled soldiers, erected upon territory purchased for that purpose by the government of the United States from the state of Ohio, being within the exclusive jurisdiction of the general government, are not residents of the state, within the meaning of Const. Ohio,

art. 5, § 1, conferring the elective franchise upon residents of the state. Sinks v. Reese (1869) 19 Ohio St. 306, 2 Am. Rep. 397.

Act Jan. 21, 1871, ceding jurisdiction over the National Soldiers' Home back to the state of Ohio, qualified inmates of the home, residing there for one year and upward, to vote in Ohio at the next election, though it occurred less than a year from the date of cession. Renner v. Bennett (1871) 21 Ohio St. 431.

Within the suffrage laws, a soldier of the United States does not gain a residence by being stationed at an arsenal or fort. Taylor v. Reading (Pa. 1870) 4 Brewst. 439.

A person, though not in the army or navy, cannot, by long and continuous residence within the boundaries of a reservation, the jurisdiction whereof is ceded to the United States (Const. S. D. art. 26, § 18), acquire the right to vote at a state election held in the county wherein such reservation is situated. McMahon v. Polk (1897) 73 N. W. 77, 10 S. D. 296, 47 L. R. A. 830.

The state of Tennessee granted its consent to the acquisition, by the National Home for Disabled Volunteer Soldiers, of certain lands for the establishment of a branch of such home, providing that the act should not be construed to deny to inmates, who were qualified voters of the state, the right to vote. Const. Tenn. 1870, art. 4, provides that a voter shall be a citizen of the United States and a resident of the state for twelve months and of the county wherein he offers to vote for six months, preceding the day of election. Held that, the United States having exclusive jurisdiction over the land on which such branch home was erected, the inmates thereof, not being residents of the state, were not legal voters at elections therein; but persons employed in the National Home and inmates working therein, who have homes and families outside the grounds where they spend their nights, being residents of the state, and otherwise qualified, are entitled to vote. State v. Willett (Tenn. 1906) 97 S. W. 299.

31. Judicial notice as to military post.—The court will take judicial notice that land is held by the United States as a military post by private purchase, but cannot take judicial notice of the precise metes and bounds of the property by its field notes as run out on the ground. Baker v. State (1904) 83 S. W. 1122, 47 Tex. Cr. R. 482.

CITED WITHOUT DEFINITE APPLICATION

U. S. v. Bevans (1818) 3 Wheat. 336, 388, 4 L. Ed. 404; Van Brocklin v. Anderson (1886) 6 Sup. Ct. 670, 675, 117 U. S. 151, 29 L. Ed. 845; Chappell v. U. S. (1896) 16 Sup. Ct. 397, 400, 160 U. S. 499, 40 L. Ed. 510; Parsons v. U. S. (1897) 17 Sup. Ct. 880, 884, 167 U. S. 324, 42 L. Ed. 185; Stearns v. Minnesota (1900) 21 Sup. Ct. 73, 82, 179 U. S. 223, 45 L. Ed. 162; Swift v. Philadelphia & R. R. Co. (C. C. 1894) 64 Fed. 59, 67; In re Certain Land in Lawrence (D. C. 1902) 119 Fed. 453, 454; Widmayer v. U. S. (1907) 42 Ct. Cl. 519.

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Notes of Decisions

1. Construction, operation, and effect of clause in general.
2. Enabling provision as necessary to state legislation.
3. Laws "necessary and proper" in general.
4. Remedies for violation of constitutional prohibition.
5. Prescribing penalties in general.
6. Protection of migratory birds and game.
7. Condemnation of lands for post office sites.
8. Commerce and subjects of maritime jurisdiction.
9. Enforcement of fourteenth amendment.
10. Confiscation laws.
11. Laws affecting right of suffrage in the states.
12. Issuance of notes or bills of credit.
13. Establishment and regulation of banks.
14. Departments and officers thereof.
15. Creation and punishment of offenses, and exemptions from criminal process.
16. Congressional investigations.
17. Courts and judicial proceedings.

As to the admission or exclusion of aliens based on the commerce clauses, with this and other clauses, see notes under clause 3, ante.

1. Construction, operation, and effect of clause in general.—Under this clause, congress may pass any law necessary to carry into effect any power conferred upon it by the constitution. The Legal Tender Cases (1870) 12 Wall. 457, 534, 20 L. Ed. 287.

In the exercise of this general power of legislation, congress may use any means which it deems most appropriate to the end to be accomplished, which is consistent with the letter and spirit of the constitution. Logan v. U. S. (1892) 12 Sup. Ct. 617, 622, 144 U. S. 263, 36 L. Ed. 429.

This clause vests in congress a wide

range of discretion as to the means by which the powers granted are to be carried into execution. Fairbank v. U. S. (1901) 21 Sup. Ct. 648, 650, 181 U. S. 283, 45 L. Ed. 862.

Whenever an express power is granted to congress in the constitution of the United States, the choice of the means by which the power expressly granted is to be carried into effect is left to the wisdom of congress, with only this qualification, that the means adopted must bear a relation in the nature and fitness of things to the end to be accomplished. Lick v. Faulkner (1864) 25 Cal. 404.

An act of congress is constitutional if it is warranted by any of the enumerated powers conferred on congress, or by any of those not enumerated, but included in this provision. Shollenberger v. Brinton (1866) 52 Pa. St. (2 P. F. Smith) 9.

2. Enabling provision as necessary to state legislation.—While the constitution gives congress power to make all laws necessary for carrying into execution the powers granted by that instrument, the legislature of this state possesses such power without any enabling provision. Minneapolis, St. P. & S. S. M. Ry. Co. v. Railroad Commission of Wisconsin (Wis. 1908) 116 N. W. 905, 136 Wis. 146, 17 L. R. A. (N. S.) 821.

3. Laws "necessary and proper" in general.—The power to make laws for carrying into execution all the judgments which the judicial department of the United States has power to pronounce is expressly conferred by this clause, and the states may not control the proceedings, except as state process acts are adopted by congress, or by the federal courts under the authority of congress. Wayman v. Southard (1825) 10 Wheat. 1, 2, 6 L. Ed. 253.

The phrase "all laws necessary and proper for carrying into execution" defined. Hepburn v. Griswold (1869) 8 Wall. 603, 613, 19 L. Ed. 513.

Within the legitimate scope of the grant of authority in this clause to make all laws necessary and proper to carry into effect the foregoing powers, congress is permitted to determine for itself what is necessary and what is proper. Ex parte Curtis (1882) 1 Sup. Ct. 381, 383, 106 U. S. 371, 27 L. Ed. 232.

The words "necessary and proper" are not limited to such measures as are absolutely and indispensably necessary, without which the powers granted must fail of execution, but they include all appropriate means which are conducive or adopted to the end to be accomplished, and which in the judgment of congress will most advantageously effect it. Legal-Tender Cases (1884) 4 Sup. Ct. 122, 125, 110 U. S. 421, 28 L. Ed. 204.

The power of congress to make all laws necessary and proper for carrying into execution the powers vested in the government of the United States includes the power to enact such legislation as is appropriate to give efficiency to any stipulations which it is competent for the president, by and with the advice and consent of the senate, to insert in a treaty with a foreign power. Neely v. Henkel (1901) 180 U. S. 109, 121, 21 Sup. Ct. 302, 45 L. Ed. 448.

The words "necessary and proper," as used in this provision, do not imply the employment of only such means as are absolutely necessary to effect the object sought, but include as well all the means which in the judgment of congress may be proper to carry out the power so granted. U. S. v. Hoke (D. C. 1911) 187 Fed. 992, judgment affirmed Hoke v. U. S. (1913) 33 Sup. Ct. 281, 227 U. S. 308, 57 L. Ed. 523, 43 L. R. A. (N. S.) 906, Ann. Cas. 1913E, 905.

Act 1789 (Comp. St. § 1233), providing that the United States district court shall have jurisdiction, to the exclusion of the courts of the several states, of all suits against ambassadors and consuls, is authorized by article 3, § 2, extending the judicial power of the United States to all cases affecting ambassadors and consuls, and this clause, empowering congress to make necessary laws. Sartori v. Hamilton (1832) 13 N. J. Law (1 J. S. Green) 107.

4. Remedies for violation of constitutional prohibition.—Where a constitutional grant or guaranty is that congress or the state legislatures shall not pass laws for abridging a certain right, congress has no power to legislate over the subject generally, but only to provide remedies for a violation of the prohibition. U. S. v. Cruikshank (C. C. 1874) Fed. Cas. No. 14,897.

5. Prescribing penalties in general.—The power of congress to prescribe a penalty for the infraction of a rule or regulation, which the constitution expressly empowers it to enact, is clearly and necessarily implied, and, if it was not so implied, authority for it is found in this section. Howard v. Illinois R. Co. (C. C. 1907) 148 Fed. 997, affirmed (1908) 28 Sup. Ct. 141, 207 U. S. 463, 52 L. Ed. 297.

6. Protection of migratory birds and game.—Act March 4, 1913, protecting migratory birds and game, cannot be sustained as an exercise of the implied powers of the national government, though it is impossible for any state to enact laws for the protection of migratory wild game, and only the national government can do it with any fair degree of success. U. S. v. Shauver (D. C. 1914) 214 Fed. 154.

7. Condemnation of lands for post office sites.—This clause, taken in connection with clause 7, ante, and article 6, cl. 2, post, invests congress with power to condemn lands for post office

sites. U. S. v. Inlota (C. C. 1873) Fed. Cas. No. 15,441.

8. Commerce and subjects of maritime jurisdiction.—A provision of a state statute, giving an exclusive right to a telegraph company to erect and use lines of telegraph within certain counties, held to be in conflict with Act July 24, 1866, in relation to the construction of telegraph lines, passed by Congress under the power which may be referred to this clause. Pensacola Tel. Co. v. Western Union Tel. Co. (C. C. 1875) Fed. Cas. No. 10,960.

Act March 3, 1851, in limitation of liability, so far as applicable to marine torts or to other subjects of maritime jurisdiction, is within the constitutional power of congress. The Garden City (D. C. 1886) 26 Fed. 766.

Under this clause and clause 3, ante, congress can provide that a carrier engaged in interstate commerce shall furnish the shipper a bill of lading to destination of the shipment, and shall be liable for damages to the shipment, caused by any carrier over whose line the shipment passes from its delivery to the initial shipper until its delivery to the assignee at the point of final delivery. Fry v. Southern Pac. Co. (1911) 93 N. E. 906, 247 Ill. 564.

9. Enforcement of fourteenth amendment.—The authority of congress to enforce the fourteenth amendment includes a contingent power dependent on the necessity for correcting wrongs by the state or its officers, and the power and duty to legislate for the protection of the citizen, which latter power congress may exercise under the implied power given by the fourteenth amendment, or under it and section 8 of article 1 of the constitution. Ex parte Riggins (C. C. 1904) 134 Fed. 404, order reversed Riggins v. U. S. (1905) 26 Sup. Ct. 147, 199 U. S. 547, 50 L. Ed. 303.

10. Confiscation laws.—See, also, notes under art. 1, § 8, cl. 11, ante.

Act July 17, 1862 (12 Stat. 589) § 5, confiscating the property of those engaged in rebellion against the United States, is within the powers conferred on congress by this clause and clauses 1 and 15, ante, and is binding on the courts of the states. Knoefel v. Williams (1868) 30 Ind. 1.

11. Laws affecting right of suffrage in the states.—The changes made by the constitution of 1890 in the basis of suffrage, though violative of Act 1870, readmitting the state of Mississippi into the Union, do not invalidate that instrument, as congress has no power to regulate the rights of suffrage in the states. Sproule v. Fredericks (1892) 69 Miss. 898, 11 South. 472.

In the exercise of its admitted powers, congress may doubtless deprive an individual of the opportunity to enjoy a right that belongs to him as a citizen of a state, even of the right of suffrage; but it cannot deprive him of the right itself. Huber v. Reilly (1866) 53 Pa. St. (3 P. F. Smith) 112, 23 Leg. Int. 228.

12. Issuance of notes or bills of credit.—The acts of congress making United States notes legal tender for preexisting debts are unconstitutional. Hepburn v. Griswold (1869) 8 Wall. 603, 613, 19 L. Ed. 513.

The acts of congress making United States notes legal tender for pre-existing debts are constitutional. Legal Tender Cases (1870) 12 Wall. 457, 20 L. Ed. 287; Dooley v. Smith (1871) 13 Wall. 604, 20 L. Ed. 547; Norwich & W. R. Co. v. Johnson (1872) 15 Wall. 195, 21 L. Ed. 178.

Under Act May 31, 1878, c. 146, 20 Stat. 87, which enacts that notes of the United States, issued during the war of the Rebellion, under acts of congress declaring them to be a legal tender in payment of private debts, and since the close of the war redeemed and paid in gold coin at the treasury, shall be reissued and kept in circulation, is constitutional, and notes so reissued are a legal tender. The Legal Tender Cases (1884) 4 Sup. Ct. 122, 110 U. S. 421, 28 L. Ed. 204.

The "legal tender act" is constitutional. Latham v. U. S. (1864) 1 Ct. Cl. 149.

Though the constitution of the United States does not confer on congress the power to issue treasury notes or bills of credit in express terms, yet it is a power necessarily implied whenever congress shall determine that it is necessary to issue them in order to carry into effect a power expressly granted. Lick v. Faulkner (1864) 25 Cal. 404.

13. Establishment and regulation of banks.—It is within the constitutional power of congress to fix the rate of interest which a national bank may take upon a loan of money and to determine the penalty to be imposed for taking a greater rate, and such power, when exercised by congress, is exclusive of state legislation. Central Nat. Bank v. Pratt (1874) 115 Mass. 539, 15 Am. Rep. 138; Davis v. Randall (1874) 115 Mass. 547, 15 Am. Rep. 146; Schlesinger v. Gilhooly (1907) 81 N. E. 619, 189 N. Y. 1, 12 Ann. Cas. 1138 (affirming judgment [1906] 101 N. Y. Supp. 1143); First Nat. Bank v. Garlinghouse (1872) 22 Ohio St. 492, 10 Am. Rep. 751.

It is within the constitutional powers of congress to enact statutes establishing a national bank in any state, and provide that the shares of its capital stock shall be exempt from taxation by the states. Flint v. City of Boston (1868) 99 Mass. 141, 96 Am. Dec. 713; People v. Assessors of Town of Barton (N. Y. 1865) 44 Barb. 148, 29 How. Prac. 371.

In view of this and other provisions

it was held that congress has power to incorporate a bank. McCulloch v. Maryland (1819) 4 Wheat. 316, 412, 4 L. Ed. 579.

Act June 3, 1864, subjects shares of bank associations authorized by it and in the hands of shareholders to taxation by the state under certain limitations, without regard to the fact that a part or whole of the capital is invested in national securities declared by statute to be exempt, and the act thus construed is constitutional. Van Allen v. Assessors (1865) 3 Wall. 573, 582, 18 L. Ed. 229.

Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations. Easton v. Iowa (1903) 23 Sup. Ct. 289, 293, 188 U. S. 220, 47 L. Ed. 452.

Congress may prohibit any taxation of national banks by states, cities, counties, or towns, and its mere silence on the subject if it were silent, would be a prohibition. First Nat. Bank v. Richmond (C. C. 1889) 39 Fed. 309, 310, appeal dismissed (1892) 13 Sup. Ct. 1044, 149 U. S. 769, 37 L. Ed. 959.

National banking corporations are agencies or instruments of the general government, designed to aid in the administration of an important branch of the public service, and are an appropriate constitutional means to that end. Pollard v. State (1880) 65 Ala. 628.

National banks are agents of the general government to aid in the administration of a branch of the public service, and are constitutionally authorized as a proper exercise of the incidental or implied powers of Congress. Tarrant v. Bessemer Nat. Bank (Ala. App. 1913) 61 So. 47.

It is within the constitutional power of congress to waive the right of exempting public stocks from state taxation, and this has been done by Act 1864, c. 106, § 41, so far as stockholders in national banks can be considered as the owners of public stocks held by such banks. City of Utica v. Churchill (1865) 33 N. Y. 161.

The power to create a corporation as an appropriate instrument for the execution of a constitutional power vested in the federal government, only carries with it authority to confer upon that corporation such privileges or immunities from state laws as are necessary to enable it to effect the legitimate national objects for which it is created. First Nat. Bank v. Lamb (1872) 50 N. Y. 95, 10 Am. Rep. 438.

14. Departments and officers thereof.—This clause is authority for holding constitutional the act known as Civil Service Act (passed in 1871 and amended in 1883), Comp. St. § 3271 et seq. Butler v. White (C. C. 1897) 83 Fed. 578, 580, reversed (1898) 18 Sup. Ct. 949, 171 U. S. 379, 43 L. Ed. 204. See, also, In re Miller (1887) 5 Mackey (16 D. C.) 507.

Congress has power to vest in the Secretary of the Treasury authority to remit forfeitures after condemnation. U. S. v. Morris (1825) 10 Wheat. 246, 285, 6 L. Ed. 314.

The constitution which superseded the articles of confederation erected a new government, organized it into distinct departments, assigned to each its proper powers, and to congress the power to pass laws for carrying into execution the powers granted to each, so that the laws of the Union could be enforced by its own authority upon all persons and subject-matters over which jurisdiction was granted to any department or officer of the government of the United States. Rhode Island v. Massachusetts (1838) 12 Pet. 657, 730, 9 L. Ed. 1233.

Act Aug. 15, 1876, c. 287, § 6, prohibiting executive officers or employés of the United States from giving to or receiving from each other contributions for political purposes, was designed to promote efficiency and integrity in the discharge of official duties, and is a constitutional exercise of the authority to make all laws necessary to carry into effect the powers delegated to congress. Ex parte Curtis (1882) 1 Sup. Ct. 381, 106 U. S. 371, 27 L. Ed. 232.

Congress may provide for the review of the action of commissions and boards created by it exercising quasi judicial powers for the transfer of their proceedings and decisions to judicial tribunals for determination de novo, and may do so in respect of the action of tribal authorities. Stephens v. Cherokee Nation (1896) 19 Sup. Ct. 722, 734, 174 U. S. 445, 43 L. Ed. 1041.

Authority given by congress to the secretary of the treasury to provide by regulations not inconsistent with law for the government of his department, the conduct of its officers and clerks, etc., is within the power conferred by this clause. Boske v. Comingore (1900) 20 Sup. Ct. 701, 705, 177 U. S. 459, 44 L. Ed. 846.

Congress has power to protect officers making arbitrary arrests and imprisonments, where the writ of habeas corpus is suspended, by passing laws indemnifying them or declaring them not liable to legal proceedings. McCall v. McDowell (C. C. 1867) Fed. Cas. No. 8,673.

Congress may authorize its attorney general to institute suits to recover damages, but it cannot create damages to be recovered by the United States by suit, or cause acts to be wrongs to the United States, which are in their nature wrongs to another. U. S. v.

Union Pac. R. Co. (C. C. 1873) Fed. Cas. No. 16,598.

Congress may lawfully prescribe all needful rules and regulations for the discipline of government officials, and may declare what infractions of discipline shall be treated as criminal offenses, and it may prohibit co-operation between officials in the raising of funds for political purposes. U. S. v. Curtis (C. C. 1882) 12 Fed. 824.

An act of congress prohibiting executive officers or employés from requesting or receiving from other officers or employés any money or thing of value for political purposes, does not prohibit an act of a nature pertaining so exclusively to the sphere of private conduct as not to be within the power of congress to prescribe regulations for the discipline of government officials; it is only when congress has palpably transgressed the limits of its discretion that the judicial department will intervene. Id.

It is within the power of congress, after an officer has entered the service, to reduce his mileage upon discharge. Gulick v. U. S. (1909) 44 Ct. Cl. 532.

Congress may fix the hours of labor upon all the works of the United States, wherever conducted, and make the law binding upon the officers of the United States and, through the agency of contracts, upon all contractors with the United States. 25 Op. Atty. Gen. 441, 442.

Congress may prescribe qualifications for office and require that appointments shall be made from among those who have shown by proper tests to have those qualifications. (1908) 26 Op. Atty. Gen. 502.

Public officers have not only the power expressly conferred upon them by law, but also, by necessary implication, such powers as are requisite to enable them to discharge the duties devolved upon them. (1909) 27 Op. Atty. Gen. 432, 436.

15. Creation and punishment of offenses, and exemptions from criminal process.—Comp. St. 1913, § 10183, punishing any two or more persons conspiring to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States, etc., was lawfully enacted under the authority conferred by this clause. The Ku-Klux Cases (1884) 4 Sup. Ct. 152, 153, 110 U. S. 651, 28 L. Ed. 274; U. S. v. Waddell (1884) 5 Sup. Ct. 35, 112 U. S. 76, 28 L. Ed. 673; Motes v. U. S. (1900) 20 Sup. Ct. 993, 995, 178 U. S. 458, 44 L. Ed. 1150; U. S. v. Moore (C. C. 1904) 129 Fed. 630; U. S. v. Morris (D. C. 1903) 125 Fed. 322.

Whether it is competent for congress to exempt the employés of the United States from arrest on criminal process from the state courts for crimes charged against them mala in se doubted. U. S. v. Kirby (1868) 7 Wall. 482, 486, 19 L. Ed. 278.

Act 1867, § 44, punishing the fraudulent disposition of the goods of a debtor, obtained on credit, and remaining unpaid for within three months next before the commencement of proceedings in bankruptcy, is within the power of congress, as a law "necessary and proper" for carrying the bankrupt law into effect. U. S. v. Pusey (C. C. 1872) Fed. Cas. No. 16,098.

While congress may make the violation of a regulation of a head of a department made by its authority a penal offense, it must be done by specific act. U. S. v. Sandefuhr (D. C. 1906) 145 Fed. 49.

16. Congressional investigations.—See, also, notes under art. 1, § 1, ante.

R. S. § 102, Comp. St. § 157, providing for the discovery of evidence as the basis of action, and prescribing a punishment for those who contemn the authority of congress and by their contumacious conduct obstruct the lawful exercise of its functions, is within this provision. Chapman v. U. S. (1895) 5 App. D. C. 122.

17. Courts and judicial proceedings.—See, also, notes under art. 1, § 8, cl. 4, ante.

This clause considered in support of the legislation in R. S. § 643, Comp. St. § 1015, relating to the removal of causes against federal officers. Tennessee v. Davis (1879) 100 U. S. 257, 263, 25 L. Ed. 648.

The power to prescribe what effect shall be given to the judicial proceedings of the federal courts is conferred by this clause and other provisions of the federal constitution. Embry v. Palmer (1883) 2 Sup. Ct. 25, 30, 107 U. S. 3, 27 L. Ed. 346.

Congress possesses the constitutional power and is charged with the constitutional duty to protect all the agencies of the federal government including the courts, their officers, and all persons whose attendance is necessary in the proceedings of those courts, such as parties, witnesses, and jurors. U. S. v. Sanges (C. C. 1891) 48 Fed. 78, 83, writ of error dismissed (1892) 12 Sup. Ct. 609, 144 U. S. 310, 36 L. Ed. 445.

The national legislature has constitutional power to prescribe the qualifications of jurors, and the manner in which they shall be selected and summoned. It may make the judicial system of the United States complete for the independent exercise of all its function. Charge to Grand Jury—Treason (D. C. 1863) Fed. Cas. No. 18,274.

While the constitution has conferred upon congress the exclusive power of regulating commerce among the several states and of dealing with the other subjects mentioned in this section, it has not conferred on the national judiciary the exclusive jurisdiction of administering such legislation and of en-

forcing rights arising thereunder, there are times, however, when the state courts cannot give effect to congressional legislation otherwise than by refraining from exercising any jurisdiction over the subject-matter of congressional action. This occurs when the statute confers exclusive jurisdiction on some other tribunal, or when any attempt by the state courts to administer the law would be inconsistent with the purposes of the legislation, or would tend to make its provisions less uniform and effective. Southern Pac. Co. v. Crenshaw Bros. (1909) 63 S. E. 865, 5 Ga. App. 675.

Cited without definite application, Ableman v. Booth (1858) 21 How. 506, 521, 16 L. Ed. 169; Ex parte Garland (1866) 4 Wall. 333, 383, 18 L. Ed. 366; Tennessee v. Davis (1879) 100 U. S. 257, 274, 25 L. Ed. 648; U. S. v. Harris (1883) 1 Sup. Ct. 601, 606, 106 U. S. 629, 27 L. Ed. 290; Presser v. Illinois (1886) 6 Sup. Ct. 580, 581, 116 U. S. 252, 29 L. Ed. 615; U. S. v. Arjona (1887) 7 Sup. Ct. 628, 630, 120 U. S. 479, 30 L. Ed. 728; Cunningham v. Neagle (1890) 10 Sup. Ct. 658, 135 U. S. 1, 34 L. Ed. 55 (dissenting opinion); In re Robb (C. C. 1884) 19 Fed. 26, 30; U. S. v. Powell (C. C. 1907) 151 Fed. 648; U. S. v. Banister Realty Co. (C. C. 1907) 155 Fed. 583; Philadelphia R. Ry. Co. v. Interstate Commerce Com'n (C. C. 1909) 174 Fed. 687; City of Philadelphia v. Postal Tel. Cable Co. (1893) 66 Hun, 633, 67 Hun, 21, 21 N. Y. Supp. 556; Whiteaker v. Haley (1865) 2 Or. 128, 135.

DECISIONS RELATING TO SUBJECT IN GENERAL

Power of congress in general.—See, also, notes under art. 1, § 1, ante.

Congress has no powers except those expressly delegated to it, or necessarily and clearly implied from powers expressly granted. Howard v. Illinois Cent. R. Co. (C. C. 1907) 148 Fed. 997, affirmed (1908) 28 Sup. Ct. 141, 207 U. S. 463, 52 L. Ed. 297.

To support an act of congress, authority therefor, expressly or by implication, must be found in the constitution. U. S. v. McCullagh (D. C. 1915) 221 Fed. 288.

The police power, whether of the national or state governments, is neither given nor restricted by the constitution. State of South Carolina v. U. S. (1904) 39 Ct. Cl. 257.

Power as confined to subjects enumerated.—The powers of congress are limited in range of subjects, and can only be exercised over such as are enumerated in the constitution. In re Kelly (C. C. 1895) 71 Fed. 545, 552.

Protection of pension claimants.—Congress has constitutional power to regulate the amounts which claimants under the pension laws may contract to pay to their solicitors, even though both parties are citizens of the same state. U. S. v. Van Leuven (D. C. 1894) 62 Fed. 52.

Creation and punishment of offenses.—Congress can legislate in respect of murder only where the crime is connected with some subject-matter or was committed in some place which brings it within the exclusive jurisdiction of the federal government. U. S. v. Ward (C. C. 1863) Fed. Cas. No. 16,639.

When state laws have imposed duties, the performance or nonperformance of which affects rights under the federal government, congress may make the nonperformance of those duties an offense against the United States, and may punish it accordingly. U. S. v. Given (C. C. 1873) Fed. Cas. No. 15,-210.

Congress may create by the same statute two separate crimes, punishable in different courts within the same jurisdiction. U. S. v. West (1909) 34 App. D. C. 12; Zinkham v. Linaweaver, Id. 19.

—— Offenses also punishable by state.—Where both the acts of congress and of the state make a defined act an offense, the commission of the act may be an offense against each, and punishable by each. Sligh v. Kirkwood (Fla. 1913) 61 So. 185; Southern Ry. Co. v. Railroad Commission of Indiana (Ind. 1913) 100 N. E. 337.

Laws in violation of constitution or beyond the power of congress.—Rules of evidence in the state courts are governed by the laws of the state and are not subject to control by congress. Wade v. Foss (1902) 52 A. 640, 96 Me. 230; Crews v. Farmers' Bank of Virginia (Va. 1879) 31 Grat. 348. See, also, notes under clause 1, ante.

An act of congress, repugnant to the constitution, cannot become a law. Marbury v. Madison (1803) 1 Cranch, 137, 176, 2 L. Ed. 61.

Congress cannot create damages to be recovered by the United States by suit, or cause acts to be wrongs to the United States which are in their nature wrongs to another; and the regulations prescribed by Act March 3, 1873 (17 Stat. 509), for the conduct of the suit in equity thereby authorized to be brought, by the United States, against the Union Pacific Railroad Company, so far as they attempt to do so are void. U. S. v. Union Pac. R. Co. (C. C. 1873) Fed. Cas. No. 16,598, affirmed (1878) 98 U. S. 569, 25 L. Ed. 143.

Act of congress beyond power of congress held void, however laudable its purpose, and however great the exigencies of the case, or however impotent the powers of the state. U. S. v. McCullagh (D. C. 1915) 221 Fed. 288.

An act of congress must be enforced, unless its invalidity is made to ap-

pear so clearly as to be beyond all question of doubt. Id.

Prohibitions and limitations on powers.—See, also, art. 1, § 9, post, and notes thereunder.

There is nothing in the constitution which limits the power of congress to amend or correct omissions in previous acts. Freeborn v. Smith (1864) 2 Wall. 160, 174, 17 L. Ed. 922.

The prohibitions and limitations on the powers of congress should be fairly and reasonably enforced. Keller v. U. S. (1909) 29 Sup. Ct. 470, 473, 213 U. S. 138, 53 L. Ed. 737, 16 Ann. Cas. 1066.

Congress cannot, to give effect to one provision of the constitution, pass a law prohibited by other provisions, or inconsistent with the spirit of the constitution. Martin v. Martin (1870) 20 N. J. Eq. (5 C. E. Green) 421.

Section. 9. [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Notes of Decisions

See, also, notes under § 8, cl. 3, ante, as to excluding and expelling aliens.

Construction and effect in general.—This clause has exclusive reference to persons of the African race, and the words "migration" and "importation" refer to the different conditions of this race as regards freedom and slavery. New York v. Compagnie Generale Transatlantique (1882) 2 Sup. Ct. 87, 89, 107 U. S. 59, 27 L. Ed. 383, affirming (C. C. 1882) 10 Fed. 357, 363, and overruling Passenger Cases (1849) 7 How. 283, 452, 12 L. Ed. 702; People v. Edye (N. Y. 1882) 11 Daly, 132. And see Gibbons v. Ogden (1824) 22 U. S. (9 Wheat.) 1, 216, 6 L. Ed. 23.

The power of congress over vessels which might bring in persons of any description was complete before the year 1808, except that it could not be so exercised as to prohibit the importation or migration of any person, prior to 1808, whom any state, in existence at the formation of the constitution, might think proper to admit. The Wilson v. U. S. (C. C. 1820) Fed. Cas. No. 17,846. See, also, U. S. v. Gould (D. C. 1800) Fed. Cas. No. 15,239; U. S. v. Libby (C. C. 1846) Fed. Cas. No. 15,597; State ex rel. Savary v. Caroline (1852) 20 Ala. 19.

The restriction does not apply to the state governments. Butler v. Hopper (C. C. 1806) Fed. Cas. No. 2,241.

This prohibition did not extend to legislation as to slave trade carried on extraterritorially by citizens of the United States, or in vessels of the United States, or to such of the states as had previously made enactments against the introduction of slaves within their limits. (1847) 4 Op. Atty. Gen. 567.

Effect as including persons with the word "imports."—That the importation of persons is referred to in this section has no effect to include persons within the word "imports," where that word is used in section 10 of this article. New York v. Compagnie Generale Transatlantique (C. C. 1882) 10 Fed. 357, 363, affirmed (1882) 2 Sup. Ct. 87, 107 U. S. 59, 27 L. Ed. 383.

Constitution as recognizing property in slaves.—The constitution recognized the right of property in slaves. Dred Scott v. Sandford (1856) 19 How. 393, 411, 451, 15 L. Ed. 691.

Cited without definite application, Pollock v. Farmers' Loan & Trust Co. (1895) 15 Sup. Ct. 673, 679, 157 U. S. 429, 39 L. Ed. 759; Thomas v. U. S. (1904) 24 Sup. Ct. 305, 306, 192 U. S. 363, 48 L. Ed. 481; (1907) 26 Op. Atty. Gen. 193.

[2] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Notes of Decisions

See, also, notes under § 8, cl. 9, ante.

See, also, Comp. St. § 1279 et seq., and notes thereunder.

Construction and effect of clause in general.—This clause is not a grant of power to the federal courts, but a prohibition against its suspension by congress or the executive. Ex parte Bollman (1807) 8 U. S. (4 Cranch) 75, 101, 2 L. Ed. 554; In re Barry (C. C. 1844) 42 Fed. 113; Ex parte Caldwell (C. C. 1905) 138 Fed. 487 (reversed Carfer v. Caldwell [1906] 26 Sup. Ct. 264, 200 U. S. 293, 50 L. Ed. 488).

The provision restricting the denial of the writ of habeas corpus, instead of being a limitation, shows that congress has the power to deny that writ. The Legal Tender Cases (1870) 12 Wall. 457, 534, 20 L. Ed. 287.

This clause has no relation to crimes committed without the jurisdiction of the United States against the laws of a foreign country. Neely v. Henkel

(1901) 21 Sup. Ct. 302, 307, 180 U. S. 109, 45 L. Ed. 448.

This clause is one to which congress cannot give complete effect, except through the federal tribunals. King v. McLean Asylum of the Massachusetts General Hospital (1894) 64 Fed. 331, 342, 12 C. C. A. 145.

This clause delegates to congress power to suspend the writ. Warren v. Paul (1864) 22 Ind. 276.

Nature of writ or privilege thereof.—The writ of habeas corpus, as authorized by the constitution, is the prerogative writ known to the common law to obtain the liberation of those who may be imprisoned without sufficient cause, and is in the nature of a writ of error to examine the legality of the commitment. Ex parte Watkins (1830) 3 Pet. 193, 201, 7 L. Ed. 650.

Writ of habeas corpus as suit, see Holmes v. Jennison (1840) 14 Pet. 540, 562, 10 L. Ed. 579.

The privilege of the writ of habeas corpus is secured to every citizen by the national and state constitutions, and can only be suspended or withheld in case of rebellion or invasion, when the public safety may require it. In re Collier (1858) 6 Ohio St. 55.

Application to aliens.—The guaranty of the privilege of habeas corpus is not violated by Act Feb. 20, 1907, § 3, for deportation of aliens for practicing prostitution within three years after entry, though findings of fact of Department of Commerce and Labor are made conclusive. Zakonaite v. Wolf (1912) 33 S. Ct. 31, 226 U. S. 272, 57 L. Ed. 218.

The decisions of executive officers on questions of law are not conclusive on the courts, which have the power to grant relief by habeas corpus to an individual aggrieved by an erroneous decision of a legal question by a department officer. Davies v. Manolis (1910) 179 Fed. 818, 103 C. C. A. 310.

Fugitive slaves.—Fugitive Slave Act Sept. 18, 1850, c. 60, is not in conflict with the provisions of the constitution in relation to the writ of habeas corpus. (1850) 5 Op. Atty. Gen. 254.

Suspension of writ in general.—The power to suspend refers only to the writ ad subjiciendum, when a person stands committed or detained as a prisoner for a crime within St. 31 Cas. II, c. 2, and does not include the other writs. Ex parte Bollman (1807) 8 U. S. (4 Cranch) 93, 2 L. Ed. 554. (1861) 10 Op. Atty. Gen. 74, 88; In re Cain (1864) 60 N. C. (2 Winst. 142) 525.

The suspension of the privilege of the writ of habeas corpus by the act of March 3, 1863, does not suspend the writ itself, which issues as of course; and on the return made to it the court decides whether the applicant is denied the right of proceeding any further with it. Ex parte Milligan (1866) 71 U. S. (4 Wall.) 2, 131, 18 L. Ed. 281.

Where a military officer, under direction of the president, unlawfully assumed to suspend the writ of habeas corpus, a power not within the authority of the president, but exclusively belonging to congress, and disregarded the mandate of the court on habeas corpus, the record of the proceedings and the opinion of the court were submitted to the president, in order that he, pursuant to his duty to take care that the laws may be faithfully executed, may determine what measures he would take to cause the civil process of the United States to be respected and enforced. Ex parte Merryman (C. C. 1861) Fed. Cas. No. 9,487.

The two orders issued by the war department August 8, 1862, one "to prevent the evasion of military duty, and for the suppression of disloyal practices," and the other "authorizing the arrest of persons discouraging enlistments," were issued in violation of this clause. Ex parte Field (C. C. 1862) Fed. Cas. No. 4,761.

It seems that an act suspending the writ of habeas corpus is itself a protection to officers making arrests thereunder, as against any action by the party arrested. McCall v. McDowell (C. C. 1867) Fed. Cas. No. 8,673.

Neither the president nor the congress of the United States can suspend the issue of the writ of habeas corpus by a state court. Griffin v. Wilcox (1863) 21 Ind. 370. But see Bagnall v. Ableman (1855) 4 Wis. 163, declaring that "the state governments have, in their sovereign capacity, full authority of the writ of habeas corpus, and that the federal government is inhibited from suspending its privileges, except in case of rebellion or invasion. This power (to suspend the writ) was necessary to be vested in congress, because in such cases it might become essential to the preservation of the United States government, or that of a state or states." And see In re Booth (1854) 3 Wis. 157.

A soldier illegally enlisted, and not charged with any offense against the government, cannot be held against a writ of habeas corpus, under the provisions of Act March 3, 1863, suspending that writ in certain cases. People v. Gaul (N. Y. 1865) 44 Barb. 98.

The language of the act of congress suspending the writ of habeas corpus applies to the case of a person detained by the military authorities as a volunteer in the service of the United States. In re Oliver (1864) 17 Wis. 681.

Power of congress as exclusive.—The power of suspending the writ of habeas corpus, under this clause, is a legislative power, and is vested exclusively in congress; and the president has no power to suspend the privilege of the writ of habeas corpus. Ex parte Merryman (C. C. 1861) Fed. Cas. No. 9,487;

McCall v. McDowell (C. C. 1867) Fed. Cas. No. 8,673; Ex parte Benedict (D. C. 1862) Fed. Cas. No. 1,292; (1857) 8 Op. Atty. Gen. 365; In re Kemp (1863) 16 Wis. 359. CONTRA, (1861) 10 Op. Atty. Gen. 74, 89; In re Dugan (1865) 6 D. C. 131.

Congress is the exclusive judge of "when, in cases of rebellion or invasion," the public service requires suspension of habeas corpus. It may suspend it generally, or in particular cases, or may commit the matter, within proper limits, to the judgment of the president. McCall v. McDowell (C. C. 1867) Fed. Cas. No. 8,673.

The proclamation of September 24, 1862, so far as it attempts to suspend the writ is void as not authorized by congress. Id.

See, also, Wright v. Johnson (1844) 5 Ark. (5 Pike) 687.

Establishment of peace.—Where the return to a writ of habeas corpus, issued to the officer commanding the military department of the East, embracing New York, stated that the relator was charged with the offense of arson in the nighttime in the city of New York, in November, 1864, and also with being at that time within the Federal lines as a spy, he being at the time an officer in the Confederate army, but disguising his rank and character in the dress of a citizen, it was held that the restoration of peace absolved all offenses committed by the public enemy during the existence of the war, that the prisoner could not therefore now be lawfully arraigned before a military tribunal for the offense of being a spy, and that, as the president's proclamation restoring the writ of habeas corpus proved the establishment of peace, the prisoner must be delivered into the custody of the civil authorities. In re Martin (N. Y. 1865) 45 Barb. 142, 31 How. Prac. 228.

Appeal or review in habeas corpus proceedings.—This provision against suspension of the writ applies to the absolute denial of the writ only, and has no reference to the delay involved in a review by a higher court of the judgment of a lower one upon the writ. Macready v. Wilcox (1866) 33 Conn. 321.

Code Civ. Proc. N. Y. § 2058, authorizing appeals in habeas corpus proceedings, held not in violation of this clause, as a suspension of the right to such writ. People ex rel. Hubert v. Kaiser (1912) 135 N. Y. S. 274, 150 App. Div. 541, order affirmed (1912) 99 N. E. 195, 206 N. Y. 46.

Authority of president.—See, also, notes, ante.

A writ of habeas corpus was issued just prior to the suspension of such writ as a military necessity by the president, and the marshal was directed by the president not to execute the same. The court unanimously protested against the action of the military authorities. U. S. v. Porter (C. C. 1861) Fed. Cas. No. 16,074a.

The president had authority to issue his proclamation of September 24, 1862, proclaiming martial law and the suspension of the writ of habeas corpus in the case of military arrests. Ex parte Field (C. C. 1862) Fed. Cas. No. 4,761.

An arbitrary arrest of a civilian by the commander of a department, of his own will and judgment, as necessary to preserve the peace, is not justified by the act of March 3, 1863, authorizing the president to suspend the writ of habeas corpus, as specified, and the president's proclamation thereunder of September 15, 1863; nor by the act of May 11, 1866. McCall v. McDowell (C. C. 1867) Fed. Cas. No. 8,673.

The proclamation of the president of September 15, 1863, suspending the privilege of the writ, was authorized by Act March 3, 1863, and suspended all proceedings pending upon writs served prior to its date. In re Dunn (D. C. 1863) Fed. Cas. No. 4,171; In re Fagan (D. C. 1863) Fed. Cas. No. 4,604.

Act March 3, 1863, providing "that during the present Rebellion the president of the United States, whenever in his judgment the public safety may require it, is authorized to suspend the privilege of the writ of habeas corpus in any case throughout the United States or any part thereof," etc., was an expression of the legislative judgment that the time had already arrived when the public safety required the legislature to provide for a suspension, and provided for such suspension to take effect according to the judgment of the president, whether the authority conferred should be exercised in particular cases or not, though the act professes to confer on the president the authority to suspend the privilege of the writ whenever, in his judgment, the public safety should require it during such Rebellion; and there was, therefore, a valid suspension of the writ on the proclamation of the president, September 15, 1863. In re Oliver (1864) 17 Wis. 681.

Refusal of military officer to obey writ.—The court refused to take further action where a military officer made return to the writ that he declined to obey it at the present time under orders from his superior, which were produced in court. Ex parte McQuillon (D. C. 1861) Fed. Cas. No. 8,924.

Jurisdiction of courts.—See, also, Comp. St. § 1279 et seq., and notes thereunder.

Appellate jurisdiction by habeas corpus defined. Ex parte Bollman (1807) 8 U. S. (4 Cranch) 75, 100, 2 L. Ed. 554; In re Yerger (1868) 8 Wall. 85, 95, 19 L. Ed. 332; Ex parte Parks (1876) 93 U. S. 18, 21, 23 L. Ed. 787.

Although it is made the duty of the secretary of war to discharge any per-

son illegally enlisted as a soldier, that delegation of power to the secretary of war does not deprive the courts of their power, prescribed by the constitution, to discharge under writ of habeas corpus. U. S. v. Hanchett (C. C. 1883) 18 Fed. 26.

This clause is not a grant of power to the federal courts, but a prohibition against its suspension by congress or the executive. Ex parte Caldwell (C. C. 1905) 138 Fed. 487, order reversed Carfer v. Caldwell (1906) 26 S. Ct. 264, 200 U. S. 293, 50 L. Ed. 488. See, also, Ex parte Bollman (1807) 8 U. S. (4 Cranch) 75, 101, 2 L. Ed. 554.

The suspension of the writ of habeas corpus under the constitution in times of rebellion does not confer on a state court power to enjoin against an arrest. Kneedler v. Lane (1863) 45 Pa. (9 Wright) 238.

Cited without definite application, Prigg v. Pennsylvania (1842) 41 U. S. (16 Pet.) 539, 619, 10 L. Ed. 1060; Ex parte Burrus (1890) 10 Sup. Ct. 850, 851, 136 U. S. 586, 34 L. Ed. 1500; U. S. ex rel. Turner v. Williams (1904) 24 Sup. Ct. 719, 724, 194 U. S. 279, 48 L. Ed. 979; Fisher v. Baker (1906) 27 Sup. Ct. 135, 203 U. S. 174, 51 L. Ed. 142, 7 Ann. Cas. 1018; Ex parte Moran (1906) 144 Fed. 594, 75 C. C. A. 396; Nelson v. U. S. (C. C. 1887) 30 Fed. 112, 115 (affirming [D. C. 1886] 29 Fed. 202); Ex parte Wood (C. C. 1907) 155 Fed. 190 (affirmed [1908] 28 Sup. Ct. 472, 209 U. S. 205, 52 L. Ed. 747); In re Keeler (D. C. 1843) Fed. Cas. No. 7,637; Ex parte Fong Yim (D. C. 1905) 134 Fed. 938.

[8] No Bill of Attainder or expost facto Law shall be passed

Notes of Decisions

1. Construction and effect of clause in general.
2. Congress and the states as equally prohibited.
3. Bill of attainder.
4. Change of law as to grand jury.
5. Changing place of trial.
6. Addition of penalties for desertion.
7. Commerce law in general.
8. Anti-trust law.
9. Admission and exclusion of aliens.
10. Naturalization laws.
11. Postal laws.
12. Revenue laws.
13. Laws relating to the practice of law and medicine.
14. Blacklisting statute.
15. Law as to sale of liquor in Alaska.
16. Treaties.
17. Retrospective or retroactive laws in general
18. —— Civil remedies and procedure.
19. Conclusiveness of decisions of federal courts.

See, also, notes under Art. 1, § 10, cl. 1, post.

1. Construction and effect of clause in general.—This clause applies solely to the federal government. Barron, Use of Tiernan, v. Baltimore (1833) 7 Pet. 243, 248, 8 L. Ed. 672.

This clause has no relation to crimes committed without the jurisdiction of the United States against the laws of a foreign country. Neely v. Henkel (1901) 21 Sup. Ct. 302, 307, 180 U. S. 109, 45 L. Ed. 448, affirming judgment In re Neely (C. C. 1900) 103 Fed. 631; Neely v. Henkel (1901) 21 Sup. Ct. 308, 180 U. S. 126, 45 L. Ed. 457 (affirming judgment [C. C. 1900] 103 Fed. 626).

This prohibition goes to the competency of congress to pass a bill of attainder or ex post facto law, and limits the power of congress in legislating for territory acquired by the United States, such as Porto Rico, as well as in legislating for the states. Downes v. Bidwell (1901) 21 Sup. Ct. 770, 783, 182 U. S. 244, 45 L. Ed. 1088.

2. Congress and the states as equally prohibited.—Congress and the states equally are prohibited from passing any bill of attainder or ex post facto law. Legal Tender Cases (1884) 4 Sup. Ct. 122, 129, 101 U. S. 421, 28 L. Ed. 204.

3. Bill of attainder.—Act Jan. 24, 1865, c. 20, 15 Stat. 424, providing that after its passage no person should be admitted to the bar of the supreme court of the United States, or, after a specified day, to the bar of any circuit or district court, or of the court of claims, as an attorney or counselor, without having first taken the oath prescribed in Act July 2, 1862, declaring that the deponent has never voluntarily borne arms against the United States, since he has been a citizen thereof; that he has not given aid, etc., to persons engaged in armed hostility thereto; or sought to exercise any office in hostility thereto, or yielded a voluntary support to any pretended government within and hostile to the United States, etc.,—is within the prohibition against bills of attainder. Ex parte Garland (1866) 71 U. S. (4 Wall.) 333, 32 How. Prac. 241, 18 L. Ed. 366; In re Shorter (D. C. 1865) Fed. Cas. No. 12811; Ex parte Law (D. C. 1866) Fed. Cas. No. 8126.

Bills of pains and penalties, inflicting a punishment less than death, are bills of attainder. Cummings v. Missouri (1866) 71 U. S. (4 Wall.) 277, 18 L. Ed. 356.

Act Jan. 24, 1865, providing that no person shall be admitted as an attorney to the bar of the Supreme Court, and after March 4, 1865, to the bar of any United States court, or be allowed to appear by virtue of any

previous admission, unless he shall have first taken the oath prescribed by Act July 2, 1862, that he has never voluntarily borne arms against the United States, nor given aid to its enemies, is within the constitutional inhibition against the passage of bills of attainder. Ex parte Garland (1866) 4 Wall. 333, 377, 18 L. Ed. 366.

A bill of attainder may affect the life of an individual, or may confiscate his property, or may do both. In this form the power of the legislature over the lives and fortunes of individuals is expressly restrained. Fletcher v. Peck (1810) 6 Cranch, 87, 138, 3 L. Ed. 162.

An act of congress which undertakes to inflict the punishment of banishment or exile from the United States on a citizen thereof because of his race or color is within the prohibition of this clause, as to bills of attainder. In re Yung Sing Hee (C. C. 1888) 36 Fed. 437.

A bill of attainder is a special act, which inflicts punishment without a judicial trial, and where a punishment is less than death, the act is called a "bill of pains and penalties," and the phrase "bill of attainder" includes bills of pains and penalties. Id.

Act July 20, 1868, § 44, which declares a forfeiture of distillery real estate, for certain violations of the internal revenue laws, is a regulation of civil policy, framed to secure fair payment to the United States of taxes imposed for the support of the government, and does not conflict with this clause prohibiting bills of attainder. It is for congress, in the exercise of its legislative powers, to determine what measures may be requisite to enforce the collection of a tax. U. S. v. Distillery in West Front street (D. C. 1870) Fed. Cas. No. 14,965.

Act March 3, 1865, § 21, providing for a forfeiture of the rights of citizenship in case of persons deserting after the passage of said act, and persons who have previously deserted, and fail to return within a specified time, is not unconstitutional as a bill of attainder, for the reason that it contemplates a trial by a court-martial to enforce this penalty, together with the other penalties for desertion. Gotcheus v. Matheson (N. Y. 1870) 58 Barb. 152, 40 How. Prac. 97. See, also, Goetcheus v. Matthewson (1875) 61 N. Y. 425.

Ex post facto laws in general.—The prohibition against ex post facto laws applies exclusively to penal or criminal cases. Calder v. Bull (1798) 3 U. S. (3 Dall.) 386, 1 L. Ed. 648; Watson v. Mercer (1834) 33 U. S. (8 Pet.) 88, 8 L. Ed. 876; Carpenter v. Pennsylvania (1854) 58 U. S. (17 How.) 456, 15 L. Ed. 127; Locke v. City of New Orleans (1866) 71 U. S. (4 Wall.) 172, 18 L. Ed. 334; Minge v. Gilmour (C. C. 1798) Fed. Cas. No. 9,631; Evans v. Robinson (C. C. 1813) Fed. Cas. No. 4,571; Albee v. May (C. C. 1834) Fed. Cas. No. 134; Schneck v. Peay (C. C. 1868) Fed. Cas. No. 12,450; Schenck v. Peay (C. C. 1869) Fed. Cas. No. 12,451; Minge v. Gilmour (C. C. 1798) Fed. Cas. No. 9,631; Evans v. Robinson (C. C. 1813) Fed. Cas. No. 4,571; De Pass v. Bidwell (C. C. 1900) 124 Fed. 615.

An ex post facto law is one which imposes a punishment for an act which was not punishable when it was committed, or imposes additional punishment, or changes the rules of evidence, by which less or different testimony is sufficient to convict. Cummings v. Missouri (1866) 4 Wall. 277, 325, 18 L. Ed. 356; Burgess v. Salmon (1878) 97 U. S. 381, 24 L. Ed. 1104; Kring v. Missouri (1883) 107 U. S. 221, 2 Sup. Ct. 443, 27 L. Ed. 506, 16 Cent. Law J. 308, 4 Cr. Law Mag. 550; Calder v. Bull (1898) 3 U. S. (3 Dall.) 386, 1 L. Ed. 648; U. S. v. Hall (C. C. 1809) Fed. Cas. No. 15,285.

Act Jan. 24, 1865, c. 20, 15 Stat. 424, providing that no person should be allowed to practice in the federal courts, by reason of any previous admission thereto, without having first taken an oath that he had never borne arms against the United States, aided its armed enemies, supported any pretended authority hostile thereto, nor sought or exercised any office under such hostile authority. Held, that the act is ex post facto and void. Ex parte Garland (1866) 71 U. S. (4 Wall.) 333, 18 L. Ed. 366; Id. (N. Y. 1867) 32 How. Pr. 241; In re Baxter (C. C. 1866) Fed. Cas. No. 1,118.

The prohibition against the passage of ex post facto laws cannot be evaded by giving a civil form to that which is, in substance, criminal. Cummings v. Missouri (1866) 71 U. S. (4 Wall.) 277, 18 L. Ed. 356.

A statute which merely enlarges the class of persons who may be competent to testify is not ex post facto in its application to offenses previously committed. Hopt v. Utah (1884) 110 U. S. 574, 589, 4 Sup. Ct. 202, 28 L. Ed. 262.

Comp. St. § 3450, disenfranchising bigamists and polygamists, held not ex post facto law. Murphy v. Ramsey (1885) 114 U. S. 15, 42, 5 Sup. Ct. 747, 29 L. Ed. 47.

The provision in the constitution of Utah for the trial of criminal cases not capital by a jury of eight persons is ex post facto in its application to felonies committed before the territory became a state. Thompson v. Utah (1898) 170 U. S. 343, 355, 18 Sup. Ct. 620, 42 L. Ed. 1061.

A defense to a forfeiture granted by a subsequent law must be taken subject to the terms and conditions imposed by such law. U. S. v. Hall (C. C. 1809) Fed. Cas. No. 15,285.

The right of an attorney to practice his profession is his property, and an act (Jan. 24, 1865) declaring a forfeiture of such property for offenses not so punishable when committed is ex

post facto and void. In re Baxter (C. C. 1866) Fed. Cas. No. 1,118.

Act March 2, 1867 (14 Stat. 432), which provided that all acts and orders of the president, or acts done by his authority respecting martial law, or the arrest, imprisonment, and trial of persons charged with participation in the Rebellion, and all proceedings and acts done or had by courts-martial, or arrests and imprisonments made in the premises by any person made as aforesaid, are hereby approved and made valid, was unconstitutional, as ex post facto, so far as it validated an imprisonment of one illegally imprisoned because tried by and held under the sentence of a court which had no jurisdiction. In re Murphy (C. C. 1867) Fed. Cas. No. 9,947. So far as the act protected from civil process persons striving, under executive orders, to suppress the Rebellion, it was valid. Id.

The provision Bankrupt Act 1867 (14 Stat. 539) § 44, which provides punishment for the fraudulent disposition of goods of a debtor obtained on credit and unpaid for, made within three months before commencement of bankruptcy proceedings held not an ex post facto law. U. S. v. Pusey (C. C. 1872) Fed. Cas. No. 16,098.

An ex post facto law is one which in its operation makes that criminal or penal which was not so at the time when the act was performed, or which increases the punishment, or which, in relation to the offense or its consequences, alters the situation of the party to his disadvantage. U. S. v. Hall (C. C. 1809) Fed. Cas. No. 15,285.

Where there is no tribunal competent at the time of its commission to punish an offense, jurisdiction thereof cannot afterwards be conferred. U. S. v. Starr (C. C. 1846) Fed. Cas. No. 16,379.

This clause and section 10, providing that no state shall pass any ex post facto law, apply, not merely to criminal laws, but to cases for the recovery of penalties and forfeitures. U. S. v. Hughes (D. C. 1875) Fed. Cas. No. 15,416.

In order to render legislation unconstitutional as ex post facto, it is not necessary to show that it must be detrimental to all persons charged with offenses; it is sufficient that it materially alters their condition in a manner which may be detrimental to some. In re Murphy (C. C. 1898) 87 Fed. 549.

"An ex post facto law is one which renders an act punishable in a manner in which it was not punishable when it was committed," and hence, if no punishment was provided when the crime was committed, none can be imposed by subsequent legislation; the punishment can be lessened, but never increased, as against any one for a crime already committed. Iowa v. Jones (D. C. 1904) 128 Fed. 626.

Laws which only reorganize or otherwise modify the judicial tribunals of the United States are not ex post facto laws within the scope of the prohibitory clause of the constitution. (1853) 6 Op. Atty. Gen. 103.

A judgment of conviction in a criminal prosecution based upon the admission of evidence in violation of a statute providing that such evidence shall not be admitted in such a proceeding will be reversed on an appeal by the accused, although the statute is repealed pending the appeal. Whether the repealing act is an ex post facto law is not before the court. Frisby v. U. S. (1910) 35 App. D. C. 513.

A statute is ex post facto, which by its necessary operation and in relation to the offense or its consequences alters the situation of the accused to his disadvantage. Frisby v. U. S. (1912) 38 App. D. C. 22, 37 L. R. A. (N. S.) 96.

Any additional or increased penalty provided for a crime after its commission is ex post facto. La Porte v. State (Ariz. 1913) 132 P. 563.

Act 1st Assem. Okl. T. § 1, continuing in force the Nebraska Criminal Code, held not an ex post facto law as to offenses theretofore committed, but not prosecuted. Ex parte Larkin (1891) 1 Okl. 53, 25 Pac. 745, 11 L. R. A. 418.

While one convicted of crime cannot complain of a change in the penalty by amendment of the statute, if it reduces the penalty, an amendment increasing the penalty is an ex post facto law. State v. Smith (Or. 1910) 107 P. 980.

4. Change of law as to grand jury.—The statute governing procedure in the federal courts in the states and fixing the number of members which shall compose a grand jury at not less than 16 nor more than 23, and requiring the concurrence of 12 in an indictment, is not invalid as an ex post facto law as applied to an offense committed in the territory of Oklahoma for which an indictment was found after the admission of the state by a grand jury of 19, although under the territorial law the number was fixed at not less than 12 nor more than 16, and 12 were required to concur to return an indictment. Hallock v. U. S. (1911) 185 Fed. 417, 107 C. C. A. 487, writ of certiorari denied (1911) 31 S. Ct. 717, 220 U. S. 613, 55 L. Ed. 610.

An indictment by a grand jury of 21 members for an offense committed when the law requiring grand juries to be composed of 16 persons was in force held invalid as a proceeding under an ex post facto law. U. S. v. Haskell (D. C. 1909) 169 Fed. 449.

Since Mansf. Dig. Ark. § 3991 (Ind. T. Ann. St. 1899, § 2671), which applied to Indian Territory before the statehood of Oklahoma, required a grand jury to be composed of only 16 men, R. S. § 808, Comp. St. § 1259, providing that a grand jury should con-

sist of not less than 16 nor more than 23 persons, so far as it permits a grand jury to consist of more than 16 persons, if applied to a charge of crime committed before statehood, would be violative of this clause. U. S. v. London (D. C. 1909) 176 Fed. 976.

5. Changing place of trial.—That a law changes the place of trial does not render it ex post facto. Cook v. U. S. (1891) 11 Sup. Ct. 268, 275, 138 U. S. 157, 34 L. Ed. 906.

The fact that the organic act of the territory of Oklahoma required criminal offenses to be tried in the county where committed does not render the provision of the enabling act of the state transferring jurisdiction of offenses against the United States to the District Court for the appropriate district invalid as an ex post facto law with respect to offenses previously committed, and such District Court has jurisdiction to indict and try a person for such an offense, although not held in the county where it was committed. Hallock v. U. S. (1911) 185 Fed. 417, 107 C. C. A. 487, writ of certiorari denied (1911) 31 Sup. Ct. 717, 220 U. S. 613, 55 L. Ed. 610.

6. Addition of penalties for desertion.—Act March 3, 1865, § 21, providing that, in addition to the other penalties for desertion from the military or naval service of the United States, all persons who have deserted, and fail to return within a specified time, and persons thereafter deserting shall forfeit their rights of citizenship, is not unconstitutional as an ex post facto law. Gotcheus v. Matheson (N. Y. 1870) 58 Barb. 152, 40 How. Prac. 97.

7. Commerce law in general.—A railroad company subject to the interstate commerce laws, which paid rebates to a shipper in 1904, is subject to prosecution therefor under the Elkins Act Feb. 19, 1903, § 1 (Comp. St. § 8597), although the agreement therefor was made before the passage of such act. Such agreement was unlawful and unenforceable under the original interstate commerce law, and the rebates cannot be said to have been "given," within the Elkins Act, until their actual payment; and, as so construed, the act as applied to such a case is not an ex post facto law. U. S. v. Great Northern R. Co. (C. C. 1907) 157 Fed. 288.

A rule of the Interstate Commerce Commission, regulating freight rates and charges, cannot be regarded as retroactive, unless it impairs some right vested according to existing law. Horton v. Tonopah & Goldfield R. Co. (D. C. 1914) 225 Fed. 406.

8. Anti-trust law.—The construction of Anti-Trust Law July 2, 1890, as applying to contracts or combinations formed prior to its enactment, so as to make them illegal from the date of the act, does not give it any retroactive or ex post facto character or effect. U. S. v. Trans-Missouri Freight Ass'n (1897) 17 Sup. Ct. 540, 559, 166 U. S. 290, 41 L. Ed. 1007.

9. Admission and exclusion of aliens.—The prohibition against ex post facto laws, does not apply to provisions like those of Act Feb. 20, 1907, § 3, and Amendatory Act March 26, 1910, § 2, for deportation of alien woman practicing prostitution after entry into the United States. Bugajewitz v. Adams (1913) 33 Sup. Ct. 607, 228 U. S. 585, 57 L. Ed. 978; Schwartz v. Same (1913) 33 Sup. Ct. 609, 228 U. S. 592, 57 L. Ed. 980.

The Chinese exclusion act, providing that it shall be unlawful for any Chinese laborer who shall at any time heretofore have been a resident within the United States, and who shall have departed therefrom, and shall not have returned before the passage of this act, to return to the United States, is not unconstitutional, as being an ex post facto law, since there is nothing in the nature of an offense in a Chinaman's departing from this country. In re Chae Chan Ping (C. C. 1888) 36 Fed. 431, order affirmed Chae Chan Ping v. U. S. (1888) 9 Sup. Ct. 623, 130 U. S. 581, 32 L. Ed. 1068.

Act Nov. 3, 1893, extending the time for registration of Chinese laborers is not ex post facto because it excepts from its provisions those who had been theretofore convicted of felony, as the deportation was only the consequence of a failure to register under the original act (May 5, 1892), and had no relation to the felony. U. S. v. Chew Cheong (D. C. 1894) 61 Fed. 200.

Immigration Act 1907, amended by Act March 26, 1910, eliminating the three-year limitation for deportation, held not unconstitutional as ex post facto. Ex parte Cardonnel (D. C. 1912) 197 Fed. 774.

10. Naturalization laws.—Retrospective features of Act June 29, 1906, c. 3592, § 15, authorizing impeachment of naturalization certificates fraudulently procured, do not invalidate that section under this clause. Johannessen v. U. S. (1912) 32 Sup. Ct. 613, 617, 225 U. S. 227, 56 L. Ed. 1066.

The naturalization act of 1906 (chapter 3592) is not obnoxious as an ex post facto act. U. S. v. Mansour (D. C. 1908) 170 Fed. 671.

11. Postal laws.—Pen. Code (Act March 4, 1909) § 211 (Comp. St. § 10381), making it an offense to mail obscene and filthy matter, is not unconstitutional as an ex post facto law. Tyomies Pub. Co. v. U. S. (1914) 211 Fed. 385, 128 C. C. A. 47; Coomer v. U. S. (1914) 213 Fed. 1, 129 C. C. A. 617.

12. Revenue laws.—Act March 3, 1875, provides for an increase in the revenue tax on tobacco, and prescribes a penalty against any person who re-

moves tobacco from his manufactory without the proper stamp being affixed and canceled. Held, that the increase of tax did not apply to tobacco stamped, sold, and removed before the passage of the act, even as to the civil liability for the excess of the tax, since the ex post facto effect of the law cannot be evaded by giving a civil form to that which is essentially criminal. Burgess v. Salmon (1878) 97 U. S. 381, 24 L. Ed. 1104.

Congress may declare a forfeiture for nonpayment of taxes that will take effect ipso jure. Schenck v. Peay (C. C. 1869) Fed. Cas. No. 12,451.

The clause within the act of 1862 creating a penalty for nonpayment of the direct tax is not unconstitutional, or an ex post facto law. Sharpleigh v. Surdam (C. C. 1876) Fed. Cas. No. 12,711.

Act June 22, 1874, § 5, requiring the production by defendants or claimants of all books, papers, etc., in proceedings under the revenue laws other than criminal, that will tend to prove allegations made by the United States, is not unconstitutional, as being an ex post facto law, where it is applied in a case expressly limited to books, papers, etc., relating to their business since the passage of the act. U. S. v. Distillery No. Twenty-Eight (D. C. 1875) Fed. Cas. No. 14,966.

Act June 22, 1874 (18 Stat. 178), which provides that in all suits and proceedings other than criminal arising under the revenue laws the court may require the defendant to produce any books and papers which may tend to prove any allegation made by the government, and which provides that, if the books or papers are not produced, the allegations contained in the declaration shall be taken as confessed, is an ex post facto law, and therefore unconstitutional, so far as it applies to suits for a penalty or forfeiture. U. S. v. Hughes (D. C. 1875) Fed. Cas. No. 15,416.

13. Laws relating to the practice of law and medicine.—Act Jan. 24, 1865, providing that no person shall be admitted as an attorney to the bar of the Supreme Court, and after March 4, 1865, to the bar of any United States court, or be allowed to appear by virtue of any previous admission, unless he shall have first taken the oath prescribed by Act July 2, 1862, that he has never voluntarily borne arms against the United States, nor given aid to its enemies, is within the inhibition against ex post facto laws. Ex parte Garland (1866) 4 Wall. 333, 377, 18 L. Ed. 366; In re Shorter (D. C. 1865) Fed. Cas. No. 12,811; Ex parte Law (D. C. 1866) Fed. Cas. No. 8,126.

Where the license of a practicing physician is revoked by the board of medical supervisors of this district for the alleged violation of Act June 3, 1896, c. 313, 29 Stat. 198, regulating the practice of medicine and surgery in this district, based on causes arising subsequent to the act, and not for the violation of any regulations made by the board subsequently to the alleged offense, it cannot be claimed in his defense that he was convicted under an ex post facto law. Czarra v. Board of Medical Sup'rs of District of Columbia (1905) 25 App. D. C. 443.

14. Blacklisting statute.—The blacklisting statute (Acts 30th Leg. Tex. c. 67, § 1), requiring a corporation to give to its discharged employés service letters stating the true reasons for their discharge, though retroactive, is not invalid as an ex post facto law under this clause. St. Louis Southwestern Ry. Co. of Texas v. Hixon (Tex. Civ. App. 1910) 126 S. W. 338.

15. Law as to sale of liquor in Alaska.—One Ashland was found guilty in 1908 of violating the then law governing the sale of intoxicating liquor in Alaska. In 1909 congress passed an amendatory act, which repeated a clause from the former law "that such applicant has not been, since the passage of this act, adjudged guilty of violating the laws governing the sale of intoxicating liquors" (Act Feb. 6, 1909, c. 80, 35 Stat. 600). In 1909, after the passage of the amendatory act of 1909, Ashland applied for a license and was denied because of his conviction under the act of 1908. Held, there was no such interest of the applicant in the liquor trade as to prevent congress, in the exercise of its police power, disqualifying him from engaging in the business of selling intoxicating liquor, on account of his conviction prior to the passage of the act of 1909. Such a law would not be ex post facto, and, if it were, there is nothing in the constitution of the United States forbidding it. In re Ashland (1912) 4 Alaska, 486.

16. Treaties.—The treaty of March 23, 1868, between the United States and Italy, construed as covering the case of a crime committed before the treaty was made, is not open to the objection that it is a bill of attainder or an ex post facto law, within this clause. In re De Giacomo (C. C. 1874) Fed. Cas. No. 3,747.

17. Retrospective or retroactive laws in general.—A statute is not obnoxious to the constitutional provision in its retrospective operation unless it is an ex post facto law. Satterlee v. Matthewson (1829) 27 U. S. (2 Pet.) 380, 7 L. Ed. 458; Albee v. May (C. C. 1834) Fed. Cas. No. 134.

In the absence of an express constitutional prohibition, a statute is not void merely because it is retrospective in its action. Calder v. Bull (1798) 3 U. S. (3 Dall.) 386, 1 L. Ed. 648; Watson v. Mercer (1834) 33 U. S. (8 Pet.) 88, 8 L. Ed. 876; Curtis v. Whit-

ney (1871) 80 U. S. (13 Wall.) 68, 20 L. Ed. 513.

Every ex post facto law must necessarily be retrospective, but every retrospective law is not an ex post facto law. Calder v. Bull (1798) 3 U. S. (3 Dall.) 386, 1 L. Ed. 648.

The power of congress to pass laws within the constitutional grant of legislative power is not restricted to laws prospective in their operation, as it may pass retrospective statutes. Schenck v. Peay (C. C. 1869) Fed. Cas. No. 12,-451.

A retroactive statute is not unconstitutional unless its effect would be a deprivation of life, liberty, or property, contrary to the fifth amendment of the federal constitution. Plummer v. Northern Pac. Ry. Co. (C. C. 1907) 152 Fed. 206.

Retrospective laws are unconstitutional only when they impair the obligation of contracts, affect vested rights, or are of the nature of ex post facto laws. In re Kirkland (D. C. 1873) Fed. Cas. No. 7,842.

An act of congress may invalidate contracts or rights which had their inception before its passage. Elliott Mach. Co. v. Center (D. C. 1915) 227 Fed. 124.

So far as retroactive legislation affects the liability of the United States and does not interfere with vested rights, and is not penal, it is within the constitutional powers of congress. McNamara v. U. S. (1893) 28 Ct. Cl. 416.

18. —— Civil remedies and procedure.—There is no constitutional right to old forms of procedure, which may be changed by congress directly or by the court to whom the power has been delegated. Fidelity & Deposit Co. v. U. S. (1902) 23 Sup. Ct. 120, 122, 187 U. S. 315, 47 L. Ed. 194.

Remedies, and those rights pertaining to the remedy, which are purely of statutory creation, may be altered or abolished even after an action is instituted, provided an adequate remedy remains for the enforcement of rights founded on contract; and congress, which is not prohibited from passing retrospective or retroactive laws, has power to divest or impair an attachment lien acquired under a federal statute, at least until there has been an adjudication that adequate grounds for the attachment exist, and that the lien of the attachment be enforced. Evans-Snider-Buel Co. v. McFadden (1900) 105 Fed. 293, 44 C. C. A. 494, 58 L. R. A. 900, judgment affirmed McFaddin v. Evans-Snider-Buel Co. (1902) 22 Sup. Ct. 758, 185 U. S. 505, 46 L. Ed. 1012.

The legislature may validate retrospectively any proceedings which it could have authorized in advance; and it is immaterial that such legislation may operate to divest an individual of a right of action existing in his favor, or subject him to a liability which did not exist originally. In a large class of cases this is the paramount object of such legislation. The Exchange Bank Tax Cases (C. C. 1884) 21 Fed. 99, judgment affirmed Williams v. Albany County Sup'rs (1887) 7 Sup. Ct. 1244, 122 U. S. 154, 30 L. Ed. 1088.

19. Conclusiveness of decisions of federal courts.—See notes under art. 6, cl. 2, post.

Cited without definite application, Marbury v. Madison (1803) 1 Cranch, 137, 179, 2 L. Ed. 60; Presser v. Illinois (1886) 6 Sup. Ct. 580, 582, 116 U. S. 252, 29 L. Ed. 615; Nelson v. U. S. (C. C. 1887) 30 Fed. 112, 115, affirming (D. C. 1886) 29 Fed. 202; Cunningham v. Neagle (1890) 10 Sup. Ct. 658, 678, 135 U. S. 1, 34 L. Ed. 55; Kepner v. U. S. (1904) 24 Sup. Ct. 797, 802, 195 U. S. 100, 49 L. Ed. 114, 1 Ann. Cas. 655; Trono v. U. S. (1905) 26 Sup. Ct. 121, 122, 199 U. S. 521, 50 L. Ed. 292, 4 Ann. Cas. 773.

[4] No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

Notes of Decisions

1. Restraint on taxing power.
2. Direct taxes in general.
3. Succession or legacy taxes.
4. Stamp taxes.
5. Carriage taxes.
6. Income taxes.
7. Tax on corporations in general.
8. Tax on banks.
9. Tax on insurance companies.
10. Tax on sugar refining.
11. Single tax corporation.
12. Census or enumeration.

See, also, art. 1, § 8, cl. 1, and art. 2, § 2, cl. 3, ante, and notes thereunder.

1. Restraint on taxing power.—The taxing power of the federal government is restrained by this and the following clause, as well as by section 8 of this article. U. S. v. Billings (C. C. 1911) 190 Fed. 359.

2. Direct taxes in general.—The term "direct taxes," as used in this clause. Hylton v. U. S. (1796) 3 U. S. (3 Dall.) 171, 173, 1 L. Ed. 556; Veazie Bank v. Fenno (1869) 75 U. S. (8 Wall.) 533, 19 L. Ed. 482; Springer v. U. S. (1880) 102 U. S. 586, 26 L. Ed. 253.

Taxes on lands, houses, and other permanent real estate have always been deemed to be direct taxes and capitation taxes, by the express words of this clause, are within the same category, but it never has been decided that any other legal exactions for the

support of federal government fall within the condition that, unless laid in proportion to the numbers, the assessment is invalid. Scholey v. Rew (1874) 23 Wall. 331, 347, 23 L. Ed. 99.

The direct tax laid by the act of Aug. 5, 1861, did not create any liability on the part of the states in which the lands taxed were situated to pay the tax. U. S. v. Louisiana (1887) 8 Sup. Ct. 17, 20, 123 U. S. 32, 31 L. Ed. 69; Same v. Alabama (1887) 8 Sup. Ct. 21, 123 U. S. 39, 31 L. Ed. 73.

The direct tax laid by Act Aug. 5, 1861, did not create any liability on the part of the states, in which the lands taxed were situated, to pay the tax. U. S. v. Louisiana (1887) 8 Sup. Ct. 17, 20, 123 U. S. 32, 31 L. Ed. 69.

Taxes on personal property, or on the income of personal property, are direct taxes (Justices Harlan, Brown, Jackson, and White dissenting). Pollock v. Farmers' Loan & Trust Co. (1895) 15 Sup. Ct. 912, 913, 158 U. S. 601, 39 L. Ed. 1108.

In levying direct taxes, after apportioning the amount among the several states as provided by this clause, congress has the power to choose the object of direct taxation, and to levy the quota as apportioned directly upon the object so selected. Knowlton v. Moore (1900) 20 Sup. Ct. 747, 766, 178 U. S. 41, 44 L. Ed. 969.

3. Succession or legacy taxes.—Succession or legacy taxes are not direct taxes within the meaning of this clause. Scholey v. Rew (1874) 23 Wall. 331, 346, 23 L. Ed. 999; High v. Coyne (1899) 93 Fed. 450 (affirmed [1900] 20 Sup. Ct. 747, 178 U. S. 111, 44 L. Ed. 797); Knowlton v. Moore (1900) 20 Sup. Ct. 747, 762, 178 U. S. 41, 44 L. Ed. 969.

4. Stamp taxes.—Internal Revenue Act June 13, 1898, c. 448, Schedule A, par. 2, imposing a tax on each sale or agreement of sale at any exchange or board of trade or similar place, and requiring delivery by the seller of the written memorandum, to which a revenue stamp shall be affixed, was not a direct tax, but was in the nature of a duty or excise tax for the privilege of doing business, and not on the memorandum required, the article sold, or the occupation. Nicol v. Ames (1899) 19 Sup. Ct. 522, 526, 173 U. S. 509, 43 L. Ed. 786, affirming (C. C. 1898) 89 Fed. 144, 147.

The stamp tax imposed by Act June 13, 1898, upon stock sales is not a direct tax within the meaning of this section. Thomas v. U. S. (1904) 24 Sup. Ct. 305, 306, 192 U. S. 363, 48 L. Ed. 481.

5. Carriage taxes.—The tax on private carriages imposed by Act June 5, 1794, was not a direct tax within this clause, and hence could be laid by the rule of uniformity. Hylton v. U. S. (1796) 3 U. S. (3 Dall.) 171, 173, 1 L. Ed. 556.

6. Income taxes.—See, also, notes under art. 1, § 8, cl. 1, ante.

In so far as Act Aug. 27, 1894, c. 349, 28 Stat. 509, imposing taxes on incomes, levies a tax on rents and income of real estate, it is invalid, because such tax, being equivalent to a tax on the real estate itself, and therefore a direct tax, is not apportioned among the states. (Mr. Justice White and Mr. Justice Harlan dissenting). Pollock v. Farmers' Loan & Trust Co. (1895) 15 Sup. Ct. 673, 157 U. S. 429, 39 L. Ed. 759.

Taxes on real estate being indisputably direct taxes, taxes on income of real estate are equally direct taxes. Id.

The whole purpose of Amendment 16, authorizing an income tax, was to exclude the source from which a taxed income was derived as the criterion by which to determine the applicability of constitutional requirement as to apportionment of direct taxes. Brushaber v. Union Pac. R. Co. (1916) 36 Sup. Ct. 236; Stanton v. Baltic Mining Co. (1916) 36 Sup. Ct. 278; Tyee Realty Co. v. Anderson (1916) 36 Sup. Ct. 281.

An income tax (Act June 30, 1864) is not a "capitation or other direct tax," within this clause. Clark v. Sickel (C. C. 1871) Fed. Cas. No. 2,862.

The income tax laid by Act July 14, 1870, is not a "direct tax," within the meaning of the constitution, and the act is valid though it imposes the tax by the rule of uniformity. Smedberg v. Bentley (C. C. 1874) Fed. Cas. No. 12,964.

7. Tax on corporations in general.—The tax measured by new annual income, imposed by Act Aug. 5, 1909, c. 6, § 38, upon the carrying on or doing of business in a corporate or quasi corporate capacity, being an excise and not a direct tax, is not invalid because not apportioned among the several states according to population. Flint v. Stone Tracy Co. (1911) 31 Sup. Ct. 342, 347, 220 U. S. 107, 55 L. Ed. 389, Ann. Cas. 1912B, 1312.

Corporation Tax Act, § 38, held not unconstitutional as imposing a direct tax not apportioned according to population. Stratton's Independence v. Howbert (D. C. 1912) 207 Fed. 419.

8. Tax on banks.—Act July 13, 1866 (Comp. St. § 6292), requiring all banks to pay a tax of 10 per cent. on the amount of notes of any state bank paid out after a certain day, does not impose a direct tax within this clause. Veazie Bank v. Fenno (1869) 75 U. S. (8 Wall.) 533, 540, 19 L. Ed. 482.

9. Tax on insurance companies.—The tax laid by Act June 30, 1864, §§ 105, 120, and the amendment thereto of July 13, 1866, on the amounts insured, renewed, or continued by insurance companies on the gross amount of premiums received and assessments made by them, and on dividends, undistributed sums, and income, is not a direct tax, but a duty or excise. Pacific Ins.

Co. v. Soule (1868) 74 U. S. (7 Wall.) 433, 19 L. Ed. 95.

10. Tax on sugar refining.—The "special excise tax" imposed on sugar refining by War Revenue Act June 13, 1898, c. 448, § 27, 30 Stat. 448, 464, to be measured by gross annual receipts in excess of a named sum, is not a direct tax, but is an excise imposed by congress under its power to lay and collect excises which shall be uniform throughout the United States. Spreckels Sugar Refining Co. v. McClain (1904) 24 Sup. Ct. 376, 380, 192 U. S. 397, 48 L. Ed. 496, reversing judgment (1902) 113 Fed. 244, 51 C. C. A. 201.

11. Single tax corporation.—Act Ala. Oct. 1, 1903 (Acts 1903, p. 342, §§ 1-5; Code 1907, § 3573), authorizing associates to incorporate, and under which they were incorporated, to own and lease lands to apply and demonstrate the single tax principle of taxation, held not to violate Const. art. 1, §§ 8, 9. Fairhope Single Tax Corporation v. Melville (1915) 69 So. 466, 193 Ala. 289.

12. Census or enumeration.—The census referred to is one exhibiting the number of inhabitants in the respective states and territories, and where the enumeration is taken in the District of Columbia and territories on the same principle on which the enumeration of the respective states is made, the information is acquired by which a direct tax may be imposed on the district and territories in proportion to the census, and congress may impose a direct tax on the District of Columbia in proportion to the census directed to be taken by the constitution. Loughborough v. Blake (1820) 5 Wheat. 317, 321, 5 L. Ed. 98.

The functions vested in the national government authorize the obtainment of information relating to manufacturing and mechanical establishments demanded by the census act of March 3, 1899, c. 419, 30 Stat. 1015, though this clause merely directs congress to take a census of the population for the purpose of apportioning representatives and direct taxes. U. S. v. Moriarity (C. C. 1901) 106 Fed. 886.

See, also, notes under art. 1, § 2, cl. 3, and art. 1, § 8, cl. 1.

Cited without definite application, Downes v. Bidwell (1901) 21 Sup. Ct. 770, 776, 182 U. S. 244, 45 L. Ed. 1088; South Carolina v. U. S. (1905) 26 Sup. Ct. 110, 112, 199 U. S. 437, 50 L. Ed. 261, 4 Ann. Cas. 737; Rainey v. U. S. (1914) 34 Sup. Ct. 429, 430, 232 U. S. 310, 58 L. Ed. 617; Michigan Cent. R. Co. v. Slack (C. C. 1876) Fed. Cas. No. 9,527a; U. S. v. Mitchell (D. C. 1893) 58 Fed. 993, 998; Whiteaker v. Haley (1865) 2 Or. 128, 135.

[5] No Tax or Duty shall be laid on Articles exported from any State.

Notes of Decisions

1. Cheese manufactured for exports.
2. Cattle purchased for export.
3. Passengers.
4. Slaves.
5. Coal shipped to another state for sale.
6. Logs awaiting transportation to another state.
7. Stamp taxes in general.
8. Liquors and tobacco.
9. Commercial intercourse with insurrectionary districts.
10. Effect of Elkins act.
11. License tax on emigrant agents.
12. Tax on exporter.
13. Customs duties between Porto Rico or Hawaii and the United States.
14. Tonnage tax on foreign vessels.
15. Licenses from vessel owners.
16. Single tax corporation.

See, also, note under art. 1, § 8, cl. 1.

1. Cheese manufactured for export.—The tax imposed by Comp. St. § 6248, on cheese manufactured for export, is not obnoxious to the prohibition of this clause. Cornell v. Coyne (1904) 24 Sup. Ct. 383, 384, 192 U. S. 418, 48 L. Ed. 504.

2. Cattle purchased for export.—Plaintiffs, as dealers in cattle, were accustomed to receive shipments of cattle every Wednesday, which on the following day were sold to local buyers, or exported, as the case might be. Held, that the fact that a portion of the cattle so received were purchased for the purpose of being exported does not constitute them exports, within this clause. Myers v. Baltimore County Com'rs (1896) 83 Md. 385, 35 Atl. 144.

3. Passengers.—Passengers are not exports within this clause. (1910) 28 Op. Atty. Gen. 211.

4. Slaves.—A city ordinance fixing a tax on slaves brought from other states into this state for sale does not conflict with this clause. State v. City Council of Charleston (S. C. 1857) 10 Rich. Law, 240.

5. Coal shipped to another state for sale.—The inclusion in the appraisement of the capital stock of a domestic corporation, for purposes of taxation, under Laws Pa. 1891, p. 229, the value of coal mined by it within the state, but situated in other states, there awaiting sale when the appraisement was made, was invalid as a tax on exports. Delware, L. & W. R. Co. v. Pennsylvania (1905) 25 Sup. Ct. 669, 674, 198 U. S. 341, 49 L. Ed. 1077.

6. Logs awaiting transportation to another state.—Where logs cut in the

forests of New Hampshire are deposited at a point therein to await transportation to Maine, they are still a part of the wealth of the state, though owned by persons residing in Maine; and a tax levied on them by the town where deposited is not invalid, as being in violation of this clause. Coe v. Town of Errol (1886) 6 Sup. Ct. 475, 116 U. S. 517, 29 L. Ed. 715.

7. Stamp taxes in general.—The stamp tax imposed on a foreign bill of lading by Act June 13, 1898, c. 448, § 6, 30 Stat. 448, is in substance and effect equivalent to a tax on the articles included in that bill of lading, and therefore a tax or duty on exports, prohibited by this clause. Fairbank v. U. S. (1901) 21 S. Ct. 648, 649, 181 U. S. 283, 45 L. Ed. 862.

Stamp tax assessed under War Revenue Act June 13, 1898, § 25, on charter parties for carriage of goods from state ports to foreign ports, held a violation of this clause. U. S. v. Hvoslef (1915) 35 S. Ct. 459, 237 U. S. 1, 59 L. Ed. 813, Ann. Cas. 1916A, 286, affirming judgment Hvoslet v. U. S. (D. C. 1913) 217 Fed. 680.

The stamp tax imposed under Act June 13, 1898, on marine policies, held invalid as being a tax on exportation, in violation of this clause. Thames & Mersey Marine Ins. Co. v. U. S. (1915) 35 S. Ct. 496, 237 U. S. 19, 59 L. Ed. 821, Ann. Cas. 1915D, 1087, reversing judgment (D. C. 1914) 217 Fed. 685.

Stamp tax on ship's manifests held void as a tax on exports. New York & Cuba Mail S. S. Co. v. U. S. (D. C. 1903) 125 Fed. 320, judgment reversed (1906) 26 Sup. Ct. 327, 200 U. S. 488, 50 L. Ed. 569.

8. Liquors and tobacco.—Stamps required by Comp. St. § 6192, to be placed on packages of manufactured tobacco intended for exportation, is not a duty on exports within this clause. Pace v. Burgess (1875) 92 U. S. 372, 374, 23 L. Ed. 657; Turpin v. Burgess (1885) 117 U. S. 504, 6 Sup. Ct. 835, 836, 29 L. Ed. 988; Burwell v. Burgess (Va. 1879) 32 Grat. 472.

An excise laid on tobacco, before its removal from the factory, is not a duty on "exports," or "on articles exported," within the prohibition of the constitution, even though the tobacco be intended for exportation. Turpin v. Burgess (1886) 6 Sup. Ct. 835, 836, 117 U. S. 504, 29 L. Ed. 988, citing and applying Coe v. Town of Errol (1886) 6 Sup. Ct. 475, 116 U. S. 517, 29 L. Ed. 715.

Distilled spirits are not in process of exportation on the giving of an exportation bond under Comp. St. § 6125, for their removal from bonded warehouses, so as to render applicable the constitutional inhibition of taxation of articles exported from the states; and the collector of internal revenue is not thereby deprived of his power to assess a tax on the deficiency accruing by reason of an evaporation, after the giving of one exportation bond, on a subsequent removal of the spirits under a second exportation bond. Thompson v. U. S. (1892) 142 U. S. 471, 12 Sup. Ct. 299, 35 L. Ed. 1084.

Under this provision no tax could be laid by the United States on tobacco intended for exportation, and actually exported. U. S. v. Allen (D. C. 1889) 39 Fed. 100.

9. Commercial intercourse with insurrectionary districts.—The prohibition does not extend to a statute passed in the midst of rebellion to prohibit and regulate "commercial intercourse" with insurrectionary districts. Folsom v. U. S. (1868) 4 Ct. Cl. 366.

10. Effect of Elkins act.—The mere incidental effect on exports produced by applying to a shipment from an interior point of the United States to a foreign port the provisions of Elkins Act Feb. 19, 1903 (Comp. St. § 8597), making it an offense against the United States to obtain the transportation of property in interstate or foreign commerce at less than the carrier's published rates, does not render such provisions repugnant to this clause. Armour Packing Co. v. U. S. (1908) 28 Sup. Ct. 428, 209 U. S. 56, 52 L. Ed. 681, affirming judgment (1907) 153 Fed. 1, 82 C. C. A. 135, 14 L. R. A. (N. S.) 400; Chicago, B. & Q. Ry. Co. v. Same (1908) 28 Sup. Ct. 439, 209 U. S. 90, 52 L. Ed. 698 (affirming judgment [1907] 157 Fed. 830, 85 C. C. A. 194).

11. License tax on emigrant agents.—A statute imposing a license tax on emigrant agents hiring persons to labor outside the state is not within this clause. Williams v. Fears (1900) 21 Sup. Ct. 128, 130, 179 U. S. 270, 45 L. Ed. 186.

12. Tax on exporter.—A tax imposed on an exporter of merchandise as an incident to his business is not a tax upon the exported article, as an export, and hence is not violative of this clause. (1910) 28 Op. Atty. Gen. 211.

The imposition of a tax upon the capital of a person used entirely in the business of purchasing cotton and exporting it from the United States to foreign countries is not in violation of this clause. People v. Board of Tax Commissioners (N. Y. 1877) 10 Hun, 255, affirmed (1878) 73 N. Y. 607.

13. Customs duties between Porto Rico or Hawaii and the United States.—See, also, notes under art. 1, § 8, cl. 1, ante.

The tax imposed on imports from Porto Rico by Comp. St. § 3749, is not a tax or duty within this clause. Dooley v. U. S. (1901) 22 Sup. Ct. 62, 63, 183 U. S. 151, 46 L. Ed. 128.

The provision of the joint resolution for the annexation of the Hawaiian

Islands of July 7, 1898, which retained in force the same customs duties between such islands and ports of the United States as formerly, is constitutional. Crossman v. U. S. (C. C. 1900) 105 Fed. 608, judgment reversed Goetze v. U. S. (1901) 21 S. Ct. 742, 182 U. S. 221, 45 L. Ed. 1065.

14. Tonnage tax on foreign vessels.—The imposition of a tonnage tax on foreign vessels exporting goods is constitutional. Aguirre v. Maxwell (C. C. 1853) Fed. Cas. No. 101.

15. Licenses from vessel owners.—Act La. No. 176 of 1908, construed to require licenses from owners of vessels plying on the Mississippi river while engaged in interstate and foreign commerce, does not conflict with this clause. State v. Southern Pac. Co. (1915) 68 So. 819, 137 La. 435, L. R. A. 1915F, 1140.

16. Single tax corporation.—Act Ala. Oct. 1, 1903 (Acts 1903, p. 342, §§ 1-5; Code 1907, § 3573), authorizing associates to incorporate, and under which they were incorporated, to own and lease lands to apply and demonstrate the single tax principle of taxation, held not to violate Const. art. 1, §§ 8, 9. Fairhope Single Tax Corporation v. Melville (1915) 69 So. 466, 193 Ala. 289.

Cited without definite application, Marbury v. Madison (1803) 1 Cranch, 137, 179, 2 L. Ed. 60; Woodruff v. Parham (1868) 8 Wall. 123, 132, 19 L. Ed. 382; U. S. v. Reese (1875) 92 U. S. 214, 250, 23 L. Ed. 563; Pittsburgh & S. Coal Co. v. Bates (1895) 15 Sup. Ct. 415, 417, 156 U. S. 577, 39 L. Ed. 538; Pollock v. Farmers' Loan & Trust Co. (1895) 15 Sup. Ct. 912, 921, 158 U. S. 601, 39 L. Ed. 1108; Nicol v. Ames (1899) 19 Sup. Ct. 522, 525, 173 U. S. 509, 43 L. Ed. 786; Lawder v. Stone (1902) 23 Sup. Ct. 79, 80, 187 U. S. 281, 47 L. Ed. 178; Champion v. Ames (1903) 23 Sup. Ct. 321, 324, 188 U. S. 321, 47 L. Ed. 492; Thomas v. U. S. (1904) 24 Sup. Ct. 305, 306, 192 U. S. 363, 48 L. Ed. 481; South Carolina v. U. S. (1905) 26 Sup. Ct. 110, 112, 199 U. S. 437, 50 L. Ed. 261, 4 Ann. Cas. 737; U. S. v. Chavez (1913) 33 Sup. Ct. 595, 228 U. S. 525, 57 L. Ed. 950.

"No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

Notes of Decisions

See, also, notes under art. 1, § 8, cl. 1, ante.

Preference between ports in general.—This clause not only restricts the power of congress to regulate commerce, but is equally binding on the several states. Smith v. Turner (1849) 7 How. 283, 404, 12 L. Ed. 702.

Congress is not forbidden from giving a preference to a port in one state over a port in another, and any preference is legally given where it makes a port in one state a port of entry, and refuses to make another port in another state a port of entry, and the discrimination forbidden is discrimination between states. Pennsylvania v. Wheeling & Belmont Bridge Co. (1855) 18 How. 421, 435, 15 L. Ed. 435.

This provision operates only as a limitation on the powers of congress, and in no respect affects the states in the regulation of their domestic affairs. Munn v. Illinois (1876) 94 U. S. 113, 135, 24 L. Ed. 77.

A state statute discriminating between vessels sailing between ports of the same state and the ports of different states is invalid. Spraigue v. Thompson (1886) 118 U. S. 90, 6 S. Ct. 988, 30 L. Ed. 115, reversing (1882) 69 Ga. 409.

Act La. July 1, 1882, requiring all vessels to pay a fee for examination as to their sanitary condition when they pass the quarantine station, is not objectionable, under Const. art. 1, § 9, as giving a preference for a port of one state over those of another, as that section is a restraint upon powers of the general government, and not of the states, and can have no application to the quarantine laws of Louisiana. Morgan's Louisiana & T. R. & S. S. Co. v. Louisiana Board of Health (1886) 118 U. S. 455, 6 Sup. Ct. 1114, 30 L. Ed. 237.

Preference is not given to the ports of one state over those of another by applying to articles intended for foreign export the provisions of Elkins Act Feb. 19, 1903 (Comp. St. § 8597), making it an offense against the United States to accept transportation of goods in interstate or foreign commerce at less than the carrier's published rates. Armour Packing Co. v. U. S. (1908) 28 Sup. Ct. 428, 209 U. S. 56, 52 L. Ed. 681 (affirming judgment [1907] 153 Fed. 1, 82 C. C. A. 135, 14 L. R. A. [N. S.] 400); Chicago, B. & Q. Ry. Co. v. Same (1908) 28 S. Ct. 439, 209 U. S. 90, 52 L. Ed. 698 (affirming judgment [C. C. A. 1907] 157 Fed. 830, 85 C. C. A. 194).

The provision as to preference of ports does not prevent the exercise of the power of congres by delegated authority to regulate commerce between ports of different states merely because such regulation may incidentally affect the commerce of a port in still another state. Louisville & N. R. Co. v. Interstate Commerce Commission (C. C. 1910) 184 Fed. 118.

Any regulation of land transportation,

however exercised, would seem to be so indirect in its effect upon the ports that it could not constitute a preference between the ports of different states within the meaning of this clause. (1905) 25 Op. Atty. Gen. 422.

Reasonable, just, and impartial rates, determined by legislative authority, are not within the prohibition of this clause even though they result in a varying charge per ton per mile to and from the ports of the different states. Id.

Act Va. March 17, 1856, prescribing a penalty for any vessel owned by a nonresident to sail from any state port to Northern ports without an inspection certificate, held not repugnant to this clause. Baker v. Wise (Va. 1861) 16 Grat. 139, 227.

Creation of liens against vessels.—Rev. St. Ill. 1881, c. 12, giving a lien, in certain cases, against water crafts, for damages done by them in Illinois, is not unconstitutional, as against this clause, forbidding the enactment of laws giving preference between ports. Johnson v. Chicago & P. Elevator Co. (1886) 7 S. Ct. 254, 259, 119 U. S. 388, 30 L. Ed. 447.

Pilotage regulations.—The Pennsylvania acts of March 2, 1803, and June 11, 1832, imposing on the master of every foreign vessel, and of every vessel of the burden of 75 tons or over, sailing from or bound to any port not within the Delaware river, and not engaged in the Pennsylvania coal trade, a penalty of half pilotage for refusing to take a pilot, does not give a preference to the ports of one state over those of another. Cooley v. City of Philadelphia (1851) 53 U. S. (12 How.) 299, 13 L. Ed. 996.

Since pilotage fees are not duties within the constitution, a state statute imposing a forfeiture for the neglect of a vessel to take a pilot is not unconstitutional, as giving a preference to any port. Id.

The adoption of compulsory pilotage regulations by a state, under the authority of R. S. § 4235, Comp. St. § 7981, does not prefer the ports of one state over those of another, in violation of this clause. Thompson v. Darden (1905) 25 S. Ct. 660, 198 U. S. 310, 49 L. Ed. 1064, affirming judgment Darden v. Thompson (1903) 44 S. E. 755, 101 Va. 635.

A state statute exempting vessels owned wholly in the state from payment of any pilotage unless a pilot is actually employed is in violation of the provision as to preference between ports. Williams v. The Lizzie Henderson (D. C. 1880) Fed. Cas. No. 17,726a.

Quarantine regulations.—Act La. July 1, 1882, requiring all vessels to pay a fee for examination as to their sanitary condition when they pass the quarantine station, is not objectionable, under this clause as giving a preference to a port of one state over those of another, as this is a restraint on powers of the general government, and not of the states, and can have no application to the quarantine laws of Louisiana. Bradley, J., dissenting. Morgan's Louisiana & T. R. & S. S. Co. v. Board of Health (1886) 6 Sup. Ct. 1114, 1120, 118 U. S. 455, 30 L. Ed. 237.

Regulation of warehouses.—Laws of Illinois regulating warehouses, and fixing the maximum of charges for the storage of grain, are not in conflict with the provision as to preference between ports. Munn v. Illinois (1876) 94 U. S. 113, 135, 24 L. Ed. 77.

Improvement of navigation.—Authorizing the diversion of water from one channel of the river into another at the discretion of the secretary of war is not giving a preference to the ports of one state over those of another. South Carolina v. Georgia (1876) 93 U. S. 4, 12, 23 L. Ed. 782.

Erection and maintenance of bridges.—The act providing for the erection and maintenance of the Wheeling bridge over the Ohio river, though it may incidentally increase the trade of Wheeling and diminish that of Pittsburg, is not in conflict with section 9 of article 1 of the constitution. Pennsylvania v. Wheeling & B. Bridge Co. (1855) 59 U. S. (18 How.) 421, 15 L. Ed. 435.

Application of clause to statute prohibiting "commercial intercourse" with insurrectionary districts.—The prohibitions of this clause do not extend to a statute passed in the midst of rebellion to prohibit and regulate "commercial intercourse" with insurrectionary districts. Folsom v. U. S. (1868) 4 Ct. Cl. 366.

Cited without definite application, Passenger Cases (1849) 7 How. 283, 407, 12 L. Ed. 702; Pollock v. Farmers' Loan & Trust Co. (1895) 15 Sup. Ct. 673, 678, 157 U. S. 429, 39 L. Ed. 759; Knowlton v. Moore (1900) 20 Sup. Ct. 747, 765, 178 U. S. 41, 44 L. Ed. 969; Dooley v. U. S. (1901) 22 Sup. Ct. 62, 69, 183 U. S. 151, 46 L. Ed. 128; Thompson v. Darden (1905) 25 Sup. Ct. 660, 661, 198 U. S. 310, 49 L. Ed. 1064; South Carolina v. U. S. (1905) 26 Sup. Ct. 110, 112, 199 U. S. 437, 50 L. Ed. 261, 4 Ann. Cas. 737.

[7] No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Notes of Decisions

Provision as to appropriations as directed exclusively to treasury officers.—This provision is exclusively a direction to the officers of the treasury. It nei-

ther controls courts nor prohibits the creation of legal liabilities. Collins v. U. S. (1879) 15 Ct. Cl. 22.

This provision is a restriction and limitation only upon the executive officers of the treasury department, and does not prevent congress from involving the government in liabilities to pay money to any extent. Mitchell v. U. S. (1883) 18 Ct. Cl. 281, judgment reversed (1883) 19 Ct. Cl. 703.

Money subject to provision as to appropriations.—The money received from captured and abandoned property under the construction given by the treasury department is not subject to this provision. Rice v. U. S. (1887) 7 Sup. Ct. 1377, 1383, 122 U. S. 611, 30 L. Ed. 793.

Several secretaries of the treasury so construed the law that money received from captured and abandoned property was merely deposited with the treasurer, and was not technically covered into the treasury, and was not subject to this provision. U. S. v. Johnston (1888) 8 Sup. Ct. 446, 454, 124 U. S. 236, 31 L. Ed. 389.

When a pecuniary penalty, accruing to the United States, has been actually paid into the treasury, although it may be remitted of right by the president, still by reason of constitutional prohibition, which is coequal in force with the constitutional power to pardon, the amount of the penalty cannot be drawn from the treasury without appropriation by act of congress. (1857) 8 Op. Atty. Gen. 281.

Necessity of appropriation to pay debt on claims.—No officer of the government can pay a debt due by the United States without an appropriation of congress, and without an appropriation a claim cannot be paid by the treasury, whether the claim is by verdict or judgment. Reeside v. Walker (1850) 11 How. 272, 291, 13 L. Ed. 693.

As to the necessity of appropriations to pay awards for Alabama claims, see Great Western Insurance Co. v. U. S. (1884) 19 Ct. Cl. 206.

As to extra allowances to mail contractors, see (1835) 3 Op. Atty. Gen. 1.

As to the necessity of appropriation to pay claims under Indian treaties, see (1870) 13 Op. Atty. Gen. 354.

Payment of officers.—Mandamus will not lie against the secretary of the navy to enforce the payment of an officer's pay, as this section necessitates an appropriation. Brashear v. Mason (1848) 6 How. 92, 101, 12 L. Ed. 357.

Contract without appropriation.—A contract by the clerk of the house of representatives, made with a person to furnish wood, where no appropriation has been made to pay for the same, is not binding on either party. U. S. v. Derringer (C. C. 1851) Fed. Cas. No. 14,950a.

Where the constitution or laws require the president to do something requiring the expenditure of money, he may lawfully do it, or contract to have it done, in the absence of an appropriation therefor, and the expense becomes a lawful charge on the government, but a contract in excess of an appropriation is subject to the contingency of a future appropriation, without which it is not binding on the United States as to such excess. (1853) 6 Op. Atty. Gen. 26.

Disposition of money as within discretion of congress.—The disposition of public money is in the discretion of congress, whose reasons cannot be inquired into by executive officers or by the courts. Mumford v. U. S. (1896) 31 Ct. Cl. 210.

Power of president as to specific appropriation.—The president does not possess the power to order any portion of a specific appropriation for the mileage and pay of members of the house of representatives to be transferred to the contingent fund of that body. (1839) 3 Op. Atty. Gen. 442.

This clause held not to permit the president to advance money to the governor of Kansas otherwise than by draft on funds appropriated by law for some branch of the public service in that territory. (1856) 8 Op. Atty. Gen. 137.

Right of congress to prohibit payment.—The general pardon and amnesty granted by President Johnson by proclamation did not entitle one so pardoned to the proceeds of his property theretofore confiscated, condemned, and sold, after such proceeds had been paid into the treasury. Knote v. U. S. (1877) 95 U. S. 149, 24 L. Ed. 442.

Congress has a constitutional right to prohibit the officers of the government from paying persons who encouraged rebellion, and cannot consider such claims, although the claimants may have received an executive pardon. Hart's Adm'r v. U. S. (1880) 16 Ct. Cl. 459.

What is appropriation in general.—An appropriation is per se the legislative authorization prescribed by the constitution that money may be paid out at the treasury. Campagna v. U. S. (1891) 26 Ct. Cl. 316.

A statute should not be construed as making an appropriation, or authorizing the expenditure of money, unless the language is sufficiently explicit to clearly justify it; authority for the use of the public money cannot arise by inference without very clear terms requiring it. (1885) 18 Op. Atty. Gen. 174.

Reclamation act as appropriation in itself.—The reclamation act of June 17, 1902 (Comp. St. § 4700 et seq.), providing for the irrigation by the United States of arid public lands, is not in

violation of the constitution on the ground that it authorizes the expenditure of public money without an appropriation, since it is in itself an appropriation of the proceeds of land sold. U. S. v. Hanson (1909) 167 Fed. 881, 93 C. C. A. 371.

Cited without definite application Cross v. Harrison (1853) 16 How. 164, 201, 14 L. Ed. 889; Hart v. U. S. (1886) 6 Sup. Ct. 961, 963, 118 U. S. 62, 30 L. Ed. 96; Downes v. Bidwell (1901) 21 Sup. Ct. 770, 813, 182 U. S. 244, 45 L. Ed. 1088.

[8] No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Notes of Decisions

Granting title of nobility.—Congress and the states are equally prohibited from granting any title of nobility. Legal Tender Cases (1884) 4 Sup. Ct. 122, 129, 110 U. S. 421, 28 L. Ed. 204.

This prohibition goes to the competency of congress to grant any title of nobility, and limits its power in legislating for territory acquired by the United States, such as Porto Rico, as well as in legislating for the states. Downes v. Bidwell (1901) 21 Sup. Ct. 770, 783, 182 U. S. 244, 45 L. Ed. 1088.

Acceptance of present, emolument, office, or title.—See, also, note under art. 1, § 8, cl. 18, ante, as to "Prohibitions and limitations on powers."

The marshal of the United States for the southern district of Florida cannot at the same time hold the office of commercial agent of France. (1854) 6 Op. Atty. Gen. 409.

A minister plenipotentiary from the United States to a foreign power cannot, without the consent of congress, accept a similar commission from a third power. (1871) 13 Op. Atty. Gen. 538.

The positions held by the commissioners appointed by the president for the Centennial Exhibition are offices of "trust," within the meaning of this clause. (1877) 15 Op. Atty. Gen. 187.

This provision as to the acceptance of any "present, emolument, office, or title" applies as well to a titular prince as to a reigning one; and a simple remembrance of courtesy, even if merely a photograph, falls under the inclusion of "any present of any kind whatever." (1902) 24 Op. Atty. Gen. 116.

This prohibition expressly relates to official persons, and does not extend, under the circumstances outlined, to a department of the government or to governmental institutions. Id.

The secretary of state would not be justified, without authority of congress therefor, in delivering to a clerk of class 4 in the post office department an insignia which has been conferred upon the latter by the German Emperor. Such clerk is an inferior officer of the United States, within the meaning of article 2, § 2, cl. 2, of the constitution, and is therefore inhibited by the last clause of article 1, § 9, of the constitution, from accepting the insignia, unless the consent of congress be first obtained. (1909) 27 Op. Atty. Gen. 219.

A field assistant on the United States Geological Survey, designated as special agent, whose service is not continuous, who is paid by the day when actually employed, and who does not take any oath of office, is not an officer, and he may accept from the king of Sweden the order of the "Knighthood of the North Star." (1911) 28 Op. Atty. Gen. 598.

DECISIONS RELATING TO SECTION IN GENERAL

Section as prohibition on congress.—This section declares what congress may not do. Dodge v. Woolsey (1855) 18 How. 331, 349, 15 L. Ed. 401.

Limitations as in nature of bill of rights.—This section enumerates in the nature of a bill of rights limitations intended to be imposed on the powers of the general government. Barron, Use of Tiernan, v. Baltimore (1833) 7 Pet. 243, 248, 8 L. Ed. 672.

Application to state governments.—This section does not apply to state governments. Butler v. Hopper (C. C. 1806) Fed. Cas. No. 2,241.

Cited without definite application, Leovy v. U. S. (1899) 92 Fed. 344, 349. 350, 34 C. C. A. 392 (reversed [1900] 20 Sup. Ct. 797, 177 U. S. 621, 44 L. Ed. 914); Pacific Steam Whaling Co. v. U. S. (1903) 23 Sup. Ct. 154, 155, 187 U. S. 447, 47 L. Ed. 253; Marvin v. Trout (1905) 26 Sup. Ct. 31, 34, 199 U. S. 212, 50 L. Ed. 157; Cahen v. Brewster (1906) 27 Sup. Ct. 174, 175, 203 U. S. 543, 51 L. Ed. 310, 8 Ann. Cas. 215.

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